

EXHIBIT A

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COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU : PART 15

----- X
SALIH KARASU and ANA DE LUCCA KARASU,

Index No.
4428/16

Plaintiffs,

-against-

SECURITY AUTO SALES, INC., SECURITY
DCJR, INC., and 345 MERRICK ROAD, LLC,

Defendants.
----- X

9th of March, 2022
Mineola, New York

B E F O R E : HONORABLE DICCIA PINEDA-KIRWAN

Justice and a Jury.

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

Plaintiffs:

RONALD BURKE, ESQ.
Kelner and Kelner
7 World Trade Center
250 Greenwich Street, Ste. 2700
New York, NY 10007

Defendants:

JAMES A. EDWARDS, ESQ.
Ahmuty, Demers & McManus
199 Waters Street, 16th Floor
New York, NY 10038

1 THE CLERK: All rise. The Nassau County Supreme
2 Court Trial Term Part 15 is now in session. The Honorable
3 Diccia Pineda-Kirwan presiding. Be seated. Come to order.

4 In the matter of index number 004428 of 2016 Salih
5 Karasu and Ana De Lucca Karasu against Security Auto Sales,
6 Inc., Security DCJR, Inc., and 345 Merrick Road, LLC.

7 MR. BURKE: Ronald, middle initial C. Burke. From
8 Kelner and Kelner for the plaintiff.

9 MR. EDWARDS: For the defendant Security Auto
10 Sales, Inc., Security DCJR, Inc., and 345 Merrick Road,
11 LLC, James Edwards Ahmuty, Demers & McManus.

12 THE COURT: Counsel, I have receive made rulings
13 for trial counsel to guide you as to what the court
14 requires just so we can have everything in order. So we
15 can start the trial.

16 You had submitted, Mr. Burke, I have your request.
17 I'm sorry, I have this the marked pleadings. I usually
18 don't mark it, but we might as well court exhibit roman
19 numeral one.

20 Now I have plaintiffs' request to charge and
21 plaintiffs' proposed verdict sheet which I'd like to mark
22 roman numeral two A and B.

23 Now consider the defendant verdict sheet and
24 request to charge. It will be marked as court's exhibits
25 3A and 3B.

1 As court exhibit number four stipulation of the
2 parties with the moving some documents some evidence in
3 evidence moving them into evidence on consent. They have
4 stipulated to it. There was one exhibit, two exhibits
5 actually, two photographs, that the defendant does not
6 agree to that's objected to and the court will rule on that
7 in the future.

8 MR. BURKE: With regard to the records of
9 Dr. Acampa that we're putting into evidence it's been
10 agreed by counsel that there are two visits from calendar
11 year 2020 that we're going to add into this you know on
12 Friday morning.

13 THE COURT: Okay.

14 MR. BURKE: Just missing the last two visits of
15 the we're going to we agree upon and we'll supply them.

16 MR. EDWARDS: Agreed.

17 MR. BURKE: The last two visits that we are going
18 to add Friday morning are the notes of Dr. Acampa from the
19 visit of May 4, 2020 and September 15, 2020.

20 THE COURT: Stipulation to the exhibit should be
21 to be admitted court exhibit four.

22 Discontinue third party, so ordered court exhibit
23 number five.

24 THE CLERK: All rise. The Nassau County Supreme
25 Court Trial Term Part 15 is now in session. The Honorable

1 Diccia Pineda-Kirwan presiding. Be seated. Come to order.

2 In the matter of index number 004428 of 2016 Salih
3 Karasu and Ana De Lucca Karasu against Security Auto Sales,
4 Inc., Security DCJR, Inc., and 345 Merrick Road, LLC.

5 THE COURT: Thank you. Counsel, why don't you be
6 seated?

7 THE CLERK: Is the jury satisfactory to the
8 plaintiff?

9 MR. BURKE: Yes, the jury is satisfactory to the
10 plaintiff.

11 THE CLERK: Is the jury satisfactory to the
12 defendant?

13 MR. EDWARDS: The jury is satisfactory to the
14 defendant.

15 THE CLERK: Members of the jury, please rise and
16 raise your right-hands, do you and each of you solemnly
17 swear that you will well and truly try the issues joined
18 herein and a true verdict render in accordance with the
19 evidence and the charge of the court so help you God?

20 SWORN JURY: Yes.

21 THE CLERK: Please be seated. Give your attention
22 to the court.

23 THE COURT: Before I give you my -- hi, everybody,
24 good morning, nice and wet, right? Before I give you the
25 introduction, I'd like to let you know that we're going to

1 ask you to keep your masks on. The attorneys may remove
2 them and they are going to stay away from everybody because
3 the court reporter cannot hear through the masks. It's
4 easier for her to understand. So bear with us. If there
5 is an issue, let us know but I think if you just remain
6 calm and it should be okay. Relax. And as I said, the
7 attorneys are going to take them off. When they are
8 speaking to you they will stay a little aways. Thank you.

9 Good morning, ladies and gentlemen, I hope you can
10 hear me. My name is Supreme Court Justice Diccia Pineda
11 Kirwan and I will be presiding over this trial. The right
12 to trial by jury is the backbone of our system of justice.
13 And your service here enables us to continue on your
14 participation in the civil justice system is of utmost
15 importance in both State of New York as well as United
16 States.

17 Members of the jury, we are about to begin the
18 trial of this case about which you have heard some details
19 during jury selection. Before the trial begins, however, I
20 will provide you with certain instructions to help you
21 understand what you will hear and see and to guide your
22 conduct during this trial.

23 The party who brings the lawsuit is called the
24 plaintiff. In this case the plaintiffs are Salih Karasu
25 and Ana De Lucca Karasu. The plaintiffs are represented by

1 Mr. Ronald Burke which you have met. He's right in front.
2 The parties against whom the suit is brought are called the
3 defendant. The defendants in this action are Security Auto
4 Sales, Inc., Security DCJR, Inc., and 345 Merrick Road, LLC
5 defendants are represented by Mr. James Edward whom you
6 also met.

7 Now the question of liability has been decided
8 thus in this part of the case you will decide only the
9 nature and extent of the plaintiff's injuries and what
10 amount of money will fairly and justly compensate the
11 plaintiff for all resulting loss.

12 Should there be a mention of how the injury
13 happened or the accident, you will consider that reference
14 only in deciding the amount of money, if any, that you will
15 fairly and justly compensate the plaintiff.

16 When I have completed these instructions, the
17 attorneys will make opening statements in which each will
18 outline for you what he expects to prove. The purpose of
19 opening statement is to tell you about each party's
20 contentions. So that you will have better understanding of
21 the evidence as it is introduced.

22 What is said in opening statements is not
23 evidence. The evidence upon which you will base your
24 decision will come from the testimony of the witness here
25 in court or in sworn testimony given before trial. Or in

1 the form of photographs, documents or other exhibits
2 admitted into evidence.

3 In this case, the plaintiff makes an opening
4 statement first and is followed by the defendant. After
5 the opening statements, plaintiff will introduce evidence
6 in support of his or her claim.

7 Normally a party must introduce all of his or her
8 witnesses and complete his or her all of his entire case
9 before opposing party introduces any evidence although
10 exceptions are sometimes made.

11 After the opposing party has completed the
12 introduction of all of his or her evidence. The other
13 party may, but is not required to present evidence,
14 witnesses and exhibits. If he or she does so then the
15 other party may, but is not required to offer additional
16 evidence for the purpose of rebuttal.

17 A witness is examined by the party who calls that
18 witness to testify and then maybe questioned by the
19 opposing party in cross-examination. Additional
20 questioning may occur.

21 Now at times during the trial an attorney may
22 object to the question of an introduction of an exhibit or
23 make motions concerning legal questions that apply to this
24 case. Arguments in connection with objections or motions
25 sometimes are made out of the presents of the jury. Any

1 ruling I make will be made based solely on the law and,
2 therefore, you must not conclude from any ruling or from
3 anything I say during the trial that I favor either party
4 to this lawsuit.

5 After all the evidence is in, the attorneys will
6 speak to you in a closing statement or summation. Summing
7 up the lawyers will point out what they contend the
8 evidence has shown, what the inferences or conclusions they
9 contend you should draw from the evidence and what
10 conclusions they can contend you should reach at your
11 verdict.

12 What attorneys say in summation like what they say
13 in jury selection, opening statements or in the making of
14 objections or motions during the trial is only argument and
15 not evidence.

16 Under our system the defendant sums up first and
17 is followed by the plaintiff. Now after summations I will
18 instruct you on the rules of law that apply to this case.
19 You will then retire for deliberations. In your
20 deliberations your function as jurors is to decide what has
21 or has not been proved and to apply rules of law that I
22 give you to the facts as you find them to be.

23 That the decision you reach will be your verdict.
24 Your decision will be based on the testimony you hear and
25 the exhibits received in evidence during the trial. You

1 are the sole and exclusive judges of the facts. And
2 nothing I say or do should be taken by you as any
3 indication or -- strike that.

4 Of my opinion as to the facts. Neither I nor
5 anyone else can take over your responsibility to determine
6 the facts. My role is to preside impartially and not to
7 express any opinion concerning the facts. Any opinion of
8 mine on the facts would in any event be totally irrelevant
9 because the facts are for you to decide.

10 On the other hand, if with equal emphasis I
11 instruct you that in accordance with the oath you took as
12 jurors, you must accept the rules of law I give you whether
13 or not you agree with them. You are not to ask anyone else
14 about the law. You must not consider or accept any advice
15 about the law from anyone else but me.

16 Now as sole judges of the facts you must decide
17 which of the witness you believe, what portion of their
18 testimony you accept and what weight you give to it.

19 At times during the trial I may sustain objections
20 to questions and you may hear no answer or where an answer
21 has been given, I may instruct that it be stricken or
22 removed from the record and that you disregard it.

23 You may not draw any inference or conclusion from
24 an unanswered question nor may you consider testimony that
25 has been stricken or removed from the record in reaching

1 your decision. The law requires that the decision be made
2 solely on the evidence before you. Any items I exclude
3 from your consideration will be excluded because they are
4 not legally admissible.

5 A lawsuit is a civilized method of determining
6 disputes. It is basic to the administration of any system
7 of justice that the decisions on both the law and the fact
8 be made fairly and honestly. You as the jurors and I as
9 the court have a heavy responsibility. To act impartially
10 and insure a just result -- to insure that just result is
11 reached in deciding the dispute between the plaintiff and
12 the defendant in this case. Or the plaintiffs and the
13 defendants.

14 Now as a fair and impartial juror, you must guard
15 against the application of any stereotypes or attitudes
16 about people or groups that might lead you to render a
17 decision based on those stereotypes or attitudes.

18 Keep in mind that bias is not always obvious and
19 conscious. In assessing the testimony and other evidence
20 in the case, you must not be swayed by those stereotypes or
21 attitudes.

22 The law does not require to accept all of the
23 evidence that will admit in deciding what evidence you will
24 accept you must make your own evaluation of the testimony
25 given by each of the witness and decide how much weight if

1 any you choose to give to that testimony.

2 The testimony of a witness may not conform to the
3 facts as they occur because he or she is intentionally
4 lying because the witness did not accurately see or hear
5 what he or she is testifying about because a witness's
6 recollection is faulty or because the witness has not
7 expressed himself or herself clearly.

8 There is no magical formula by which you evaluate
9 testimony. You bring with you to this courtroom all the
10 experience and background of your lives. In your everyday
11 affairs you decide for yourselves the reliability or
12 unreliability of things people tell you.

13 The same tests you use in your everyday dealings
14 are the tests you should apply in your deliberations. In
15 deciding how much weight, if any, you will give to a
16 witnesses testimony, you may consider the interest or lack
17 of interest of that witness in the outcome of the case.
18 Bias or prejudice of the witness if there be any. The age,
19 the appearance, the manner in which the witness gives
20 testimony on the stand. The opportunity and ability the
21 witness has had to observe the facts about which he or she
22 testified. And the probability or improbability of the
23 witness's testimony when considered in light of all the
24 other evidence in the case.

25 If it appears there was a conflict in the evidence

1 you should decide whether and to what extent the apparent
2 conflict can be reconciled by fitting the different
3 versions together. If you can not decide, you will have to
4 decide which of the conflicting versions you will accept
5 if, any. To make sure strike that.

6 To help make sure just result is reached when you
7 decide this case consistent with the oaths you took as
8 jurors, as a juror, there are several rules that must
9 govern your conduct during the time you serve as a juror.

10 Now because this case involves something that
11 happened at a particular location, you may be tempted to
12 visit that location. You must not pass by until the case
13 is over.

14 In addition, you must not attempt to view scene by
15 using any computer programs. Viewing the scene either in
16 person or through a computer program would be an unfair to
17 the parties because the location the way it looked at the
18 time of the injury and as it now looks may be very
19 different. This case involves -- strike that.

20 Thus you must rely only on the evidence admitted
21 here in court to determine the circumstances and conditions
22 under which the accident and injury occurred. In fairness
23 to the parties to this lawsuit it is very important for you
24 to keep an open mind throughout the trial. You must reach
25 your decision and verdict on the evidence only as it is

1 admitted during this trial. And then only after you have
2 heard the summations of the attorneys and my instructions
3 to you on the law. Then you will exchange your views and
4 opinions with each other with the other members of the jury
5 to reach your decision and verdict.

6 Well it is human nature for you to form -- strike
7 that. While it is human nature for you to form tentative
8 opinions about the witness's testimony and other evidence
9 as the trial progresses and there is a strong temptation to
10 discuss those opinions during the course of the trial the
11 law does not permit it.

12 The reason for this is that if you engage in
13 premature discussions without the benefit of all the
14 evidence, the summations by the lawyers, my final
15 instructions to you on the law, you're discussions will not
16 be fully informed. That would be unfair to the parties.

17 For this reason, among others, do not do any
18 independent research or any on any topic you might hear
19 about this case whether by consulting others, reading any
20 material, or consulting internet searches of any kind.

21 Some of the topics you may not discuss or research
22 are the law or any other issues in the case.

23 You must you also must not discuss or do research
24 by the parties the lawyers the witnesses or me. After you
25 have rendered your verdict and have been discharged you

1 will be free to do any research you choose or to share your
2 experiences. However, strike that.

3 Remember these rules while you are serving as a
4 juror whether in the courtroom or elsewhere including
5 whether you use the computer or other personal electronic
6 devices. It is vital that you carefully follow these
7 directions. The law requires that you consider only the
8 testimony and other evidence admitted at this trial. Not
9 only does our lawyer mandate, but parties depend on you to
10 fairly and impartially consider only the admitted evidence.

11 To do otherwise by allowing outside information
12 which may be incomplete, inaccurate or otherwise unreliable
13 to affect your judgment, would be unfair and prejudicial to
14 the parties and could require a retrial of this case.

15 All cellphones smart phones, laptops, tablets or
16 any other personal electronic devises must be turned off
17 while you were in the courtroom and while you were
18 deliberating. Do not talk either amongst yourselves or
19 with anyone else about anything related to this case. You
20 may tell people you are a juror and give them information
21 about when you will be required to be in court, but you
22 must not talk with anyone about any other matters related
23 to this case.

24 You must not provided any information about the
25 this case to anyone by any means whatsoever. This means

1 you must not discuss or give or get information about any
2 matter related to this case by telephone, text messaging,
3 e-mail, any internet services or social media including for
4 example blogs, chatrooms, Google, FaceBook, Twitter
5 Linked-In, Instagram, TikTok or any other platform. Boy
6 that's a mouthful. Okay.

7 You must not permit any person who is not a juror
8 to talk about this case in your presence. If anyone does
9 despite you telling them that person is not to report that
10 to me as soon as you are able. However, you must not
11 discuss with your fellow jurors either that fact or any
12 fact you feel necessary to bring to my attention.

13 Now although it is normal human tendency to talk
14 to people with whom you come in contact during the time you
15 serve on this trial, do not talk whether in or out of the
16 courtroom with any of the parties or their attorneys or any
17 witnesses. By this I mean not only do not talk about the
18 case but not talk to them at all even to pass the time of
19 day.

20 In no other way can our parties be assured of the
21 absolute impartiality they are entitled to expect from you
22 as jurors. If a lawyer party or witness does not
23 acknowledge you that person is not being rude. But is
24 merely following my instructions not to speak with you.
25 You can acknowledge me by the way. The parties and the

1 attorneys involved in this case or people working with them
2 on this case may properly look at the jurors public
3 website, public social media posts or blogs or you're
4 social media profiles that are publicly accessible. This
5 may have occurred during jury selection and also may occur
6 during the course of this trial during deliberations and
7 after the trial has ended.

8 While the parties and attorneys may look at your
9 public media, they may not communication with you through
10 public media or any other way during the trial and
11 deliberations. In fact, nobody may communicate with you
12 about the case for any reason in any manner during the
13 course of this trial or during the time you are
14 deliberating.

15 If you believe any one has an attempted to
16 communicate with you may in any manner about the case let
17 me know as soon as possible. You should not communicate
18 about the case with anyone other than me or a court
19 officer.

20 Now during this trial circumstances may arise when
21 a juror has the need to bring a matter to my attention.
22 Should anyone of you find yourself in that situation please
23 notify our court officer either or through a note that you
24 need to speak to me. I usually give you note paper, pen
25 and everything, but usually while they are deliberating but

1 maybe I will give you that any in case they need it.

2 I will then instruct you further. Do not tell any
3 juror or anyone else about the matter you seek to bring to
4 my attention. Under the law only 6 jurors will deliberate
5 in this case, we have selected additional jurors because
6 sometimes during the trial a juror may be unable to
7 continue serve due to an emergency.

8 All of you are required to pay the same careful
9 attention during the trial so that each you will be fully
10 familiar with the case. The fact that there are additional
11 jurors does not mean that any juror free to excuse themself
12 or herself from the case. As a sworn juror it is your
13 obligation to be available and attentive throughout the
14 trial.

15 The description of trial procedure, the rules
16 governing your conduct and the legal principals I have
17 described for you will, I believe, make it easier for you
18 to understand the trial as it proceeds and to reach a just
19 result in conclusion. That's my part in this play.

20 You may do your openings.

21 MR. BURKE: Thank you, Judge.

22 Thank you, all jurors, we really appreciate your
23 volunteering to sit on this trial. We spend a lot of time
24 talking to you about just an overview of things. So now is
25 my opportunity on behalf of my clients Salih Karasu and his

1 wife Ana who is sitting in the back of this courtroom. You
2 will hear from them shortly.

3 But I want to tell you just in general terms an
4 overview or like a roadmap as to what I believe the
5 evidence is going to reveal to you over the course of the
6 next several days.

7 The issue in this case which is limited is really
8 the severity of the injury. I want you to be listening for
9 testimony concerning the long term consequences of that
10 injury not just today, but the long term consequences when
11 Mr. Karasu who is now 47, he was 40 when this happened, but
12 one of the long term consequences when Mr. Karasu is 57,
13 67, 77.

14 And that's where you're going to be considering a
15 lot of information regarding what is the natural progress
16 of this injury. I would ask you to focus on the testimony
17 that's going to talk about the range of motion of his ankle
18 that was fractured and whether his ability to earn income
19 has been diminished or reduced as a result of his injury.

20 So let me tell you a little bit about Salih
21 Karasu. He and his wife have been living for many years in
22 a house in Wantage. They have a daughter, teenager, I
23 believe, she must be a junior or senior by now in high
24 school. But Mr. Karasu was born and educated in Turkey. I
25 believe he had 11 years of high school and then he obtained

1 two year associates degree in accounting all in Turkey, but
2 that he wanted to come to the United States.

3 And so after he had completed his education in
4 Turkey and I believe he worked for sometime after he
5 obtained that degree in Turkey, he comes to the United
6 States in 1996 at the age of approximately 22.

7 It's important to give you just a little bit of
8 information about the man and what he's qualified to do in
9 terms of employment and what he's not. So he has a variety
10 of jobs which Mr. Karasu will describe to you let's say
11 between 1996 and 2014. And in 2014 is where he gets a job
12 as a roofing mechanic a roofer. Someone who goes on top of
13 a building and removes and or replaces a roof.

14 So in that position as a roofer he begins with his
15 company Four Seasons I believe in the summer of 2014. And
16 he works with them until the date of his accident in March
17 of 2015. And you're going to hear what it is that a roofer
18 does.

19 I'm sure some you have some knowledge, but
20 basically a great deal of it is associated with using
21 ladders and climbing. And it's heavy manual work.

22 So this accident occurs on March 26th, 2015 at the
23 end of the day when Mr. Karasu is working with a crew of
24 other guys that he commonly worked with. I'm not going to
25 tell you how or why the accident happened only because it's

1 not relevant to the case. I'm simply going to tell you the
2 tell end of this accident which is he fell approximately a
3 distance of 8 to 10 feet off of a ladder and landed with
4 the bulk of his weight on his right foot. And this was a
5 building that was owned and or leased by the defendants
6 Security Auto Sales, Inc., and 345 Merrick Road, LLC.

7 Now since it has already been determined before we
8 all got together that both of those defendants are
9 responsible for the accident and the injuries related to
10 the accident, we are just going to focus on the injuries
11 for the purpose of this trial.

12 So Mr. Karasu is in a very public way has fallen.
13 He's in pain. An ambulance comes, police come. He's taken
14 immediately from the scene -- this is again at the end of
15 the typical workday, he's taken over to Good Samaritan
16 Hospital emergency room. And all of the focus is on his
17 right ankle. He really didn't have any complaint about any
18 other part of his body. It's not his neck. It's not his
19 back. He's complaining only about his right ankle. And
20 the notes indicates it's extremely swollen.

21 And after a work-up with x-rays they come up with
22 the following phrases that you're going to hear during the
23 trial. He has comminuted fracture of the distal tibia.
24 The tibia is the shinbone between our knee and our ankle.
25 He had a displacement of fragments from the tibia. Meaning

1 this wasn't just a clean break and when it says distal
2 there is a difference between fracturing a bone in the mid
3 shaft area or fracturing a bone in a joint. Let's say the
4 knee or the ankle.

5 There is a big consequential difference the
6 evidence will show. It also indicated that he had based on
7 the x-rays a transverse fracture of the distal fibula.
8 Fibula is the skinny bone. There are two bones that run
9 between the knee and the ankle. The tibia or the shinbone
10 is the thick one and over on the side runs a slender bone
11 called the fibula.

12 So when they use the word distal that means it's
13 not a fracture in the middle of the leg. Distal means it's
14 further away meaning it's at the bottom tip of those long
15 bones. So any time you hear distal it means far away. If
16 they were to say proximal that would indicate it's higher
17 up.

18 So this fracture occurred down at the bottom of
19 those two long bones. And the problem with fractures of
20 the distal tibia and fibula is that when these bones end
21 and go into the ankle joint there is a cover on the end of
22 those bones which is what they call an articular surface.

23 The articular surface allows one bone, same thing
24 in your knee, to move and slide so that we can pivot that
25 we can bend because our ankle moves in four different

1 planes at least which is when you lift up your foot -- your
2 tibia and the fibula are articulating. They are moving
3 with the joint. And when you lift it up it's called dorsa
4 flexion.

5 The next plane of motion for the foot, the ankle
6 is when you extend when you push your foot down as opposed
7 to up when you're putting it down it's called plantar
8 extension. We also move our feet. We can invert and we
9 can evert. So there are multiple planes. All of these
10 planes depending upon proper articulating surfaces.

11 So just quickly one more point. You will hear
12 that just to the building block of the foot the heel bone
13 is called the calcaneus. On top of the calcaneus is what's
14 call the talus. Then we have two bones the tibia and the
15 fibula coming down into the talus. And so there is what's
16 called the tibiotalar joint which means the joint between
17 the tibia bone and the talus. So it's calcaneus, talus and
18 abbreviation they say tibfib. The tibia fibula bones come
19 down into it. And we have that what we hope is a nice
20 smooth articulating surface. All right.

21 So after arrival at the hospital the imaging
22 studies show the severity of this injury Mr. Karasu's ankle
23 it's too swollen to perform the necessary surgery to put
24 that all back together again as best they can. So a
25 decision is made by an orthopedist who comes into

1 Mr. Karasu's life the next day we're going to hear his name
2 many times. His name is a John Acampa. John Acampa is an
3 orthopedist who meets with Mr. Karasu for the first time
4 the following day March 27th of 2015.

5 Now as of this point in time you should know
6 Mr. Karasu had never fractured his ankle he had never
7 injured his ankle before. There is no prior medical
8 history. He had a proper functioning left and right foot
9 and ankle until this injury.

10 So Dr. Acampa comes in on March 27th to Good
11 Samaritan Hospital on what would be Mr. Karasu's day two
12 and basically a decision is made that they are going to use
13 what's called an external fixator that we need to wait
14 several weeks before this injury, this swelling from it
15 calms down. So a surgery is performed a day after the
16 accident where they apply an external fixator.

17 Now an external fixator basically means almost
18 looks like an erector set where they will have steel rods
19 with screw tips and they will basically put them into the
20 sides of your leg. And they will literally screw down and
21 it goes down to incorporate the foot.

22 You know you could see on the leg it occupies a
23 very large place. So that surgery was performed the
24 following day. On the Thursday Mr. Karasu was released and
25 sent home basically with the plan of you're coming back

1 that about three weeks to remove the external fixator. The
2 swelling should be down by then which of course happened.
3 Approximately three weeks later it would have been on April
4 17, 2015. Mr. Karasu's who of course is laid up, you know,
5 in between these two surgeries he can't do anything. He
6 has a procedure which is referred as an open reduction
7 internal fixation.

8 So three weeks later after the accident they
9 remove the external fixator. They make an incision into
10 the ankle and we will have a medical expert describe to you
11 what they do, but essentially they use plates and screws to
12 put the pieces back together as best as they can.

13 You will hear medical testimony that this is not a
14 cure it's making hopefully the best of a bad situation. So
15 he's admitted to Good Samaritan Hospital. And we have all
16 these hospital records in evidence. Dr. Acampa in
17 evidence. We're going to ask him to look at some x-ray
18 images both before and after so you get a sense of what
19 you're looking at.

20 And he's released from the hospital, but of course
21 he's released non weight bearing. Basically he needs a
22 period of time where you will hear he goes from basically
23 bedbound to a walker, graduates over many months to a cane.
24 And he of course after he has been released from Good
25 Samaritan Hospital for the second hospitalization you will

1 see that there were many many follow-up visit with
2 Dr. Acampa at his office and there is a point in time where
3 he also begins physical therapy on a regular basis.

4 In the beginning you know he's going three times a
5 week then maybe two three times a week. And over time it
6 winds down it's less and less. I believe the physical
7 therapy continued through to I believe 2018, but you will
8 hear in the records of Dr. Acampa two, three months after
9 the second surgery Dr. Acampa has notes indicating that
10 he's non weight bearing.

11 He talks about in August, you know, which would be
12 four months later encourage Mr. Karasu to progress from a
13 boot on the right foot like a CAM boot to protect that foot
14 while it's recovering from the surgery he encourages him to
15 go into sneaker. By the end of 2015 Dr. Acampa is noting
16 that Mr. Karasu is totally disabled as a construction
17 worker. And he notes also that he has what's referred to
18 as an antalgic gate antalgic A-N-T-A-L-G-I-C, but basically
19 what they are talking about when they say antalgic gate is
20 limp.

21 And you will see over the years, there is
22 improvement on that as well. But documented in Dr. Acampa
23 office records are a series of range of motion
24 examinations. Where a doctor literally measures your range
25 of motion and records what the normal range of motion is

1 for dorsiflexion, plantar flexion, eversion, inversion.
2 And there is you will see there is some significant loss of
3 range of motion in that foot.

4 And there are multiple notes of swelling
5 difficulty sleeping and this is in 2015, 2016. His ankle
6 has stabbing, burning, numbness and weakness. And this
7 continues.

8 Now of course in 2015 after the fall from the
9 ladder Mr. Karasu is totally unemployed. And in the years
10 to come there is yet a third surgery that is necessary in
11 July of 2017 which would be about two years and couple of
12 months from the time of the accident. He has a third
13 surgery to remove the hardware. And you will also see that
14 try as they might they weren't able to remove everything.
15 Some of the screws still remain.

16 So approximately a month after that third surgery
17 to remove the hardware, there is a problem with the wound
18 at the site of the surgery and there is decay and death of
19 skin tissue and so he has problem with wound healing and as
20 a result he has to undergo what's called wound debridement
21 or debridement. I'm not -- I always mix those two up.

22 But basically they are cutting away dead tissue or
23 perhaps an infected tissue that prevents healing. So that
24 was yet another unfortunate outcome of this, but the wound
25 did heal. Of course the scarring in the area of the ankle

1 you will be able to see for yourself. But after this time
2 in the summer of 2017 Mr. Karasu is continuing with his
3 visits again to both Dr. Acampa as well as to physical
4 therapy. And in 2017 you will hear that they tried steroid
5 injection to help reduce the inflammation to diminish the
6 pain.

7 You know, there is an indication that as a result
8 of this fracture this devastating fracture there is early
9 onset of arthritis in that joint. You see the same
10 complaint in 2017 that I mentioned to you before. And
11 there is options for him. Back in 2018 there is no
12 guaranteeing a cure for what has happened to Mr. Karasu.
13 But Dr. Acampa raises the option of in his notes of a
14 surgical fusion.

15 With the idea being is that if that joint is fixed
16 in some degree, although you are bound to lose even more
17 range of motion, we hope it will decrease your pain.
18 That's one option.

19 The record will reveal that Mr. Karasu obtained a
20 second opinion from a different orthopedist at the Hospital
21 For Special Surgery. Dr. Halfet. Mr. Halfet raised
22 surgical option which he described as an ankle joint
23 replacement. But the problem for Mr. Karasu is that there
24 is no guarantee either of these surgical options are going
25 to improve his condition. And as you will hear any

1 surgical option brings along with it the risk that anyone
2 takes when undergoing surgery is that it may not only make
3 it better, it may make you worse. So this is a decision
4 Mr. Karasu has made right now he's not interested in either
5 of these procedures.

6 Now Mr. Karasu got a job with Sunrise Labs in 2018
7 where he began earning money part time driving and he was
8 picking up labs specimens from doctors offices. He would
9 go out on a route, go to multiple offices from doctors, you
10 know how they keep a box outside the office, you know, he
11 would pick them up bring them into the car and take them
12 back to the lab. And he did this in 2018. Of course
13 finances are tough. But he made nine thousand dollars in
14 2018.

15 In 2019 he increased his hours of work and he
16 earned, you will see this in the tax returns which, you
17 know, are in evidence he increased his earnings to thirteen
18 thousand. He felt that he could tolerate the pain if he
19 had the opportunity to rest when he gets back in the car.
20 So takes a short work to get the specimen he comes back
21 into the car and now he's seated and he drives a bit until
22 he goes to his next pick up.

23 So in 2020 Mr. Karasu earns 17 thousand dollars.
24 It keeps going up from his part time work as a driver for
25 Sunrise. And he also does a part-time job with an another

1 company where he made another approximately 11 thousand
2 dollars. So between 2019 and 2020 he doubles his earnings
3 from 13 thousand to roughly 28 thousand. But it's still a
4 financial burden to go from the earnings which will be
5 described to you as a roofer where he's being paid a much
6 higher hourly wage and when working overtime, gets time and
7 a half on that.

8 So there is a significant difference there that
9 I'm going bring to you an economist who will with the use
10 of tables show what the earnings track record would be
11 continuing as a roofer at Four Seasons versus not being
12 able to work versus working part time and then going full
13 time.

14 So with you know a young child at home and his
15 wife with you know rent and utility bills and what not even
16 when he increased his earnings to 28 thousand, I don't
17 think I need much to tell you that that still is financial
18 struggle.

19 So one thing you will never be more assured of is
20 that Mr. Karasu is an extremely hard working gentleman
21 because in 2021 he starts working 60 hours a week sometimes
22 70 hours a week. He started that back in 2021 up to today
23 he's working 60 to 70 hours a week. He's working you will
24 hear 7 days a week at an hourly rate of roughly 16 thousand
25 dollars.

1 You know, he can get over time, but even still
2 when you compare what the earnings would be working a
3 normal life-style of five days a week to the crazy amount
4 of hours that he has to work as a driver picking up lab
5 specimens and he does this during the enduring the pain
6 because he rests when get back into the car.

7 And you will hear from a medical expert his name
8 Ali Guy who is a board certified physician specializing in
9 the field of medicine rehabilitation who is the type of
10 doctor that after an orthopedic injury if you're not
11 pursuing the surgical options offered by the orthopedist
12 then of course, you know, you work with a physiatrist they
13 are called. Physical therapy.

14 Dr. Guy will testify based upon his examination of
15 Mr. Karasu based upon the records that we have in evidence
16 for you from physical therapy from Dr. Acampa, records from
17 the radiology images which hopefully successfully bring up
18 on that screen, it may be, I will bring in one of these
19 young kids to come in and help me.

20 But what he will testify to in a general way, I'm
21 going to try to make it brief here is that this condition
22 to the damage to the articular surface is that this is
23 something that doesn't get better it doesn't stay the same.
24 That generally speaking as to every member of society any
25 human being it's going to get worse. There is no blood

1 supply to the articulated surface at the end of our bones.
2 And once damaged whether traumatically as a result of a
3 fall or car accident, there is really nothing that can be
4 done to cure that.

5 This injury has a name which you see all over the
6 records. When you have that that forceful jam that will
7 occur when you fall off a ladder or maybe, you know, a
8 front impact if you're in the front seat of a car that
9 comes with a head-on collision that's when you can see
10 what's called a pilon, P-I-L-O-N, fracture. A pilon
11 fracture is when the tibia fibula, two long bones from the
12 knee to the ankle, when they crunch into the talus which
13 sits on top of the calcaneus.

14 Now Dr. Guy will explain that because of this it's
15 not reasonable to expect Mr. Karasu now at the age of 47 to
16 continue working these grueling hours forever. It's a
17 burden that comes with a cost because with increased
18 activity with bad weather it aggravates the condition that
19 you have and makes whatever was painful more painful or
20 whatever had quieted down become painful.

21 Dr. Dwyer, the Ph.D. economist, she'll explain
22 that not only will Mr. Karasu have a loss over of the
23 course of the rest of his lifetime of work, you know, which
24 they basically use they estimate future lifetime work
25 expectancy up to the age of 67 because that's when you get

1 the full Social Security benefit should you choose to
2 retire at 67. By she'll explain not only is this going to
3 have a wage loss, he's also going to have a loss in his
4 Social Security retirement income benefit.

5 The more you make and the more you pay into the
6 system, the more you get out. So that also is a some of
7 money which is paid out over the course of a lifetime once
8 you reach the retirement age. Dr. Guy will also comment
9 upon notes made by other doctors not only has this
10 arthritis set in in the ankle, but also when you have an
11 impact on one joint it also ultimately becomes an issue in
12 the joint above and the knee.

13 I will also ask Mrs. Karasu to testify for two
14 reasons to tell you things that she is observed that
15 Mr. Karasu is never going to share unless a dentist pulls
16 it out of him. And also because she can give a sense as to
17 in general her observation in the darkest days and how it
18 has progressed. And how it changed, you know, in any
19 marriage there is a sharing hopefully of the burden of
20 household chores, taking your child, whether you're working
21 you're a chauffeur for your child, all of those things
22 she's going to explain to you what it is that her husband
23 wasn't able to do and what she had to do instead of him.

24 So I would just ask you to keep an open mind.
25 That don't make up your mind until you hear from everybody.

1 I want you to hear from the medical expert that the defense
2 has brought in, as you should.

3 And you will learn that Mr. Karasu has come some
4 distance from what's happened to him. And you decide if
5 you believe that it is fair and just to compensate him for
6 what has he has lost in the past for what his past pain and
7 suffering. What at the of this case you will be asked to
8 also award a fair sum of money for his anticipated future
9 pain and suffering as well as lost wages lost retirement
10 benefits. And I thank you for your time.

11 THE COURT: Thank you, Counsel.

12 MR. EDWARDS: Mr. Burke, pretty much identified
13 for you what our issue here. He told you right at the
14 outset long term consequences of the thing. And he told
15 you here he just told that you he's going to be looking for
16 damages for when Mr. Karasu is 57 and 67 and 77. So I'm
17 looking at a claim here where they are going to be asking
18 you for money damages 30 years in the future.

19 Which you heard the evidence is going to show you
20 heard about a lot of medical treatment that happened
21 already years in the past. And about a couple of surgeries
22 that are not going to happen because he's already told you
23 they are not going to happen.

24 So let's just, again, I'm not I told you folks,
25 forget the injury, I don't dispute it. It's a bad injury.

1 I will tell you right now I'm not in any way diminishing
2 the significance of what happened when he fell because
3 that's not why we're here. What we are here about sort of
4 these long term consequence issues. That's really where we
5 believe the struggle is.

6 So if you're going to hear numbers. 57, 67, 77.
7 Let's think about numbers. Okay. Let's look at the case
8 in terms of numbers. So he's got no question four
9 procedures which were laid out by Mr. Burke. He has no
10 dispute the external fixator, the internal fixation, the
11 removal of the hardware. He had those procedures. He's
12 got about you heard about Dr. Acampa that's the doctor
13 that's been treating him throughout for his ankle injury.

14 And he saw Dr. Acampa I have the records here. We
15 stipulated we agree the records come into evidence. You
16 have -- he's seen him about 40 odd times I think maybe
17 about 45 times or so. That's going back within right, you
18 know, within the years after the accident.

19 Then around 2018 the appointments stopped they
20 spread out there's about seven in 2018. He's got five in
21 2019. Saw him twice in 2020. Has not seen him in almost
22 two years. He doesn't have anymore appointments his
23 treatments with Dr. Acampa is done. He had his -- the
24 treatments. He had physical therapy no question about it.
25 I got the records there too. It's in excess of one hundred

1 physical therapy treatments. Especially there was
2 additional rounds of PT after the procedures and that's to
3 be expected. But that's done. He hasn't had his physical
4 therapy. He's finished with his physical therapy. I think
5 it was about August mid 2018 after the last procedure.
6 There is no PT in 2019. There is no PT in 2020. There is
7 no PT in 2021. The physical therapy is done.

8 So the issue here, I think what the evidence is
9 going to show is the ankle fracture is healed. When I say
10 that, I am not saying that his ankle is as good as new.
11 I'm not saying that. It's not. I know that it's not. But
12 it has healed. He's had the treatment that he should have
13 he got very good treatment for it. He had the treatment
14 that Jim had and I think he's healed.

15 He is right now and you will see him in court when
16 you talk about -- Mr. Burke talks about you know mobility.
17 He has mobility in his ankle. He's walking unassisted and
18 has been walking unassisted for years. You know, he may
19 have had crutches and other things. He's walking
20 unassisted for years.

21 He drives which we know he's driving for a living.
22 And you're going to hear since Mr. Burke mentioned, yes,
23 there's doctors are going to come in Dr. Faierman who's
24 going to say he had very serious injuries. He had
25 excessive amount of treatment following treatment to do

1 what the treatment is supposed to do to help resolve the
2 result of the injury and his course of treatment is done.
3 And that is borne out by the fact that it is, in fact,
4 done. He has not truly treated in years.

5 So we're here for money damages. There is a
6 doctor. You heard there is going to be somebody coming in
7 his name is Dr. Ali Guy who is going to come in. And this
8 is an expert, evidence will show this is an expert that on
9 all different types of cases regularly testifies for this
10 lawyer and this law firm in lawsuits for recovery of
11 damages and personal injury cases. In neck cases. In back
12 cases. In knee cases. In shoulders cases. This one
13 happens to be an ankle.

14 I just want you to keep that in mind when you're
15 hearing the testimony about the, you know, leg bone
16 connected to the ankle bone. Just the fact of the matter
17 is, folks, he is working, he's earning. And we're talking
18 about that you heard that you're going to hear from a Debra
19 Dwyer who is an economist that the plaintiff is going to
20 present. We're talking about you know numbers.

21 The evidence is going to show okay before this
22 accident in 2015, the most amount of money ever earned by
23 the plaintiff of was \$43,500 in a year. Okay. That's the
24 most money he had ever earned up until that, you know, the
25 year before his accident.

1 We have -- look, I'm not arguing, he lost time of
2 work certainly after the accident, 2015. I'm not disputing
3 that. He's absolutely he was out of work 2016 and, you
4 know, the rest of 2015 rest of 2016. He doesn't show any
5 income at 2017. There may be some question with regard to
6 him working in an auto repair shop for three or four
7 months. We'll take look at the tax records I don't think
8 we see any income for those years, but then starting in
9 2018 he's back working he makes some money. And in 2019 he
10 does -- I think counsel pointed out he makes double the
11 money.

12 Well, in 2021 he made almost 62 thousand dollars.
13 So his best earnings year before the accident happened is
14 43 thousand dollars. His past earnings year before here
15 right now is nearly 62 thousand dollars. It's about 18
16 thousand dollars a year more that he's earning now than he
17 was earning before.

18 Now, again, I'm not talking about the time he had
19 out after the injury because it's not -- I'm not going to
20 fight over that. I am not going to contest that. We're
21 talking about, as you heard, future consequence of damages.
22 He's making more money now than ever made before, but I'm
23 going to have or we're going to hear then from an expert
24 from a witness that is going to come in a paid expert to
25 testify that despite the fact that he is now making 18

1 thousand dollars a year more than he ever made beforehand,
2 somehow he's going to be out over a million dollars in lost
3 earnings. That's what they are coming here and asking us
4 to pay for. So that just when you hear that evidence just
5 keep an open just question it.

6 The realty is I don't want to take a lot of time
7 he has not treated in years. He doesn't need it. You will
8 hear he does not need -- aside from what you're going to
9 hear from Ali Guy, you're going to hear from an orthopedist
10 who says he doesn't need -- he's reached his -- he's gotten
11 his treatment which you know that not because of the
12 experts are telling you because we know that because he's
13 there.

14 He's living. He's walking. He's working. He's
15 driving. He's earning money. He's taking care of his
16 family. He's doing the things that people do once they get
17 past their injury. So I would like you to please if you
18 could just stay open until the end of the case again I'm
19 defendant I go last.

20 All we're looking for here is that's why we put
21 this in your hand at the end the case I'm going to ask you
22 to give us a verdict, just verdict, a fair verdict, based
23 upon facts, not on speculation or wishful thinking.

24 Thank you.

25 THE COURT: Thank you, Counsel. Perfect timing.

1 We're good for now. We send them to lunch. We'll
2 come back at two. Okay. Thank you. Enjoy your lunch.
3 Thank you very much for your attention.

4 MR. BURKE: The only thing on the record I would
5 like to bring to the court's attention in the request to
6 charge submitted by Mr. Edwards he indicated that he will
7 be looking for a missing witness charge. When I asked him
8 he said that it would be a missing witness charge as to
9 Dr. Acampa. I believe.

10 THE COURT: I didn't seem to have one. I was just
11 looking through them. I was checking some of them are
12 obsolete now. There is just suggest which is missing
13 witness.

14 I keep my little crib sheet see what I have and
15 what you guys have 140, 141 they did away with. I don't
16 think that has anything to do with it. Where would it be.

17 MR. EDWARDS: Let me get my copies of stuff right
18 here.

19 THE COURT: Yes, it's not here.

20 MR. BURKE: Defense counsel has asked for a
21 missing witness charge under PJI 1:75.

22 THE COURT: I don't see that at all in here.

23 MR. EDWARDS: 1:75 failure to produce a non party
24 witness. Look, Judge, I put it in there may be it may be
25 an issue. I want the court to be aware that we may do it.

1 We just did openings. I don't know that I need it.

2 THE COURT: I think his concern is that, you know,
3 he has to secure this witness and we can have a discussion
4 about it may be after we finish today or something but
5 you're going to call both plaintiffs today.

6 MR. BURKE: I don't think we'll get to his wife.

7 THE COURT: You have two and a half hours. All
8 right. We'll talk about scheduling because I have so much
9 stuff going on next week. I am going to take you because
10 your priority but I don't know how I'm going to handle
11 everything else. But including a trial that I had
12 scheduled. No what I think what he's and I think it's
13 justified I don't know and I as I said yesterday well he's
14 telling you what this is for and if you're if you're not
15 going to bring a witness.

16 MR. EDWARDS: I'm aware, Judge, it's on there.

17 THE COURT: Do you want me to do a ruling?

18 MR. BURKE: I don't need a ruling right now, Judge
19 but just wanted to --

20 MR. EDWARDS: We can work it out.

21 THE COURT: He's going to.

22 MR. BURKE: I want to bring it your attention.

23 THE COURT: I remember things believe it or not I
24 remember that.

25 MR. BURKE: Because I have an orthopedist who does

1 not participate in litigation. So I would have to --I
2 would have to drag him in under a subpoena which I'll do if
3 I have to but his records are in evidence.

4 THE COURT: Listen, also I still need the list of
5 witnesses names of witnesses that.

6 MR. BURKE: I'll do it over the lunch break.

7 THE COURT: All right. Enjoy your lunch I'll see
8 you at two. Thank you, everybody.

9 (Luncheon recess taken at this time.)

10 MR. BURKE: As I indicated I'm going to offer this
11 into evidence defense counsel has an objection. I'm
12 offering it because it's relevant with respect -- it's
13 relevant with respect to the tragedy that the plaintiff
14 endured in the three weeks after his accident he lived with
15 an external fixator surrounding his lower right leg and
16 that's what he had to deal with 24 hours a day 7 days a
17 week. So it's necessary for the jury's evaluation of his
18 pain and suffering and it's reasonable.

19 MR. EDWARDS: I object and I think it's
20 interesting counsel's use of the word tragedy which is
21 indicative of his intent to introduce this for the sole
22 purpose of eliciting an emotional appeal.

23 Looking right now with Richardons 4-206 undue
24 prejudice says if the legitimate probative value of the
25 evidence is slight and it is slight because there is no

1 issue or dispute with regard to this particular procedure
2 or treatment that the plaintiff had no probative value is
3 slight and it's emotional appeal is great. It should be
4 excluded citing People v. Sanger Allen 300 New York 120 and
5 Ross v. Brooklyn Heights 10 AD 47 741 New York sub 1069.

6 So I object to the photos going in as more
7 prejudicial than probative and as an attempt to evince an
8 emotional response as opposed to provide meaningful
9 evidence.

10 MR. EDWARDS: Thank you.

11 MR. BURKE: I would rely only that most people
12 during the course of ordinary experience have never seen
13 someone or themselves had to wear an external fixator for
14 three full weeks. I think it's necessary to educate the
15 jury on the impact of that devise.

16 THE COURT: All right. While you were doing your
17 opening remarks we were looking to see what we do about
18 this one. You're going to tell me about the other ruling
19 you want but anyway defendant seeks to preclude photographs
20 of an internal fixator in plaintiffs Salih Karasu's leg on
21 the basis that they will unduly will be unduly inflammatory
22 and will prejudice defendants.

23 Generally photographs will be admitted if they are
24 among other things illustrate or illucidate relevant
25 evidence or corroborate other evidence offered. See people

1 V Wood 79 NY 2d 58 1992. They will be excluded where their
2 quote sole purpose is to arouse the emotion of the jury and
3 prejudice the defendant unquote.

4 It is well settled that a court has great
5 discretion in making evidentiary rulings and to be
6 admissible evidence it must be relevance and probative
7 strike that. Evidence must be relevant and its probative
8 value outweigh the risk of any undue prejudice see Mazella
9 versus Beals 27 NY 3d 694 709 2016.

10 Additionally, a photograph generally admissible
11 upon testimony by someone with personal knowledge that the
12 photograph accurately represents that which it purports to
13 depict. See Corsey versus town of Beckford 358 AD 3d 225
14 228 of 2008. Here the photograph depicting plaintiffs
15 Salih Karasu injury are not unduly inflammatory it will
16 help the jury evaluate the medical testimony and assess
17 Mr. Karasu's pain and suffering. See Colon right by Colon
18 versus New York City Housing Authority 248 AD 2d 254, 255
19 1998. Accordingly defendants motion is denied.

20 MR. EDWARDS: Note my exception, your Honor.

21 THE COURT: Okay. Call your witness.

22 MR. BURKE: Mr. Karasu, please come up.

23 THE COURT: All right. Welcome back. You may be
24 seated.

25 I just want to let you know that normally I know

1 the court officer, Steve, had told you that about the
2 logistics, you know, what we're doing here. Normally you
3 guys would be sitting there. The witness would be here.
4 The attorneys would be facing me.

5 So this is kind of awkward. We're all looking
6 into space, right, but with the pandemic and the whole
7 issue we're going to have witness up here. You're going to
8 stay there. And, you know, everybody else is here.

9 So with that being said, Mr. Burke, would you
10 please call your first witness?

11 MR. BURKE: Yes, I'd like to call Salih Karasu.

12 THE CLERK: Mr. Karasu, can you raise your right
13 hand please. Do you solemnly swear or affirm that the
14 testimony you are about to give in the case now on trial
15 will be the truth the whole truth and nothing but the truth
16 so help you God?

17 THE WITNESS: I do.

18 THE CLERK: Could you please state and spell your
19 full name and address for the record?

20 THE WITNESS: Salih Karasu.

21 THE COURT: I think this is a good time if you
22 want to, you can remove your mask.

23 THE WITNESS: Salih Karasu, S-A-L-I-H-K-A-R-A-S-U.

24 THE CLERK: Please state your address for the
25 record.

1 THE WITNESS: 1701 Hawthorne Road, Wantage, New
2 York, 11793.

3 THE COURT: Thank you. You may inquire.
4 You may be seated.

5 S A L I H K A R A S U, called as a witness,
6 having been first duly sworn, was examined and testified as
7 follows:

8 DIRECT EXAMINATION

9 BY MR. BURKE:

10 Q. Good afternoon, Mr. Karasu. So how long have you
11 resided at the house located on Hawthorne in Wantage?

12 A. Almost 8 years.

13 Q. Almost 8 years?

14 A. Yes.

15 Q. Who do you live with?

16 A. Live with my wife and my daughter.

17 Q. Is your wife the lady seated in the back of the
18 courtroom?

19 A. Yes.

20 Q. When were you and your wife Ana married?

21 A. We married June 18, 2015.

22 Q. And you have a daughter?

23 A. Yes.

24 Q. What's her name?

25 A. Julia Karasu.

1 Q. How old is Julia today?

2 A. She's 16 years old.

3 THE COURT: I want to make sure everyone can hear.

4 Q. Salih, what's your date of birth?

5 A. November 9, '74.

6 Q. How old are you today?

7 A. 47.

8 Q. Would you tell the jury your educational background,
9 where were you born?

10 A. I born Turkey.

11 Q. Did you attend elementary school and high school?

12 A. Yes, correct.

13 Q. Turkey?

14 A. In Turkey.

15 Q. How many years of high school did you have?

16 A. Three years high school.

17 Q. What did you do after you completed high school?

18 A. I went to college associate degree two years.

19 Q. What did you get your associates degree in?

20 A. Accounting.

21 Q. This occurred in what part of Turkey?

22 A. Istanbul.

23 Q. I take it that while you were attending school in
24 Turkey your native language is?

25 A. Turkish.

1 Q. Did you know English before you came to the United
2 States?

3 A. No.

4 Q. What year did you get your associates degree?

5 A. '94.

6 Q. After you got your associates degree in accounting did
7 you work using that degree at in Turkey?

8 A. Yes.

9 Q. What kind of work did you do?

10 A. Two years construction work company as accountant.

11 Q. After those two years did you do anything else?

12 A. No.

13 Q. In Turkey?

14 A. In Turkey, yes.

15 Q. Briefly describe to us what sort of work did you do
16 with accounting on behalf of this construction company in
17 Turkey?

18 A. In Turkey we do like monthly sales tax.

19 Q. Do you mean monthly statements?

20 A. Statements, yes.

21 Q. What did the monthly statements keep track of?

22 A. For sales tax.

23 Q. Were you preparing any of these statements to comply
24 with Turkish tax laws?

25 A. Yes, Turkish tax laws.

1 Q. While you were working as doing accounting services in
2 Turkey were you working with computers were these entries being
3 made with computer?

4 A. Well at that time companies didn't have computers so it
5 was everything was with handwriting.

6 Q. So everything was on paper?

7 A. On paper handwriting, yes.

8 Q. They didn't type up paper that they used any kind of
9 word processor or typing or was it all in hand?

10 A. Hand.

11 Q. So when did you move to the United States?

12 A. End of '96, November 96.

13 Q. Are you a United States citizen?

14 A. Yes.

15 Q. When did you become a citizen?

16 A. 2010.

17 Q. Now why did you want to come to the United States?

18 A. That was my dream to come to the United States.

19 Q. And when you came to the United States in 1996, did you
20 have a number of different jobs?

21 A. Yes.

22 Q. So I want to ask you just ask you between 1996 and 2014
23 when you began working with Four Seasons, could you just
24 generally describe for the jury the companies you worked for or
25 the work that you did over that period of time?

1 A. Well I start first cashier as a cashier at the gas
2 station. And I worked there like three months after
3 communication with my friend. I find construction jobs and I
4 apply construction company. That company was to Omni Windows
5 Siding Roof home improvement business.

6 Q. So you were you installing siding, installing windows?

7 A. Yes.

8 Q. Did you learn something about roofing?

9 A. Yes, residential roofing at that time.

10 Q. And were you involved in residential roofing between
11 2000 and 2010?

12 A. Yes.

13 Q. Was that for the same company or different company?

14 A. Actually I worked at company like three years up to
15 2000 and then middle of 2000 I opened my own company.

16 Q. What was the name of the company you opened in 2000?

17 A. ADT Nets Home Improvements Incorporated.

18 Q. What services did you provide through Net Home
19 Improvement?

20 A. I was doing siding, residential siding, windows, doors
21 and residential roofing.

22 Q. Did you have any people who work for you or were you
23 doing this on your own?

24 A. I had workers, yes.

25 Q. How many workers do you have?

1 A. From time to time it was changing like two or three.

2 Q. Did there come a point in time after 2010 when you
3 returned to Turkey?

4 A. Yes.

5 Q. Could you tell the jury the reason why you went back to
6 Turkey?

7 A. I went back Turkey with my daughter and my wife just
8 staying there like close to a year in Turkey.

9 Q. Was that in 2010, 2011?

10 A. No, it's 2010.

11 Q. And then what did you do after your move to Turkey at
12 that time?

13 A. I worked my could you say sons company it was
14 construction company also.

15 Q. Over in Turkey?

16 A. Yes, just supervising you know other workers at his
17 company.

18 Q. Did there come a point in time when you the went to
19 Brazil?

20 A. Yes, after that my wife and my daughter was in Brazil
21 and then I went Brazil after Turkey.

22 Q. What did you do when you were in Brazil?

23 A. Well I went to visit them over there. And then I had I
24 got sick because of my liver.

25 Q. Tell the jury what happened with your liver?

1 A. I was in Brazil I got sick I knew I had liver disease I
2 find out hat 2005 and I was getting treatment here months Sinai
3 hospital in Manhattan. But I got back in Brazil at the visit
4 time my family and then they didn't let me fly back so I was
5 operated over there I got liver transplant.

6 Q. So you had a liver transplamt in Brazil in the year
7 2011?

8 A. 2011, yes.

9 Q. Was there some period of time that you had to recover
10 from that?

11 A. Yes, it was like close to year 9 months to a year.

12 Q. How have you been doing since liver transplamt in 2011?

13 A. I don't have any problems. I feel good.

14 Q. Do you take any medication because you have a liver
15 transplamt?

16 A. Yes, every liver transplamt people has to take every 12
17 hours medication so I'm taking that every 12 hours.

18 Q. Is it the name of that Prograf?

19 A. Prograf, yes.

20 Q. I did spell that right?

21 A. Yes correct.

22 Q. Do you know why you needed a liver transplamt?

23 A. Yes, it was auto immune disease.

24 Q. Did you bring this on yourself by heavy drinking with
25 alcohol.

1 A. No.

2 MR. EDWARDS: Objection.

3 THE COURT: Overruled.

4 Q. Were you the open one in the family who had problem
5 with will he beer?

6 A. No I lost two brothers because of that and I have other
7 brother had he liver transplant after one year me so in 2012 he
8 got liver transplant also.

9 Q. So the two of you are well?

10 A. Yes.

11 Q. The other brothers didn't get a liver transplant?

12 A. No.

13 Q. So was this something that was in the family jeans?

14 A. Yes.

15 Q. All right. So after the liver transplant did there
16 come a time when you returned to the United States?

17 A. Yes, I came back to the United States from my recovery
18 after my recovery you I came to the United States and I went
19 back Turkey can I 2012 I believe it was March because of my
20 brothers condition.

21 Q. Is it fair to say that your brother was doing very
22 badly so you wanted to be with him?

23 A. Yes before the surgery, yes.

24 Q. After you spent that time in Turkey with your brother
25 in 2012, did you return to the United States?

1 A. Yes.

2 Q. Turkey?

3 A. I went back to Brazil to my wife and my daughter. And
4 then we came back to the United States together.

5 Q. Now your wife, where was she born?

6 A. She born in Brazil, São Paulo.

7 Q. So then after you went to Brazil and you you're with
8 your wife, and do you remember did you then return to the United
9 States?

10 A. Yes, we return to the United States.

11 Q. And that would have been in what year?

12 A. End of to 12 September.

13 Q. And since that time have you remained in the United
14 States?

15 A. Yes.

16 Q. And your wife and your daughter?

17 A. Yes.

18 Q. So tell us about the type of work that you were doing
19 when you returned to the United States in 2012 and in 2013?

20 A. Yes, I was working I in Marriott hotel.

21 Q. Where was this Marriott hotel?

22 A. Islip Terrace.

23 Q. What type of work did you do at the Marriott Hotel?

24 A. Engineering department as mains sentence.

25 Q. What type of mains sentence did you perform at

1 Marriott?

2 A. Small fixing changing bulbs. Small stuff.

3 Q. Electric, plumbing?

4 A. Yes.

5 Q. I'm going to refer to your tax returns which are in
6 evidence as part of exhibit one there is a tax return in 2012
7 well there is income reported from Columbia Sussex management?

8 A. Yes.

9 Q. Is that the Marriott?

10 A. Yes, that's the company.

11 Q. And so as you say you returned to the United States in
12 September of 2012 and when you went to work at Marriott being
13 paid by Columbia Sussex management according to your tax return
14 you received \$7,325?

15 A. Yes.

16 Q. There is also a source of income in 2012 indicating
17 that you received five hundred in wages from net home
18 improvement Inc.,?

19 A. Yes.

20 Q. Is that the same company you spoke about earlier where
21 you?

22 A. Yes earlier.

23 Q. Now in 2013 your income tax from exhibit one it
24 reflects you had earnings of 33, 420 from Columbia Sussex in
25 other words Marriott?

1 A. Marriott, yes.

2 Q. Now in 2014 there are three different sources of income
3 on your tax returns for that year Columbia Sussex reflect?
4 \$13, 509?

5 A. Yes.

6 Q. You earned \$24,703 from Four Seasons roofing?

7 A. Yes.

8 Q. Does that ring a bell?

9 A. Yes, 2014.

10 Q. Yes. And that we also have pay stubs indicating what
11 your pay scale was at Four Seasons I'm just going to show you
12 what's been marked as exhibit three and just if you would
13 quickly scroll through these pay stubs from Four Seasons and
14 tell us does that contain accurate information about your pay
15 scale when you went when you began working at Four Seasons?

16 A. Yes.

17 Q. So you didn't start working at Four Seasons in 2014
18 until later in that year?

19 A. Yes, I start July 2014.

20 Q. Now on your 2014 tax return there is also income
21 reported of \$5,297 from AEG processing center, do you recognize
22 that?

23 A. Yes.

24 Q. What is that?

25 A. It was delivering part.

1 Q. What's that?

2 A. It was like auto parts delivering auto parts.

3 Q. What did you do for the auto parts company?

4 A. I was delivering the auto parts to the mechanic shops.

5 Q. So you would go out drive pick up parts and bring them
6 to?

7 A. Right from base to mechanic shops.

8 Q. Where did you do this what county?

9 A. It was Roslyn, Syosset.

10 Q. All right so just tell us a little bit about the what
11 type of business is Four Seasons where you began working in July
12 of 2014?

13 A. Yes, Four Seasons they do roofing company they do
14 residential also commercial but I was working at the commercial
15 building parts.

16 Q. Does this involve removing old roofs and putting on new
17 ones?

18 A. Yes.

19 Q. Were you working frequently with ladders?

20 A. Yes, everyday.

21 Q. Was that just generally it came everyday that you would
22 have to use ladders?

23 A. Yes, everyday.

24 Q. What was your title?

25 A. I was commercial roofing mechanic.

1 Q. What did you do as a commercial roofing mechanic just
2 to give us the sense as to how physical your work was what did
3 you have to carry what did you have to lift?

4 A. Oh, yes, basically whatever you said everything
5 carrying stuff you know working hard running old roof and
6 installing new once physically work.

7 Q. Does it involve being on your feet for long period of
8 time?

9 A. Yes.

10 Q. When you were working for Four Seasons when you started
11 what was your hourly wage?

12 A. 19 dollars an hour.

13 Q. You started at 19?

14 A. 19, oh, 18, yes 18 I started.

15 Q. Did it later go up to 19?

16 A. It went up to 19.

17 Q. So when you started at 18 dollars per hour at Four
18 Seasons, did you also have a benefit of over time payments?

19 A. Yes.

20 Q. And when was the over time pay scale triggered after
21 how many hours of work?

22 A. After 40 hours.

23 Q. And when you would work an extra hour over 40 hours how
24 much would you earn?

25 A. You get time and a half.

1 Q. It was your work schedule back in 2014 at Four Seasons
2 how many days a week when did you begin when did you end when
3 did it end?

4 A. Early in the morning 6:30 you have to meet in the
5 warehouse and after that we were preparing whatever we need for
6 the cars and we drive to the job site.

7 Q. So in the course of one day would you sometimes work at
8 more than one job site?

9 A. Sometimes if it's big job we stayed there like depends
10 the day sometimes like 7, 8 o'clock.

11 Q. How many days a week did you work in 2014 while at Four
12 Seasons?

13 A. 6 days sometimes 7 days.

14 Q. Did you work with a crew of other roofing mechanics?

15 A. Yep.

16 Q. Approximately how many people constitute work with?

17 A. Depends on the time to time like 9, 10, people.

18 Q. Now in 2014 it's approximately three years after your
19 liver transplant by the end of 2014 could you just tell the
20 ladies and gentlemen of the jury how was your general health?

21 A. It was fine I was working really hard and nothing was
22 affecting me.

23 Q. I'm going to ask you questions about the accident, but
24 before I begin I just want to remind you it's understood we're
25 not going to talk about how your accident happened or why it

1 happened we're just going to ask you to tell us did you fall off
2 a ladder.

3 A. Yes.

4 Q. And did you fall off a ladder on March 26, 2015?

5 A. Yes.

6 Q. And at the time of your fall from the ladder were you
7 working for Four Seasons?

8 A. Yes.

9 Q. And what was the job site you were working at when this
10 accident happened?

11 A. Where I was.

12 Q. What was the name of the job site?

13 A. It was Security Dodge dealership.

14 Q. Where did the accident happen, was it outside, was it
15 inside, tell us?

16 A. It happened back in the building mechanic area.

17 Q. This would have been Security Auto Sales, Inc and 345
18 Merrick Road?

19 A. Yes.

20 Q. And that was in Amityville?

21 A. Yes.

22 Q. What time did you start working that day and what time
23 was the accident?

24 A. Usually we start 6:30, 7.

25 Q. In the morning?

1 A. Morning.

2 Q. Approximately what time did the accident happen?

3 A. Accident happened 17:51, 5:51.

4 Q. You're using military time?

5 A. Yes.

6 Q. Was there still people around when this accident
7 happened?

8 A. Yes.

9 Q. Was anyone from Four Seasons Roofing Company on the
10 jobsite when your accident happened?

11 A. Yes, it was just foreman, Four Seasons foreman and me.

12 Q. Just tell the jury in your best estimate what was the
13 distance you fell off the ladder, how far down did you go?

14 A. My best estimate was that 15, 16 feet, but I was on the
15 ladder like 8 to 10 feet.

16 Q. So 8 to 10 feet the approximate distance you fell?

17 A. I fell with the ladder, yes.

18 Q. When you fell from the ladder, what part of your body
19 came in contact with the ground?

20 A. My right leg, my right ankle.

21 Q. Did you fall standing up?

22 A. With the ladder, yes.

23 Q. What type of surface did you fall on to, was it dirt,
24 was it concrete asphalt?

25 A. It was asphalt.

1 Q. So tell us, what did it feel like when you fell and
2 landed?

3 A. This was the most extremely pain I got in my life. It
4 was so painful.

5 Q. Where did you feel this pain, what area of your body?

6 A. Mostly in my leg, but I didn't know what was going on
7 so from my leg to all my body.

8 Q. Did anyone come over to help you?

9 A. Yes, I saw first from the mechanic repair shop someone
10 came to me and ask me how I was feeling.

11 Q. Was that the car dealership?

12 A. Yes, it was the dealership they had the mechanic repair
13 shop back so someone came.

14 Q. Did the police or ambulance come to the scene?

15 A. Yes, yes, I saw first cop came, police came then
16 ambulance.

17 Q. And when the ambulance came do you recall if you told
18 them what was hurting?

19 A. Yes.

20 Q. What did you tell them was hurting?

21 A. I told them I cannot move my leg I'm having so much
22 pain. I was hardly breathing at that time and they untied my
23 shoes, heart was beating, he was taking off my construction
24 boots. And they take off my boots and then they secure my whole
25 leg and then they tied and they took me with the ambulance to

1 the hospital.

2 Q. So are you describing did they put some type of a
3 splint to protect your leg?

4 A. Yes, my whole leg.

5 Q. And the ambulance then took you to a hospital?

6 A. Yes, they took me to Good Samaritan Hospital.

7 Q. Were you able to stand and walk into the ambulance or
8 did they put you on a stretcher and bring you into the
9 ambulance?

10 A. They put me on the stretcher.

11 Q. Now when you got to the emergency room at Good
12 Samaritan Hospital on March 26, 2015, somewhat did they do for
13 you?

14 A. I went inside. They ask me what happened, the nurses
15 first. And then I -- they ask me where is the pain. I show
16 them and then they ask my heart history what kind of heart, I
17 mean, problem I had in past. I told them I had liver transplant
18 and my pain is in any leg, my ankle. And then they just make me
19 wait a little bit then they put me on the x-ray. It was like
20 that.

21 Q. Were you given any kind of medication to help with your
22 pain?

23 A. First, no, but after the x-ray they give me like after
24 maybe 2 hours later 3 hours later.

25 Q. What did you come to learn about what had happened to

1 your right leg?

2 A. I find out what happened in any leg from next day from
3 Dr. Acampa my doctor.

4 Q. That would be March 27th, was that the first time you
5 met Dr. Acampa?

6 A. Yes.

7 Q. Had you ever injured your leg before?

8 A. No.

9 Q. What did you learn about what was wrong with your leg?

10 A. Dr. Acampa told me I had very bad injury. I have
11 fracture bone and he's planning to do operation that same day
12 night, which is the 27th.

13 Q. And did he tell you what type of operation he planned
14 to perform on you?

15 A. Yes, he explained me I had swollen leg so he's going to
16 put external fixators and I have to stay because the swelling on
17 my leg so I have to stay like that like two three weeks, he
18 said. And then he's planning to do the surgery.

19 Q. So on that same day, did you undergo surgery to have
20 the external fixator applied to your leg?

21 A. Yes.

22 Q. Were you knocked out for the procedure?

23 A. Yes.

24 Q. Or were you awake you tell us?

25 A. Can you repeat that?

1 Q. When you had the operation to install the external
2 fixator were you awake or sleeping?

3 A. I was sleeping.

4 MR. BURKE: If I may, Judge, I'd like to show the
5 witness what's been marked as evidence.

6 THE COURT: Is that the one for identification?

7 MR. BURKE: That was marked for identification you
8 ruled on it.

9 MR. EDWARDS: No objection.

10 THE COURT: Okay. So will be moved into evidence
11 without objection.

12 Counsel, please approach.

13 (Whereupon, a discussion is held off the record)

14 THE COURT: All right, Jurors, I notice that you
15 guys are taking notes. And I specifically didn't charge
16 you and say that you were allowed to. We prefer, the court
17 and the attorneys prefer that you do not take notes. And
18 this is why, okay, you're supposed to listen and remember.
19 And it's what you recall. And if you have notes people are
20 going to rely on your notes.

21 You know, how it is in school I'm going to borrow
22 your notes and see what it says. It's what you believe. I
23 think I charged you that too. I gave part of the charge.
24 It's, there is nothing wrong with it as long as you get rid
25 of it before you go into the deliberate if you want to. I

1 think if you could just listen you could take, you know,
2 we'll give you numbers if you need numbers in the future.
3 I believe the attorneys would do that.

4 SWORN JURORS: We can ask questions later, right?

5 THE COURT: We can provide for that and you can
6 put it into writing and we'll read it on the record and
7 everything. Not directly of the witness.

8 We have our wonderful court reporter who is just
9 takes everything down. Everything. So what we allow to do
10 to ask for question and then reread it back.

11 She has everything under control. Sometimes I
12 take notes to keep myself busy, but usually, you know, you
13 rely on the transcript documentation that she's taking
14 down.

15 It's what the witness says. It's not what you're
16 thinking. I don't want to charge you on anything right
17 now. I gave you necessary charge in the beginning of the
18 preliminary charge. Just listen, okay. Just listen. I
19 know that you're far away from each other and it's the
20 environment, but listen to the witness.

21 We will let you know when you could talk to each
22 other about what you heard about this. Then you can
23 exchange ideas and thoughts and everything like that, but
24 don't take notes.

25 I am one I don't know if I remember after a few

1 days. You will remember. As I say, if you don't remember
2 something just pinpoint to who said it then we'll look it
3 up in the record and we'll read it back to you. Don't
4 worry. Okay.

5 You work but the work isn't that difficult.

6 All right. Let's move on.

7 COURT OFFICER: Plaintiffs five A and B marked in
8 evidence being shown to the witness.

9 MR. BURKE: Yes, thank you.

10 Q. Mr. Karasu, you're looking at exhibits five A and five
11 B are they photographs of your leg?

12 A. Yes.

13 Q. Are those photographs a fair and accurate
14 representation of what the external fixator looked like when it
15 was applied to your right leg?

16 A. Yes.

17 MR. BURKE: Your Honor, I'd like to publish those
18 photographs to the jury.

19 THE COURT: You may publish them.

20 COURT OFFICER: Plaintiffs five A and five B being
21 published to the jury.

22 Q. Now did this external fixator remain on your leg for
23 approximately three weeks until it was removed during the course
24 of the next surgery?

25 A. Correct.

1 Q. How many or rather, do you know how deep the metal rods
2 or the steel rods were screwed into your leg that we saw in the
3 photographs?

4 A. Not really.

5 Q. How in total how many days were you hospitalized at
6 Good Samaritan Hospital on this occasion?

7 A. Three days.

8 Q. While you were in the hospital, would you tell us a
9 little bit about what type of pain, if any, you were
10 experiencing?

11 A. Yes, I had so much pain even after surgery, but I was
12 given pain killer, but beginning it wasn't helping me at all.

13 Q. Did you have -- were you able to sleep comfortably at
14 the hospital with the external fixator?

15 A. No.

16 Q. Did it affect your ability to sleep?

17 A. Yes, it was affecting my sleep.

18 Q. In what way?

19 A. It was painful. It was like I couldn't handle it.

20 Q. When you were discharged from Good Samaritan Hospital,
21 how did you move from the hospital to your home, were you in a
22 wheelchair, a walker, I mean, however you describe it, how did
23 you get from Good Samaritan Hospital to back to the house in
24 Wantage?

25 A. From the hospital the wheelchair, when I use a walker

1 and then discharge with the walker.

2 Q. Who brought you home?

3 A. My wife.

4 Q. Now according to the hospital chart in evidence, you
5 had the next surgical procedure at Good Samaritan Hospital on
6 April 27th, 2015, does that sound about right?

7 A. Yes.

8 Q. When you returned to Good Samaritan Hospital
9 approximately three weeks later, was Dr. Acampa the orthopedist
10 who was going to continue treating you?

11 A. Yes.

12 Q. In between the first surgery applying the external
13 fixator and the second surgery when they removed it, could you
14 just discuss what a typical day was like for you at home with
15 the external fixator?

16 A. Yes, I was just laying down on my bed and just going to
17 bathroom and just taking showers. That's all. Bathroom to my
18 bed. That's all.

19 Q. Were you able to transfer from your bed to the shower
20 without any help from anyone?

21 A. I was doing with walker, but my wife was next to me.

22 Q. And by the way, the house that you were living at in
23 Wantage it's the same house today, right?

24 A. Yes.

25 Q. How many steps to get into that house?

1 A. Just one step.

2 Q. How many bedrooms in that house?

3 A. Two bedrooms.

4 Q. Are they all in the first floor?

5 A. All in the first floor.

6 Q. So you didn't have to go upstairs or downstairs?

7 A. No, no.

8 Q. Do you own that home?

9 A. No, I'm renting.

10 Q. During over those three weeks when you were home with
11 the external fixator, just let the jury know how did that affect
12 your ability to sleep?

13 A. I was having so much hard time to sleep. And with the
14 pain, you know, I had pain killer but it wasn't helping me that
15 much. It was like miserable those days.

16 Q. With the external fixator, were you allowed to put
17 pressure to bear weight on your right leg?

18 A. No, not really.

19 Q. So when you were using a walker, did you have to lift
20 your --

21 A. Yes.

22 Q. Your leg up, right leg up, like almost like your foot?

23 A. Right.

24 Q. Getting close to your rear end?

25 A. Yes, and then I was limping with the other leg holding

1 the walker.

2 Q. And this pain that you discussed, was that something
3 that was constant, did it come and go?

4 A. Beginning it was constant pain.

5 Q. Are there any words to describe the type of pain that
6 you were feeling?

7 A. At the time.

8 Q. Yes, with the external fixator?

9 A. It was like ten out of ten at the beginning.

10 Q. So when you went back to Good Samaritan Hospital
11 according to the charts it says you came back on April 15th
12 approximately how many days was it?

13 A. Three days.

14 Q. And did you go into Good Samaritan Hospital
15 understanding that they were going to remove the external
16 fixator?

17 A. Yes.

18 Q. What was your understanding as to the type of surgery
19 they were going to perform on your right leg after they removed
20 the external fixator?

21 A. Yes, I have been told they are going to put there is
22 broken bones and small pieces on my ankle. And he's going to
23 try to put the screws and plates, attach the broken bones and
24 that's why I need do another surgery.

25 Q. Fair to say that you would have been asleep for that

1 second procedure?

2 A. Yes.

3 Q. How did you feel after you woke up after the second
4 surgery in April of 2015?

5 A. I feel the beginning same pain, but it was a little
6 okay pain-wise.

7 Q. When you were discharged from the hospital, after they
8 remove the external fixator and put in the plates and screws,
9 how did you leave the hospital, were you walking on your own
10 with assistance of some device?

11 A. No, same with the walker again.

12 Q. And with the walker after the second surgery, were you
13 allowed to bear weight on your right leg?

14 A. Beginning, no.

15 Q. When were you first allowed to start bearing weight on
16 your right leg after this surgery in April of 2015?

17 A. After August like close to four months, yes.

18 Q. Did there come a point in time that you were able to
19 put away the walker and just start walking or put away the
20 walker and start using a cane?

21 A. Yes, after I moved to crutches and boots. I was
22 wearing boots on my right leg and with cane, cane and boots.

23 Q. So when you left the hospital, you had a walker, you
24 had a boot on your right foot?

25 A. Right.

1 Q. Is that correct?

2 A. Right.

3 Q. How long did you continue to wear the boot on your
4 right leg after the April 2015 surgery, the second surgery?

5 A. It was like four months four months.

6 Q. Four months with the --

7 A. No, I get out of the hospital just walker. There was
8 no boots beginning.

9 Q. When did you get the boot?

10 A. I start wearing boot after August with crutches and
11 boots same time.

12 Q. So when you transitioned from a walker to a boot and
13 crutches in August of 2017?

14 A. Right.

15 Q. Throughout this time were you still provided pain
16 medication?

17 A. Yes.

18 Q. Did you use it?

19 A. Yes.

20 Q. Did it help?

21 A. It helped.

22 Q. Did it eliminate your pain or did it make it less?

23 A. It make me less less pain.

24 Q. And so when you transitioned to crutches, how long was
25 it before you progressed to not needing the crutches?

1 A. Say, like two months after that.

2 Q. So that would be roughly October?

3 A. October, yes, of 2015, yes.

4 Q. No more crutches?

5 A. No more crutches.

6 Q. And did you go to a cane at that point?

7 A. Yes, my doctor advised me to put start little bit
8 weight on the leg so it was also October.

9 Q. When did you stop wearing the CAM boot, do you recall
10 when you were transitioned to sneaker?

11 A. I start few months after that.

12 Q. So the boot came off after about two months?

13 A. Two months, two months, yes.

14 Q. And when you moved from crutches to a cane in October
15 of 2015, how long a time was it that you used the cane?

16 A. Can you repeat that?

17 Q. How long did you use the cane for, how many months or
18 years were you using the cane?

19 A. I was using it just until October.

20 Q. Earlier you testified that you were using crutches from
21 August to October?

22 A. Right, crutches and cane, boot.

23 Q. So my question is, you said there were no more crutches
24 being used after October?

25 A. Right.

1 Q. So then you went to a cane?

2 A. No, I was using crutches and cane same time.

3 Q. So did you stop?

4 A. August to October so I stopped cane also October.

5 Q. Now jumping ahead just at a milestone, the record
6 reflects that you had a third surgery in April of 2017?

7 A. Yes.

8 Q. Just to move it along, that surgery was to remove
9 hardware, correct?

10 A. Correct.

11 Q. So I want to ask you just to limit yourself to, I have
12 a series of questions about how you were doing between May of
13 2015, that's after the second surgery up until April of 2017,
14 when they removed the hardware, all right. So the two years
15 before they removed the hardware, during that time, did you
16 continue to see Dr. Acampa?

17 A. Yes.

18 Q. And you would go to Dr. Acampa's office?

19 A. Yes.

20 Q. How would you get there?

21 A. Beginning I was going with my wife.

22 Q. And who drove?

23 A. She was drove.

24 Q. And, again, with regard to between May of 2015 and up
25 to the time of the third surgery to remove the hardware, how

1 often would you go to see Dr. Acampa?

2 A. Beginning two weeks I start every other two weeks after
3 months, after three months, and it was like that period until
4 the third surgery.

5 Q. And did there come a point in time when you were able
6 to drive yourself to Dr. Acampa?

7 A. Yes.

8 Q. When was that approximately?

9 A. It was 2016.

10 Q. Now in addition to seeing Dr. Acampa between May of
11 2015 and up until third surgery April of 2017, did you also
12 attend physical therapy?

13 A. Yes.

14 Q. Could you tell the jurors approximately how often were
15 you attending physical therapy between May of 2015 and the third
16 surgery in April of 2017?

17 A. I start first year was like three times a week and then
18 I was going two times a week.

19 Q. And were you going to physical therapy during this
20 whole roughly two-year period?

21 A. Yes.

22 Q. Could you just describe, I don't want to go through
23 every visit, could you describe for the jury what a typical
24 physical therapy session was like between May of 2015 and April
25 of 2017, what did they do?

1 A. Right I was going on there first, first for one month
2 it was like different just put on ice and sometimes hot to treat
3 ankle area and they were give me like electric shock like for
4 the muscles.

5 Q. Electrical stimulation?

6 A. Yes, electric stimulation. Then after that I start
7 with exercising with the bicycle certain time like starting like
8 three minutes after five minutes and then ten minutes. And then
9 lifting some weight with my both legs and starting with little
10 weight and then raise it up to weight barrier. I was lifting
11 with my legs and those kind of things with the plastic rope I
12 was using lifting my leg up down up down. Those kind of.

13 Q. During your second surgery and third surgery this is
14 roughly a little bit more than two years, were you able to work
15 and earn money?

16 A. No.

17 Q. Why not?

18 A. I was in pain and my leg was still weakness, you know,
19 I was feeling the week.

20 Q. Observe any swelling?

21 A. Yes, from time to time.

22 Q. Where?

23 A. On the ankle area.

24 Q. So how did that make you feel over those two years you
25 weren't working, how did you feel about that?

1 A. Yes, I was like miserable times stressful times.

2 Q. Why was it stressful not to be working?

3 A. Because of the financial-wise, you know, it was
4 stressful.

5 Q. Between May of 2015 and April of 2017, were you able to
6 do household chores?

7 A. At the beginning, no, but after that I start little bit
8 doing it.

9 Q. When did you start to do a little bit of the household
10 chores?

11 A. End of 2015. After walkers and crutches and boots.

12 Q. Break in time period of between May of 2015 and April
13 of 2017, were you walking just casually walking the same way
14 that you casually walked before the accident?

15 A. No.

16 Q. Tell the jury how what was different?

17 A. It was everything was different. I mean, if you
18 compare walking I was walking, but with the pain and I cannot
19 run of course. And it was like painful, you know, and feeling
20 stress also at the same time as the walking. It was scary at
21 the beginning.

22 Q. Did you ever limp as a result of this?

23 A. Yes.

24 Q. How long did that continue for, did it improve?

25 A. Yes, and then I did surgery then it start again same

1 recovery sessions started again after third surgery so long
2 period of time.

3 Q. Now did this affect you emotionally in terms of whether
4 you were happy or sad?

5 A. Of course, yes.

6 Q. In what way?

7 A. Emotionally sad ways.

8 Q. Between May of 2015 and April of 2017, were you still
9 being provided pain killers from Dr. Acampa?

10 A. Yes.

11 Q. What was the name of it?

12 A. Oxycodone.

13 Q. Between May of 2015 and April of 2017 third surgery,
14 what percent of the time of any given day were you feeling pain?

15 A. Like 80, 90 percent.

16 Q. Now during that period of time did that affect how long
17 you could stand in one place?

18 A. Yes.

19 Q. Were you able to stand for as long as you used to
20 before the accident?

21 A. No.

22 Q. What would happen if you stood too long, what would you
23 experience?

24 A. It's not comfortable feeling pain right away if I stand
25 too much.

1 Q. But I'm just going back, I'm just asking you between
2 May of 2015 and your third surgery in April of 2015, that's the
3 timeframe for my question, in addition an affect of on your
4 ability to stand, did it affect on your ability to take long
5 walks?

6 A. No.

7 Q. You're still able to walk?

8 A. No, short distance.

9 Q. Why don't you go a long distance?

10 A. I can walk, but I have to stop and get rest you know.
11 And then continue.

12 Q. Was there any impact or affect on how you could come
13 into a building and go up and down staircases?

14 A. Yes, I was doing it but I was avoiding to do it.

15 Q. Why?

16 A. It was painful and it was like it wasn't comfortable.

17 Q. Now I want to refer according to your income tax
18 returns 2015 it shows that you reported income Four Seasons
19 roofing \$12,925?

20 A. Right.

21 Q. My question to you is so the approximately \$1300 you
22 earned from Four Seasons in 2015 would be based on the work that
23 you did from January 1st 2015 until your accident at the end of
24 March?

25 A. Right.

1 Q. 20 --

2 A. Yes.

3 Q. 2015?

4 A. Yes.

5 Q. And there is also an entry of \$451 on the 2015 return
6 which is a scholarship in Screen Educate, what's that, is that
7 money that was because of something you did or something your
8 wife did?

9 A. Something my wife did, yes.

10 Q. Now in 2016 your income tax return indicates that there
11 is income from Neil Subs Development Corp., is that your wife?

12 A. Yes.

13 Q. And your wife also had a line item for scholarship
14 Screen Educate something like that?

15 A. Yes. Yes.

16 Q. In 2017 it indicates that your wife had earnings of
17 approximately \$17,674 from Tusa & Associates CPA?

18 A. Yes.

19 Q. Also some of that income was for this Niel Subs
20 Development Corp., that your wife's income?

21 A. Wife's, my wife.

22 Q. And again the line for approximately five thousand
23 dollars for scholarship Inc., Screen Educate?

24 A. My wife.

25 Q. Now in 2017, you had surgery according to the Good

1 Samaritan Hospital record July 14, 2017 at Good Samaritan
2 Hospital and that was when they removed the hardware?

3 A. Yes.

4 Q. What was your understanding as to reason why
5 approximately two years after your first surgery, why did they
6 want to remove the hardware, what was your understanding?

7 A. They attached the screws and plates because it was I
8 had broken bones on my ankle, so that's why they attached those
9 screws and plates to replace those bones and then there was the
10 time to take it off.

11 Q. Was this also done by Dr. Acampa?

12 A. Yes.

13 Q. Approximately how many days were you admitted to the
14 Good Samaritan Hospital for this third surgery?

15 A. I stayed three days.

16 Q. Based on your understanding were all of the screws
17 removed?

18 A. It was like 11 screws I have been told after the
19 surgery I still had four screws.

20 Q. Do you know why they didn't remove those four screws?

21 A. It was attached to the bone so my doctor told me he
22 could not remove.

23 Q. Again, the same question when you left Good Samaritan
24 Hospital after this third surgery, were you -- describe how you
25 got out of the hospital, did you walk out were you using a

1 wheelchair or a walker?

2 A. Walker, I get out with walker.

3 Q. And did you go through the same process as you did
4 after the second surgery where there was a period of time you
5 used the walker then you graduated to crutches or a cane?

6 A. Yes.

7 Q. Could you give us a rough idea of how long that
8 transition lasted?

9 A. It was like three months.

10 Q. What, if anything, were you experiencing in terms of
11 pain levels after you were at the time you were discharged from
12 the hospital?

13 A. Pain didn't go away because I had still screws inside
14 my ankle. Still had pain.

15 Q. And did you follow-up with Dr. Acampa?

16 A. Yes.

17 Q. Once again on a regular basis?

18 A. Yes, yes.

19 Q. Over time did your visits to Dr. Acampa become less and
20 less?

21 A. Yes.

22 Q. In 2017 in your post op visits to Dr. Acampa how far
23 was it that you would have to drive to his office?

24 A. About half hour.

25 Q. Where was his office?

1 A. Bay Shore.

2 Q. You also after the third surgery continue visiting
3 physical therapy?

4 A. Yes.

5 Q. Did you have the same type of physical therapy
6 treatments you described earlier?

7 A. Yes.

8 Q. If it was different tell us, but it was the same?

9 A. No, the same.

10 Q. Again with respect to the visits to Dr. Acampa over the
11 years, what was a typical visit like with Dr. Acampa, what would
12 he -- what would he do to you, would you observe him doing
13 anything?

14 A. I was going there and filling out questionnaire paper.
15 After that I was going there office he was examining me asking
16 me questions time to time he was taking x-ray same office. I
17 was asking questions why I was still having pain. And he was
18 always telling me it was a bad injury and you had bad fracture.
19 And not just broken bones, small pieces also. He couldn't
20 attach those to my bone.

21 So there was causing problem. We were just discussing
22 this kind of stuff and he was just telling me continue to physio
23 therapy. And time to time he was giving me pain killer which is
24 oxycodone.

25 Q. Did there come a point in time when you were made to

1 understand that there was a surgical option to address your
2 pain?

3 A. Yes.

4 Q. What was it?

5 A. When I was complaining after the third surgery I have
6 still pains. And we're just talking about this and he advise me
7 if I do ankle fusion it may get a little less your pain is a
8 option. And I ask am I going to get still the pain. And he
9 said between like 15 to 25 percent is not going to go away and
10 because ankle fusion I'm going to have some limits how I walk
11 and I was going lose range of motions.

12 Q. More loss of range of motion?

13 A. Yes.

14 Q. Did you think about getting a second opinion?

15 A. Yes, I did.

16 Q. We're going to get to that in a minute. In August of
17 2017, we have the record in evidence from a procedure that was
18 performed on you at South Nassau Community Hospital?

19 A. Yes.

20 Q. There was reference to a wound or a non-healing wound
21 that you had?

22 A. Yes.

23 Q. Where was that wound located?

24 A. My ankle.

25 Q. Was it at the sight of the surgery or somewhere away

1 from it?

2 A. After the surgery that happened the healing point.

3 Q. After before you went into South Nassau Hospital for
4 the procedure, were you able to look at your ankle and see what
5 it looked like or was it bandaged and you couldn't see it?

6 A. I see like my skin was black and swollen and I hurting
7 it was hurting.

8 Q. And so what was your understanding as to what they did
9 for you at South Nassau hospital to address this wound on your
10 ankle?

11 A. Right. They cut ankle area stitches again and they
12 cleaned inside, I don't know how to say the blood -- infection.

13 Q. Were you led to believe that they had to cut away dead
14 infected tissue?

15 A. Yes, yes.

16 Q. Were you put under put to sleep for this procedure or
17 were you awake and they did it with a local?

18 A. I was awake.

19 Q. So did you observe them cutting away skin tissue from
20 your ankle?

21 A. Yes.

22 Q. Was this in and out ambulatory visits to the hospital
23 or did you stay overnight?

24 A. In and out.

25 Q. One day?

1 A. One day.

2 Q. And when you left were you bandaged or did they leave
3 the wound exposed?

4 A. It was bandaged.

5 Q. Has all of the surgeries and procedures described has
6 it left a scar on your ankle?

7 A. Yes.

8 MR. BURKE: With the Court's permission, I wanted
9 to ask if the jury could view the scarring on Mr. Karasu's
10 ankle.

11 THE COURT: How are we going to do that?

12 MR. BURKE: I would suggest if Mr. Karasu could
13 come down and he could sit in this chair remove his shoe
14 and sock.

15 THE COURT: Remember what I told you stay away
16 from the jury, Counsel, you're getting too close to the
17 jury. Could you, you know, stand back and look from a
18 distance.

19 MR. EDWARDS: He could do that no objection.

20 THE COURT: Let's do it as safely as possible.

21 MR. BURKE: Mr. Karasu, would you take this seat?

22 THE COURT: Maybe you can have him do here and
23 then do it over there. So the jurors don't have to move.

24 MR. BURKE: So if you could sit in that chair.

25 THE COURT: The jurors in the back do you want to

1 stand up he'll come over to you in a minute.

2 We'll take a five-minute recess.

3 (Brief recess is taken at this time.)

4 MR. BURKE: It's been agreed between counsel that
5 we're not going to ask for any missing witness charges
6 counsel is bringing in his examining orthopedic vocational
7 rehab experts. I'm not going to call in Dr. Acampa.

8 MR. BURKE: I'm only calling Dr. Ali Guy.

9 THE COURT: Stipulated. Thank you, counsel.

10 COURT OFFICER: Jury entering.

11 THE COURT: You may be seated.

12 Counsel, you may proceed.

13 CON'T DIRECT EXAMINATION

14 BY MR. BURKE:

15 Q. Mr. Karasu, in 2017 did there come a time that you
16 tried to learn a new trade, did you work as an apprentice
17 somewhere?

18 A. Yes.

19 Q. Tell us about that?

20 A. It was in my friend's mechanic shop.

21 Q. Was that an auto repair shop?

22 A. Yes.

23 Q. How long did you try that for in 2017?

24 A. Three to four months.

25 Q. Was that everyday three to four months or was that?

1 A. No, just on and off.

2 Q. So did you learn how to repair cars?

3 A. First because of my injury I was just going there he
4 was my friend just beginning, killing time. And then I see what
5 he's doing all of that I kind of like it. And then he told me
6 he can help if I want to learn he can teach me that's how I
7 became interested to spend time over there.

8 Q. Did you serve as an apprentice?

9 A. Yes.

10 Q. At any point in time did your friend give you money for
11 helping out or learning how to do auto repairs?

12 A. Yes, it was like on and off I was being there and I got
13 maybe like less than thousand dollars.

14 Q. Did you stop doing it?

15 A. Yes, I stopped doing it.

16 Q. Why?

17 A. Because I was stand all the time over there. And I was
18 getting pain like stabbing sharp pain. It was coming and go.
19 And my feet and ankle was numbness at the time. And I feel like
20 little burning and itchy, tingling. I had that kinds of
21 complaint after I was doing that and then I stopped going there.

22 Q. Now by 2017, you indicated that you had already started
23 driving yourself to doctor visits and physical therapy, were you
24 also involved in taking your daughter to school or?

25 A. Yes.

1 Q. Were you also able to drive go to a store and pick up
2 things that your family needed and bring it home?

3 A. Yes, like small shopping mostly.

4 Q. But the pain that made you want to stop working as an
5 auto repair mechanic, what was it that you were doing that was
6 causing the pain?

7 A. Because I was standing up over there and beginning it
8 was, okay, but after like hours and hours I couldn't handle it.
9 It was costing me time, pain and I was checking myself before I
10 can work again. It was like knowing me again after broken ankle
11 if I can handle that kind of job or not. That was the main idea
12 actually.

13 Q. Did you try to learn some new skills with computers by
14 going back to school?

15 A. Yes, I never had computer knowledge I was just using
16 iPhones and stuff you know. And I tried AutoCAD.

17 Q. Was that some type of a sort of where program?

18 A. Yes.

19 Q. And where did you go to school to learn about that?

20 A. I went weekends Nassau Community College.

21 Q. And so for approximately how many weeks or months did
22 you take this course at Nassau Community College?

23 A. It was less than three months so every weekend.

24 Q. Did there come a point in time that you found a job as
25 a driver for Sunrise Laboratories?

1 A. Yes.

2 Q. I'm going to refer to your income tax return from 2018
3 which is part of exhibit one and it indicates that in 2018 that
4 you were paid \$8,834 from Sunrise Medical Laboratories and there
5 is another line for Tusa & Associates CPA for \$224,957 that's
6 the work your wife was doing?

7 A. Yes.

8 Q. So when you began working at Sunrise Labs in 2018, was
9 that on a part-time or full-time basis?

10 A. It was part-time just weekend.

11 Q. What were you -- how much were you being paid?

12 A. I was being paid 14 dollars an hour.

13 Q. And working part-time approximately how many hours a
14 week in 2018?

15 A. It was like 15, 16 hours.

16 Q. And so just discuss generally what did you do at
17 Sunrise Laboratories what's involved in making deliveries or
18 pick-ups for them?

19 A. Right. We work getting specimens from doctor's office.
20 I was working there afternoons. So I was wasn't going inside is
21 just collecting specimen from the boxes.

22 Q. So fair to say then that means you would drive your car
23 up to the doctor's office?

24 A. Yep.

25 Q. Get out of your car?

1 A. Get out of my car.

2 Q. And walk over to the box?

3 A. Walk small distance then pick up specimen handling it
4 to the car.

5 Q. Are these boxes then kept outside the office building
6 or inside the lobby or somewhere else?

7 A. It's most of them was outside the building. Some of
8 them was inside the building, but entry area.

9 Q. And when you with go out lets say on a typical day back
10 in 2018, when you were working 15 to 16 hours a week, how many
11 pick ups would you make, you know, in one shift?

12 A. In one shift it was like 2025 at that point.

13 Q. So you would go out and then would you wait until you
14 picked everything up from all your stops then would you bring it
15 back to the lab?

16 A. Back to the lab, yes.

17 Q. Where was the lab located?

18 A. Hicksville.

19 Q. What was the approximate distance that you would have
20 to walk from your car to a box were you would pick up lab
21 specimens?

22 A. Most of them was like short distance like say 50 feet.

23 Q. In 2018, you were thinking about, you know, a software
24 program you went to Nassau Community College, you started
25 working as a driver, did you ever consider or think about

1 looking for a job doing accounting work like you had done in
2 Turkey back in the 90's?

3 A. No. No.

4 Q. Why not?

5 A. Because I done accounting in Turkey with all the
6 Turkish laws and rules over here. It's totally different and I
7 never went to accounting school over here.

8 Q. So, Mr. Karasu, you are certainly making yourself
9 understood in this courtroom, English is a second language to
10 you?

11 A. Yes.

12 Q. Do you understand the English language one hundred
13 percent?

14 A. No.

15 Q. So in 2018 were you still visiting Dr. Acampa and going
16 let's say every other month?

17 A. Yes.

18 Q. With regard to the physical therapy records reflect
19 that physical therapy stopped in 2018?

20 A. Yes.

21 Q. Approximately when?

22 A. April.

23 Q. Would you explain to the jury why you didn't continue
24 going for physical therapy? Why did you stop?

25 A. Because it was not recovering me anymore. It was not

1 helping me. It was all the time same what I was feeling. And
2 then I did maximum what they recommend for physiotherapy after
3 those kind of surgeries.

4 Q. Were you doing any type of home exercises to in any way
5 work with your ankle?

6 A. Little bit exercise stretching always. I still do that
7 kind of things. When I get up actually I cannot walk right
8 away. I have to do those exercises to start walking again.

9 Q. When you have been seated for a while, what is it that
10 you need to do before you start walking again?

11 A. I have to stretch my legs, you know.

12 Q. Were your pain levels the same in 2018 as they were in
13 2017? Or do you feel you had less pain in 2018 compared to
14 2017?

15 A. 2018, yeah little less.

16 Q. A little less pain?

17 A. Yes.

18 Q. Okay. Was your range of motion of your ankle, was it
19 the same in 2017 after they had removed the hardware, was it,
20 did it get -- did the range of motion get better in 2018 or did
21 it stay the same?

22 A. It's the same.

23 Q. And the same question with regard to your range of
24 motion, the range of motion in your right ankle gotten any
25 better in the last three years?

1 A. No.

2 Q. And the same thing with regard to your pain the pain
3 that you experiencing in 2018 is it any different today in 2022?

4 A. It's same pain I have coming on and off.

5 Q. Now would you tell the jury how much did you weigh
6 before your accident happened?

7 A. 180.

8 Q. How much do you way now?

9 A. 210.

10 Q. Why have you put on that much weight?

11 A. At that time I was working physically and I was doing
12 hard work. Right now I cannot do that kind of exercise and
13 working.

14 Q. So with all these changes that you described and still
15 having had, you know, this pain this limitation on your range of
16 motion why wouldn't you try the fusion or try the joint
17 replacement why not?

18 A. Yes, I ask my doctors and then he explain me how he's
19 going to do and he told me it's not guarantee. This is my
20 options, but it's not guarantee.

21 When you talking this kind of things that means I'm
22 going to have another surgeries, which one I pick doesn't
23 matter, and it's going to be recovery maybe going to benefit me
24 pain-wise. Which is I find out with the fusion I'm still going
25 to have 15 to 25 percent pain after the fusion.

1 So I mean I'm going to have limp. I'm going to lose my
2 range of motions. So I couldn't do that because then I have to
3 I cannot able to work. And I cannot able to support my family.
4 Even I cannot going to drive with the fusion because I'm going
5 to lose my range of motion.

6 Q. Now in 2019 your income tax return which is part of
7 exhibit one it shows that you received earnings from Sunrise
8 Labs 12,885 and your wife received earnings from Tusa &
9 Associates CPA of \$30,975?

10 A. Right.

11 Q. Does that indicate in 2019 you started adding more
12 hours on as a driver for Sunrise Labs?

13 A. Yes.

14 Q. And in 2020 your income tax return part of exhibit one
15 shows that your wife earned \$37,937 and that you had two sources
16 of income in 2020 you received \$17,240 from Sunrise Labs which
17 is an increase of almost five thousand dollars over the prior
18 year, right?

19 A. Right.

20 Q. And you also reported earnings of 11 thousand and
21 change from Seztech Fire Design?

22 A. Yes.

23 Q. What is that company and what did you do with it?

24 A. It's company for fire sprinkler design, design company.

25 Q. What type of work did you do for them?

1 A. After I learned a little bit of autoCAD and I start all
2 of that and I was doing computer aided like software program
3 designing fire sprinkler system and same time I was learning.

4 Q. Now in 2019 did you continue to take on more household
5 chores than you had done in the past?

6 A. Yes.

7 Q. Now this is a rental property?

8 A. It is rent.

9 Q. Are you required to maintain the lawn?

10 A. Yes.

11 Q. And does that mean somebody has to mow the lawn?

12 A. Yes.

13 Q. Did your landlord require you under the lease to be
14 responsible for maintaining the lawn?

15 A. Yes.

16 Q. Did the landlord provide you with a lawn mower?

17 A. Yes.

18 Q. What kind of lawnmower was it?

19 A. Self propelled.

20 Q. Self propelled?

21 A. Lawn machine.

22 Q. As between you and your wife who was -- who took over
23 the responsibility to mow the lawn before the accident?

24 A. Before I was doing it.

25 Q. And after the accident who took care of the lawn in the

1 first few years after your accident?

2 A. My wife did.

3 Q. When did you start mowing the lawn again after your
4 accident, what year was it?

5 A. I believe 2019.

6 Q. You have front lawn?

7 A. Yes.

8 Q. Approximately how wide is that front lawn and how deep
9 is it?

10 A. It's like 50 feet by 20 feet.

11 Q. Did you mow your front lawn starting in the spring of
12 2019 for the rest of the year?

13 A. Yes.

14 Q. How often would you mow that front lawn?

15 A. Every other two weeks.

16 Q. Who mowed the backyard?

17 A. My wife.

18 Q. How long would it take you to mow the front yard?

19 A. Ten minutes, it's small.

20 Q. When you're behind the lawn mower, does it require you
21 to use muscle to push that forward?

22 A. No, just ring you just hold it it goes by itself.

23 Q. And when you were working for Seztech, what was your
24 hourly wage there?

25 A. I start at 12 dollars.

1 Q. And when you were working for Sunrise lab we have
2 marked in evidence as exhibit four your pay stubs which show
3 that at least in 2020 your hourly rate was 15 dollars and 50
4 cents an hour?

5 A. Yes, yes. That's at the Sunrise lab.

6 Q. At Sunrise Labs?

7 A. Yes.

8 Q. It showed that in June of 2021 in Sunrise lab your
9 hourly rate was still 15 dollars 50 cents an hour?

10 A. Yes, yes.

11 Q. Did you get an increase at Sunrise Labs?

12 A. Yes.

13 Q. How much did they increase your hourly wage to?

14 A. They increase like four percent so it's like 16, 14.

15 Q. I'm looking at the last pay stub from Sunrise lab which
16 indicates that for the pay period ending in September of 2021
17 you show an hourly range of 16 dollars and 14 cents?

18 A. Yes.

19 Q. Did Sunrise lab also pay you over time?

20 A. Yes.

21 Q. When was over time triggered after how many hours?

22 A. After 40 hours.

23 Q. Would you get time and a half from Sunrise Labs?

24 A. Yes.

25 Q. So in 2020 between Sunrise Labs and Seztech your

1 earnings were reported at a little over 28 thousand dollars?

2 A. Yes.

3 Q. Does that sound about right?

4 A. Yes.

5 Q. Now in 2021 we have marked in evidence as exhibit two
6 your w2 for the year 2021 at Sunrise Medical Laboratories which
7 reflects that you more than doubled your income in 2021 and you
8 earned \$61,812, can you explain to the jury how it was that you
9 were able to more than double your income, what did you do?

10 A. I was working over times and I was working 7 days.

11 Q. You were working 7 days a week?

12 A. Yes.

13 Q. Are you still working 7 days a week?

14 A. Yes.

15 Q. And could you just tell the jury like what are your
16 hours Monday through Friday and what are your hours on Saturday
17 and Sunday?

18 A. I start like three to 11, 12 Monday through Friday and
19 Saturday I start one o'clock to 9, 9:30 and Sundays it's 8
20 o'clock morning and then 5 to 6.

21 Q. 5 or 6 o'clock p.m.?

22 A. This is the usually but sometimes it changes little bit
23 earlier and a little bit late.

24 Q. But even at the present time you were working Monday
25 through Friday, roughly how many hours a day?

1 A. Over 40 like 45 say.

2 Q. Why were you working so many hours if it bothers you to
3 do more activity?

4 A. I have to work behind my bills I have financial
5 difficulties I have to pay my rent.

6 Q. I don't want to go through it again, but in 2021, are
7 you basically doing the same thing you described to us as when
8 you started at Sunrise Labs that you will go out and you will
9 have a route?

10 A. Yes.

11 Q. And you will just all you do during your entire shift
12 is driving to doctors offices?

13 A. Yes.

14 Q. Park your car, pick up a box, go back into your car?

15 A. Yes.

16 Q. Do you have any pain during the day when you're putting
17 in these long hours at Sunrise Labs?

18 A. Yes, yes, I do.

19 Q. Tell the jury how do you deal with it?

20 A. I deal because I'm not rushing when I pick the specimen
21 when I bring in the back to the car I can get little bit of rest
22 and I can continue like that after I'm getting every 2 or 3
23 stops get a little bit break.

24 Q. Now during the course of this lawsuit, did you go to
25 the medical offices of a doctor selected by the defendants so

1 that they could have their doctor look at you?

2 A. I do.

3 Q. And do you remember the name of the doctor?

4 A. Dr. Faierman.

5 Q. Faierman, F-A-I-E-R-M-A-N?

6 A. Faierman.

7 Q. And you recall how long was it that you -- withdrawn.

8 Did that doctor interview you?

9 A. Yes.

10 Q. And did there doctor examine you?

11 A. Yes.

12 Q. Could you tell the jury approximately how long it took
13 for Dr. Faierman to interview you and examine you?

14 A. It took like 15, 20 minutes.

15 Q. During the course of the lawsuit, did you also visit
16 with Dr. Ali Guy a physiatrist, yes?

17 A. Yes.

18 Q. And when he examined you, could you tell the jury
19 approximately how long he took to interview you and examine you?

20 A. A little longer than half an hour.

21 Q. Would you tell this jury at the present time what are
22 your current complaint --

23 MR. BURKE: If I could just pause, Judge.

24 Judge, I'm close. I'm not done, but do you want
25 me to finish now it will probably take another 15 minutes.

1 THE COURT: Is that all 15 minutes?

2 If it's 15 minutes is okay. We have to be out of
3 here.

4 Q. At the present time, would you tell the jury what are
5 your current complaints with respect to pain levels, range of
6 motion, things of that nature?

7 A. I have still pains. It comes sharp pains sometimes.
8 It's like stabbing my foot and ankle area is all the numbness
9 stiffness and it's tingling sometimes itchy and burning.

10 Q. What do you mean by sometimes burning?

11 A. Like feeling hot, burning inside.

12 Q. At the present time approximately what percent of your
13 day do you feel this type of pain?

14 A. 80 percent.

15 Q. With regard to your level of activities, is your pain
16 lessened if you're doing less?

17 A. Yes.

18 Q. Are there any triggers for your pain like changes in
19 the weather?

20 A. Yes.

21 Q. In what way describe?

22 A. Rainy snow day I have more pains.

23 Q. So on one of these long days where you're in and out of
24 your car, what can you do to try to make yourself feel a little
25 bit better over the course of a shift when you're going from

1 doctors office to doctors office?

2 A. When I'm coming to car seated inside the car and moving
3 my leg, injury leg top of the dash board and sit a little bit
4 like that stretching. That's helps.

5 Q. What about with regard to your range of motion, how
6 would you describe the limitation if any in the range of motion
7 of your foot and ankle your right foot and ankle?

8 A. It's not like before.

9 Q. Comparing the way your ankle was before the accident
10 today is your right ankle as strong weaker or something else?

11 A. Yes, it's weaker.

12 Q. How do you notice that your right ankle is week?

13 A. Because when I walk it's not that strong.

14 Q. Can you give us an example?

15 A. For example when I'm standing usually I put my weight
16 to the other leg so I don't interrupt this broken ankle too much
17 or put weight too much. And when I walk I feel my right leg is
18 weaker than other leg.

19 Q. Has this continued to have an impact on a peaceful
20 night's sleep?

21 A. No.

22 Q. Describe in what way that your right ankle and foot
23 have caused you difficulty?

24 A. After working hours and coming home that time I get no
25 more pain.

1 Q. When you're laying down?

2 A. Yes, laying down because I use my leg all day and it
3 was on and off, on and over daytime, but nighttime it's most
4 pain I'm getting sleep time. I don't sleep very well it's
5 waking me up sometimes. Causing more pain at the nighttime.

6 Q. As a result of the accident, has it impacted on your
7 social relationships whether with some of your guy friends your
8 male friends or with the people you and your wife socialize
9 with?

10 A. Yes.

11 Q. Tell us in what way?

12 A. Work you mean?

13 Q. What's that?

14 A. Work.

15 Q. Yes, let's talk about work, did you have a crew of guys
16 that you worked with that you socialized with?

17 A. Yes.

18 Q. Did you have lunch with them together?

19 A. Right at that time we are working like crew there is
20 like ten people 9, 10 people at the Four Season and it was
21 working together eating lunch together even sometimes dinner.

22 Q. Do you have that at Sunrise Labs or are you mostly just
23 working alone?

24 A. I'm working alone.

25 Q. Do you miss working as a roofer and with the guys that

1 you used to work?

2 A. Yes, I do.

3 Q. Now is there anything I'm going to ask you about
4 limitation one thing I want to ask you about activities that you
5 used to do before the accident that you can not do at all and
6 then a second question about activities that you did before the
7 accident and you can still do today but not at all?

8 A. Right.

9 Q. So the first part of my question to you then is what
10 were you able to do before accident that you can not do at all
11 today?

12 A. I was running and I was doing working ladder and
13 roofing.

14 Q. Were you like when you say, what do you mean when you
15 say you were able to run before but you cannot run today, were
16 you a jogger?

17 A. I can run at that time but not anymore.

18 Q. Were you just talking about you can't run across the
19 street?

20 A. Right.

21 Q. You weren't a long distance runner we see on the
22 streets?

23 A. Yes.

24 Q. But so you can't run and you can't roof?

25 A. Right.

1 Q. Is there anything else? Did you have activities any
2 sports?

3 A. I was playing soccer before I cannot play any more.

4 Q. The second part of the question as I mentioned before
5 what is it that you can still do activities wise since the
6 accident, but you just can't do it as well or you can't do it as
7 long?

8 A. Right. I can still walk but not long distance. I
9 can't standing, but not long periods. I got pains getting on
10 and off these kind of things.

11 Q. What about stairs?

12 A. Stairs, still I can do it but I avoid it.

13 Q. You avoid it?

14 A. I'm avoid it. It's not comfortable to.

15 Q. So were you of course able to get up the steps to get
16 into this courthouse?

17 A. Yes.

18 Q. If you had to go up to the second floor, could you go
19 up to the second floor?

20 A. If there is no elevator I have to do it but it's not
21 comfortable.

22 Q. Does it activate your pain or does it have any impact?

23 A. Yes, it's like putting me on stress also, you know,
24 putting me on stress.

25 Q. What do you mean?

1 A. If I fell if something happens again because my leg is
2 still weakness.

3 Q. Comparing the condition of your right foot before and
4 after the accident, you have different sensation in those of
5 your right foot that you didn't have before the accident?

6 A. Yes.

7 Q. What feels different about your toes or your foot?

8 A. Range of motion is not like before.

9 Q. Do you have any change in sensation, do you feel like
10 something feel funny or change in one or more of your toes on
11 the right foot?

12 A. Yes, it's for example my first toe finger first one is
13 like numbness always.

14 Q. Are you referring big toe of your right foot?

15 A. Yes.

16 MR. BURKE: I have nothing else.

17 Thank you.

18 THE COURT: All right. We'll continue on Friday.
19 We're off tomorrow.

20 Jurors, because I have other matters on tomorrow
21 we're going to start Friday, March 11, 9:30.

22 Have a nice day and we'll see you Friday.

23 MR. BURKE: With your permission defense counsel
24 has kindly agreed because I have an expert coming on Friday
25 that I can put my expert on before he cross cross-examines

1 Mr. Karasu. That's the only day I have for this expert.

2 THE COURT: That makes sense. We'll have the
3 plaintiff here all the time. So if that's okay with you,
4 it's okay with the court.

5 (Trial is adjourned to Friday, March 11, 2022.)

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COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU : PART 15

----- X
SALIH KARASU and ANA DE LUCCA KARASU,

Index No.
4428/16

Plaintiffs,

-against-

SECURITY AUTO SALES, INC., SECURITY
DCJR, INC., and 345 MERRICK ROAD, LLC,

Defendants.
----- X

11th of March, 2022
Mineola, New York

B E F O R E : HONORABLE DICCIA PINEDA-KIRWAN

Justice and a Jury.

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

Plaintiffs:

RONALD BURKE, ESQ.
Kelner and Kelner
7 World Trade Center
250 Greenwich Street, Ste. 2700
New York, NY 10007

Defendants:

JAMES A. EDWARDS, ESQ.
Ahmuty, Demers & McManus
199 Waters Street, 16th Floor
New York, NY 10038

1 THE CLERK: All rise. The Nassau County Supreme
2 Court Trial Term Part 15 is now in session. The Honorable
3 Diccia Pineda-Kirwan presiding. Be seated. Come to order.

4 In the matter of index number 004428 of 2016 Salih
5 Karasu and Ana De Lucca Karasu against Security Auto Sales,
6 Inc., Security DCJR, Inc., and 345 Merrick Road, LLC.

7 MR. BURKE: Ronald Burke. From Kelner and Kelner
8 for the plaintiff.

9 MR. EDWARDS: For the defendant Security Auto
10 Sales, Inc., Security DCJR, Inc., and 345 Merrick Road,
11 LLC, James Edwards Ahmuty, Demers & McManus.

12 THE COURT: All right. Good morning, everybody.
13 The first order of business is that may be you can tell me
14 what transpired with Juror Number 3.

15 COURT OFFICER: Juror Number 3 approached me just
16 says that the school had called and said that her son is
17 sick and needs to be picked up as soon as possible.

18 THE COURT: Does that mean -- you want to call her
19 in just to make sure what we should do?

20 (Whereupon, a discussion is held off the record.)

21 MR. BURKE: During jury selection Jim and I had
22 agreed that we were picking designated alternates. So if
23 juror three leaves she would be replaced with alternate
24 number one.

25 MR. EDWARDS: I agree.

1 THE COURT: We'll see what Juror Number 3 says
2 about whether or not she can come back today.

3 The other issue I want to bring before you is that
4 we got an e-mail from juror number one it was at 5:17 a.m.
5 this morning. Shall I read the whole thing?

6 MR. BURKE: Please.

7 MR. EDWARDS: I would.

8 THE COURT: Good morning, Honorable Justice Diccina
9 Pineda-Kirwan, I am writing because at the jury selection
10 the attorneys stated that this would only this would last
11 no more than five to 7 days and probably shorter. And
12 knowing that it is my civil duty, and I say this with
13 sincerity, this trial would be done by Wednesday, March
14 16th. And so it would not interfere with my scheduled
15 business trip on Thursday March 17th to Ohio for my company
16 Sunrise Trail Hobbies, LTD. I do already of course have a
17 hotel reservation made for this Trip.

18 The background of this trip is that I would go
19 every year for the last 20 years, of course missing a year
20 or two due to I illness or other family matters, to meet
21 with suppliers, distributors and customers, but with Covid
22 it did not take place the last two years.

23 So this year is important to make those
24 connections again. I don't know if you want to keep going.

25 MR. BURKE: Judge, what was the date she said she

1 has to leave?

2 THE COURT: I think it's a he.

3 MR. EDWARDS: Juror number one.

4 THE COURT: 17th. And I'm not sure how long -- it
5 doesn't say when he's returning.

6 I am not taking this matter lightly. So I would
7 be willing to even postpone the start of my trip Thursday
8 afternoon if that would help. Not to bore you with some of
9 history, but I did take LSAT -- I took the LSAT back in the
10 early 80's and was accepted into Brooklyn Law School, but
11 instead stayed the course to becoming a registered
12 architect in the State of New York. And currently work
13 full time since 2006 for the New York City School
14 Construction Authority managing school designs and
15 construction.

16 And I also started my full time business Sunrise
17 Trail Hobbies and that started, it says, stated but
18 managing school design and construction. And I also
19 started my full time business Sunrise Trail Hobbies in 1992
20 when architectural business was and continued today.

21 With Covid being a big boom for it's continued
22 expansion and growth so I will be in court today and
23 everyday and will wait to hear from you on how to this
24 request may be reviewed and decided. I will be -- I will
25 bring a copy of this and have the court officer present it

1 to you. Thank you for your time in this matter. Sincerely
2 Mark Honca.

3 We'll mark it as a court exhibit.

4 MR. EDWARDS: Sounds like we might be able to work
5 and he's coming -- I think we're going to be done with
6 everything.

7 THE COURT: Yes, I was looking at the schedule.
8 We don't have much time to even charge the jury.

9 MR. BURKE: I'm going to begin on Monday.

10 MR. BURKE: Jim has surveillance witnesses on
11 Tuesday and his doctor.

12 MR. EDWARDS: Doctor on Wednesday morning.

13 Judge, I was thinking on Tuesday too I don't know
14 if the witness takes the whole day, we could probably make
15 a lot of progress with the charge conference and anything
16 else Tuesday afternoon.

17 THE COURT: I don't know how long he's going to be
18 gone maybe it's just weekend. I know you don't want to
19 come back but we have --

20 MR. EDWARDS: Sounds like he wants to serve and I
21 understand it's like it's not he's willing to accommodate
22 we're right on the cusp of a day or so there we might be
23 able to work this out.

24 THE COURT: Let's hear the response from the
25 juror.

1 COURT OFFICER: She has to -- she had called like
2 her husband and no one will be able to stay with the child
3 when she gets home. She understands that she will not be
4 able to come back.

5 THE COURT: All right. So we're going to have
6 juror number alternate number one sit in for Juror
7 Number 3.

8 MR. BURKE: Correct.

9 THE COURT: How do you dismiss her?

10 COURT OFFICER: Bring her down to central jury
11 with the ballot and then they will -- I think that's it.

12 THE COURT: All good.

13 MR. BURKE: Yes.

14 MR. EDWARDS: Yes, I think this will be like.

15 THE COURT: I was going to work on this.

16 All right. Let's start.

17 As soon as you get the jury ready we'll start.

18 COURT OFFICER: Jury entering.

19 THE COURT: Counsel, good morning, everybody, I
20 hope everybody is okay. Beautiful day. Where are we going
21 to put juror number --

22 MR. BURKE: Alternate juror number one goes in
23 seat three, I believe.

24 THE COURT: Who's alternate one?

25 COURT OFFICER: We started this that way.

1 THE COURT: Who's juror three? Where is juror two
2 where would three be then? We had to put it on the record
3 okay. Are we set? You have been sworn. We're going to
4 start.

5 Call your first witness.

6 MR. BURKE: Yes, plaintiff would like to call
7 Dr. Ali Guy to the stand.

8 THE CLERK: Dr. Guy, can you please raise your
9 right hand, do you solemnly swear or affirm that the
10 testimony you will give in this case now on trial will be
11 the truth, the whole truth and nothing but the truth so
12 help you God?

13 THE WITNESS: I do.

14 THE CLERK: Please state and spell your full name
15 and address for the record.

16 THE WITNESS: My name Dr. Ali Guy. First name
17 A-L-I. Last name G-U-Y. Office address is Four Hundred
18 Post Avenue, Westbury, New York, 11590.

19 THE COURT: Good morning. You may be seated.

20 A L I G U Y, called as a witness by the
21 Plaintiff, having been first duly sworn, was examined and
22 testified as follows:

23 THE COURT: You may inquire.

24 MR. BURKE: Thank you, Judge.

25 DIRECT EXAMINATION BY

1 MR. BURKE:

2 Q. Dr. Guy, the judge has given permission to the
3 questioning attorney and witness to remove their masks.

4 A. Thank you.

5 Q. Dr. Guy, are you a duly licensed physician to practice
6 medicine in the State of New York as well as surgery?

7 A. Yes, I am.

8 Q. And when did you receive your license?

9 A. 1985.

10 Q. Would you explain to the jury your educational
11 background?

12 A. Yes, my undergraduate I went to Queens College Flushing
13 New York Medical School. I graduated from the University of
14 Northeast Dominican Republic, June of 1981. Thereafter I did
15 three separate residencies. I did 18 months of internal
16 medicine at Mount Sinai School of Medicine, Mount Sinai Medical
17 Center in the field of internal medicine for 18 months.

18 I did one year of general surgery at Cabrini Medical
19 Center, Manhattan, New York. I completed a three year residency
20 training program in the field of physical medicine and
21 rehabilitation. At Mount Sinai Medical Center. I'm board
22 certified in the field of physical medicine and rehabilitation.

23 I was the director of the Department of Rehab Medicine
24 at Maimonides Medical Center, Brooklyn, New York. From 1997 to
25 2002. That would be five years. My duties were to be in charge

1 of all the rehab services, provide teaching to the house staff,
2 the orthopedic surgery residents, general surgical residents,
3 internal medicine residents, other doctors in my department
4 which at the time were about two dozen other doctors. And to
5 teach the speech therapists, physical therapists, occupational
6 therapists as well.

7 And from 1990 until 2006 I was director of the
8 Department of Neuromuscular Equipment Clinic at NYU Hospital For
9 Joint Diseases. My duties were to see all the patients assigned
10 to the clinic. This would be patients that are born with birth
11 defects, spinal cord injuries, orthopedic problems. My duties
12 were to see these patients and teach the residents from NYU and
13 prepare them for the boards part one and part two.

14 And from January of 2006 until November of 2020, I was
15 clinical instructor of physical medicine and rehab at NYU School
16 of Medicine NYU Medical Center. And in the November of 2019 I
17 was promoted to clinical Assistant Professor of Medical Medicine
18 and Rehabilitation at NYU, School of Medicine. My duties were
19 to teach the residents from NYU. And again prepare for the
20 boards both one and part two.

21 Also director of the pain services at the North Queens
22 Surgery Center. It's an out patient surgery center. I
23 supervise the approximately 30 other doctors to make sure they
24 do their work properly. And if they have any problems, I get
25 involved. I teach them and or discipline them.

1 I'm also the director of the departments of rehab
2 medicine at Med Alliance M-E-D-A-L-L-I-A-N-C-E, in the Bronx
3 it's article 28 facility which is like mini hospital. We have
4 approximately 50 doctors we have 200 employees. We have about
5 four operating rooms. My duties are to teach house staff, the
6 nurses, the physician assistants, and also to see the patients.

7 And I also have offices in Westbury and Manhattan. I'm
8 also a captain with the New York National Guard. My duties are
9 to take care of the soldiers the officers. And be on standby 24
10 times 7 for riots and disasters.

11 Q. Doctor, what does it mean when you say you're board
12 certified in physical medicine and rehabilitation?

13 A. Board certification is the highest degree of
14 recognition which you can obtain in your level of specialty. In
15 order to be board certified in my specialty which is known as
16 physiatry. It's pronounced physiatry or physiatry both ways are
17 correct. You have to have the following prerequisites. You
18 have to be training in the field of physical medicine and
19 rehabilitation. Roughly one year of internal medicine and or
20 one year of general surgery. Two years you have to be involved
21 in an accredited teaching facility Mount Sinai is the very well
22 known accredited teaching facility.

23 You have to pass the monthly evaluations given by your
24 teachers. You have to pass the annual exams given by the
25 department. And once you finish your training period, you have

1 to sit and take your boards part one. Which is an 8 hour
2 written examination. You get tested on orthopedic surgery,
3 general surgery, neurosurgery, neurology, internal medicine,
4 arthritis, muscle and nerve physiology interpretation of x-rays
5 CT scans MRI scans and other radiological studies and disability
6 and impairment.

7 Which means we have training to evaluate a patient to
8 see if that patient is injured temporarily or permanently. If
9 it's a permanent total or permanent partial and what the future
10 holds for that patient. And we get tested also on electro
11 diagnostics to do studies to see if there is any muscle or nerve
12 damage and pain management. Both interventional and
13 pharmacological.

14 We're trained to do epidural injections, F-A-C-E-T,
15 facet injections and radio frequency procedures where we burn
16 several nerves so that the patient doesn't feel the pain. And
17 we also have training in micro discectomy of the spine for disc
18 herniations and rehabilitation. Once a surgeon does surgery
19 like a hip replacement or knee replacement, the patient gets
20 transferred to our services for continued physical therapy
21 rehabilitation, pain management. So this is essentially what we
22 do.

23 Q. What are the requirements to become a clinical
24 instructor which allows you then to teach other doctors?

25 A. You have to be board certified. I left out one thing,

1 once you pass your boards part one, part two, which is oral exam
2 again 6 to 8 hours, similar principals, then all your
3 credentials from college, from medical school, from residency
4 training program is sent to the American Board of Physical
5 Medicine and Rehabilitation. Everything is up to par they pass
6 you, they give you a title of a Diplomate of the American Board
7 of Physical Medicine and Rehabilitation that was obtained in
8 1989 and to this day it stays in good standing.

9 So in order to be able to teach at NYU you have to
10 first be board certified. You have to pass a written
11 residential committee which takes anywhere from 6 months to one
12 year. And then you go on probation for six months. You have to
13 get good evaluations by your students. It's the other way
14 around. They have to evaluate you to see if you have the
15 ability to teach and if they like you.

16 If you can not teach, you may possess a lot of
17 knowledge, but if you can't teach, they don't want you. So once
18 you pass that and they let you continue. I have been with NYU
19 since 1990. So I'm doing something right. And so that's
20 basically it.

21 Q. Are you a member of any professional organizations?

22 A. Yes, I'm one of the cofounders of the New York State
23 Pain Society. I teach also at the New York Pain Society. I
24 teach students and doctors. I'm mentor for these students and
25 doctors. We have annual debates and I won every single every

1 debate except one year. I'm also on a board of that facility as
2 well.

3 Q. Could you just explain to the jury what is the focus in
4 the field of physical medicine and rehabilitation?

5 A. Yes. This is a medical specialty that was founded
6 shortly after World War II by doctor Howard Rusk, R-U-S-K,
7 that's why the Rusk Institute at NYU is named after him. This
8 specialty has been around since World War II and it deals with
9 traumatic injuries. Covering the whole body from head to toe.

10 Initially it was called orthopedic medicine and
11 rehabilitation. Because of all the chaos and confusion between
12 orthopedic surgery and the specialty, the name was changed to
13 physical medicine and rehabilitation. So we do essentially
14 everything that an orthopedic surgeon does except we don't do
15 surgery. We try to avoid surgery. And we get involved after
16 surgery and after the fracture has been set we do
17 rehabilitation.

18 We do everything a neurologist does. We concentrate
19 more on pain management and peripheral neurology which is our
20 knowledge. The spine nerve roots and the nerves that go down to
21 your arms, hand and legs. And we do electric diagnostics. Not
22 every neurologist does electric diagnostic. I get a lot of
23 referrals for neurologist to perform electric diagnostic study.
24 And we do physical therapy disability and evaluation.

25 Q. Now as part of your training did you receive formal

1 training in all these other fields like orthopedics, neurology,
2 radiology, interpreting x-rays CAT scans?

3 A. Yes, the answer is, yes, but I do not hold myself out
4 as an expert board certified in any of those specialties. I
5 have training in those specialities. My title is called a
6 physiatrist.

7 Q. So what's difference in perspective between you as the
8 physiatrist with respect to fractures and an orthopedist?

9 A. Orthopedic surgeon gets involved in the initial stages
10 of a fracture. He sets the fracture. He does the surgery.
11 After he's done, he sends the patient to a rehab doctor like
12 myself for continued medical care and attention. And the
13 orthopedic surgeon may still continue to see the patient until
14 he feels that the physiatrist can take over. That's one
15 example.

16 Q. So do you consider yourself an orthopedist or
17 radiologist?

18 A. I do not, sir.

19 Q. Does your field deal with traumatic injuries and are
20 you an expert in the feel of trauma?

21 A. Yes, my field deals with traumatic injuries. I treat a
22 lot of patients with trauma. I treat people of that been
23 injured on the job. I treat patients that have been injured in
24 car accidents. I treat patients that have been injured in
25 martial arts accidents injuries, skiing accidents so on and so

1 forth.

2 Q. Do you do any or do you deal with disability and
3 impairment evaluations of patients?

4 A. Yes, sir, I do.

5 Q. What's in the nature of one of these disabilities
6 evaluations?

7 A. Basically take history of the patient, you examine the
8 patient, you review the pertinent medical records, x-rays, MRI
9 operative reports, you arrive at a final diagnosis and what the
10 future holds for the patient. Are these injuries permanent,
11 which means patient cannot work anymore. Are these injuries
12 permanent partial or permanent total. Permanent partial the
13 patient can do some work. Permanent total patient cannot do any
14 work. Example, permanent total patient has spinal cord injury
15 from the neck down C6 level or below. Patient permanently and
16 totally disabled patient is wheelchair bound.

17 Q. Now as a trauma expert and someone who treats patients
18 who have been injured as a result of an accident, have you found
19 yourself frequently called upon to become involved in litigation
20 either as testifying at trial or preparing an evaluation of
21 someone's impairment?

22 A. Yes, sir, on the average 8 to 10 times per year during
23 Covid period as you know courts were closed, so not during those
24 two years approximately and that testifying coming to court and
25 testifying constitutes less than one percent of all the patients

1 I treat. So the vast majority of my time is devoted to taking
2 care of patients and teaching.

3 Q. What happens if, you know, as a trauma expert who is
4 treating a patient who has been injured as a result of the
5 accident, what happens if you get called to testify in court
6 before jury and you don't come you don't cooperate?

7 A. You can get sanctions by the Office of Professional
8 Medicine Discipline. This almost happened to me once. I was
9 asked to testify for a patient in court. I told the patient I
10 would gladly come, but my testimony would throw you under the
11 bus because you lied to me. You had three prior accidents and I
12 did not know about --

13 MR. EDWARDS: Move to strike that, Judge.

14 MR. BURKE: He's just giving back ground of his
15 experience.

16 THE COURT: Sustained.

17 Q. Have you ever been deemed an expert testifying in court
18 with respect to the field of physiatry and it's related areas in
19 orthopedics and radiology?

20 A. Yes, sir many times.

21 Q. Have you ever been turned down as an expert by any
22 court?

23 A. When I appeared in court when court heard my experience
24 never turned down, no.

25 Q. Approximately how many times have you been qualified as

1 an expert in a jury trial in court?

2 A. Somewhere between 200 and 70 to 300 times in my 30
3 years plus career as a physician.

4 MR. BURKE: And, Judge, at this time, I would ask
5 if the Court would recognize Dr. Guy as an expert in the
6 field of physical medicine and rehab?

7 MR. EDWARDS: No objection.

8 Q. Now, Doctor, you also give lectures to various
9 different people?

10 A. Yes, I love to teach. I give lectures to medical
11 students, doctors, international doctors that rotate through my
12 office. I have been giving lectures to attorneys at Mount Sinai
13 School of Medicine along with several other professors. Through
14 these lectures they get continuing CLE credit toward their law
15 license. And also to fire fighters, police officers, the
16 Marines, New York National Guard. Just about every walk of
17 life.

18 Q. So when you give these lectures are you doing it for
19 monetary compensation?

20 A. No, sir, I do not get paid. I don't accept any
21 monetary compensation. It's considered a great honor to be
22 asked to give lectures to these class of people especially at
23 Mount Sinai School of Medicine.

24 Q. When you do testify to the jury in court, do you do it
25 mostly for the plaintiff's side, the defendant's side or

1 somewhere in between?

2 A. I do both sides, but mostly for my residents and
3 patients are referred to as patients in the legal sector.

4 Q. So why do you mostly testify for plaintiffs?

5 A. The patients, I went to school, I became a doctor to
6 take care of patients. And my field deals with traumatic
7 injuries. And sometimes these traumatic injuries have legal
8 proceedings. And as from time to time I'm asked from time to
9 time to come and explain the kind of treatment patient received
10 by me. And or explain the diagnosis to lay people like jurors
11 so that they can understand the nature of these injuries and the
12 future sequela of these injuries. So they have a better
13 understanding.

14 Q. So what percentage of your professional life is devoted
15 to treating and evaluating patients versus testifying in court?

16 A. The vast majority 90 percent plus is devoted to taking
17 care of patients and teaching. And I would say less than one
18 percent devoted to coming to court and testifying.

19 Like I said, it's on the average 8 to 10 times per year
20 that is for my office in Manhattan. My office in Westbury, Long
21 Island and the hospital practice as well.

22 Q. And do you perform consultations at the request of
23 other physicians?

24 A. I do.

25 Q. What type of physician?

1 MR. EDWARDS: Objection. We've already I have
2 already consented that he's qualified. I'm not sure --
3 seems like we're still --

4 THE COURT: Move on, move on.

5 Q. So what type of specialists ask you for consultation?

6 A. Orthopedic surgeons. Neuro surgeons. Neurologists.
7 Internal medicine doctors. Just about everybody walk of life.
8 Every specialist.

9 Q. And you understand of course that you are here today to
10 express your professional medical opinions regarding Mr. Karasu?

11 A. Yes, sir.

12 Q. And I just want to ask you, are you being paid for your
13 time or compensated for your time taking away from your practice
14 to come here and testify?

15 A. Yes, sir, for canceling all my patients and for
16 pretrial preparation with you discussing the medical aspect
17 action of the case and travel time back and forth five thousand
18 dollars four half day of testimony, one thousand for pretrial
19 preparation, all together six thousand.

20 Q. Doctor, if your testimony should extend into the
21 afternoon beyond a half day, how are you compensated in what
22 amount?

23 A. 4,000 for the afternoon.

24 Q. Now, Doctor, I'm going to be asking you a series of
25 questions regarding your professional opinion and I only want

1 you to give us your professional opinion, if you can do so,
2 within a reasonable degree of medical certainty, is that
3 understood?

4 A. Yes, sir.

5 Q. So you understand then that when you give us an answer
6 with respect to your professional opinion we're all assuming
7 it's you're stating that within a reasonable degree of medical
8 certainty, and that if I should ask you a question that you
9 cannot give us your opinion within a reasonable degree medical
10 certainty, would you please say that otherwise we'll assume that
11 you are?

12 MR. EDWARDS: Judge, I have an objection.

13 THE COURT: Could you rephrase your question
14 please?

15 MR. BURKE: Okay.

16 Q. Please agree that throughout the course of your
17 testimony today, you will only express your professional medical
18 opinions if you can do so within a reasonable degree of medical
19 certainty, is that understood?

20 A. Yes, sir.

21 Q. And if you can not state an opinion within a reasonable
22 degree of medical certainty please say so okay?

23 A. Yes, sir, many yes/no answers I cannot answer that with
24 a reasonable question agree of medical certainty.

25 Q. Okay. If that comes up you just alert us to that?

1 A. Yes, sir.

2 MR. EDWARDS: Judge I have no problem with that.

3 MR. BURKE: I'm done.

4 MR. EDWARDS: That's fine, Judge.

5 THE COURT: Do you have on objection?

6 MR. EDWARDS: I have an objection.

7 THE COURT: Overruled. Let's go.

8 You can put it on the record later.

9 MR. EDWARDS: Sure.

10 Q. Doctor, would it assist you in explaining to the jury
11 principals of the human anatomy by using a chart of the ankle
12 foot as well as a model of the ankle foot?

13 A. Yes, sir.

14 MR. BURKE: With the courts permission, I would
15 ask if Dr. Guy could come down and discuss, Judge, may
16 Dr. Guy step down, I have an anatomy chart as well as a
17 model of a foot?

18 THE COURT: Yes. Just make sure that the court
19 reporter --can not to give his back to the court reporter
20 if you can.

21 A. Yes, your Honor.

22 Q. Doctor, I'm going to ask you to come down, I have got
23 this color chart?

24 A. May I begin.

25 Q. Yes?

1 A. So this is a model of the foot and the ankle. This is
2 the tibia, your shinbone. This is the fibula. The fibula is
3 always the bone on the outer portion of the foot and the ankle.
4 This is the a lateral, a lateral means outside, that is the
5 lateral malleolus medial, means on the inner side. This is the
6 medial malleolus. So these are the phalanges of those five
7 phalanges. These are the metatarsals. This is the talus.

8 You're going to hear a lot of discussion today about
9 the talus. Fracture of the talus. Fracture the tibia and the
10 fibula. And this is the hyoid bone. And this is the navicular
11 bone. Right here. This is the navicular bone. This is the
12 calcaneus the hind foot your heel.

13 So the foot and the ankle we have arches. And it's
14 kept in place with a lot of small tiny tendons, muscles and
15 ligaments. The arch is very important in keeping the foot and
16 the ankle in proper alignment and to assist with this is the
17 foundation of the body. How the body if I weigh two hundred
18 pounds, 200 pounds is kept in check by the use of these small
19 muscles, tendons, ligaments and the arch.

20 So the foot and the ankle if everything is in proper
21 alignment, your normal gait, the way you walk pattern would be
22 normal.

23 So I like to demonstrate the normal gait pattern.
24 Would it be here. If you can stand, you could see me better.
25 So a normal gait pattern is four stages. We start with double

1 stance. Phase one push off. Phase two swing state. Three heel
2 strike. Four foot down. You repeat with the same on the other
3 side. Now we have several abnormal gaits. We have antalgic
4 gait. Which is limp. Antalgic gait. We have festinating gait.
5 People would Parkinson's disease. We have hip hiking. People
6 have leg limb discrepancy arterial arthritis.

7 So when you have an instability in the foot or the
8 ankle, you will have an abnormal gait. So some patients
9 compensate when we -- when they walk foot goes externally
10 rotated, goes out to compensate for the pain they are having.

11 Once you have a fracture in the vicinity of the joints
12 it heals with traumatic arthritis. And you have what is called
13 a compensatory mechanism syndrome CMS. The patient tries to
14 unload that side. They begin to overload the other side and or
15 the joints above.

16 So their gait pattern helps compensate for the problems
17 they are having here. Going to go into this later on. So this
18 is the basic anatomy of the foot and the ankle.

19 Q. So the tibia and the fibula drop down on top of the
20 talus?

21 A. Yes, the tibia drops right on top of the talus. This
22 is the talus.

23 Q. Where is the tibiotalar joint?

24 A. Tibiotalar joint is right here where my pen is.

25 Q. Where is the fibula do in relation to the talus is it

1 resting on it?

2 A. Well the talus is here. The fibula is here. It's out
3 of that area. So the fibula helps support the ankle extra
4 support by way of ligaments, tendons, etc. And it gives
5 additional support. You have two bones supporting the foot and
6 the ankle.

7 Q. Could you explain where are the let's start off what's
8 an articulating surface?

9 A. Articulating surface is when the bones glide on top of
10 each other. This is an example of an articular surface.

11 Q. So that would be the same like between the tibia in the
12 knee joint?

13 A. This will be the same as with the tibia and the talus
14 right here.

15 Q. But in other words, we have articulating surface at the
16 end of our long bones?

17 A. That is correct.

18 Q. And what are the good properties of an articulating
19 joint?

20 A. So it has to be very smooth. So that it glides
21 smoothly. If it becomes arthritic like I will give you an
22 example you take patio doors. Patio doors where you have those
23 grooves patio doors slide to open and close. If you put sand or
24 gravel in it if you try to open and close the gravel it will not
25 be smooth. It would either fall off the track or it won't open

1 or close. So if you have an articular surface that function
2 will be lost. You will not be able to dorsiflex, plantarflex,
3 evert, invert your foot and ankle. That will lead to pain
4 disfunction and altered gait pattern.

5 Q. Now is there an articular surface anywhere at the
6 distal end of the fibula?

7 A. The distal portion, no, but the medial portion, yes
8 right here.

9 Q. So is it fair to say that even the fibula has
10 articulating surface that meet with another bone?

11 A. Yes, sir, inner portion medial aspect.

12 Q. And when we use the words like distal and proximal,
13 could you explain that to the court?

14 A. Distal means away from the heart further away this is
15 distal this is proximal. Proximal is closer to the heart. This
16 is my proximal arm. This is my distal arm.

17 Q. Is there anything else that you want to explain to the
18 jury before we move to the --

19 A. No, this is pretty much covered everything.

20 Q. So doctor, I'm going to go to the monitor?

21 A. I forgot to mention one thing. We're going to be
22 talking about the term P-I-L-O-N. Some physician refer to it as
23 pilon, but the technical pronunciation pilon. So pilon any time
24 you have a fracture of the tibia and the fibula in the vicinity
25 of the ankle joint that is considered the pilon or the pilon

1 fracture which is what the patient had is pilon.

2 Q. Doctor, I want to ask you to comment. This is a report
3 of the x-ray first taken at the Good Samaritan hospital after
4 Mr. Karasu's accident. There is also you can see a report of
5 the CAT scan of the right ankle, can you just discuss with the
6 jury what are the significant findings on the x-ray and on the
7 scat scan? This is before surgery?

8 A. That's correct. So what's important it says there is a
9 mildly impacted fracture. Impacted means pushed into. Fracture
10 of distal tibia. That's the distal portion of the bone I showed
11 you with the fracture extending to the distal articular surface
12 anterior. Let me show you what that is.

13 So we have an impacted fracture of the tibia. It's
14 pushed forward. Anterior means toward into this articular space
15 that's what that means. There is a subtle cortical disruption
16 laterally within distal fibula that such that is that the
17 fracture is not excluded.

18 So they are saying there is some abnormality on the
19 distal portion of the fibula, but the x-ray cannot tell you
20 exactly if it's broken or not. Fracture means a break in the
21 bone. We have different types of fractures. We have non
22 displaced where the two pieces don't move. We have displaced
23 where the pieces move away from of each other. We have what is
24 called comminuted means it breaks into pieces.

25 Q. Is that also referred shattered?

1 A. Yes, sir.

2 MR. EDWARDS: Objection.

3 THE COURT: Overruled.

4 Q. There is also again repeated the mildly impacted
5 intraarticular, intraarticular fractures have devastating
6 sequela?

7 A. Any time you have a break in the vicinity of a joint
8 and if it goes inside the joint, it almost always heals with
9 traumatic arthritis and the range of motion would almost always
10 be abnormal permanently. That's why intraarticular fractures
11 are one of the worst types of fracture.

12 Q. Dr., how would you characterize a simple nondisplaced
13 midshaft fracture of lets say the tibia or the fibula compared
14 to this?

15 A. A mid shaft means in the middle. In the middle of the
16 tibia it is not in the vicinity of a joint. There is no joint
17 in the midshaft. So it heals usually with no -- usually with no
18 residual sequela, but intraarticular fracture are fracture in
19 the vicinity of a joint is not the same. It almost always heals
20 with permanent sequela as we have here as we will show later on.

21 Q. So Dr. I want to draw your attention to the CAT scan
22 report?

23 A. Okay. CAT scan stands for computerized axial
24 tomography. They take x-rays of the patients area of injury in
25 different segments different distances away. So you have get

1 much greater three dimensional picture.

2 Q. Now this CAT scan report is dated March 27th, 2015, are
3 there any significant findings that you have not already
4 discussed from the x-ray report?

5 A. Yes, it says comminuted fractures distal aspect of the
6 tibia. I just mentioned comminuted means into pieces. More
7 than one broken piece. Later on we have the x-rays and we have
8 the CT scans. I will show you those fragments that are broken
9 into the tibia. Again, it shows anterior displacement of the
10 fragment by zero point four centimeters. It goes into the joint
11 line. And there is now CAT scan confirms transverse fracture of
12 the fibula. Transverse something -- so of the fibula. Normal
13 x-ray could not pick it up. The CAT scan picked it up. In the
14 medical field we don't always rely on one diagnostic study. If
15 we did we miss a lot of things. We have to see the whole
16 picture. CAT scan gives you that ability to see it in the three
17 dimensional fashion.

18 Q. What is the significance of the reference to the fibula
19 at the distal aspect having displacement?

20 A. Again, it's in the vicinity of a joint space it affects
21 articulation on the inner portion of the fibula which is here.

22 Q. So in the CAT scan report is there reference to
23 fragments from the tibia as well as fibula?

24 A. Yes, there is fragments of both tibia and fibula. The
25 tibia is going into the tibiotalar joint space which is here.

1 Q. Doctor, when they said in this CAT scan report in
2 reference to the tibiotalar joint it reads quote, there appears
3 to be a small bony fragment in the anterior aspect of the
4 tibiotalar joint end quote, what does that mean?

5 A. There is a piece of bone that broke lose it's stuck
6 inside the joint space.

7 Q. Doctor, I want, we'll go to the radiology images in the
8 second, but I just wanted you to comment on the operative report
9 from Dr. Acampa dated March 27th, and tell us what he did for
10 his patient on that day?

11 A. So on March 27th, 2015 the surgeon, orthopedic surgeon,
12 Dr. John Acampa, his name is on top, he did application of a
13 spanic external fixator with reduction of the fracture. So when
14 you have a fracture that is this complicated, there is two
15 procedures you can do. You can try to reduce the broken
16 segments through an outside wire and medical hardware, get it
17 ready to then cut into the ankle open and do what is called open
18 reduction internal fixation.

19 When the fracture is this complicated you have to go in
20 stages. First is the outside external fixators. Once you get
21 all the pieces as close as possible to approximation then you go
22 in you do the open reduction. So this is the outside external
23 fixators.

24 Q. He's referring to the items in evidence?

25 A. Which look like this?

1 Q. Let me just for the record, it's exhibit five A and
2 five B two photographs. So in the operative report, do they
3 make reference to the bones into which they put screws and pins?

4 A. Well the x-rays speaks for itself. You don't have to
5 read that. You can just look at the external fixators have gone
6 into the tibia and the fibula where the break has been.

7 Q. I put up on the screen this is the operative report of
8 I believe it is April 17, 2015 at Good Samaritan Hospital, what
9 does this operative report indicate that Dr. Acampa did for
10 Mr. Karasu?

11 A. So the diagnosis preoperative means diagnosis before
12 the surgeon goes in. Postoperative diagnosis means the
13 diagnosis after the surgeon post surgery. So preoperative
14 diagnosis pilon or pilon fracture of the right ankle. Status
15 post means condition after the external fixator for staged
16 procedure.

17 Remember what I told you you cannot do open reduction
18 right away because the fragments are too far apart. You have to
19 prepare the area first. When you want to make steak what do you
20 do, you marinate the stake first. You get it ready so you don't
21 break your tooth when you bite on it. So same. I'm giving you
22 examples of the extreme.

23 So the procedure was removal of the external fixator
24 and then open reduction and then do open reduction and internal
25 fixation of the distal tibia and arthrotomy of the ankle joints.

1 Arthrotomy is you cut into the bone. Otomy means you cutting
2 into bone. Arthro bones.

3 Q. So when he's doing arthrotomy of the ankle is he would
4 you describe what he's doing to the these bones?

5 A. Yes. We have those x-rays that will explain that best.

6 Q. I'm going to load them right now. I'm going to start
7 with the x-rays that were taken at Good Samaritan hospital and
8 the first one is March 26, Doctor, if you want to move along all
9 we have to do is push this button here and you can go to the
10 next image?

11 A. If you don't mind, I will let you operate this because
12 I'm going to concentrate on the picture. So this is so what
13 we're looking at is the x-ray the side view. This is the tibia.
14 This could be part of the tibia or the fibula. That's what when
15 you look at the CAT scan in a different view. So this is the
16 break in the bone. A break here and a break here and break
17 here. And this is the joint line. This is right inside the
18 joint line. So this is one view of showing fracture. Different
19 views shows us more of the extent of the fracture. The CT scan
20 shows even more.

21 Q. Next one?

22 A. Yes, next one.

23 Q. This is dated if you would, this says March 26th, 2015?

24 A. Yes, same.

25 Q. Same date the day of the accident.

1 A. So with this view what I see is a fracture of the
2 distal fibula here. The tibia on this view is not the best
3 visible. The other view was much better visible. What I can
4 see a little subtle fracture even from this view. Next one.

5 Q. This is dated March 26, 2015?

6 A. This is similar to the last view let's get a better
7 view.

8 Q. This is also March 26th, 2015?

9 A. So I can see a black line going from here all the way
10 down here. That's one break in the tibia. The fibula. Another
11 line going through. That's a fracture, but we have better
12 pictures coming up. Keep going please.

13 Q. Okay.

14 A. Here again you see the fracture. I don't know if you
15 can all see it from back there. You can all see it, good. This
16 is the fracture. Again it's in the vicinity of the joint line.
17 Here is the joint line intraarticular fracture.

18 Q. Still on March 26 right now this is the March 27th,
19 2015 film is that shows?

20 A. Right. So this is the distal tibia here's broken piece
21 of bone sticking out. We have better pictures than that.

22 Q. Going forward this is the CAT scan of March 27th, 2015?

23 A. Can you give me a picture without all these grids
24 looking --

25 Q. No, I can't eliminate the grid.

1 A. Okay. So what we see here this is the distal tibia.
2 There is a break here. There is a break here. When you have a
3 break here and break here, what happens, the bone has moved from
4 its normal position. And this area is unstable. If you step on
5 it, it's going to break in a little pieces. That's why you need
6 an external fixator first to stabilize it. And then you go in a
7 few weeks later so when there is bone cement which is called
8 callus, C-A-L-L-U-S, bone cement referred to a callus formation.
9 It's cementing the bone making it a little bit more stable.

10 Next one. Here we go.

11 Q. This is March 27th, 2015 CAT scan?

12 A. This is the CT scan. It clearly shows you the broken
13 piece. You cannot miss this. Everybody sees it. And again
14 this is the joint line. Pay attention to this joint line.
15 Remember the joint line. As we go on in years this joint line
16 will decrease. That's the early signs of traumatic arthritis
17 setting in.

18 Q. Next this is CT from March 27 also?

19 A. Yes, this shows the essentially what the other ones
20 shows. Let's go to the next one.

21 Q. This is another CT from March 27?

22 A. Shows same thing I show last time here's the fracture
23 line here and here of the distal tibia.

24 Q. This is March 27?

25 A. Shows same thing I showed you earlier. This is the

1 external fixators which I showed you in the pictures.

2 Q. Does that screw go across go through the bone?

3 A. Yes, it's screwed into the bone.

4 Q. Do they literally screw through the entire bone to the
5 other side?

6 A. Yes, to get as close to a normal alignment as possible.
7 If you only screw into the bone partially not all the way
8 through, you are not going to achieve that proper alignment.
9 You have to go all the way through.

10 Q. There is another CT from March 27?

11 A. Right. This is another example of the external
12 fixators trying to stabilize the broken areas.

13 Q. This is another March 27 CT image of the foot?

14 A. Shows the same thing again external fixators anchoring
15 into the normal bones that were not broken. These bones are not
16 broken. So they are being anchored in as additional extra
17 support from the top and from the bottom.

18 Q. This is another March 27?

19 A. Yes, this is an x-ray again showing the external
20 fixators on the top on the bottom. We've seen this before.
21 Next one.

22 Q. This is another March 27?

23 A. Here again you see the fracture here and here.

24 Q. This is an x-ray in Dr. Acampa office on April 2nd,
25 2015?

1 A. Again you see a piece of the fracture here and these
2 are again are the external fixators stabilizing the broken
3 pieces.

4 Q. This is an x-ray from April 2nd, 2015 at Dr. Acampa?

5 A. Again showing the external fixators from above and from
6 below the joint line to stabilize the area. So that the bones
7 are going to be in proper alignment. Same thing. Same thing
8 keep going. Again.

9 Q. Should I go back?

10 A. This is the again again you see the broken piece here.
11 This is not going to be fixed with external fixators. You have
12 to go in with open reduction internal fixation. That's why it's
13 staged. You can't do everything at once. Next one.

14 Q. This is dated April 9th, 2015?

15 A. Same thing.

16 Q. With the external fixators?

17 A. Yes.

18 Q. This is April 9th, 2015?

19 A. Same next one.

20 Q. This is April 9th, 2015?

21 A. Next one.

22 Q. Same?

23 A. Next one.

24 Q. This is April 9th again?

25 A. Same thing see same thing essentially. Okay. Now you

1 stop.

2 Q. This is April 15th, 2015?

3 A. Okay. So now we have the open reduction internal
4 fixation. We have one, two, three, four, five, six, six long
5 screws and we have five other small screws that had to be left
6 in place when the hardware was later on removed.

7 So as you could see there was a little piece of bone
8 that was broken here before. Could not be corrected with the
9 external fixators. Now with the open reduction internal
10 fixation with these two screws is trying to hold it in place and
11 this is the anchor to put the nails through. See these little
12 holes this gets nailed into the bone. Next.

13 Q. This is also April 15?

14 A. So you see all the little screws one, two, three, four,
15 five, six, seven, eight, nine, ten, eleven, eleven screws.

16 Q. This is also an April 15 x-ray?

17 A. Metal plate hardware these are again the screws
18 stabilizing the area.

19 Q. This is answer 15?

20 A. Again showing the fracture being stabilized with the
21 open reduction internal fixation with the plates and screws.

22 Q. This x-ray is dated April 22nd, 2015 from Dr. Acampa's
23 office?

24 A. If you remember, this little piece which I told you
25 about could not be put into proper alignment with external

1 fixators even with the internal open reduction internal fixation
2 with plates and screws. Even this little piece is still
3 floating into the joint line. There is still not able to get
4 this 100 percent. On this view --

5 Q. Should I go back?

6 A. Go back please. On this view, you can see with this
7 plate hardware they have been able to accomplish bringing it
8 together and stabilizing it.

9 Q. This is April 22nd, 2015?

10 A. Okay. Now April 22nd, we're almost one month later
11 look at the joint space remember what I told you before remember
12 the joint space. Remember the joint space now. Beginning to
13 become narrowed. From disuse. If you don't use it you lose it.
14 If your bone breaks what do you do. You're not going to jump
15 around. You're going to have less mobility. As a result
16 traumatic arthritis sets in. And disuse osteoporosis sets in
17 into the bones. Which I will show you better -- look how thick
18 these bones are. These bones are becoming a little bit black
19 that is the beginning of osteoporosis. Later on pictures you
20 will see it lot better. Remember this picture. It's still not
21 black. The future ones will be black. Next one.

22 Q. This is may 21st 2015 from Dr. Acampa office?

23 A. Same thing which showed before. Again same thing.

24 Q. June 10, is when your referring to now?

25 A. Yes, same thing we explained before more for less

1 different --

2 Q. This is July 8th, 2015?

3 A. These are all different views of the same thing. Keep
4 going.

5 Q. That's another July 8th, 2015?

6 A. Okay.

7 Q. Next image is dated July 22nd, 2015 from Dr. Acampa
8 x-ray?

9 A. Okay. Next one.

10 Q. Again July 22nd, 2015 from Dr. Acampa?

11 A. Look at this joint space. You can't see it. It's
12 almost almost narrowed very very much so very much narrowed.
13 Traumatic arthritis is already beginning. Traumatic arthritis
14 has stages. Stiffness and pain joint space narrowing sclerosis
15 and then later on spur or bony spicules begin to form inside the
16 joint space. Next.

17 Q. This is an x-ray of Dr. Acampa's office August 12th,
18 2015?

19 A. Essentially same thing. Next one.

20 Q. Well before we do that I want to go to page 6. I want
21 to go to Dr. Acampa's note I'm putting up on the screen
22 Dr. Acampa's note from September 17, 2015?

23 A. That's correct.

24 Q. And what are the significant findings recorded by
25 Dr. Acampa with respect to different planes range of motion?

1 A. So it says there is multiple well-healed wounds from
2 the surgery the wound has healed. Rightfully so. Patients
3 dorsiflexion zero. There is no dorsiflexion. Plantar flexion
4 down is 25 degrees. Comparing it with the other side mine was
5 normally on the other side was 55 degrees. So 25 is
6 approximately one half normal. Inversion 15 degrees normally 20
7 degrees. Eversion is ten degrees. Eversion ten degrees less
8 than about half. The patient ambulates with an antalgic gait
9 remember antalgic gait.

10 Patients hind foot mid foot fore foot function are
11 within normal limits. The back portions are within normal
12 limits. His diagnosis fibula fracture closed pilon fracture
13 with routine healing. Pilon fracture right ankle pain. Closed
14 low fibula bimalleolar fracture. Malleolus I explained to you
15 the medial is the inside the fibula on the lateral is on the
16 outside.

17 Q. So when we feel on the sides of our ankle the bone that
18 protrudes on either side?

19 A. Both. So to summarize it for you this is the lateral
20 malleolus. This is the medial malleolus. The bumps on your
21 ankle inner and outer.

22 Q. Now I'm putting up the visit with Dr. Acampa on
23 December 23rd, 2015 and what are these significant findings
24 Dr. Acampa records?

25 MR. EDWARDS: What's the date?

1 Q. December 23rd, 2015?

2 A. So the examination of the patient's ankle reveals well
3 healed wounds his. Dorsiflexion is to neutral. That's it
4 almost none. Plantar flexion zero to 25 half normal. Eversion
5 same as before ten degrees. Normal is 20. He still ambulates
6 with a slight antalgic gait. Still walks with a limp. His
7 ankle is still swollen and neurologically is intact. The nerves
8 are functioning properly.

9 Q. And what did Dr. Acampa say in his note of December
10 23rd, 2015 at the bottom of the page regarding the patient's
11 disability?

12 A. Patient is totally disabled as a construction worker
13 obviously. You have to go up and down ladders. You have to
14 walk on uneven steps.

15 MR. EDWARDS: Objection.

16 THE COURT: Overruled.

17 A. You walk on wet surfaces. You don't have good balance.
18 You're going to fall and hurt yourself. So obviously he's
19 disabled for construction worker. He's to return to my office
20 in one month. He has not yet reached maximum medical
21 improvement which means he's not a 100 percent better yet.
22 There is still room for progress and improvement.

23 Q. And there is reference to sending him for physical
24 therapy?

25 A. Three times a week for next four weeks.

1 Q. I'm now putting up Dr. Acampa's notes of February 4th,
2 2016, and can you discuss any significant findings?

3 A. Yes. So, again, his wounds are healed. His
4 dorsiflexion is still zero. His plantar flexion same as before
5 half. Eversion inversion ten degrees normally it's 20. And
6 eversion is now five degrees. Less than this was before. So
7 it's fluctuating which is normal. It's fluctuating.

8 Q. Dr., it says here in the patient's ankle joint is
9 swollen and this is February 2016, why almost a year after the
10 accident does he still have swollen ankle?

11 A. Remember what I told you traumatic arthritis. You have
12 radiological evidence of traumatic arthritis and you have
13 clinical evidence of traumatic arthritis. Clinical evidence is
14 pain, swelling and stiffness, crepitation which is grinding when
15 you move the joints. These are the clinical signs of traumatic
16 arthritis.

17 Then we have radiological confirmation. The clinical
18 comes first. The radiological comes later on. One other thing,
19 is he has, remember, he has metal in his body. And he had
20 surgery before. So the laws of physics cold contracts. Heat
21 expands. In the cold months joints will be contracted. When it
22 rains or snows the barometric pressure drops, joints stiffen up
23 or cause more pain and stiffness. This is in February. That's
24 what's happening.

25 Q. I'm going to go to the next note in my list of

1 documents which is November 9th, 2016, and what are the
2 significant findings some 9 months after the last note?

3 A. Dorsiflexion is still zero. He still can't do this.
4 Plantar flexion is to 20 degree. Normally it's 55 degrees.
5 Inversion is 20 degrees. That's normal. Eversion ten degrees
6 that's one half of normal. The right foot and the ankle still
7 swollen.

8 Q. Doctor, I'm going to go to -- withdrawn.

9 I'm going to direct your attention to x-rays taken by
10 Dr. Helfet at the Hospital for Special Surgery dated August
11 22nd, 2016, and I'd like you to discuss the findings from
12 Dr. Helfet?

13 A. So this is entire joint line. Over here you see the
14 joint line almost completely gone on this outer portion. And
15 over here you see it very very much narrowed. And you beginning
16 to get what is called sclerotic formation. Extra white lines on
17 the edges of the joint line. Which is one of the radiological
18 signs of early traumatic arthritis.

19 There is another view that shows the osteoporosis if
20 you could give me that. Here we go.

21 Q. Now this is the same date as mentioned before?

22 A. So this is normal dense bone see this big black spot
23 here the calcium much less. If you don't use it you lose it.
24 So he lost a lot of bone inside the calcaneus from disuse. Both
25 here here here osteoporosis.

1 Q. Can you identify the bones that you're saying there is
2 osteoporosis?

3 A. In the distal tibia see the fibula because it is
4 blocked by hardware the heel bone the talus and all the other
5 intraarticular bones in the middle of the foot. Here, here, the
6 osteoporosis is affecting almost all of the bones of the foot.

7 Q. I'm going to go to the next view so there were three
8 views from Dr. Helfet at Hospital for Special Surgery on August
9 22nd 2016?

10 A. Could you also bring up his report also as well.

11 Q. I don't have his report. I'm going to direct your
12 attention to the Hospital for Special Surgery radiology report
13 of those three x-rays taken arranged by Dr. Helfet on August
14 22nd, 2016. This is a report from Carolyn Sofka, MD,
15 radiologist, on August 24, 2016 regarding these three images we
16 saw from the hospital for special surgery.

17 A. Right. So what it says on top the date is 8/22/16 this
18 is roughly a year and a half after the accident, plate and
19 screws largely healed intraarticular fracture of the distal
20 tibia. There is a mild non uniform joint space. Remember, I
21 told you about joint space narrowing. The doctor at the
22 hospital is confirming it. And there is a mild varus alignment.
23 Means the alignment is not perfectly normal. It's going to
24 little bit like this. We expect it from this type of a
25 fracture. Osteo means bone structure are osteoporotic. Exactly

1 what I said. Exactly what I showed you the doctor confirms it.
2 Attributed in part to disuse. You don't use it you lose it.

3 Q. Now, Dr., what is the significance when someone has a
4 varus alignment of the ankle?

5 A. The gait pattern changes. If the patient goes normally
6 it's going to hurt the foot in the ankle. So the patient tries
7 to compensate does external rotation. They walk with the foot
8 and ankle externally rotated to compensate for that disfunction.

9 Q. So you mean right foot turns to the right?

10 A. Yes, turns to the outside and there is still soft
11 tissue swelling that's another sign of traumatic arthritis.

12 Q. Now I'm going to show you I don't have it on the screen
13 from exhibit ten in evidence, the two page report of Dr. Helfet
14 concerning this visit of August 2016, and I'm going to draw your
15 attention to Dr. Helfet's range of motion findings with respect
16 to Mr. Karasu's right ankle?

17 A. So on the date of 8/22/16 Dr. Helfet from Hospital for
18 Special Surgery orthopedic surgeon he finds the dorsiflexion to
19 be five degrees out of 40. That's still close to zero.

20 Q. Is this of course at this date, Dr. Guy, this is before
21 the hardware is removed the following year?

22 A. Correct. And he still has pain over the talar joint.
23 That's where the broken bone was. That's from the fracture was
24 and he still has the palpable screws over the medial malleolus.
25 And he still has some soft tissue pain.

1 Q. Can you read what Dr. Helfet recorded for his
2 diagnosis?

3 A. Status post open reduction internal fixation.

4 MR. EDWARDS: Objection. Objection. He's not
5 giving his opinion. He's giving another --

6 MR. BURKE: He's reading from record in evidence
7 from Dr. Helfet which is two page report in evidence as
8 plaintiffs exhibit ten.

9 THE COURT: Overruled, overruled.

10 A. Number one status post open reduction internal fixation
11 of the right pilon fracture mild right ankle arthritis. And now
12 anterior ankle joint bone spur formation. That's what I told
13 you about the little bony spicules that are beginning to stick
14 out in the joint space. It's already happening. All the signs
15 and symptoms of traumatic arthritis has now been confirmed. Now
16 it's just a matter of time it's slowly progressively will worsen
17 over time.

18 Q. Does Dr. Helfet also refer in his diagnosis to quote
19 mild right knee of ankle arthritis end quote?

20 MR. EDWARDS: Objection.

21 A. He does, yes.

22 THE COURT: Overruled.

23 Q. Now Doctor, how does a physician like Dr. Helfet make a
24 diagnosis of arthritis in the knee?

25 MR. EDWARDS: Objection.

1 THE COURT: All right. What was the question?

2 Q. Is there a clinical diagnosis of arthritis?

3 THE COURT: Wait, wait.

4 Are you rephrasing your question?

5 MR. BURKE: I was rephrasing it.

6 MR. EDWARDS: He's asking how another doctor goes
7 about process I'm objecting.

8 MR. BURKE: I'll rephrase it in a way that will
9 accommodate the concern.

10 THE COURT: Thank you.

11 Q. Can a diagnosis of arthritis be made clinically as well
12 as radiographically?

13 A. Yes.

14 Q. Would you explain?

15 A. I have been explaining repeatedly over and over again
16 that traumatic arthritis first begins to manifest itself
17 clinically you find pain, stiffness, and or swelling and
18 crepitation, grinding over the area, crepitus C-R-E-P-I-T-U-S.
19 Crepitation which means grinding sensation feeling. These are
20 the early clinical signs and symptoms of traumatic arthritis.
21 And later it's confirmed by x-rays which I showed you. You have
22 joint space narrowing. You have spur formation S-P-U-R which is
23 bony projections into the joint space. And you have sclerosus.
24 That white line that appears on the borders of the joint these
25 are all radiological signs of traumatic arthritis.

1 Q. Now in Dr. Helfet's report where he says that the
2 patient also has soft tissue pain over the anterior and antral a
3 lateral compartment of his right lower leg up to the mid tibia
4 region, does that -- it goes up beyond ankle to the middle of
5 the shinbone or tibia?

6 A. Remember what I told compensatory mechanism syndrome.
7 CMS. The patient has pain, the patient tries to unload that
8 area consciously or subconsciously they begin to overload the
9 joint above the fractures above and the fracture on the opposite
10 side. That's what's happening right now. The problem is going
11 to the joint above the knee. Later on the hip. Later on the
12 lower back. It takes time. It doesn't happen over night.

13 Q. I'm going to draw your attention to Dr. Acampa visit
14 January 5th, 2017? Now this is three months before the hardware
15 is removed what are the significant findings of January of 2017?

16 A. Again the dorsiflexion is zero. No motion. Plantar
17 flexion 30 degrees. Before it was 25. He's got five extra
18 degrees. Now inversion is 15 degrees. Normally it's 20.
19 Eversion is ten degrees. Normally 20. So it's still half of
20 normal. He's still walks with a slight antalgic gait and.

21 Q. Is there a reference?

22 A. One second, he underwent a steroid injection to his
23 right ankle. Steroids reduces pain and swelling and
24 inflammation. So he tried that. Will continue physical therapy
25 two times per week. He will see patient again in four weeks.

1 Q. As of this date Dr. Acampa says in January of 2017
2 quote patient is totally disabled end quote. At the bottom of
3 the page he refers to x-rays and could you read what he says
4 about radiographs at the bottom of the page?

5 A. Radiograph of the right ankle reveals internal fixation
6 of the distal tibia with early degenerative osteoarthritis of
7 the ankle joint. That's another term for traumatic arthritis.

8 Q. Now Doctor, I'm going to draw your attention on the
9 board three months later, the patient undergoes another third
10 surgery with Dr. Acampa to remove the hardware and could you
11 just describe the significant findings?

12 A. Yes, so the pre op and post op diagnosis are the same.
13 Healed pilon, right healed pilon fracture of the right ankle.
14 And right distal tibia. Operation is removal of the hardware
15 the plate and screws of the right tibia, but he still leaves
16 five little screws in place because it was too dangerous remove
17 them. The fragments broke inside would collapse into the joint
18 space.

19 So the reason why you remove the hardware you want to
20 try to give the patient some additional flexibility, additional
21 range of motion. You hope it works. If it doesn't work then
22 you have one other last resort, to fuse the joint.

23 Q. Dr., I want to draw your attention to the end of the
24 first paragraph of the second page of the operative report where
25 it says so the five articulating, but if you read down towards

1 the end of the sentence the last two lines, does it indicate the
2 number of screws that are left behind?

3 A. Yes, I will read that sentence for you. The five
4 remaining statically locked two point seven locking screws were
5 difficult to remove even after Synthes bone removal. Synthes
6 bone removal, that's the hardware plate. It was utilized to
7 ream over the screws and attempt to remove the screws was
8 difficult. So the five articulating screws were left in place.
9 They could not be removed.

10 Q. There are five remaining articulating screws in
11 Mr. Karasu until today?

12 A. Yes, yes.

13 Q. Are they ever coming out?

14 A. No, they cannot.

15 Q. I'm going to draw your attention to a record from South
16 Nassau Community Hospital which takes place in August 14th, 2017
17 and can you just briefly discuss what that confirms in terms of
18 medical treatment?

19 A. First they found a scar on the dorsal, that's the top
20 portion of the right distal leg and ankle and foot. It's healed
21 well. There is an eschar over the right -- E S C H A R, eschar
22 is that black portion that remains as part of healing portion of
23 prior surgery. There is still healing going on even this late
24 in the clinical picture. And there is still -- there is no
25 surrounding redness or induration. That means there is no sign

1 of infection. So that eschar is part of the normal healing
2 process. It's going fall off by itself and replaced with skin.

3 Okay. This is very important. 42 year old
4 immunocompromised patient post transplantation on antirejection
5 medications has hardware removed from his right leg a month ago.
6 The wound has failed to heal. And is a persistent eschar
7 formation. When the eschar is removed there is an open wound
8 that goes all the way down into the deeper tissues without any
9 evidence of purulent, that's pus.

10 So that he had liver transplant. When you have a liver
11 transplant you want to make sure the body does not reject it
12 that different liver from a different person. So you put the
13 patient on immuno compromised medication to prevent the
14 rejection. What does that do, it weakens your immune system.
15 It doesn't help to do proper normal wound healing. That's why
16 he has problem with wound healing.

17 Q. I'd want to go back to the images from 2017, this is
18 preoperatively and we are now seeing January 5th?

19 A. Could you hold it one second. So these are the five
20 little screws where the doctor could not remove. They were very
21 difficult to get to and if he were to go in deeper to remove
22 them, he would cause more problems. Sometimes when a patient
23 has gunshot wound we don't always remove the bullet. Because to
24 go in and remove the bullet causes more bleeding causes more
25 complication. We let bullet stay in there. That's what he did

1 with these tiny screws.

2 Q. This is an image from January 5th, this is before the
3 operation this is after the operation?

4 A. So in this picture this x-ray you see all the hardware
5 removed. Except the five little screws which cannot be removed.
6 They left them they will stay there permanently.

7 Q. That image was July 14, 2017. This is another view of
8 July 14, 2017 and this is an x-ray from July 14, 2017?

9 A. Yes, and these little screws again help to stabilize
10 that fragment that could not be completely approximated.

11 Q. And another July 14, 2017?

12 A. Again, same little five screws in place.

13 Q. This is July 17th, 2017 from Dr. Acampa?

14 A. Yes, these are the metal surgical clips and these are
15 the screws still in place.

16 Q. This is July 17, is it the same?

17 A. Same, yes. Same.

18 Q. Now I will get to this one in a moment. So, Dr., I
19 want to draw your attention to Dr. Acampa note February 26th,
20 2018?

21 MR. EDWARDS: Your Honor.

22 THE COURT: Mr. Burke, we're going to take a five
23 minute recess.

24 (Brief recess is taken at this time.)

25 COURT OFFICER: Jury entering.

1 THE COURT: Welcome back. You may be seated.

2 MR. BURKE: Judge, may Dr. Guy step down and again
3 to the monitor?

4 THE COURT: Yes, you may.

5 CON'T DIRECT EXAMINATION

6 BY MR. BURKE:

7 Q. Sir, we have on the monitor Dr. Acampa note of February
8 26th, 2018 and what is the significance to you of the
9 documentation that the patient was had offered complaint of
10 sleeping difficulty, you should assume that Mr. Karasu has told
11 the jury that he even has pain when he's laying in bed at night
12 and it's even worse at times laying down?

13 A. Yes, there is very good reason. As long as you're
14 moving, your body's producing endorphins which are natural pain
15 killers. Runners when they run a lot the body produces a
16 tremendous amount of endorphins which are natural painkillers.
17 When you're resting you feel the pain, the stiffness, you feel
18 everything. When you wake up in the morning 8 hours of rest and
19 sleep ten times worse. When you start to move it's a lot
20 better.

21 So that's the reason and over here the patient
22 complaint of joint pain, swelling, stiffness and muscle pain.
23 So that's basically what that means.

24 Q. So in this visit of February 26th, 2018 it's ten months
25 after the hardware removal, and what is the range of motion

1 noted at the bottom of the muscular skeletal?

2 A. Yes, the dorsiflexion is still zero. Flexion 35
3 degrees, much better. The last one we had was 25 degrees. Now
4 we have 35 degrees after the hardware removal. His inversion is
5 20 degrees is normal. His eversion is 10 degrees still one half
6 normal. He still ambulates with slight antalgic gait. Ankle
7 still slightly swollen and no other deficits found in the lower
8 extremities.

9 Q. It's not all of the visits, I'm going to a visit of
10 December 4th, 2018, and what are the significant findings with
11 respect to Dr. Acampa reference for future treatment?

12 A. With first of all, he's back to work, but on limited
13 duties his work is part time. He will require an ankle fusion
14 in the future. He will return to the doctors in 90 days. The
15 doctor prescribed for him oxycodone five milligrams one capsule
16 every 12 hours for pain. Oxycodone very strong narcotic. In
17 the street one milligrams cost one dollar. So it's a very
18 expensive and very dangerous drug, but it's a strong narcotic
19 for pain control.

20 Q. Down at the bottom what is Dr. Acampa note about the
21 x-ray of the right ankle?

22 A. Yes, it reveals degenerative osteoarthritis of the
23 tibiotalar joint and there are screws still remaining in the
24 distal tibia. We spoke about the degenerative osteoarthritis
25 that's very traumatic arthritis.

1 Q. Dr., I want to go back and show you the x-ray image
2 from that visit of December 4th, 2018, and what is what are the
3 significant findings that you see on the x-ray, if you could
4 explain to the jury?

5 A. What I see is this joint space narrowing, you cannot
6 miss it significant narrowing. And there is evidence of
7 osteoporosis in all the bones surrounding the fracture site here
8 as well.

9 Q. Could you describe the bones by name?

10 A. Yes, distal tibia, distal fibula, distal tibia, distal
11 fibula, osteo arthritis means joint space. So this is the
12 tibiotalar joint. And these are the metatarsals bones full of
13 osteoporosis and the five screws are still in place. That's
14 essentially what you see.

15 Q. You show us the sight of the osteoarthritis, have you
16 showed us all the sight of the osteoporosis?

17 A. Yes, I did just.

18 Q. Just name the bones. The osteoporosis?

19 A. Distal tibia, distal fibula, the talus and the
20 metatarsal bones and the calcaneus and the other bones in front
21 of the talus.

22 Q. And now I'm just going to go to the that's last x-ray
23 I'm just going to draw your attention to the last notes of
24 Dr. Acampa, March 7th, 2019 which is after that last x-ray?

25 A. Here it is right here.

1 Q. All right. What is the significance that as of March
2 of 2019 there is a note indicating that the patient ambulates
3 with antalgic gait, he says it's related to right ankle
4 disfunction?

5 A. So this is what I explained to everybody earlier this
6 morning. I don't want to repeat I will put everybody to sleep,
7 but repetition but basically traumatic arthritis is setting in
8 he's having difficulty having normal gait pattern. As a result
9 he's walking with antalgic gait with the leg externally rotated.
10 I'm surprised none of these doctors picked up the external
11 rotating gait, but it's obvious to me and to anybody that knows
12 how to do gait analysis.

13 Q. What is the underneath plan under diagnosis, could you
14 read to the jury what the Dr. Acampa says?

15 A. The patient has a permanent impairment of the right
16 lower extremity secondary to degenerative osteoarthritis of the
17 right ankle. The patient will require an ankle fusion to reduce
18 his pain and improve his ability to ambulate. The ankle fusion
19 does all that if it's done successfully. However when you fuse
20 the ankle you lose range of motion. The foot and the ankle will
21 always remain stiff. As a result of that stiffness the pain
22 gets transferred to the joint above. That's the other problem
23 that we have to deal with. You fix one problem you create
24 another problem.

25 Q. So that's March 7th, and comparing this date to a visit

1 May 4th, 2020, now this is a year later are the range of motion
2 values the same as it was the year before?

3 A. It is, yes, and he's still has zero dorsiflexion
4 plantar flexion is 35 degrees. Inversion 20 degrees. Eversion
5 still the same ten degrees. He still ambulates with a slightly
6 antalgic gait. His ankle is slightly swollen.

7 Q. Now why is that ankle still swollen all there time?

8 A. Traumatic arthritis, traumatic arthritis.

9 Q. And at the bottom under other diagnosis, could you just
10 read what it says for the visit of May 4th?

11 A. That patient has permanent impairment of his right
12 lower extremity. He's on limited duty. He will require ankle
13 fusion in the future. He will return to my office in 120 days
14 that's four months.

15 Q. I'm going to go to the last visit Mr. Karasu made to
16 Dr. Acampa dated September 15th, 2020 and are the range of
17 motion values improved or changed in any way?

18 A. Everything is almost one hundred percent exactly the
19 same as it was on his last exam four months ago.

20 Q. And is the same finding with respect to the antalgic
21 gait?

22 A. Yes, sir still the same.

23 Q. And what does he say at the bottom of his note with
24 respect to the ankle fusion?

25 A. He will see me in six months. He will continue on

1 limited duty. He will require an ankle fusion on the right
2 lower extremity in the future. So this advice was given to him.
3 It's now up to the patient whether or not he wants this
4 procedure.

5 Q. Dr. Guy, could you return to your seat?

6 A. Yes.

7 Q. Now Doctor, who referred Mr. Karasu to you?

8 A. Your office did.

9 Q. And Doctor, if you have your -- you wrote a report
10 concerning your examination?

11 A. Yes, sir, I did.

12 Q. Are you holding it in your hand?

13 A. I am.

14 Q. If you need to refer to it at any time please do, but
15 I'm going to start out by asking what records did you review?

16 A. I reviewed the ambulance call report, I reviewed the
17 records from Good Samaritan Medical Center, x-ray reports, CT
18 scan reports, the two -- three operative reports, records of the
19 Dr. John Acampa, records of Dr. David Helfet.

20 Q. The Hospital for Special Surgery?

21 A. And Hospital for Special Surgery, South Nassau
22 Community Hospital records, and records from Dr. Steven
23 Freedman. I believe that's essentially it.

24 Q. Is that Dr. Steven Friedman records concern the
25 nonhealing wound treatment?

1 A. That is correct.

2 Q. Now had you heard of Dr. Dennis Helfet from the
3 Hospital For Special Surgery before you saw this patient?

4 A. Yes, sir, yes, I have, yes.

5 Q. What is he known as?

6 A. He's very good orthopedic surgeon.

7 Q. Now what did you after you had reviewed these records
8 that were provided to you by my law firm Kelner and Kelner, tell
9 me about how you went to begin your evaluation of Mr. Karasu and
10 tell us the date of that evaluation?

11 A. The first time I saw him was July 30, 2019.

12 Q. Did you take medical history from him?

13 A. I did.

14 Q. Is that important?

15 A. Yes, medical history is very important because if a
16 physician obtains a proper pertinent medical history 70 percent of
17 the working diagnosis comes from a good medical history. May I
18 give two quick small examples?

19 Q. Yes, please.

20 A. If a patient comes to a physician he's a male, very
21 important, complaint of chest pain. He describes his chest pain
22 as being crushing or stabbing, I don't have to do any
23 examination I don't have to, that patient is having a heart
24 attack. The patient gets called to 911 or transferred to the
25 cardiac care unit for work-up for heart attack. Because if you

1 miss it, if you delay, he will have a heart attack. And he
2 could die.

3 Second example if a patient comes complaints of
4 abnormal pain, if it's right lower quadrant, very important, if
5 it's associated with nausea and vomiting more than four hours,
6 very important, don't have to examine the patient send them to
7 the patient to the emergency room, they take patient to the OR
8 for exploratory laparotomy acute appendicitis. If you miss it,
9 it will explode. And patient will die of peritonitis.

10 So this is two examples of why a history is very
11 important. So yes, I did take a history from the patient and
12 pertinent history was when I saw him he was 45 years of age. No
13 prior problems to his foot and ankle. He was working on the job
14 on March 26, 2015 as a commercial roofer and he fell off the
15 roof while on the ladder. He injured his right ankle and he was
16 taken to Good Samaritan hospital in West Islip by ambulance.
17 X-rays were taken revealed fractures. Which I showed.

18 And he had multiple surgical procedures. He was
19 originally admitted for three days. He had the external
20 fixators in place. Then two weeks later he had the open
21 reduction and internal fixation. Then he had the hardware
22 removed. And then he had a wound that did not heal properly
23 which required wound care. He was given oxycodone five
24 milligrams for pain. And past medical history was just a liver
25 transplant in 2011.

1 Q. And with regard to your physical examination, what did
2 that consist of when you saw Mr. Karasu back in July of 2019?

3 A. The right ankle was diffusely tender. There was a 13
4 centimeters midline surgical scar. There was also 3 centimeter
5 medial surgical scar. I did the range of motion in the passive.
6 Range of motion -- range of motion done in two ways, active what
7 the patient does. Passive, what I, physician, does. I pushed
8 it through all the range of motion. And I think I'm the only
9 one of all the physicians that got extension of 15 degrees.

10 Q. You found more than the other physicians whose records
11 we were just reading?

12 A. I did that's because I did it in the passive range of
13 motion. I forced it above and beyond what the patient was able
14 to do.

15 Q. So when you say passed the range of motion, you mean
16 physician assisted?

17 A. That's right.

18 Q. And in the active it's what the patient is able to do?

19 A. That's correct.

20 Q. And patient could make efforts or a patient could fake
21 making an effort, correct?

22 A. That's correct, but in this case I did not I don't
23 believe he ever faked making an effort. It was just done in the
24 active range of motion. If I had do it in the active it would
25 probably be zero as well.

1 Q. What were your significant findings?

2 A. The plantar flexion was 30 degrees. Other doctors
3 found 35. So it's pretty much close.

4 Q. But what's normal, you say you found 30 degrees of
5 plantar flexion, out of what is the normal?

6 A. 55 comparing it to the left side.

7 Q. So if he has plantar flexion of 30 degrees where normal
8 is 55 that's almost a 50 percent reduction in and loss of range
9 of motion, true?

10 A. That is correct.

11 Q. Now with the inversion?

12 A. Now with the inversion.

13 Q. You didn't do dorsiflexion?

14 A. I did.

15 Q. What did you find?

16 A. 15 degrees.

17 Q. Out 25?

18 A. Out of 25. That was, again, passive range of motion.
19 Same for the inversion and eversion were five degrees out of 15.
20 Muscle power was four plus over five. Normally it's five over
21 five. Next is five minus over five. Next is four plus over
22 five. So he was two grades weaker than normal. And sensation
23 was diminished to pin prick and touch the right dorsal foot on
24 top of the right foot. That's indicative of the nerve damage
25 Tarsal Tunnel Syndrome. That's the nerve that goes and covers

1 the top of the foot and the outer portion of the foot.

2 Q. Now Mr. Karasu told the jury about how he feels some
3 numbness and tingling his big toe on the right foot and on the
4 top of his foot, so is that complaint consistent with the nature
5 of that injury that you have described?

6 A. It is. And his gait was slow and antalgic with the
7 right lower extremity externally rotated.

8 Q. Did you observe him walk?

9 A. I did.

10 Q. With the court's permission I'd like to ask Dr. Guy to
11 watch Mr. Karasu walk up to the front of the courtroom and walk
12 back to see if he's noticed any change in his gait?

13 THE COURT: Okay. Permission granted.

14 Q. So Dr. Guy, I'm going to ask Mr. Karasu just to stand
15 over there by that desk?

16 A. Can I step down.

17 Q. Now, Doctor, you tell me when to ask him to start
18 walking?

19 A. Walk towards me. So his right foot is still externally
20 rotated when he walks. Turn around walk back. Right.

21 Q. You can take a seat, Mr. Karasu.

22 Now can you get a complete picture of a patient's
23 overall condition from just reviewing one diagnostic study like
24 an x-ray or a CAT scan?

25 A. Answer absolutely not. In fact, I showed an x-ray that

1 showed a part of the fracture. It was CAT scan that showed all
2 the other pieces that were broken so the answer to your question
3 is absolutely no.

4 Q. Why is it so important to put the whole picture
5 together?

6 A. So let's picture a patient's condition as a crossword
7 puzzle with 20, 30 pieces. If you take one piece out of the
8 puzzle and look at it, can you tell the whole picture, common
9 sense, absolutely not. You have to put all the 30 pieces
10 together to clearly see the full picture.

11 Q. So did you arrive at a diagnosis after reviewing all of
12 the medical records you described from Good Samaritan hospital,
13 Dr. Acampa, Hospital for Special Surgery, Dr. Helfet, what was
14 your diagnosis when you included your examination of him as
15 well?

16 A. Yes, status post right tip pilon fracture, status post
17 external fixators in place were surgically removed on March
18 27th, 2015, status post removal of the external fixators of the
19 right lower extremity with an open reduction and internal
20 fixation of the distal tibial fracture and right ankle
21 arthrotomy, surgery performed on April 15th, 2015, status post
22 third surgical procedure to remove the hardware with plates and
23 screws, poor wound healing with permanent scarring to the right
24 foot and the right ankle and gait disturbance.

25 Q. Dr. Guy, do you have an opinion within a reasonable

1 degree of medical certainty whether Mr. Karasu is permanently
2 and totally disabled from his former occupation as a commercial
3 roofer or any other work in the field of construction?

4 A. The answer is hundred percent, yes, common sense
5 question, common sense answer.

6 Q. That he can not?

7 A. Cannot and should not.

8 Q. Why do you say he shouldn't even try?

9 A. Because he doesn't have enough medical experience to
10 know the dangers. He doesn't have full power. His muscle power
11 is affected. There is a nerve damage. He will not feel
12 everything normally. And if he slips and falls off and slides
13 off a ladder which he should not go on top of. If he walks on
14 uneven grounds with gravel on it his foot is going to twist and
15 turn. He's going to have more injuries. And if the ground is
16 wet and slippery, he will not have the normal ability to control
17 his balance. He will fall and God forbid he hits his head or
18 break a hip or another bone. Very dangerous.

19 Q. Do you have an opinion within a reasonable degree of
20 medical certainty as to whether these injuries sustained
21 including the right ankle, the arthritis in the ankle and the
22 right knee, are they causally related to the accident of March
23 26th, 2015 when Mr. Karasu fell from a ladder?

24 A. Yes, sir, they are all causally related to this
25 accident.

1 Q. Are these injuries permanent in nature?

2 A. They are permanent and progressive.

3 Q. For the future whether Mr. Karasu lives to the age of
4 77, 87 are his problems which you have described going to get
5 better, stay the same or get worse?

6 A. They are going to get slowly progressively worse as
7 Dr. Acampa has confirmed. As the x-rays have been confirming
8 with traumatic arthritis setting in, with spur formation
9 forming. This is only going to get slowly and progressively
10 worse over time.

11 Q. Will there be any need for future medical treatment?

12 A. Yes, if any physician says otherwise they are strongly
13 mistaken and wrong. The patient needs and should be seen by an
14 orthopedic surgeon periodically.

15 Q. How often?

16 A. I would say at least three to four times per year to
17 monitor the area. We know that arthritis is forming. We know
18 there is osteoporosis. We know the patient needs an ankle
19 fusion. We know there is poor wound healing. We know there is
20 nerve injury. All these things have to be addressed. So the
21 orthopedic surgeon who handle the orthopedic problems at least
22 three to four times per year and he would need to see a
23 physiatrist like myself to supervise the entire muscular
24 skeletal condition, the effect on the right ankle, the right
25 knee, the right hip, the lower back and the opposite side. As

1 well assess the need for x-rays, MRI, EMG nerve test. He will
2 need an EMG right now because of the nerve disfunction. He will
3 need medications for pain, inflammation as well. And he will
4 need physical therapy sessions at least once per week to
5 diminish the pain, diminish the stiffness and most importantly
6 to prevent it from getting progressively worse. Physical
7 therapy is not designed to cure the problem there is no cure for
8 what he has. You have to make sure he doesn't get worse.

9 Q. How frequently should Mr. Karasu be seen?

10 MR. EDWARDS: Objection. There is no disclosure.

11 MR. BURKE: Yes. There is.

12 THE COURT: Overruled.

13 MR. BURKE: Your Honor, I'll pass up a copy of the
14 Dr. Guy's expert disclosure.

15 THE COURT: All right. It's okay. I overruled
16 it. Show it to the defendant.

17 MR. BURKE: I'm going to draw the court's
18 attention to the last page of his report.

19 THE COURT: Last page.

20 MR. BURKE: Of the report.

21 THE COURT: Where it says opinion.

22 MR. BURKE: If you read through I think the middle
23 of the paragraph. It's also in the Bill of Particulars.

24 THE COURT: What was the last question?

25 Q. How frequently would he need to see a physiatrist and

1 the cost of the psychiatrist?

2 MR. EDWARDS: I'm objecting. There is no
3 disclosure.

4 MR. BURKE: Thank you. Judge, it's in the
5 supplemental Bill of Particulars. It's in the expert
6 disclosure.

7 MR. EDWARDS: It is not. There are no costs of
8 anything anywhere. And there is no, Judge, there is no
9 amount, blanket statement he needs treatment. There is
10 nothing about who he's going to meet, how frequently. None
11 of what he's going into has been disclosed.

12 MR. BURKE: Says it right here permanent and
13 progressive. He will require periodic medical supervision.

14 MR. EDWARDS: That's the extent of it. Now we're
15 getting into details and the times per week and times per
16 year and costs associated. None of that has been
17 disclosed.

18 He basically wants to put in a life care plan in
19 when there is no disclosure on life care plan.

20 MR. BURKE: They are on notice we have future
21 medical expenses in the Bill of Particulars as well.

22 THE COURT: Why don't we talk about it afterwards.

23 I think you have a two part question. Why don't
24 you divide it then we'll --

25 Q. Dr. Guy, how often should Mr. Karasu consult with a

1 physiatrist in the future?

2 A. At least 6 times per year for very good reason.

3 Q. Why what's the good reason?

4 A. To manage his overall condition. Not just the right
5 foot and ankle, but namely the knee which is beginning to
6 manifest and joints above. That's the hip and the lower back on
7 the right side and on the opposite side. The left side as well.
8 Assess the need for pain medication. Assess the need for EMG
9 studies, MRI studies and referral to any other specialists as
10 medically indicated.

11 Q. And currently what's the approximate cost for
12 consultation with a physiatrist?

13 MR. EDWARDS: Objection.

14 THE COURT: Counsel, before I rule did you say you
15 had something in the supplemental?

16 MR. BURKE: Yes.

17 THE COURT: Is that what you showed me?

18 MR. BURKE: I just showed you the expert
19 disclosure.

20 THE COURT: Yes, then you showed me something
21 else, but we're talking about, you know, we're talking
22 about is something that is in there.

23 MR. BURKE: I will show you. Page two of the
24 supplemental Bill of Particulars of October 3rd of 2017 and
25 I highlighted it.

1 THE COURT: Okay. Overruled.

2 MR. BURKE: Thank you.

3 MR. EDWARDS: Judge, note my exceptions to the
4 ruling?

5 MR. EDWARDS: Note my exception please, Judge.
6 There is nothing in there.

7 Q. Dr. Guy, what is the fair and reasonable cost for
8 consultation with a physiatrist at the current time?

9 A. Yes, brief 150 dollars. Comprehensive or extended \$200
10 per visit.

11 Q. So 100 to 200?

12 A. 150 to 200.

13 Q. And the course for orthopedic surgeon?

14 A. Same, same price.

15 Q. And the cost for physical therapy session?

16 A. 150 dollars per session.

17 Q. Now with regard to the injuries that you described as
18 permanent with respect to the findings of osteoarthritis and
19 osteoporosis, can you tell the jury what is your prognosis for
20 these conditions in the future with regard to either the ankle
21 or the knee?

22 A. It's going to get progressively worse as I indicated
23 many many times.

24 Q. Now do these medical conditions, are they subject to
25 remissions or exacerbation meaning aggravations?

1 A. Yes, sir.

2 Q. Now have you reviewed the report of Dr. Faierman who
3 was retained by defendant Security Auto Sales, Inc., and 345
4 Merrick Road, LLC to examine Mr. Karasu?

5 A. Yes, sir, I have read his report.

6 Q. Do you have, do you agree with his conclusions in his
7 report?

8 A. I agree with the findings that he found zero degrees of
9 dorsiflexion in the active range of motion. He found deficits,
10 but yet he says the patient needs no further treatments. He
11 contradicts himself. And he contradicts the fact that there is
12 traumatic arthritis setting in and progressively worsening.

13 And the fact that the patient is having problems with
14 his knee and the problem is spreading to the joint above.

15 So if the patient never needs anymore future medical
16 treatments and care, you will miss all these problems. The
17 patient is having pain. The patient is having trouble falling
18 asleep. The patient needs medication for the pain and stiffness
19 and the insomnia. So according to that doctor he should be
20 disregarded and he should not be given the chance of having
21 proper medical care and medication to address these issues.

22 Q. Do you agree with the defendant's examining physician
23 Dr. Faierman that Mr. Karasu could not benefit from any physical
24 therapy into the future?

25 A. With most utmost respect, I most vehemently disagree.

1 Q. By the way, Dr. Faierman's range of motion he found 40
2 degrees of plantar flexion and he said normal range of motion
3 for plantar flexion is 40 degrees. So he had no problem with
4 plantar flexion, do you agree with that?

5 A. I disagree normal plantar flexion you have to compare
6 it to the other side. The other side was 55 degrees. And even
7 at the 40 degrees is still abnormal compared to the other side.
8 And Dr. Acampa's all of his reports repeatedly found range of
9 motion deficits in almost all range of motion except for the
10 normal inversion everything else was abnormal.

11 Q. Now I want you to assume that Mr. Karasu testified that
12 80 percent of the time he is in pain. I want you to assume he
13 testified he described it as sharp, stabbing, burning pain in
14 his foot and ankle, assume that he also said that he feels pain
15 in his right ankle even when laying down, and that at night the
16 pain can be the worse and it wakes him up, are those complaints
17 consistent with the nature of the injury that you described?

18 A. Yes, sir, they are.

19 Q. I want you to also assume that Mr. Karasu testified
20 that he can no longer run whether across the street or down the
21 hall, that he can no longer play soccer or work as a roofer, are
22 those complaint consistent with the nature of the injuries you
23 have testified about?

24 A. Yes, all these things are contraindicated for him to
25 do.

1 Q. I want you to assume that Mr. Karasu testified that he
2 is limited in his ability to walk long distances without
3 resting, that he is limited in how long he can stand without
4 sitting down and that he is limited in using stairs, are those
5 complaint consistent with the nature of the injuries he suffered
6 when he fell off the ladder?

7 A. Yes, sir, they are.

8 Q. Why is that, why does it affect -- why can't he just
9 stand in one place for an hour?

10 A. Number one has weak muscle. Number two nerve damage.
11 Number three there is arthritis setting in and is progressing.
12 When you put all that weight on that injured foot and ankle
13 after a certain amount of time it exponentially worsens his
14 pain. So these are all the reasons why he cannot and should not
15 stand on a continuous basis nor walk on a continuous basis.

16 Q. Now I want you to also assume that the evidence from
17 W2s, pay stubs, the evidence from Mr. Karasu, we have seen that
18 in the year 2021 up until the time of this trial, Mr. Karasu has
19 gone from working part time as a delivery driver of specimens
20 picking them up at doctor's offices bringing them back to the
21 lab, that he's been working 60 to 70 hours a week, do you have
22 an opinion whether Mr. Karasu today as a 47-year-old man given
23 the nature of those injuries, is he going to be able to sustain
24 that level of activity indefinitely?

25 A. Absolutely not for a variety of good reasons.

1 Q. Could you tell us?

2 A. Yes, right now he's doing good by necessity. We all
3 know that when we have to do certain things by necessity we just
4 do them even though it kills us. A quick example, may I give a
5 quick example?

6 Q. Yes.

7 A. We have heard reports of a mother seeing their child
8 about to be crushed by a car and the mother trying to lift the
9 back of the car up to save the child. These are all the heroic
10 measures to do the almost impossible thing. So right now he's
11 doing what he has to support his family. And to do what he's
12 got to do, but he will not be able to sustain it because the
13 range of motion will continue to worsen. The muscle weakness
14 will continue. And it will eventually need that ankle fusion
15 which has been recommended by Dr. Acampa on numerous occasions.
16 He will have no choice. Because the pain will be unbearable.
17 And the swelling will be unbearable. So he will have no choice
18 to do that.

19 Q. Same question with regard to Dr. Helfet's
20 recommendation, we looked at his report from the Hospital for
21 Special Surgery, he was recommending an ankle replacement as an
22 option, but Mr. Karasu has said he doesn't want an ankle
23 replacement, he doesn't want a fusion, he's afraid either it
24 won't succeed or he'll lose his job?

25 MR. EDWARDS: There is no reference to this in the

1 Helfet's record that I could find. A replacement. I don't
2 see it anywhere.

3 MR. BURKE: I have it.

4 MR. EDWARDS: There no foundation.

5 MR. BURKE: I will read it. I'm going to read
6 from the --

7 MR. EDWARDS: Unless I missed it.

8 MR. BURKE: Okay.

9 THE COURT: I could rule it and we can move on.
10 We have about five minutes.

11 MR. BURKE: I'm reading from Dr. Helfet's report
12 in evidence page two, quote, under plan, at this point we
13 do not advise a primary fusion of his right ankle given
14 lack of work-up instead Dr. Helfet recommended --

15 MR. EDWARDS: Hold on. That's the only report I
16 have. That's the only report I have.

17 THE COURT: What evidence is that what documentary
18 evidence. Is it submitted?

19 MR. BURKE: This is from Dr. Helfet.

20 MR. EDWARDS: That's not the report.

21 MR. BURKE: You don't have this report?

22 MR. EDWARDS: No, that's not the report.

23 MR. BURKE: But it's in evidence. You and I agree
24 that this is Dr. Helfet's report.

25 MR. EDWARDS: Whatever you want to do that's not

1 the report. What's the date on that.

2 MR. BURKE: In the visit of August 27, 2016.

3 MR. EDWARDS: Let me see it.

4 MR. BURKE: This is a good time. This was my last
5 question. Is this good time to break for lunch?

6 THE COURT: Well he didn't answer. I ruled I said
7 overruled.

8 MR. BURKE: Would ankle replacement.

9 MR. EDWARDS: Sure. Go ahead.

10 THE COURT: I think he was almost finished with
11 the question. You want the court reporter to read it back.

12 MR. BURKE: I can do it again.

13 THE COURT: Why don't you go ahead rephrase
14 restate the question again.

15 Q. With respect to Dr. Helfet is a joint replacement is it
16 reasonable for a patient to decline to have whether a fusion of
17 the ankle or a replacement of the ankle?

18 A. In this particular case the answer is, yes, remember
19 he's immuno compromised because of his liver transplant. And
20 the chances of rejection is high. The chance of infection is
21 high. And ankle replacement is very expensive. Much more than
22 ankle fusion. It's much more complicated. Much more involved
23 than an ankle fusion, but an ankle replacement if it does work,
24 it will give him better satisfaction, less pain and more range
25 of motion and more flexibility than the fusion.

1 Q. Do either replacement or fusion do they come with a
2 guarantee good outcome?

3 A. No, sir, no physician is allowed to guarantee, you
4 could lose your license if you guarantee, only God guarantees,
5 not a physician.

6 Q. If Mr. Karasu had an ankle fusion as recommended by
7 Dr. Acampa as an option, how would that change the way he walks
8 if he has even more rigidity in that ankle.

9 A. It will worsen his gait. It will make it much more
10 noticeable. He will never have a normal not even a close to a
11 normal gait. Right now it's close to normal gait to average lay
12 person not to a trained eye like myself. So that gait will be
13 worse.

14 MR. BURKE: I have no further questions, Judge.

15 THE COURT: All right.

16 MR. EDWARDS: I will cross after lunch.

17 THE COURT: All right. You want to take the jury
18 out.

19 We will meet here two o'clock please.

20 (Jury exits the courtroom.)

21 THE COURT: Could we grab juror number one?

22 Thank you. I discussed it with the attorneys and
23 there are options you want to ask him?

24 MR. EDWARDS: Are you going away at the end of the
25 week?

1 SWORN JUROR: No, just Thursday, Friday.

2 MR. EDWARDS: The problem days are Thursday,
3 Friday. Those are the only problem. I could do after a
4 day Thursday if it would help.

5 THE COURT: Yes, we're not on Thursday. It would
6 be Friday if you came back.

7 However the problem is that because I think people
8 thought we were going to be done by next week. So they
9 were thinking of going into Monday, but we have to ask
10 everybody else now. You see what I'm saying?

11 MR. EDWARDS: The issue that you have are Thursday
12 and Friday.

13 SWORN JUROR: Correct.

14 MR. EDWARDS: We understand.

15 THE COURT: It's good. Go to lunch. We just
16 wanted to get some more information.

17 SWORN JUROR: Thank you.

18 MR. EDWARDS: Judge, when we were on the zoom
19 conference we indicated the possibility that it might go
20 into week of the 21st I don't think it would be.

21 THE COURT: It's what you told the jurors though.

22 MR. BURKE: What we told them was we were in jury
23 selection we told them when we start the trial we
24 anticipate five to seven trial days as our best estimate
25 subject to whatever the judge we're assigned to who may

1 have a down day here or down day there.

2 THE COURT: So it's total. That's how I do it
3 because I know that you know Friday. So we can go to
4 Monday then.

5 MR. EDWARDS: We didn't give them any promises
6 that they would be done. We didn't tell them. No way we'd
7 do that. We left that open as a possibility.

8 THE COURT: All right. Just wanted to make sure
9 because I hate to it's nice that he can go to his thing if
10 that's the only issue.

11 MR. BURKE: Okay, Judge, thank you.

12 THE COURT: Enjoy lunch. We'll see you a lot 2.
13 (Luncheon recess is taken at this time.)

14 THE COURT: Welcome back. I hope you had a nice
15 lunch.

16 Go ahead, Mr. Burke.

17 CON'T DIRECT EXAMINATION BY

18 MR. BURKE:

19 Q. Dr. Guy, I misspoke before as correctly pointed out by
20 Mr. Edwards, I'm going to direct your attention to the last
21 paragraph on page two of Dr. Helfet's report, he did not mention
22 the word replacement, could you just read to the jury the last
23 two sentences of that first paragraph under plan beginning with
24 we can also discuss?

25 A. We can also discuss hardware removal at a later time

1 with debridement of his joint with possible cheilectomy of the
2 anterior bone spur to help with the pain. At this point we do
3 not advise a primary fusion of his right ankle given the lack of
4 work-up.

5 Q. So there was no reference in here to replacement just
6 to ankle fusion, correct?

7 A. Correct.

8 MR. BURKE: Nothing further, Judge.

9 THE COURT: Thank you.

10 Mr. Edwards, you may inquire.

11 CROSS EXAMINATION BY

12 MR. EDWARDS:

13 Q. Good afternoon, Doctor.

14 A. Good afternoon.

15 Q. There was no mention just to clarify on that so there
16 is no mention of a replacement, there is mention of a fusion but
17 am I correct, Doctor, that Dr. Helfet at that point does not
18 recommend fusion, is that correct?

19 A. That is correct.

20 Q. Now just do you have -- did you bring a file with you,
21 Doctor?

22 A. Yes, right here.

23 Q. Could I see your file please, Doctor, is this the file
24 you maintain in your office for this patient for Mr. Karasu?

25 A. Yes, sir.

1 Q. And does it contain the materials that you reviewed?

2 A. Yes, sir.

3 Q. In preparation of your report so it includes the
4 records from Dr. Acampa?

5 A. Yes.

6 Q. And Dr. Acampa is his treating orthopedist?

7 A. Yes, sir.

8 Q. Dr. Acampa is orthopedic surgeon, correct, sir?

9 A. Yes.

10 Q. You saw Mr. Karasu one time, correct?

11 A. Twice.

12 Q. When was the second time you saw him?

13 A. March 3rd, 2022.

14 Q. March 3rd?

15 A. Yes, sir.

16 Q. Last week?

17 A. Yes, sir.

18 Q. Did you prepare a report?

19 A. Right here.

20 Q. That would have been nice if I had that.

21 A. You can have it now.

22 Q. Between when was the first time that you saw him?

23 A. July 30th, 2019.

24 Q. So between July 30th, 2019 and March 3rd last week of
25 this year?

1 A. Yes, sir.

2 Q. You had not seen Mr. Karasu, is that correct?

3 A. Yes, sir, that is correct.

4 Q. You were contacted I presume by Kelner and Kelner firm
5 to see Mr. Karasu in anticipation of the trial?

6 A. My office, yes, not me, my office.

7 Q. On your behalf and on behalf of the office of Kelner
8 and Kelner, correct?

9 A. More or less, yes, sir.

10 Q. So when you saw him in, I assume, as you sit here right
11 now, you don't have any appointments to see him in the future?

12 A. No, sir.

13 Q. You do not?

14 A. I do not.

15 Q. Now, Doctor, you have Dr. Helfet's report, correct?

16 A. Yes.

17 Q. So Dr. Helfet we already squared away that Dr. Helfet
18 makes no mention of an ankle replacement and does not recommend
19 an ankle fusion, correct?

20 A. Yes, sir.

21 Q. He took x-rays Dr. Helfet, correct?

22 A. Yes.

23 Q. He took x-rays of the ankle?

24 A. Foot and ankle, yes.

25 Q. Three views?

1 A. Yes, sir.

2 Q. He did not take any x-rays with regard to the knee, is
3 that correct?

4 A. Correct, that is correct.

5 Q. And there is no reference in Dr. Helfet's note with
6 regard to any complaint made by Mr. Karasu with regard to his
7 knee, is there?

8 A. I didn't see any, that's correct.

9 Q. There is reference on the report. There is reference
10 to he tested some of the muscles around the lower leg?

11 A. He did.

12 Q. And he tested and if I get my pronunciation wrong
13 muscle known as the tibialis anterior?

14 A. You pronounce it correctly.

15 Q. Okay. That's a muscle?

16 A. Yes, sir.

17 Q. And he tested a gastrocnemius?

18 A. Gastrocnemius.

19 Q. The extensor?

20 A. Calluses longus.

21 Q. The flexor halluses longus?

22 A. Yes, sir.

23 Q. Those are all muscles, those are all muscles I assume
24 that are used to help the ankle function?

25 A. Yes, sir.

1 Q. That assists in motion those are muscles that if I sit
2 here and do things with my ankle with I'm using those muscles?

3 A. Yes, sir.

4 Q. And you didn't find any deficits with regard to any of
5 those muscles, is that correct?

6 A. That is correct.

7 Q. You had a note in there that says five of five so I
8 assume that's normal?

9 A. That's normal with regard to those muscles.

10 Q. Doctor, I apologize because I was shuffling around here
11 before, would you mind if you could you had demonstrated for the
12 jury the different gaits, would you do that again?

13 A. Absolutely.

14 Q. Thank you?

15 A. Judge, may I?

16 THE COURT: Sure.

17 A. So we have the normal gait pattern we start off with
18 double stance first part push off second swing phase third heel
19 strike fourth foot down and repeat with the other side. And
20 then I demonstrated some abnormal gaits, antalgic gait. I
21 demonstrated festinating gait in Parkinson's. They try to catch
22 up with their center of gravity. I demonstrated hip hiking
23 that's when they have severe arthritis of the hip or leg limb
24 discrepancy. These are some of the.

25 Q. Did you do antalgic?

1 A. I did you missed it again.

2 Q. I did.

3 A. You have to pay attention, bad student.

4 Q. That's what happens when you attempt to multitask.

5 Doctor, just to go back over your qualifications. You had done
6 a residency program at Cabrini?

7 A. Yes, sir.

8 Q. When was that?

9 A. That was in 83.

10 Q. You didn't complete the residency program at Cabrini
11 did you?

12 A. I did not I was not of trying to complete residency in
13 general surgery this was pre requisite.

14 Q. Yes or no question did you complete the residency at
15 crab bin any?

16 A. The answer is no for very good reason.

17 Q. And with regard to you loss did a surgical residents
18 general surgical residency is that?

19 A. You just asked me that.

20 Q. Is that at Cabrini?

21 A. Yes.

22 Q. So that's the and you had medical residency at Mount
23 Sinai?

24 A. Yes, sir, internal medicine.

25 Q. You did not complete that residency either did you?

1 A. I did not for very good reason.

2 Q. Now since I know that you have Dr. Acampa's file I'm
3 going ask you some I'm going to ask you some questions with
4 regard to Dr. Acampa's records?

5 A. Okay.

6 Q. Just letting you will know you may have to make
7 reference?

8 A. Just give plea a date when you ask.

9 Q. Doctor, when you testified on direct and Mr. Burke had
10 you look at Dr. Acampa's notes from the last note which was May
11 of 2020, correct?

12 MR. BURKE: September.

13 Q. September of 2020?

14 A. September 15th, 2020.

15 Q. September 15th, 2020. And when you talk about that
16 note you did you mentioned that there was no there was no change
17 with regard to from the September of 2020 note to the prior
18 note?

19 A. Let me just make sure. Yes that's correct.

20 Q. So there was no there was no there was no progress or
21 anything it didn't get any better it didn't get any better, is
22 that fair to say?

23 A. Correct, yes.

24 Q. So now in all you reviewed I assume Dr. Cams whole
25 entire chart at some point?

1 A. Whatever is in my possession.

2 Q. Whatever was sent to you?

3 A. Yes, that's correct.

4 Q. Now is there any reference in Dr. Acampa's chart
5 anywhere up until the last visit in September of 2020 with a
6 reference to his patient Mr. Karasu making a complaint of knee
7 pain?

8 A. I did not see any, no.

9 Q. Any is there any mention at all in Dr. Acampa's records
10 with regard to his patient where he made a reference to
11 arthritis of the knee?

12 A. I don't recall seeing it, no.

13 Q. And is there any reference anywhere in Dr. Acampa's
14 chart on his patient where there is reference to x-rays being
15 done of the knee?

16 A. I do not see any.

17 Q. Now on the if you take a look Dr. If you could if it's
18 easiest one you have there the September 2020 note from
19 Dr. Acampa?

20 A. Okay.

21 Q. At the end. There is on page three where on page three
22 of three where it says assessment the records states close, how
23 do you pronounce pilon?

24 A. Pilon that's the proper way to pronunciation.
25 Physicians say pilon.

1 Q. It's a word that's French in origin?

2 A. Yes, that is correct.

3 Q. To it says closed pilon fracture with routine healing
4 correct?

5 A. Yes.

6 Q. Throughout Dr. Acampa's records from 2015 throughout
7 his entire course of treatment you will until the last visit in
8 2020 each record notes routine healing correct?

9 A. I believe that is correct.

10 Q. Dr. There is you talk a little bit about I forget the
11 word compensatory what's the term you used?

12 A. CMS compensatory mechanism syndrome.

13 Q. And that would mean that would mean that the person
14 would be compensating for compensating using other parts of the
15 body to compensate for a problem with one part of the their
16 body?

17 A. Yes, more or less that is correct, yes.

18 Q. More or less, okay, now throughout this I was looking
19 for this generally when you when you're dealing with that what I
20 expect to see atrophy if I was not using a particular joint?

21 A. Sometimes could you see that atrophy but if the person
22 is using it now you pa may not see the atrophy and it's very
23 difficult to assess atrophy in the foot or in the ankle unless
24 you measure is it very very closely.

25 Q. Well you could doctor, doctor yes or no doctor, if I

1 stopped using my foot I would not have atrophy in all of the
2 muscles that work to operate the foot above my calf and what
3 not?

4 A. Can't, can't.

5 Q. If you can't answer it yes or no that's fine might I'm
6 atrophy then in my calf muscle?

7 A. I cannot answer that with a yes or no I can answer it
8 with a explanation.

9 Q. Okay. Is there any mention anywhere in Dr. Acampa's
10 records of atrophy?

11 A. No.

12 Q. Now when you saw let me ask you this question too,
13 there is and this was mentioned I think by the plaintiff he's
14 put on weight how does weight affect you mentioned you discussed
15 the ankle the foot and the ankle in terms of foundation?

16 A. Yes.

17 Q. Is it fair to say is it fair to say that somebody's
18 weight could have an impact on or could affect that foundation?

19 A. Depending, yes depending how much extra weight they
20 have on, yes.

21 Q. Is it fair to say also that the less weight the better
22 on that foundation joint?

23 A. Yes, yes.

24 Q. Now there is reference did you note in Dr. Acampa's
25 records that there was reference to the patient explore some

1 things too about referencing to him losing weight did you notice
2 anything in there?

3 A. I don't recall seeing that.

4 Q. If somebody's if he lost some weight might that
5 reliever some of the pain on the ankle?

6 A. I just said earlier, yes.

7 Q. Doctor, I'm going again to reference since it's the
8 handiest one right here the September 15th, 2020 record and the
9 last two records say may he saw him twice he saw Dr. Acampa
10 twice in May?

11 A. That's good.

12 Q. On those records there is there reference to swelling
13 swelling in the ankle?

14 A. Yes there is.

15 Q. Now in the record there is reference in reviewing the
16 systems of Mr. Karasu is that reference to swelling ankle it's
17 references as cardio with regard to a cardio vascular it's not
18 note with regard to review of his cardio vascular system is that
19 correct?

20 A. It's there as well as in the musculoskeletal section.

21 Q. Correct I'm not I know that it's mentioned in
22 musculoskeletal section but with regard to his assessment of the
23 cardio vascular system of this Mr. Karasu he mentions the
24 swelling of the ankles there as well correct?

25 A. Yes, sir.

1 Q. And both of those records both of those records they
2 may and the September one?

3 A. Yes.

4 Q. And several prior records?

5 A. I don't remember the other once but.

6 Q. How about December of 2019 is that also mention cardio
7 vascular patient office complaint difficulty lying flat and
8 swelling as part of the doctors review of his cardiovascular
9 system?

10 A. Yes, that is correct.

11 Q. Is there any are you aware of any studies that
12 correlate -- withdrawn. Is there any reference any where in
13 Dr. Cams records with regard to osteo arthritis?

14 A. Yes.

15 Q. That is in the that's in the reference to withdrawn.
16 In the ankle joints, correct?

17 A. Yes, sir.

18 Q. Now you had mentioned is there any mention is there any
19 mention in Dr. Cams records with regard to osteo procedure sis?

20 A. I think I saw it in there as well, yes.

21 Q. Dr. Acampa's record?

22 A. Yes.

23 Q. Could you let me know where Dr. Acampa's record that
24 is?

25 A. Okay. Okay.

1 Q. Osteoporosis?

2 A. It was either in his records or Dr. Helfet's records I
3 even pointed it out on the screen.

4 Q. Well you have, Doctor, you have Dr. Helfet's report
5 also, right?

6 A. Yes.

7 Q. So if you take look at Dr. Helfet's if you you could
8 look through Dr. Acampa's records let me know when you're done
9 with that?

10 A. Okay. Yes, the report of 1/5/17 page number three it
11 says complete three view x-rays of the ankle shows internal
12 fixation of the distal tibia with early degenerative osteo
13 arthritis of the ankle joint.

14 Q. I'm asking you right now of osteoporosis?

15 A. I'm sorry.

16 Q. You mentioned when you look at the film, I know it
17 mentions osteo arthritis, when you were looking at the if I will
18 am before you said he has osteoporosis?

19 A. I saw it the one of the doctors reports I'm trying to
20 refer if it was doctor Acampa or Dr. Helfet.

21 Q. Let me know when you're done looking through there.
22 Acampa's report?

23 A. Okay I don't see if in Dr. Acampa's records.

24 Q. Okay if you could doctor take look at Dr. Helfet's much
25 smaller record obviously take look at Dr. Helfet's report from

1 August 22nd of 2016 if you could?

2 MR. BURKE: Just note my objection that doesn't
3 include the x-ray report.

4 Q. I'm asking the witness to look at the Dr. Helfet's
5 August 22nd, 2016 report?

6 MR. BURKE: Again objection those records do not
7 include the hospital for special surgery x-ray report from
8 that visit.

9 THE COURT: Noted.

10 MR. EDWARDS: I'm asking him to look at this
11 report.

12 THE COURT: All right.

13 MR. EDWARDS: The report that is signed by
14 Dr. Helfet. I thought you had I thought you had it do you
15 want me to give you a copy doctor.

16 A. Okay.

17 Q. Hang on a second. Take look ignore the highlight
18 that's just for my notes?

19 A. Okay.

20 Q. In the report from Dr. Helfet the two-page report from
21 Dr. Helfet August 22nd, 2016 does it make any mention of osteo
22 arthritis?

23 A. Osteo arthritis.

24 Q. I'm sorry osteoporosis?

25 A. You're even confusing.

1 Q. I am?

2 A. No, it does not. There was an x-ray report from the
3 doctor.

4 Q. All right. Doctor, it's a yes or no question of what's
5 in Dr. Helfet's actual. Now there is a condition known as osteo-
6 pen I can't correct?

7 A. Osteopenia is almost synonymous with osteoporosis.

8 Q. Correct, okay. Now osteopenia especially after a
9 fracture after there is trauma to the bone right after there is
10 a fracture?

11 A. Right.

12 Q. Therefore some patients who develop had a condition
13 known as osteopenia?

14 A. Right.

15 Q. Which is sort of a demineralization of the bone in
16 order to help it's part of the it's evidence of the healing
17 process is it not?

18 A. It is not I disagree with you.

19 Q. Okay. In osteopenia there is a demineralization of the
20 bone that is part of the healing or is part of the healing
21 process is it not?

22 A. It's not parts of the healing process, no. It's part
23 of the pathological trauma problem.

24 Q. Parts of the trauma problem?

25 A. Yes, sir.

1 Q. After the fracture heals yes or no does not the bone
2 remineralize after the healing?

3 A. Some cases, yes, many cases, no.

4 Q. So in osteopenia though it's with a fracture when a
5 patient has osteopenia right as while the bone is healing after
6 the bone heals the bone can then remineralize so if there is a
7 loss of bone density as a result of the healing process the bone
8 can actually remineralize?

9 A. You're talking generally not in this patient.

10 Q. Yes am?

11 A. Generally.

12 Q. Yes?

13 A. Is it possible yes but that's what happened in this
14 case.

15 Q. I'm asking you about osteopenia?

16 A. That's what I'm answering you.

17 Q. The there are at times with fractures it can happen you
18 can have a temporary loss of bone density in general can you
19 not?

20 A. Yes.

21 Q. And the bone can remineralize later?

22 A. Is it possible, yes to some extent.

23 Q. Well the x-rays that you looked at all right were from
24 2017 were from 2017?

25 A. I think there was some in 2018 as well.

1 Q. There maybe some in 2018 did you look at x-rays from
2 did you look at x-rays from 2019, 2020 or any time since the
3 x-rays from 2017, 2018?

4 A. None that were given to me, no.

5 Q. You did not?

6 A. I did not.

7 Q. So right now your testimony is that in 20 that in 2022
8 that the condition that you saw back in 2017 while he was still
9 while he was still having procedures on his cancel is the same
10 condition that he has in his ankle right now in March of 2022
11 that's your testimony?

12 A. Based on raid graphic pictures.

13 Q. Yes or no?

14 A. I cannot answer that yes with a yes or no.

15 Q. Because I thoughts that's what you said. Let me ask
16 you a question doctor well you had already mentioned this on so
17 this particular person Mr. Karasu who is here today he was not
18 referred to you by Dr. Acampa, correct?

19 A. No, sir.

20 Q. He was?

21 A. No I said no, sir he was not.

22 Q. I asked negative it was my fault I asked a negative
23 question I'm going to that's on me okay?

24 A. All right.

25 Q. He was referred by Kelner and Kelner?

1 A. Yes, sir.

2 Q. Hey look let me ask you a question since you mentioned
3 this earlier you're here testifying as an expert for Mr. Karasu
4 case and you're being paid which is fair nobody's asking anybody
5 to do anything for free you're being paid by my math 10 or 11
6 thousand dollars and do I did I understand your testimony right
7 that if you didn't see this person at the request of Kelner and
8 Kelner and didn't come to court for the so thousand dollars for
9 Kelner and Kelner could you of that like a disciplinary problem?

10 A. If I was asked to testify in court if I don't come, yes
11 I could.

12 Q. If you didn't come in on that case would have
13 disciplinary problem?

14 A. Yes.

15 Q. Who was give you disciplinary problem?

16 A. I was giving you an example you cut me off earlier this
17 morning.

18 Q. My question my question right now is what body what en
19 at this time?

20 A.

21 Q. Would sanction you for not coming as an expert on the
22 case?

23 A. OPMC office professional medical misconduct.

24 Q. And the office of is that the same as board for
25 professional misconduct?

1 A. It's different branch of that same board.

2 Q. I looked in looking overall of the things that doctors
3 face potentially face disciplinaries with and they put out
4 because they put out reports every year the board for
5 professional medical police conduct and I for one I happen to
6 have 2018 here?

7 MR. BURKE: Objection on relevance, your Honor.

8 THE COURT: Sustained. Where were you going with
9 this.

10 MR. EDWARDS: He said he could be sanctioned.

11 It's never happened.

12 THE COURT: Sustained.

13 MR. BURKE: Objection.

14 Q. Have you ever can you name any doctor who was actually
15 been sanctioned or lost his license for not cop to go court to
16 testify as an expert on a case?

17 MR. BURKE: Objection.

18 THE COURT: Sustained.

19 MR. EDWARDS: He testified to this on direct.

20 MR. BURKE: Objection to counsels statements.

21 THE COURT: We're not going to have a discussion
22 please let's move on.

23 Q. Is Dr. Acampa's subject to disciplinary?

24 MR. BURKE: Same objection.

25 Q. If he doesn't come in and testify?

1 THE COURT: Sustained.

2 Q. Doctor, you have testified on cases before for the firm
3 of Kelner and Kelner?

4 A. Absolutely, yes, sir.

5 Q. And you have testified on on cases where Mr. Burke was
6 the attorney correct?

7 A. Yes, sir.

8 Q. Let me ask you this doctor when let's go back a little
9 bit you received your license to practice medicine around 1985?

10 A. Yes, sir.

11 Q. 85?

12 A. Yes, sir.

13 Q. Back late 80's or early 90's you actually had somebody
14 who marketed for you your services to plaintiffs firms?

15 A. That's right because nobody knew what a physiatrist was
16 back in those days.

17 Q. You had very early in your career we're talking 30
18 years ago?

19 A. Yes, sir.

20 Q. You're licensed to practice for 37 years and the least
21 30 years ago you engaged you engaged in a mark you did engage in
22 a marketing campaign to target attorneys lawyers who bring
23 personal injury lawsuit toss market your services to them did
24 you not?

25 A. Yes, sir, yes, sir not just attorneys every walk of

1 life.

2 Q. But that include attorneys?

3 A. Yes, sir.

4 Q. To come in and testify to court?

5 A. The answer is yes.

6 Q. Not talking about anybody else I'm only talking about
7 plaintiffs personal injury lawyers?

8 A. The answer is yes.

9 Q. One of those since starting back then in the early 90's
10 you have periodically had cases where you testified for Kelner
11 and Kelner correct?

12 A. Yes, sir.

13 Q. You have testified for them on with regard to I know
14 you didn't say I know you're not an orthopedic surgeon and
15 you're not an ankle specialist?

16 A. That's correct.

17 Q. You're not saying that you are I understand that but
18 it's a variety of different things that you testified in
19 different kinds of cases for them?

20 A. Yes, sir.

21 Q. Going back you testified did you or did you not testify
22 for Kelner and Kelner in a case called Teplani T-E-P-L-A-N-I
23 back in 1999 involving a case where the injury was a skull
24 fracture?

25 A. I don't recall that case.

1 Q. And you testified in a case called Ramos?

2 A. I have hundred patients with that last name.

3 Q. Again the name of the lawsuit was Eric and Norma Ramos
4 V Melissa Charles Anthony Ramon Cannon and the City of New York?

5 A. That was when?

6 Q. That was in 2011?

7 A. I don't recall that case.

8 Q. That involved bladder perforation and other internal
9 injuries?

10 A. I don't recall that case.

11 Q. How about Linda Miller against Camelot Communications
12 just pre Covid back in January of 2020 that case involved
13 cervical and lumbar discs and a variety of other injuries, do
14 you recall that case?

15 A. I do not.

16 Q. Case called Frank Driscoll against Transit Authority?

17 A. Oh, yes, I remember that case.

18 Q. And in that case involved you were testifying that was
19 also back 1999 that case involved didn't involve ankle involved
20 actually very serious case with regard to quadriplegia?

21 A. Yes, he was paralyzed from the neck down.

22 Q. That was, again, all these cases are for the Kelner
23 firm, correct?

24 A. I don't know. I don't recall those cases that you
25 mentioned.

1 Q. Just do you know --

2 MR. BURKE: Objection. We don't know what you're
3 looking at and he already told you he doesn't remember some
4 of the cases.

5 MR. EDWARDS: Let him say he doesn't remember.

6 THE COURT: Sustained that objection.

7 Q. Doctors, you recall testifying in a case called Joseph
8 Spoto against the City of New York back in April of 1999 for
9 Robert Kelner?

10 A. I do.

11 Q. That and do you recall what injury that was?

12 A. I believe he had back surgery disc herniation of back
13 surgery, am I correct.

14 Q. Actually this was like one of the few cases it was
15 actually was injury to the right foot?

16 A. Right foot.

17 Q. Do you recall testifying in Anna Rotto against New York
18 University back this was for Joseph Kelner back in 1997?

19 MR. BURKE: Just note my objection. Counsel is
20 reading from documents that are not in evidence. We could
21 be here all day.

22 THE COURT: Sustained.

23 MR. EDWARDS: I'm not reading from documents.

24 THE COURT: I don't know what you're doing.

25 MR. EDWARDS: These are notes of mine.

1 THE COURT: And they are being answered. So move
2 on.

3 Q. Do you recall testifying to that case?

4 A. I do not in fact I believe Mr. Joseph Kelner passed
5 around that time.

6 Q. Joseph Kelner, Jr.?

7 A. There is no Mr. Joseph Kelner, Jr.

8 Q. Joseph Kelner, apologies Joseph Kelner was the father,
9 I understand.

10 MR. BURKE: Just objection to counsel.

11 THE COURT: Sustained.

12 MR. EDWARDS: It's irrelevant.

13 Q. Do you recall testifying in a case for called Posalito
14 against Grosso medical malpractice case?

15 A. Who.

16 Q. Posalito medical malpractice case involving a severed
17 artery back in December of 2003?

18 A. I don't recall that case.

19 Q. Do you recall testifying in a case call Demitry Demitry
20 against Target Corporation?

21 A. That was when.

22 Q. That was only withdrawn. If you don't recall the case
23 that's fine?

24 A. I don't recall the case.

25 Q. How about Delandro against Aranoff?

1 A. Who.

2 Q. Delandro when was?

3 A. When that is that case?

4 Q. Do you recall, do you recall testifying?

5 MR. BURKE: I object to counsel reading from
6 documents he hasn't put into evidence.

7 MR. EDWARDS: I am asking if he recalls testifying
8 I'm not looking to put it into evidence. I'm asking
9 question if he doesn't recall, I move on.

10 MR. BURKE: He's reading from a document not in
11 evidence.

12 THE COURT: Can I see you two on the side?

13 (Whereupon, a discussion is held off the record.)

14 Q. Do you recall testifying in a case called Delandro
15 against Aranoff medical malpractice?

16 A. When was that?

17 Q. Might have been 2004 it's if you recall or not?

18 A. 18 years ago, no.

19 Q. Do you recall, Doctor, let's put it this way, you have
20 -- let me ask you this question aside from testifying here in a
21 case with regard to a pilon ankle fracture, you have also on
22 behalf you have been called to testify by Kelner and Kelner for
23 cases involving traumatic brain injury?

24 A. Yes.

25 Q. Cases involving neck injuries?

1 A. Yes.

2 Q. Cases involving back injuries?

3 A. Yes.

4 Q. Cases involving shoulder injuries?

5 A. Yes.

6 Q. Cases involving various parts of the body?

7 A. Yes.

8 Q. Doctor, I'm going to ask you sit here right now are you
9 scheduled today testify in any other cases for the Kelner firm?

10 A. No, sir.

11 Q. Have you testified with regard, do you recall
12 testifying in a case called Nella Smith?

13 A. Nella Smith.

14 Q. Nella Smith?

15 A. When was that?

16 Q. 2010 the lawyer was Mr. Burke, do you recall?

17 A. That's 12 years ago, do you expect me to remember, no,
18 I don't remember.

19 Q. Do you recall testifying in other case for Mr. Burke?

20 A. I have already answered that, yes.

21 Q. Can you tell me can you tell me how many cases forget
22 about Kelner and Kelner the firm but tell me specifically with
23 regard to Mr. Burke how many cases?

24 A. Over the past 35 years, I would be guessing, I don't
25 keep track of these things, I would be guessing, I would say

1 about a dozen times could be slightly more slightly more.

2 MR. EDWARDS: Thank you, Doctor. I have no
3 further questions.

4 REDIRECT EXAMINATION

5 BY MR. BURKE:

6 Q. Doctors, you said before that you didn't complete your
7 surgery residency at Cabrini but you had a good reason, could
8 you explain?

9 A. Yes, as I indicated earlier in order to get into the
10 program of physical medicine rehabilitation you have to have
11 training in a field other than physical medicine and
12 rehabilitation preferably one year of general surgery and or one
13 year of internal medicine. I did 18 months of internal medicine
14 and one year of general surgery as prerequisite. I never wanted
15 to be surgeon. I never want to be an internal medicine doctor.
16 I want to be a physiatrist.

17 Q. Before you were asked questions regarding whether or
18 not there are any notes about muscle atrophy and Dr. Acampa's
19 records, I'm not going to take the time to put it up on the
20 screen, but I'm going to read to you from Dr. Acampa's office
21 note of February 16, 2017, where it is recorded quote patient
22 has atrophy of his gastroc --

23 A. Gastrocnemius that's the calf muscle.

24 Q. Gastroc soleus?

25 A. That's the calf muscle gastrocsoleus gastrocnemius it's

1 same muscle.

2 Q. Counsel referred you to an entry in Dr. Acampa's
3 records about how Mr. Karasu was having routine healing from the
4 pilon fracture, is there anything routine by a pilon fracture?

5 A. He meant the wound was healing normally. It was
6 recovering from this the way it was expected to recover. Not
7 that it was a perfect recovery. And that not that he had
8 perfect examination or any not having any deficits recorded.
9 All the deficits which he was having zero dorsiflexion,
10 inversion, eversion, range of motion deficits, swelling and gait
11 disturbance.

12 Q. Is there any way that Mr. Karasu could have picked what
13 this jury saw on the x-rays of that put before them this
14 morning?

15 A. No, sir.

16 Q. Is there anyone who could suffer the type of fracture
17 this Mr. Karasu did and be expect to have a chance at complete
18 recovery?

19 A. No, sir, because that was an intraarticular fracture
20 with multiple fragments involving multiple bone fractures.

21 Q. Now you were asked to read Dr. Helfet's report August
22 22nd, 2016, and find reference to osteoporosis and you said he
23 just referred to osteo arthritis, but do you recall Mr. Karasu
24 had three images taken at Dr. Helfet's request that same day and
25 there was a report from the radiologist at Hospital For Special

1 Surgery and just remind the jury what the radiologist at the
2 Hospital For Special Surgery had to say about those x-rays of
3 August 22nd, 2016?

4 A. That there was osteoporosis.

5 Q. You were asked questions about demineralization of bone
6 and whether or not it's just a normal course and does it
7 remineralize, could you explain in detail why Mr. Karasu should
8 expect no hope of recovery by some remineralization?

9 A. To say that you have osteopenia and osteoporosis are
10 almost synonymous. One is a little bit worse than the other.
11 Osteoporosis is worst. Osteopenia is less. Now
12 remineralization to have remineralization after fracture of this
13 type is called wishful thinking. It's the figment of someone's
14 imagination. Does it happen, I have never seen it happen. 35
15 years plus in practice I have never seen it happen. There is
16 always some residual deficits. And usually it gets worse not
17 better, but asked me hypothetical question. Hypothetically is
18 it possible, yes, anything is possible in the medical field
19 hypothetically, but did it happen in this patient absolutely no.

20 Q. You were asked about is there a reference in
21 Dr. Acampa's records concerning a complaint of knee pain and
22 there is none in that but how do you make sense of the reference
23 to osteo arthritis in the right knee, if someone has arthritis
24 early arthritis in the knee, are they always aware of it?

25 A. No.

1 Q. What is the natural progression when it's in its
2 earliest stages and then moves forward?

3 A. It's usually asymptomatic in its earliest stages.

4 Q. Okay. Is there any medical treatment known to mankind
5 short of a joint replacement or a fusion that you can avoid the
6 progression or worsening of arthritis in a joint?

7 A. No, you could slow it down, but you can't prevent it
8 from happening.

9 Q. How do you slow it down?

10 A. Antiinflammatory medication, weight bearing exercises,
11 continuous range of motion exercises, physical therapy.

12 Q. Now I want you to assume with regard to counsels
13 questioning of you concerning Mr. Karasu and weight gain, the
14 record has established that he was 180 pounds before the
15 accident, and he has since told you that he's now up to 210 and
16 there are many references in the medical record to his weight
17 gain, would you agree in your best professional medical opinion
18 whether Mr. Karasu's weight gain is attributable at least in
19 part to the lack of strenuous activities working as a roofer as
20 compared to being a driver picking up specimens and bringing it
21 back to a lab?

22 A. Yes, it's basically working it's a partial sedentary
23 job. Where as before it was a demanding job lifting, pulling,
24 carrying heavy things, going up and down the ladders. It was
25 more manual. Now it's no longer manual.

1 Q. Any way that you can explain away the osteoporosis
2 noted by the radiologist at the Hospital for Special Surgery who
3 identified osteoporosis, can someone look at that can another
4 physician look at that and say, oh, that's a good finding that
5 indicates there is a healing process going on?

6 A. I'm sorry that makes me laugh because it's absurd.

7 Q. Now you were asked questions regarding marketing?

8 A. Yes.

9 Q. And I'd like to ask you with respect to marketing, what
10 was the purpose for the lectures that you began with the
11 marketing?

12 A. Marketing back then in 1990 people didn't know what a
13 physiatrist was, they thought I was the psychiatrist my brother
14 was the psychiatrist. I used to get his checks. He used to get
15 my checks. I called the insurance company. I go why did you
16 send my checks to my brother, Daniel Guy, he's psychiatrist. He
17 goes what's the difference. Nobody knew what a physiatrist was
18 and what physiatrist did. I felt I had to educate the public to
19 let them know what I do. And what a physiatrist does to make
20 myself known and make myself available in the public sector.
21 Everybody advertises. Hospitals advertises. Physicians
22 advertise. I said why not me. Especially when people don't
23 even know what this specialty is.

24 MR. BURKE: Okay. I have nothing else. Thank
25 you.

1 RE-CROSS-EXAMINATION

2 BY MR. EDWARDS:

3 Q. In order to drive a car?

4 A. I'm sorry?

5 Q. In order to drive a car which he does now?

6 A. Yes.

7 Q. Do you need to have motion in your right ankle do you
8 not?

9 MR. BURKE: Objection beyond the scope.

10 THE COURT: Sustained.

11 MR. EDWARDS: May I approach, Judge.

12 He went through the difference between his two
13 different jobs.

14 THE COURT: Rephrase your question.

15 Q. He's driving right now right you mentioned that you
16 mentioned when Mr. Burke asked you about his weight gain and you
17 distinguished between doing between climbing up ladders, you
18 know, working as a roofer and working as a driver, do you recall
19 that?

20 A. Yes, of course, yes.

21 Q. You also mentioned you also mentioned about range of
22 motion exercises?

23 A. Yes.

24 Q. As therapeutic?

25 A. Yes.

1 Q. So in order to drive the car, does he not require range
2 of motion and does he not have to move his ankle does he not
3 need at least some mobility in that right ankle?

4 A. The answer is yes or he could simply push it straight
5 down on gas pedal and on the break.

6 Q. Can we agree -- can we agree because I do agree can you
7 and I both agree that his right ankle is never going to be as
8 good as it was before the accident we can both agree on that,
9 correct?

10 A. Yes.

11 Q. Now I'm assuming you look at lot of x-rays?

12 A. Yes.

13 Q. So when you look at an x-ray when you look at an x-ray
14 just tell me because this is how do you distinguish when you're
15 looking at an x-ray, how do you distinguish between osteopenia
16 and osteoporosis?

17 A. It's the extent. First is osteopenia then comes
18 osteoporosis. It's the extent of the demineralization of the
19 bone.

20 Q. Both involves a demineralization of the bone?

21 A. Yes.

22 Q. Now also when because you had mentioned you had
23 mentioned, when you did the range of motion studies that you
24 compared right to left?

25 A. Right.

1 Q. When you looked at the x-rays did you also see an x-ray
2 what the bone density was on the left ankle versus the bone
3 density on the right ankle?

4 A. Nobody took an extra of the left ankle, but in the
5 beginning the x-ray did not show any demineralization initial
6 x-ray.

7 Q. And you didn't see it that's fine. But you didn't see
8 any x-ray then the last x-ray -- you haven't seen an x-ray taken
9 of his ankle in the last four years or so, correct?

10 A. I don't know about four years.

11 Q. 2018?

12 A. If that was the last then, correct.

13 Q. Three and a half let's say three years probably more
14 than that, but lets say three years?

15 A. Okay.

16 Q. Now also the mention in Dr. Acampa's record with regard
17 to atrophy that was back in 2017, correct?

18 A. Correct.

19 Q. Now when his ankle is healing, all right, when he's
20 going through that process and we know that he had the we know
21 that he had the fixator, and we know he had the internal
22 fixations, in 2017 he also had a hardware removal, correct?

23 A. Yes, yes.

24 Q. As a result of the hardware removal there is another
25 period of certain another period of misuse with regard to the

1 ankle to allow for healing following the removal of the
2 hardware?

3 A. That would be short period of time weeks not months or
4 years.

5 Q. Not months or years but the hardware removal was in
6 2017?

7 MR. BURKE: Objection. Note of atrophy is
8 February of 2017.

9 MR. EDWARDS: That's fine.

10 MR. BURKE: It's preremoval.

11 THE COURT: Sustained.

12 Q. In 2018, all right, so in 2018 is there any reference
13 in Dr. Acampa's records of atrophy at any point?

14 A. I didn't see in 2018.

15 Q. At any time in 2019, is there any reference in
16 Dr. Acampa's notes with regard to atrophy?

17 A. I did not see it.

18 Q. And, again, in 2020 the two times he saw him in 2020
19 there is no mention of atrophy?

20 A. That is correct.

21 MR. EDWARDS: That's all. Thank you, Doctor.

22 REDIRECT EXAMINATION

23 BY MR. BURKE:

24 Q. You were asked about osteopenia and osteoporosis, you
25 said osteopenia first stage then progresses osteoporosis?

1 A. Yes.

2 Q. Is it fair it say a finding of osteo porosis is worse
3 than finding of osteopenia?

4 A. Yes, sir.

5 MR. EDWARDS: I'll leave it at that.

6 THE COURT: Thank you, Doctor, very much. Have a
7 nice day.

8 Can I see both of you again?

9 (Whereupon, a discussion is held off the record.)

10 THE COURT: We're going to continue when we come
11 back we're going to take a break you know to shift to we're
12 going to defendant going to cross-examine the plaintiff.
13 Remember we left off that part.

14 So going to take 15-minute break. It's beautiful
15 out get some of the sunshine slight E vitamin D. And we'll
16 come back in about 15 minutes. Thank you for your
17 attention. I appreciate it.

18 (Fifteen-minute break taken at this time.)

19 THE COURT: You may be seated. You're reminded
20 you're still under oath. You may sit down.

21 CROSS-EXAMINATION

22 BY MR. EDWARDS:

23 Q. Good afternoon. Mr. Karasu my name is James Edwards.
24 I'm representing the defendants in the case. I'm just going to
25 ask you some questions.

1 A. Sure.

2 Q. So I understand, right, the pain that you experience
3 right now that hasn't changed since it hasn't gotten any better
4 or has it changed at all since last year and the year before?

5 A. No, it's going the same.

6 Q. Same right. Just want to go a little into your
7 background, you have associates degree accounting that you got
8 Istanbul University?

9 A. Yes, sir.

10 Q. Could you tell me a little bit what was the course of
11 the study, how many credits did you have to take, what type of
12 courses did you have to take to get that associates degree?

13 A. At that time it wasn't credit in Turkey like how it was
14 over 50 credit or 60, it was just two years like 8 months 8
15 months.

16 Q. 8 months?

17 A. Like 8 months.

18 Q. 8 months, two years period, over two year period of
19 time?

20 A. In two years.

21 Q. Post high school though?

22 A. Yes.

23 Q. It was accounting though?

24 A. Accounting.

25 Q. I think you said when you took the class it was in

1 Turkish though not English?

2 A. Turkish.

3 Q. You didn't speak English when you were over there, you
4 learned that here?

5 A. No, I start learning English in the United States.

6 Q. This may be very ignorant question, I apologize, but
7 the numbers when you study accounting in Turkey the numbers are
8 still the numbers, correct?

9 A. Yes.

10 Q. Now you also you also studied was it Nassau Community
11 College what college you said you took CAD classes?

12 A. Auto CAD.

13 Q. The auto CAD?

14 A. Nassau community college.

15 Q. Nassau community college I think you explained but just
16 remind me the auto CAD, is that that's use of a computer to
17 generate like schematics and drawings?

18 A. No, computer aided design program like software.

19 Q. To design what though?

20 A. Architectural stuff construction.

21 Q. Did you get some type of certification after that?

22 A. No.

23 Q. Is there a certification available for that or is that
24 not the type of thing that leads to a certification?

25 A. Where I went, no.

1 Q. And did you some work you did some work I think when
2 you were discussing your income for one year, you did some you
3 did some auto CAD work?

4 A. Yes, I work if I'm not wrong around 2020 six months
5 period.

6 Q. I think you said you designed like you designs a
7 sprinkler system?

8 A. Fire sprinkler system.

9 Q. A fire not a lawn sprinkler system a building sprinkler
10 system?

11 A. Building fire sprinkler system.

12 Q. You got paid for that, correct?

13 A. Yes.

14 Q. You also have you worked at some other things over the
15 years before you work at Four Seasons, right before Four Seasons
16 roofing you had some other jobs?

17 A. Yes.

18 Q. And you worked you worked the job you mentioned at the
19 Marriott in engineering was this before Four Season after?

20 A. Before Four Seasons.

21 Q. How long were you there for?

22 A. Best knowledge I believe two and a half years.

23 Q. What types of things did you do while you were working
24 at the Marriott, what type of skills, what type of things did
25 you have to do?

1 A. Like maintenance stuff like changing the bulbs, little
2 painting, you know, a little plumbing repairs, those kind of
3 jobs.

4 Q. That was before you took the auto CAD classes, right?

5 A. I work Marriott 2012 and 2014.

6 Q. You started working at Four Seasons in 2014?

7 A. Correct, middle of 2014, July.

8 Q. You worked for them steady until July of March of 2015?
9 Until you're accident.

10 A. March 2016 through the 26th until the accident date,
11 March 26.

12 Q. Of 2015, right?

13 A. Accident happened 26th.

14 Q. I think the accident was in 2015?

15 A. Oh, I'm mixing the days, March 26th.

16 Q. I'm talking about the year?

17 A. The years, yes, sorry.

18 Q. 2015?

19 A. Right.

20 Q. The point as you worked for Four Seasons for about 7, 8
21 months?

22 A. That's what it is.

23 Q. 8 months or so, is that about right?

24 A. 8, 9 months.

25 Q. All together?

1 A. Yes.

2 Q. Over your for better words over your entire work life 8
3 months of was at Four Seasons?

4 A. In Four Seasons, yes.

5 Q. You also you had mentioned I think you started you have
6 your own company, correct?

7 A. Correct.

8 Q. What is the name what's the name of that company?

9 A. Net Home Improvement.

10 Q. It's still an active corporation still an active
11 company?

12 A. It's frozen.

13 Q. It's frozen?

14 A. Yes.

15 Q. What does that mean?

16 A. Not dissolved yet.

17 Q. It shows up on your tax return though?

18 A. I file every year papers, yes.

19 Q. You file every year papers for Net Home Improvement?

20 A. Yes.

21 Q. Let me ask you a question on your -- there was a period
22 of time after your accident where you worked you worked in an
23 auto repair shop?

24 A. Correct.

25 Q. What year that was in 2017?

1 A. 2017.

2 Q. Mr. Karasu, I'm going to ask you to take a look at your
3 tax return for 2017?

4 A. Can I have my glasses?

5 Q. Oh, yes, sure. Before you ask you about that I have
6 another question, you had mentioned at one point when you went
7 back to Turkey you worked for construction your cousin's
8 construction company?

9 A. In Turkey.

10 Q. In Turkey?

11 A. Yes.

12 Q. What year was that?

13 A. I was in Turkey 2010.

14 Q. 2010 before the accident. And while you were there you
15 supervised other workers?

16 A. Yes.

17 Q. So you had other you were a boss of at least a crew of
18 some workers there?

19 A. It was just short period yes.

20 Q. Back in the 2017 tax return there was no reported
21 income on your tax return for work that you did at the auto
22 repair shop?

23 A. It's reported.

24 Q. Where is that?

25 A. Line 12, first page line 12.

1 Q. Line 12?

2 A. First page line 12 other page it shows too.

3 Q. 18 hundred dollars.

4 A. 18 hundred dollars, yes.

5 Q. Is that schedule C, 18 hundred is not for Net Home
6 Improvement?

7 A. No, that's where I work for auto mechanic shop. I
8 didn't have income from Net Home Improvement.

9 Q. That's shown on schedule here?

10 A. Yes.

11 Q. Schedule?

12 A. Schedule C.

13 Q. Did you do this return yourself or you had somebody do?

14 A. No, I have accountant.

15 Q. You have an accountant?

16 A. Yes.

17 MR. EDWARDS: I don't have any other questions of
18 this witness. Thank you.

19 REDIRECT EXAMINATION

20 BY MR. BURKE:

21 Q. Your tax return for 2017 on the first page line 12 says
22 business income and over across the page it says 18 hundred
23 dollars?

24 A. Yes.

25 Q. If we turn to schedule C which is third page which is

1 entitled net profits from business, it has your name and under
2 the line A principal business or profession it's written it's
3 typed in underneath casual labor and on this page it says 18
4 hundred dollars?

5 A. Correct.

6 Q. And that's the -- that's the money that you received
7 you said you worked on and off as an apprentice and then towards
8 the end of that period this friend or cousin paid you, what I
9 guess, collectively was 18 hundred dollar dollars, correct?

10 A. Correct.

11 Q. And on schedule SE on page entitled self employment tax
12 it indicates that on that 18 hundred dollars you paid self
13 employment tax on that sum of 254 dollars?

14 A. I don't remember the amount, but that's what it is, I
15 believe you.

16 MR. BURKE: I have nothing else.

17 CROSS EXAMINATION

18 BY MR. EDWARDS:

19 Q. You worked three to four months for 18 hundred dollars?

20 A. No, I was there three to four months on and off depends
21 on my pain so I was.

22 Q. It wasn't everyday for three or four months?

23 A. No, it wasn't everyday.

24 Q. Did you also in addition to the money you reported
25 there, did you also get paid cash or is that the cash that you

1 reported there?

2 A. That's the cash money I applied I report.

3 Q. Did you report all the cash?

4 A. Yes.

5 MR. EDWARDS: No further questions.

6 MR. BURKE: Nothing else.

7 THE COURT: All right. Well thank you.

8 You may step down.

9 Jurors, we're going to go home shortly just give
10 me one second. Just want to give you an idea what we're
11 doing next week because we have other witnesses coming in
12 you came here 9:30 they come in. So we're going to work
13 Monday and Tuesday and Wednesday and we might it's possible
14 we come back Monday.

15 Next Monday 14th week after it is 21st. I did my
16 math in my head. The 21st and that would be. So it's
17 either we finish the 21st Monday or earlier. So just
18 wanted to let you know that. And we're off. We're down on
19 Thursday and Friday of next week. So that Thursday 17th
20 happy holiday and Friday. Have a nice weekend.

21 We'll see you Monday, Tuesday and Wednesday 9:30.

22 Have a nice weekend.

23 (Matter is adjourned to Monday, March 14th, 2022.)

24

25

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COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU : PART 15

----- X
SALIH KARASU and ANA DE LUCCA KARASU,

Index No.
4428/16

Plaintiffs,

-against-

SECURITY AUTO SALES, INC., SECURITY
DCJR, INC., and 345 MERRICK ROAD, LLC,

Defendants.
----- X

14th of March, 2022
Mineola, New York

B E F O R E : HONORABLE DICCIA PINEDA-KIRWAN

Justice and a Jury.

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

Plaintiffs:

RONALD BURKE, ESQ.
Kelner and Kelner
7 World Trade Center
250 Greenwich Street, Ste. 2700
New York, NY 10007

Defendants:

JAMES A. EDWARDS, ESQ.
Ahmuty, Demers & McManus
199 Waters Street, 16th Floor
New York, NY 10038

1 THE CLERK: All rise. The Nassau County Supreme
2 Court Trial. Term Part 15 is now in session. The
3 Honorable Diccia Pineda-Kirwan presiding. Be seated. Come
4 to order.

5 In the matter of index number 004428 of 2016.
6 Salih Karasu and Ana De Lucca Karasu against Security Auto
7 Sales, Inc., Security DCJR, Inc., and 345 Merrick Road,
8 LLC.

9 MR. BURKE: Ronald Burke from Kelner and Kelner
10 for the plaintiff.

11 MR. EDWARDS: For the defendant, Security Auto
12 Sales, Inc., Security DCJR, Inc., and 345 Merrick Road,
13 LLC, James Edwards Ahmuty, Demers & McManus.

14 THE COURT: Thank you.

15 All right. Call your next witness please.

16 MR. BURKE: I would like to call an economist
17 Dr. Debra Dwyer.

18 THE CLERK: Raise your right hand, do you solemnly
19 swear or affirm to the testimony you have to give in this
20 case now on trial will be the truth, the whole truth and
21 nothing but the truth, so help you God.

22 THE WITNESS: I do.

23 THE CLERK: Could you please state and spell your
24 first name and address for the record.

25 THE WITNESS: Debra, D-E-B-R-A, Dwyer, D-W-Y-E-R.

1 My address is 17 Spring Briar, S-P-R-I-N-G, B R I A R,
2 Centereach, New York, 11720.

3 THE COURT: Ms. Dwyer, if you feel comfortable you
4 can take your mask off. You don't have to because I think
5 court reporter can hear you, but, you know, we're going to
6 stay away. We're going to maintain distance. If you're
7 comfortable you can take it off.

8 THE WITNESS: Thank you.

9 THE COURT: All right. You may be seated.

10 D E B R A D W Y E R, called as a witness by the
11 Plaintiff, having been first duly sworn, was examined and
12 testified as follows:

13 DIRECT EXAMINATION BY

14 MR. BURKE:

15 Q. Good morning, Dr. Dwyer.

16 A. Good morning, Mr. Burke.

17 Q. Would you please explain to the jury your educational
18 background starting out after you completed college, if you want
19 to start in college start from there?

20 A. Well I got my degree in economics in English literature
21 if Queens College in Flushing, New York. I went on get my
22 bachelors and my PHd from Cornell University with a specialty in
23 health and labor economics. From there I also did post doctoral
24 fellowship at Siracuse University in their center for policy
25 research. So that means I just did an additional year of

1 training, kind of training, kind of working. That's what both
2 doctoral fellowship is kind of like an additional award
3 scholarship.

4 Q. Can you tell us about your professional background in
5 terms of your employment?

6 A. After Siracuse University I was recruited to the Social
7 Security Administration in Washington DC where I spent couple of
8 years working in the division of economic research. On their
9 disability policy research. Then from there I have been in the
10 state university of New York system for the last 24 years.

11 Stony Brook University I was a professor of economics
12 in the economics department. I also served as a chair member of
13 a healthcare policy and management department. Where they ran a
14 masters degree. I served on as a faculty member in engineering.
15 And I ended up in the deans office as an assistant dean for
16 strategic planning.

17 Since then I have stepped back from the administrative
18 work. I'm teaching health economics and public policy at
19 Farmingdale State College. So I'm still affiliated with Stony
20 Brook and Farmingdale. I have also started my own business
21 where I do a lot of economic consulting this type of work but
22 also policy analysis.

23 Q. Do you belong in know professional organizations?

24 A. Yes. I'm a member of the American Economics
25 Association, Society of Government Economists, the Society of

1 Labor Economists. I was accepted into the National Academy of
2 Social Insurance. And I sit on the board of directors for an
3 organization called Air Leap. Which is an association that has
4 to do about integrity and ethics in economic research and
5 policy.

6 Q. And for how long have you held that position on the
7 faculty of the State University of New York at Stony Brook?

8 A. So I started in 1998. So it's been 24 about going on
9 24 years.

10 Q. How long have you been focused on the field of
11 economics with your Ph.D. degree?

12 A. Longer than that. So probably close to 30 years now.

13 Q. All right. So have you previously prepared an economic
14 analysis of someone's vocational earnings?

15 A. Yes.

16 Q. And have you testified in court before?

17 A. Yes.

18 Q. Can you tell the ladies and gentlemen of the jury
19 approximately how many times you have testified in court with
20 regard to your economic analysis of someone's wage history and
21 future earnings?

22 A. So I have been doing this since the year 2012 and I
23 have probably testified about 120 times.

24 Q. You and I have previously worked together on other
25 cases?

1 A. Yes.

2 Q. Approximately how many times have you testified at my
3 request?

4 A. About four times.

5 Q. So did there come a time when you were asked by the
6 firm I'm with, Kelner and Kelner, to conduct an analysis of
7 economic damages on behalf of the plaintiff Mr. Karasu?

8 A. Yes.

9 Q. Tell the jury what's your role in analyzing the wage
10 history and future wage loss, what do you do?

11 A. So as an economist, I'm a labor economist, what my job
12 is is to assess what his -- what his work history would have
13 been, what his trajectory would have been had he continued to
14 work at his old job in his old profession before the injury for
15 the rest of his work life expectancy. So my role is to
16 calculate what the economic damages are from a reduced earnings
17 capacity.

18 In order to do that I need to know what he was earning
19 before what his earnings capacity was preinjury. And then I
20 need to look at what has he done since the injury. And based on
21 what's happening in the economy and the labor market for those
22 professions; what I do believe he would have earned for the rest
23 of his life had he not been injured; what he will earn for the
24 rest of his life given he's been injured; calculate the
25 difference. So there is two categories that I look at one is

1 the earnings loss from work and the other is the difference in
2 the Social Security earnings that he would get because of a
3 reduced earnings capacity.

4 In order to do that, you need an economist with some
5 expertise on what's going to happen to things like the wage
6 growth rate and what's going to happen to earnings into the
7 future and to be able to determine the retirement pension.

8 Q. And did my office provide you with any materials to
9 conduct this analysis?

10 A. Yes. In order to be able to look at what he was
11 earning before what he's earning now, I was provided with some
12 pay stubs from Sunrise Medical, some pay stubs from Four Seasons
13 where he was a roofer, tax return between 2011 and 2020 and W2
14 statements for 2018, 2019 and 2021.

15 Q. What sources do you rely upon for your projections
16 concerning let's say wage growth?

17 MR. EDWARDS: Your Honor, are we going into the
18 testimony or are we still qualifying the witness?

19 MR. BURKE: We're going to the testimony.

20 MR. EDWARDS: Are you offering the witness as an
21 expert in a particular field?

22 MR. BURKE: I offer Dr. Dwyer as an expert in the
23 field of economics.

24 THE COURT: Any objection?

25 MR. EDWARDS: No.

1 THE COURT: Okay.

2 Q. So what sources do you rely upon for determining things
3 like wage growth?

4 A. So that's an important one because, you know,
5 economists make assumptions. You hear that economists make
6 assumptions, but these assumptions are grounded in facts. And
7 so what I rely upon is federal data. The US Bureau of Labor
8 Statistics collects data on what happens to wages over time
9 nationally by state by all kind of categories. I rely on data
10 from the department of labor agency US Bureau of Labor
11 Statistics.

12 Q. And amongst economists is the United States Bureau of
13 Labor Statistics considered reliable in the field of economics?

14 A. Absolutely. It's the foundation for a lot of what the
15 fed does and economists.

16 Q. And is the statistics from the United States Bureau of
17 Labor Statistics are they commonly accepted by economists in
18 your field?

19 A. Yes.

20 Q. Did you rely on any other federal data?

21 A. Yes, I relied on the National Center for Health
22 Statistics data to determine life expectancy. If I'm going to
23 be projecting pensions from Social Security then I'm going to
24 need to project over the rest of his life. And so for that I
25 need to know how long Mr. Karasu would have lived. And standard

1 to use data from the National Center for Health Statistics
2 Center for Disease Control related agency that produces these
3 life tables every year. So every year you can look up by gender
4 and the year that you were born approximately how long you
5 should live based on the averages.

6 Q. And when you say based on average, in other words, in
7 some cases people live a lot shorter life than others and some
8 people live a lot longer life than the predicted typical life
9 expectancy?

10 A. Correct. The sample that is used by the National
11 Center for Health Statistics is the general population. So
12 includes people who are sick, people who are disabled. It
13 includes people who are very healthy. It is done by age, so
14 it's by your birth cohort, but it takes into account a lot of
15 factors. So what you get is an average where there are some
16 people who are going to die earlier and some people who are
17 going to die longer based on a number of factors including
18 genetics.

19 Q. So based upon the evidence that you relied upon and
20 when I say evidence I mean the tax returns are in evidence, all
21 the -- well not all the pay stubs, but selected pay stubs from
22 two of his former employers or rather one former employer, Four
23 Seasons, and Sunrise Laboratories, which is a current employer,
24 those pay stubs, did you arrive at an opinion within a
25 reasonable degree of economic certainty as to the economic

1 losses suffered by Mr. Karasu?

2 A. I did.

3 Q. Did you prepare charts concerning your breakdown of
4 economic losses?

5 A. I did.

6 Q. So would you explain to the jury the table that you
7 prepared in 2019 and the table that you prepared in 2022 once
8 the W2 from Sunrise Laboratories was available at the beginning
9 of 2022?

10 A. Sure. So as Mr. Burke said, I was contacted in October
11 of 2019. That's when I began doing this analysis. And during
12 that time all I had available to me was the income tax returns
13 up until 2018. In 2020 I finalized the first round of tables
14 when I had the 2019 tax returns. So what I did was I took the
15 preinjury earnings capacity based on what he would have earned
16 as a roofer and I subtracted off based on what he had been
17 earning from Sunrise Labs.

18 Now originally he took a hit because of the injury then
19 he started to go back to work more full time at more permanent
20 capacity. And at that time he was earning in the 30 thousand
21 dollar range, 28 thousand five hundred in 2018. So my
22 understanding was he had a reduced earnings capacity from a 60
23 thousand dollar range to about 30 thousand dollar range. And
24 the difference was the loss.

25 And I used growth rates based on the Department of

1 Labor data and I came up with my conclusions. I was told in
2 early 2022 in February that now the 2021 tax return came out
3 where he was able to earn overtime and work at 61 thousand
4 dollars in 2021.

5 So naturally I needed to update my report to
6 demonstrate that his earnings capacity was higher than I had
7 predicted in 2019. So now I have two reports. I have one where
8 his earnings capacity was significantly reduced, cut in half.
9 Another where it wasn't as reduced where he's at 61 thousand.
10 And within my expert opinion within a reasonable degree of
11 economic certainty. And I can explain what that means if you
12 want is somewhere between there.

13 Q. Could you explain what you mean when you say within a
14 reasonable degree of economic certainty?

15 A. So key to that expression is the word certainty. We
16 don't predict with a crystal ball with certainty what's going
17 going to happen into your future. But someone like me makes
18 those kind of predictions often and I spend my career studying
19 what I believe is going to happen. So it's my expert opinion
20 that the numbers I'm going to present to you are reasonable and
21 they are reasonable from an economists perspective within a
22 reasonable degree of certainty. Given we can't have a hundred
23 percent certainty.

24 Q. So did you take into account in preparing these tables
25 that, for example, what Mr. Karasu's actual hourly wage was when

1 he first started at Four Seasons as a roofer in July of 2014?

2 A. Yes.

3 Q. And did you also take into account that his testimony
4 is that he worked overtime and that he was compensated at the
5 rate of one half times normal pay?

6 A. Correct.

7 Q. And did you in projecting into the future, did you make
8 an assumption as to what his earnings would be if he continued
9 earning the same type of overtime as he had in the past?

10 A. Yes.

11 Q. And did you build any overtime hours into it or delete
12 any overtime hours, did you do it based on the actual evidence
13 was as to what his overtime was?

14 A. Well, yes, but there is two tables. So you're talking
15 about it both scenarios?

16 Q. Yes, if you could do -- okay. Now what was the average
17 growth rate that you used on the assumption that Mr. Karasu,
18 like everybody else, would have an increase in wages over the
19 years?

20 A. So what I used is whenever I have the actual number I
21 try to use the actual number. So the US Bureau of Labor
22 Statistics they have an agency completely dedicated to this. So
23 that I have the actual numbers for 2021. It's that recent. So
24 I use the actual growth rates between 2015 and 2021 from the
25 Department of Labor. And then from there forward I used the

1 average growth rate and wages over the last 25 years which has
2 been three percent. So I used if it's two point eight percent
3 in 2017 I use that. If it was actually five percent in 2021 I
4 used that. We're going on six point seven percent in February.
5 But starting 2022 I used three percent because we don't know how
6 2022 is going to end just yet.

7 Now it will be higher than three percent in 2022, but
8 it might be lower than that ten years from now. And so the
9 reason we use three percent is it kind of smooths out these
10 peaks and those valleys that you see in a business cycle. And
11 it averages out in the end. So I use the three percent.

12 Q. So in comparing earnings between work as a roofer and
13 work as a driver for Sunrise Laboratories, did you also add
14 three percent growth rate factors to what his earnings would be
15 as a driver for a lab in the future?

16 A. Yes, so what I did in the earlier report in both
17 reports I used three percent. In both reports I used the amount
18 of income I had access to at that time. So once -- so starting
19 in 2022 now in the later report that's where the three percent
20 begins. So there was a big jump between 2020 and to 2021 in his
21 actual earnings. Much big goer than three percent. So I kept
22 it at that 60 thousand and then from there on I added three
23 percent.

24 Q. So when you were projecting into the future as he
25 continues driving for Sunrise Labs, you assumed in each year

1 that his wage would grow three percent on top of his his actual
2 earnings from in 2021 which was close to 62 thousand?

3 A. Right.

4 Q. Now when looking at what he could have earned had he
5 been able to continue as a roofer, did you take into
6 consideration that some roofers get promotions and some roofers
7 don't?

8 A. No. What I did was I took so he only worked 9 months
9 as a roofer, which makes it a little bit challenging for me
10 because I don't observe a whole year and when you have seasonal
11 work that's a complicating factors.

12 So what I did was I took based on the 9 months of what
13 he had worked, what his income was projected out what his full
14 time earnings would have been as a roofer. And then I kept him
15 at that level, that occupational level. When I say a three
16 percent growth rate, what I mean by that is what is average
17 national pay raise to keep up with inflation. It typically
18 keeps up with inflation.

19 I did not take him from that occupational level and
20 bump him up to a promotions. It's just the raises had he stayed
21 at that occupational level.

22 Q. So you didn't assume that maybe Mr. Karasu would be
23 promoted to a foreman and get a bump in his wage, you just took
24 three percent as though he would not have any promotions?

25 A. I did.

1 Q. So did you also take into account in projecting in the
2 future that Mr. Karasu as demonstrated by the record in evidence
3 has been working at overtime rates for Sunrise Laboratories?

4 A. Yes.

5 Q. And did you also consider what his overtime hours were
6 in the year 2021 when he had a spike in income?

7 A. Yes. Do you want me to tell you?

8 Q. Yes. What was the overtime, the number of hours
9 overtime, that you assumed if we looked at the table where we
10 say if Mr. Karasu continues working into the future that he
11 would have three percent wage growth on top of that approximate
12 60 thousand dollars earned in 2021?

13 A. So from the 62 thousand dollars in 2021 knowing that
14 his regular hourly rate was 16 dollars and 14 cents his overtime
15 rate was 24 dollars and 21 cents, I was able to back out that he
16 averaged 21 point 9 hours per week of overtime and that
17 represents 36 percent of his total hours.

18 So if you took the total number hours that he worked in
19 2021, 36 percent of them were done as overtime. And, again, the
20 average was close to 22 hours a week of overtime.

21 Q. And in the tables that you prepared, did you base the
22 earnings as a roofer at 18 dollars an hour which Mr. Karasu
23 testified he began at, the pay stubs indicate that he received a
24 raise as a roofer. He went from 18 dollars an hour to 19
25 dollars an hour, which number did you use in your calculations?

1 A. In both reports I kept it at what I knew at the time
2 which was 18 dollars an hour. To be fair, I was pretty
3 reasonable in how I came up with that. So I kept it at 18
4 dollars an hour. It would have been slightly higher if I
5 increase it to 19 dollars an hour, but I determined what I
6 thought the overtime would be based on the 9 months that he had
7 worked. And so I still think it's within reason even though I
8 used lower number. It might have been slightly higher, but the
9 base that I'm using for preinjury is pretty reasonable.

10 Q. So considering that Mr. Karasu worked only 9 months at
11 Four Seasons, how did you arrive at a number and annualize it as
12 though it was an annual salary, what did you do?

13 A. So there is a bit of prorating that goes on. I figured
14 out what his prorated salary would be from 20 -- sorry, let me
15 just look at my notes, 2015. So the last year I have his
16 earnings were March of 2015. And if I prorate that that would
17 have been the 19 dollars an hour because it was embedded in his
18 W2, but then to determine his overtime based on what he had done
19 those first three months, I used an overtime rate of 27 instead
20 of the 19 dollars at time and a half.

21 It gets a little bit complicated, but what I did was I
22 looked at of that average 13 point 6 hours of overtime per week
23 between January and March which are the winter months. I looked
24 he did overtime in the last half of 2020 and I projected based
25 on an increase in overtime hours between April and August.

1 Because those are the months that people who work out doors tend
2 to work more hours.

3 So using based on Department of Labor data and
4 averages, I came up with an average overtime on top of the
5 prorated 2015 earnings we call that seasonal adjusted. So the
6 seasonal adjusted baseline income that I used for 2015 preinjury
7 based on working as a roofer was 60,327 dollars and that's in
8 line with the top end of what roofers earn in New York State.

9 Q. So fair to say that if there wasn't an accident and
10 Mr. Karasu continued working as a roofer, fair to say that in
11 2015, if he was earning 19 dollars an hour as a roofer in 2022,
12 his salary would be greater, correct?

13 A. Yes.

14 Q. And do you have access to information as to what a
15 roofer is now earning compared to seven years ago?

16 A. Yes. So in 2020 that's the latest that the Department
17 of Labor has for roofers it was about 67 -- yes, 67 thousand.

18 Q. What's the hourly rate, do you know?

19 A. It was in the 30's. I think it was 32.50 an hour.

20 Q. So Dr. Dwyer, did you prepare, I'm going to ask if we
21 could mark for identification, a yearly breakdown of the sources
22 of economic loss for Mr. Karasu?

23 A. Yep.

24 Q. I'm going to ask two exhibits marked for
25 identification. So this would be the first one.

1 (Exhibits marked 12A and 12B marked for
2 identification).

3 COURT OFFICER: Showing to the witness.

4 Q. Thank you. All right. So can you explain in general
5 terms to the jury what you did with respect to the yearly
6 breakdown of economic loss that you prepared in October of 2019?

7 A. Sure. So.

8 Q. 12A is the first one?

9 A. So basically what I did as I explained is so there is a
10 number of columns in my table. The preinjury income is the
11 first column. And what I do I calculate what the loss is in
12 2015 first because that's partial year. The loss starts in
13 April end in December. And I calculate what his preinjury
14 earnings would have been.

15 And then I subtract off from that what he actually
16 earned in 2015. So his preinjury earnings would have been
17 60,327 dollars what he actually earned was 13,326 dollars to get
18 a loss of 46,951 dollars. Now I'm not going to go through every
19 single year of numbers, but I'm going to tell you what I did.
20 Now let's keep going from 2016 forward when we start the few
21 years of loss.

22 Q. Before do you that, I just want to clarify, when you
23 start out with a preinjury income of 46,951, does that number
24 represent what he would have earned from if the accident didn't
25 happen from March 26th to December 31st in the year 2015?

1 A. Correct.

2 Q. If he had simply kept working at the same level of
3 overtime and at the at 18 dollars an hour?

4 A. Correct. So then in 2016 I predict that his income
5 before the injury would have been 62,016 dollars. So what I did
6 was I took the 60,327 dollars and I increased it by the growth
7 rate in 2016 which I believe was 2 point 1 percent. In 2017 I
8 used that growth rate which was 2 point 8 percent. And so on.
9 So the next assumption I have to make is for how long am I going
10 to project him working.

11 Q. But just to clarify you made an assumption that his
12 wages would grow simply by three percent a year due to normal
13 cost of living increases, inflation, what not?

14 A. So it's based on the average growth rate in wages from
15 the Department of Labor. I'm just saying it tends to move with
16 inflation. So employers feel pressure to give raises to keep up
17 with inflation. Otherwise their employees are losing in terms
18 of their ability to achieve the same standard of living.

19 And to be fair, I used the actual as long as I observe
20 it I use the actual. So it was 2 point 8 in 2017, 3 point 2 in
21 2018, 3 percent in 2019 and 2020. And in 2021 it was five
22 percent. So those are what I used in beginning in 2022 his
23 income in 2022 was by the end of the year was expected to be
24 74,050 dollars. That's when I start using the three percent
25 growth rate.

1 Q. So I'm sorry, what year did you start the three percent
2 growth rate rather than the actual growth rate?

3 A. The year that we don't observe it, 2022.

4 MR. EDWARDS: Your Honor, is this the 2019 chart
5 we're talking about?

6 MR. BURKE: Yes, the 2019 chart.

7 A. I'm sorry, I was talking about the later one -- sorry.
8 I apologize. I didn't have the five percent yet in 2019. So I
9 used -- I used the actual growth rate until 2018. And then I
10 used three percent going forward. And three percent was
11 accurate for 2019 and 2020. Not accurate actually to 2020 was
12 higher than that too. 2021 is when we know it was five -- it
13 was five point one percent actually. So in 2022 today that's
14 74,050 dollars that I quoted was from the earlier report based
15 on a growth rate of 3 percent.

16 Q. Okay. So when you did the next table in February of
17 2022 with the new information from his W2 in 2021 you used
18 actual growth rates that had been demonstrated in the
19 marketplace up until the year 2021?

20 A. Correct.

21 Q. And then from 2021 in the 2022 table you then used
22 three percent into the future?

23 A. Correct.

24 Q. Three percent annual rage growth?

25 A. Correct. Should I keep going?

1 Q. Yes, please continue.

2 A. So when would have him retire is the next question. So
3 preinjury retirement age, I gave him the normal age of
4 retirement under the Social Security system. And that's the age
5 of 67. That's the earliest age that he can collect his full
6 pension without any penalty. Given he has no private pension,
7 it's typical if you're relying on the Social Security system
8 that you're going to -- you're going to try to get to that age
9 67 where you get your full pension.

10 Q. When you say you get your full pension you mean your
11 full security social retirement benefit?

12 A. Correct. So that would take to us partial year 2041.
13 He turns 67 in the year 2041. So I have this preinjury
14 trajectory going into the year 2041. The post injury I take his
15 actual earnings, so we're still talking about the first report,
16 I have his actual earnings -- I did have an omission. Should I
17 mention --

18 Q. Yes.

19 A. So in 2017 he didn't have any income in 2016. In 2017
20 he did earn 18 hundred dollars and it wasn't included on the
21 1040 page in the typical spot so I missed it. So I compared the
22 W2 information from that tax return. It matched what his wife
23 was earning. And I didn't think he had any earnings. He
24 actually did have 18 hundred dollars in earnings. So in the
25 original report that I gave you, there was -- it should be less

1 18 hundred. So 2017 he earned 18 hundred. 2018 he earned
2 8,834. 2019 12,000 close to 12,900. 2020, 22,500. Now I'm
3 starting to grow it by three percent.

4 Q. So when did you grow it, in what year did you grow it
5 by three percent with reference to exhibit 12A the first table?

6 A. Right 2020. So now I have to determine whether I think
7 he's going to work until age 67 in the post injury trajectory.

8 MR. EDWARDS: Objection, Judge, can we approach?

9 (Whereupon, a discussion is held off the record.)

10 THE COURT: Rephrase your question.

11 MR. BURKE: Can I have my last question read back
12 so I know where I left off.

13 (Record is read by the court reporter).

14 Q. Dr. Dwyer, you just before talked about life expectancy
15 in determining what someone's life expectancy is, are there
16 governmental statistics that we rely upon?

17 A. Yes. That was the National Center for Health
18 Statistics.

19 Q. Are there statistics published by the government with
20 respect to work life expectancy?

21 A. By the government? The last time it was done was in
22 the 1980's. Department of Labor had done it back in the 1980s
23 that's a bit outdated. There are work life expectancy. There
24 is data that's available through the census through health and
25 retirement studied for researchers to be able to do that

1 analysis.

2 Q. In arriving at an opinion as to when Mr. Karasu would
3 retire with his injury as opposed to had he lived without an
4 injury, did you come to a conclusion based upon government data,
5 what his work life expectancy would be with this injury?

6 A. So based on a number of factors including the federal
7 data that I have studied myself, I came to the conclusion that
8 he would work to the year 2036 when he turns the age of 62 which
9 is the earliest age he can collect his Social Security
10 retirement benefit. Even though it would be with a penalty.

11 MR. EDWARDS: Objection. Move to strike the
12 answer. There is no proper foundation for the opinion
13 that.

14 THE COURT: Overruled.

15 MR. BURKE: Entirely disagree.

16 THE COURT: Overruled.

17 Q. Now, Dr. Dwyer, I'm sure many people in this room are
18 aware of these ages, but as I understand it, at age 62 you can
19 collect Social Security retirement benefits assuming you paid
20 in, but if you wait until age 67, you get a lot more per month,
21 correct?

22 A. Correct.

23 Q. And if you actually waited until the age of 70, you
24 would get even more per month than you would at age 67?

25 A. Correct, but then the growth rate starts to go down so

1 you get more, but the peek in terms of growing is at 67 then if
2 you work beyond that, it continues to grow at a flatter rate.

3 Q. So on table which we've marked at exhibit 12A for
4 identification, so you have got, you took his -- the income that
5 he did not receive because of the injury in 2015, which you
6 estimated would have been 46 thousand 9 hundred 51 dollars on
7 top of what he actually earned from Four Seasons up until the
8 day of the injury, correct?

9 A. Correct.

10 Q. Then you used actual growth rates from 2016 until 2021
11 and then you -- is that right, is that right?

12 A. You're talking about the original?

13 Q. The original report.

14 A. So I used the actual growth rates through 2018.

15 Q. 2018 and then you applied three percent per year
16 thereafter?

17 A. Correct.

18 Q. And in table two exhibit 12B which you prepared in
19 February of 2022, now you had the information on what actual
20 earnings were and you again projected using in the early years
21 you used the actual wages, and then you began using 22 percent
22 into the future -- I'm sorry three percent per year into the
23 future?

24 A. Correct.

25 Q. In exhibit 12B you totalled up his income loss through

1 2041, correct?

2 A. Yes.

3 Q. And in 2041 he would have been age 67?

4 A. Yes.

5 Q. And you had a separate column for Social Security
6 retirement income loss?

7 A. Correct.

8 Q. And is the reason for a Social Security retirement
9 income loss is that when you make more money and you pay more to
10 Social Security you get more when you retire and collect
11 benefits?

12 A. Correct.

13 Q. And so were you able to calculate what the Social
14 Security retirement income loss was with reasonable economic
15 certainty?

16 A. Yes.

17 Q. And, Doctor, in your opinion, do exhibits 12A and 12B
18 reliably reflect reasonable projections into the future with
19 respect to Mr. Karasu's earnings both with respect to wage loss
20 and Social Security retirement income loss?

21 A. Yes.

22 MR. BURKE: Your Honor, at this time, I'd like to
23 offer exhibits 12A and 12B into evidence.

24 MR. EDWARDS: Objection. Objection. I would just
25 like to see them.

1 THE COURT: Again? I thought you had.

2 MR. EDWARDS: I don't know. I'm objecting right
3 now because I don't know that the same tables we exchanged
4 in discovery. I understand I just don't know that witness
5 -- I assume the witness was going through everything that
6 was on here and this was just --

7 MR. BURKE: We're going -- I'm putting them into
8 evidence so I can put them up on the monitor and have her
9 go through. I can't put on the monitor until it's in
10 evidence.

11 THE COURT: I will overrule it.

12 MR. EDWARDS: I'm withdrawing the objection
13 anyway.

14 THE COURT: Plaintiffs 12A and 12B in evidence.
15 Over objection.

16 COURT OFFICER: 12A and 12B marked in received
17 into evidence.

18 Q. Okay. So on the monitor I put exhibit 12A first page
19 we're going to have to scroll. I can't fit the whole page on
20 this screen, but Dr. Dwyer would it assist you in explaining
21 this table to the jury to come down and point out?

22 MR. BURKE: Judge, could I have your permission to
23 move this monitor closer to the jury.

24 Let me see if I can make it bigger. Okay. So
25 since I'm occupying more of this page, Dr. Dwyer, would you

1 step down and take us through this?

2 A. Sure.

3 Q. Because I have enlarged it, you tell me when you want
4 me to scroll?

5 A. That's good if you could keep it there.

6 Q. So this is the title is Yearly Breakdown of the Sources
7 of Economic Loss and want to start there you let me know when I
8 should move it?

9 A. Sure. So this basically this helps a lot because it's
10 in front of you now. This basically summarizes everything I
11 just said. So when you see in 2015 is total loss of this 46
12 thousand 9 hundred 51, and again that's difference between 60
13 thousand that I estimated he would have earned and what he
14 actually earned which was 13 thousand and change.

15 So the first full year of loss is 2016. And that
16 62,016 dollars represents the base value that I have for him for
17 his earnings 60,327 dollars plus a growth rate of I believe it
18 was 2 point 3 percent in 2016.

19 I do the same thing. I used the actual growth rate for
20 2017 and 18. And you can see how he's getting raises every
21 year. By 2019 I have started using the three percent which is
22 67 thousand 766. I used three percent going forward.

23 Q. If I could interrupt to make sure it's clear. So then
24 you're using actual numbers until a point in time where you
25 start projecting three percent wage increase?

1 A. So I used the actual growth rate, right, until I start
2 using three percent. Maybe I should just use this. I'm going
3 to start with all of the columns here so that we don't have to
4 keep scrolling.

5 So what I believe in the second column here is the post
6 injury income which I get from his income tax returns or W2
7 whatever I have available. Remember I said there was 18 hundred
8 dollars business income in 2017 that I did not account for. I
9 do account for -- I did account for that now I will give you the
10 total subtracting that 18 hundred.

11 But everything in this column is going to be subtracted
12 from that column. It's an offset to the losses. So in 2018
13 where he earned close to 9 thousand dollars we get a loss of 52
14 thousand 907 dollars. And I do that every year. We have his
15 2019 actual income at 12,885 dollars. And then in 2020 I start
16 using the three percent growth rate.

17 So the difference is what you -- income loss the
18 difference between every year and what he would have earned and
19 what he did earn.

20 Q. That's because this is the table you prepared in 2019
21 not the next one which was prepared in 2022?

22 A. Correct. So now if you could scroll down I can show
23 the totals.

24 Q. Keep going?

25 A. Yes. Keep going. Maybe stop at the retirement so if

1 you could stop at 2041. So you see in 2036 the year that he
2 turn 62 and his birthday is November, I have him earning partial
3 year in 2036. So that from there on he is no longer working.
4 And so it's the full loss. So if you scroll all the way to the
5 bottom.

6 Q. Is it goes to page 2?

7 A. Yes. So I get total loss of one million 9 hundred 16
8 thousand 77 dollars and that's the difference between his
9 lifetime earnings preinjury, his lifetime earnings post injury
10 came out to even five hundred thousand for that one point 9
11 million. It's split into how much of it was in the past at that
12 time it would have been up until 2020 and how much in the
13 future. But the total is the total is 1,916,077 from that we
14 have to subtract the 18 hundred. Remember I will do that in the
15 end.

16 Q. So the 18 hundred dollar subtraction is for the 2017
17 cash income that was reported on a different page in the tax
18 return?

19 A. Correct. So moving to Social Security the losses
20 commence at retirement which if you could.

21 Q. Should I go back up?

22 A. Yes, thank you.

23 Q. Tell me how far I should go?

24 A. Keep going here. So in 2041 the loss -- so he retires
25 in 67 at age 67, partial year, so that's the loss in that year.

1 These numbers represent the difference in the pension had he
2 continued to age 67 in his preinjury earnings and what he will
3 get for having retired at age 62 as a driver. So if the first
4 full year of loss the value of that difference is 37 thousand
5 662 dollars based on this table.

6 Q. So what assumption did you make as to what why his loss
7 grows annually in let's say 2043 to 2044?

8 A. Good point. So the Social Security administration
9 adjusts for the cost of living. So I use the actual -- I took
10 the actual growth rates that the Social Security administration
11 uses which average two point one percent over the last ten
12 years. I just rounded it down to two percent and used the two
13 percent growth rate. So each of these benefits would have grown
14 by two percent each year. And the difference it would also grow
15 by two percent.

16 Q. So in going to the total in the chart prepared in 2019
17 you did not include in your analysis obviously how much he
18 earned in 2021 correct?

19 A. Say that again.

20 Q. This table is from that you prepared in 2019?

21 A. Right.

22 Q. So obviously the amount of the income loss was greater
23 in 2019 because you didn't have his earnings from 2021?

24 A. That's correct. And the last assumption that I made
25 that I said I took a life expectancy from the life tables from

1 the National Center for Health Statistics in that 2019 when I
2 did the report his life expectancy was 76.7. Which bring us to
3 the year 2051 and so loss in Social Security is all in the
4 future is this total 398 thousand 293 dollars. So the total
5 loss that you see here the two million 314 thousand 377 subtract
6 the 18 hundred. If you subtract it the total loss within reason
7 is two million 312,570 dollars.

8 Q. Go to the next table?

9 A. Yes.

10 Q. Okay. Now I'm putting up on the monitor the February
11 of 2022 table?

12 A. Correct.

13 Q. Which is in evidence as exhibit 12B, you just tell me
14 how far down to scroll?

15 A. That's good. So now we're in 2020 the only thing that
16 changes in the first column is the actual growth rates between
17 2019 and 2021. And then in 2022 I use the three percent. So,
18 again, I'm -- you will see numbers on the top are the same I'm
19 using the same base.

20 The post injury where the big change happens is in
21 2021. You see that he earned 61 thousand 812 dollars where I
22 only had him at roughly 29 thousand. So that's a big change so
23 you see offset much larger. The loss is much smaller going
24 forward. So we went from 50 thousand dollars, \$40,000 down to
25 an 11 thousand dollar loss annually. All right.

1 I keep that going with the three percent growth rate.
2 Again, I have him retiring at 67 before, 62 after, for a total
3 the methodology is the same I just changed the income in part
4 two in post injury. So now we're down 1 million 228 thousand
5 359 dollars in the loss. Again, needing to subtract off the 18
6 hundred which I will do in the end. It's a lot of numbers.
7 Just going to do it in the end.

8 The same thing with Social Security now. We probably
9 don't need to go back up. What I did was I calculated the
10 difference now because he's earning more post injury there is a
11 smaller difference. And so the difference now by the time he
12 retires is close to 30 thousand and the lifetime loss in Social
13 Security all in the future 277,318. So the total loss after
14 deducting the 18 hundred dollars is 1 million five hundred 3
15 thousand 877 dollars.

16 Q. The total is 1 million 505,677 minus 18 hundred
17 dollars?

18 A. Correct.

19 Q. So is it fair to say then that based upon exhibit 12B
20 your table from February of 2022 his total past losses are 335
21 thousand 935 dollars less the 18 hundred dollars from 2017 that
22 was reported on a different page. And that represents the loss
23 up until today?

24 A. Up until March 20, 2022, so I took to the end of March.

25 Q. So the future loss that you project of 892,424 we don't

1 deduct 18 hundred from that because it's future loss?

2 A. Correct.

3 Q. But this represents the loss of what he would have
4 earned if he had continued working as a roofer at the same with
5 a three percent wage increase up until the age of 67?

6 A. Correct.

7 Q. Is there anything else that you need to point out about
8 that table?

9 A. I don't believe so.

10 Q. I can't think of anything else.

11 A. No, I think we're good.

12 Q. Now all these figures that you have set forth on
13 exhibit 12A and 12B within a reasonable degree of economic
14 certainty?

15 A. Yes.

16 MR. BURKE: I have nothing further.

17 THE COURT: Thank you.

18 MR. BURKE: Oh, I do, there was one more question,
19 Judge.

20 Q. Just to be clear for the jury, in table two where the
21 economic losses come down a lot?

22 MR. EDWARDS: What exhibit number?

23 Q. 12B in exhibit 12B in evidence, you're assuming that
24 until the age of 62, Mr. Karasu is going to continue working at
25 these incredibly long hours, correct?

1 A. Correct.

2 Q. And you're assuming that he's going to continue the
3 same overtime schedule up until he's 62?

4 A. Right, averaging about 22 hours a week of overtime.

5 MR. BURKE: Okay. Nothing further.

6 CROSS-EXAMINATION

7 BY MR. EDWARDS:

8 Q. Good morning, Dr. Dwyer.

9 A. Good morning Mr. Edwards.

10 Q. You reviewed the Mr. Karasu tax returns?

11 A. Yes.

12 Q. Do you have those in front you now?

13 A. I do.

14 Q. If you could, could you just tell me what his earnings
15 were in 2010?

16 A. I actually only have 2011 through 2020.

17 Q. What's his 2011 earnings?

18 A. Five hundred dollars.

19 Q. 2011?

20 A. Yes, I have five hundred dollar in wages and salary
21 then unemployment compensation, but I'm not sure.

22 Q. That's 2011 I'm talking about.

23 A. Yes. Oh the business income 25 thousand four.

24 Q. Right. I'm not just talking about -- I'm talking about
25 his total his total income for 2011?

1 A. Right. So it's 25 thousand 504 dollars and then if you
2 include the unemployment insurance it comes up to 31,028.

3 Q. What about 2012?

4 A. 12 I have seven thousand 825.

5 Q. And 2014 -- 2013?

6 A. 2013 I have 33,420.

7 Q. 2014?

8 A. 43,509.

9 Q. Before the accident in 2012, 12,925?

10 A. In 2015.

11 Q. Yes.

12 A. I have 13,376.

13 Q. Is that just his income or is that?

14 A. Let's see.

15 MR. BURKE: If she could just answer your
16 question.

17 Q. Is that -- his income?

18 A. You're right. It says Four Season 12,925.

19 MR. EDWARDS: Judge, could I have this marked as
20 -- are you going to object, we talked about earlier.

21 Q. I'm going to ask you to take look first for you, you
22 can stay there right now.

23 THE COURT: Can you mark it first for
24 identification.

25 COURT OFFICER: Defendant's A marked for

1 identification.

2 Q. Dr. Dwyer, would you like to tell me is this the --

3 MR. BURKE: Can I move over here, Judge, so I can
4 see.

5 Q. Do the numbers on the chart reflect the income for even
6 of the years?

7 A. Just making sure -- yes, yes.

8 MR. EDWARDS: I offer this into evidence.

9 MR. BURKE: No objection. And that's Mr. Karasu's
10 only income, correct?

11 MR. EDWARDS: This is the earnings based upon of
12 just Mr. Karasu's income tax returns that are in evidence.

13 MR. BURKE: Just Mr. Karasu not including his
14 wife.

15 MR. EDWARDS: Correct. Just what's in evidence.

16 MR. BURKE: Thank you. I'm going to leave this
17 here for a second just so it doesn't block the court
18 reporter and you'd still be able to see it.

19 Q. The column to the far right that reflects the income
20 that Mr. Karasu earned?

21 A. In 2021, yes.

22 Q. In 2021, right, that's the highest -- as far as the
23 reported income that he has on his taxes at least going back to
24 2011. 2022 was his highest income earning year of any year in
25 his life at least any year during those reported income years,

1 is that correct?

2 MR. BURKE: 2021 you mean --

3 A. Yes.

4 Q. 2021, yes. You mentioned you have testified before
5 correct?

6 A. Yes.

7 Q. Now you have previously testified that if somebody
8 could get another job making roughly essentially the same salary
9 they were making when they were hurt, the damages would be zero,
10 have you given that testimony before?

11 A. I'm sure I have.

12 Q. That if somebody was making more, the same or more than
13 they had when they were hurt that their damages would be zero?

14 A. That's correct.

15 Q. Now with regard to you testified with regard to a
16 reduced work life?

17 A. Correct.

18 Q. You had mentioned I think correct me if I'm wrong, you
19 mentioned that there aren't any actual government statistics,
20 but there is some data from the 1980's or other things, could
21 you just tell me specifically what the data is that you relied
22 on?

23 A. Sure so and this is again why you bring in a Ph.D.
24 economist because some of it just from my years of research and
25 experience. So what I had was a vocational report that

1 suggested by an expert that he would not be able to work beyond
2 age 62. I used my knowledge of the health and retirement
3 studies and some research I had done based on work life
4 expectancies for people who are disabled in particular and
5 people who are not with these kind of injuries. And I used the
6 earliest age you can take of benefits under the Social Security
7 system.

8 So knowing that the plaintiff had undergone three
9 surgeries that my understanding were pretty severe, but I'm not
10 a medical doctor. I'm not a medical doctor to be able to say
11 how much longer he will physically be able to work, but I am a
12 researcher that understands that when you have this type of
13 disabilities you tend to retire earlier. And I did have the
14 opportunity to observe a vocational expert opinion.

15 Q. You did a vocational expert opinion?

16 A. Yes.

17 Q. I didn't hear you mention that when you were asked
18 earlier by Mr. Burke?

19 A. I actually almost added it but I think was the wording
20 of the question, but in any case, yes, I did.

21 Q. Maybe the wording of the question was intended so you
22 wouldn't mention it.

23 MR. BURKE: Objection.

24 THE COURT: Sustained.

25 Q. And was that the vocational expert information that was

1 provided to you by Mr. Burke or from Mr. Burke's office?

2 A. Yes.

3 Q. And who was that?

4 A. Young and Young.

5 Q. To the best of your knowledge, that was a vocational
6 assessment that was a report based upon a vocational assessment
7 of this particular individual, Mr. Karasu, done by Young and
8 Young and provided to you by the firm of Kelner and Kelner,
9 correct?

10 A. Correct.

11 Q. Now aside from that you mentioned other studies, but do
12 you have specific, can you identify a specific study, you're
13 giving general studies and experience, but can you identify a
14 specific -- any specific study or source of information aside
15 from the vocational assessments, that was given to you by the
16 Kelner firm, other studies specifically identify something?

17 A. Look at work by Olivia Minel, Olivia Mitchel, some of
18 my own work, health and retirement studies. But the best source
19 would be to go to the National Health and Retirement Studies
20 which is data that comes out of the Social Security
21 administration and is administered by the University of
22 Michigan.

23 Q. The studies from University of Michigan talks about
24 Mr. Karasu?

25 A. No.

1 Q. What are those studies have anything to do any of those
2 studies have anything to do with this person here who was
3 bringing the lawsuit in this case?

4 A. Just another factor in my assessment about where the
5 work life falls for someone who has a disability.

6 Q. Are you in a position to determine whether somebody --
7 you, are you in a position to determine whether somebody has a
8 disability or not?

9 A. No, I'm not.

10 Q. Are you a physician on your own just to determine in
11 any -- what the specific work life expectancy is for any
12 specific individual human being?

13 A. No, not specifically.

14 Q. We're here today on a case about specific human being
15 Mr. Karasu, correct?

16 A. Correct.

17 Q. Now, Doctor, you're right now at SUNY Farmingdale?

18 A. Yes.

19 Q. Which is when I was a kid, the Aggie school, is what we
20 called it. You previously work at Stony Brook, how long were
21 you a professor at Stony Brook for?

22 A. About 21 years.

23 Q. Were you a full professor at Stony Brook?

24 A. No, I was an associate professor.

25 Q. Associate professor. While you were at Stony Brook did

1 you ever apply for tenure?

2 A. I did.

3 Q. Did you get tenure?

4 A. No.

5 Q. What's your position right now at Farmingdale, what
6 title do you have?

7 A. I'm the codirector of financial literacy project that's
8 funded by a grant. So that's my relationship mainly with the
9 economics department there, but I am also an adjunct associate
10 professor teaching health economics.

11 Q. Health economics?

12 A. Yes.

13 Q. And actually, correct me if I'm wrong, you have a
14 background in health economics, right?

15 A. Correct.

16 Q. And you published articles in health economics?

17 A. Correct.

18 Q. Is it fair to say that over the 20 odd years since you
19 have been an economist most of your work has been in the field
20 of health economics not specifically labor economics?

21 A. Oh, no, my primary field is labor economics.

22 Q. So now on that topic, you were aware -- you published
23 about 20 odd publications that you authored or he co-authored?

24 A. Yes, probably a little more. I just got another one
25 yesterday.

1 Q. How many of these are on health economics focus on
2 health economics?

3 A. It's hard to say because a lot of my work at the cross
4 between health and labor economics. It's a very related field.
5 So I did a lot of work on the ability to work given health
6 problems. So I would say it's not going to add up to hundred
7 percent is my point because they are not mutually exclusive. I
8 would say 50 percent health economics.

9 Q. You ever publishing anything in the Journal of Labor
10 Economics?

11 A. No.

12 Q. The Journal of Human Resources?

13 A. No.

14 Q. That you're aware of also there is a journal that
15 specifically focuses on damages and personal injury cases called
16 the Journal of Forensic Economics, did you ever publish in that?

17 A. No.

18 Q. Similarly the Journal of Legal Economics, did you ever
19 publish in that?

20 A. No.

21 Q. The Journal of First Valuation and Economic Analysis
22 did you ever publishing in that?

23 A. No, I did in business and finance, I believe.

24 Q. Business and finance?

25 A. Business finance and econometrics. I didn't bring my

1 CV. I usually do. I didn't bring it.

2 Q. I have it if you want to reference it.

3 Now you mentioned testifying, you have testified I
4 think we said about 120 times?

5 A. About, yes.

6 Q. Since 2012, right, so it's about ten years I'm assuming
7 you lost out on you didn't testify much in 2020, 2021?

8 A. I did testify a couple of times in 2021 but nothing in
9 2020. 2020, I think I did one before March.

10 Q. Prior to that though, starting in 2012, is it fair to
11 say that the substantial amount of your income currently or the
12 last few years comes from testifying in court versus or more
13 income you get from testifying in court than you do from working
14 in the SUNY system?

15 A. Correct.

16 Q. Are you teaching any classes right now in Farmingdale?

17 A. Yes, I'm teaching health economics and public policy.

18 Q. Health economics?

19 A. Yes.

20 Q. Most of your income, a higher percentage of your income
21 now, comes from doing things like this and coming to court and
22 testifying?

23 A. That's correct.

24 Q. I'm going to spare you going through all the cases you
25 have testified in?

1 A. Thank you.

2 Q. I do want to know -- I want -- I do want to talk to you
3 though about the -- now your opinions are based upon
4 assumptions?

5 A. Yes.

6 Q. And so you're using and you have given testimony --
7 you're testimony -- you have given an opinion with regard to
8 calculation of future loss based upon a base level of
9 pre-accident income?

10 A. Yes.

11 Q. And the pre-accident income number that you're using
12 is?

13 A. 60,327.

14 Q. And the last full year that Mr. Karasu worked was
15 actually 43,509, correct?

16 A. Correct.

17 Q. And the year before that was 33 thousand and change?

18 A. Right.

19 Q. So he never actually made 60 thousand dollars in his
20 life, is that fair to say before the accident?

21 A. Right because he was -- I can explain.

22 Q. That's why he gets to. All right. So if I just, if I
23 -- you can come to different conclusions based upon different
24 starting assumptions, is that fair to say?

25 A. Yes.

1 Q. So you used a different number, let's just say so we're
2 using you're using a number of 60,327, right?

3 A. Correct.

4 Q. Which is a number based upon income it's certainly
5 window of time then you projecting out future some lost overtime
6 and other things to come up with a number?

7 A. Correct.

8 Q. It's not a number that he actually earned?

9 A. Correct.

10 Q. So I want to take a number that he actually earned so
11 if I take -- if I take his let's just say his last years income
12 or how about this since he was a roofer if I take the -- if I
13 take the money that he earned as a roofer?

14 A. Correct.

15 Q. So let's just stay with the roofer and it's not --
16 covers two different years, so I have sometime in 2014 and
17 sometime in 2015?

18 A. Correct.

19 Q. But I could take the money he made in Four Seasons as
20 fairly -- just let's just say for purpose of this conversation
21 that's a fair estimation of his earning capacity at the time
22 that he was injured?

23 A. Correct.

24 Q. So if I take his earnings -- if I don't take 2014 or
25 2015 but I take the earnings from midline to whatever it was

1 August midline 2014 to March at the time of the accident, just
2 look at the earnings from Four Seasons and then I project that
3 use that as a base to project that over 12 months. I come up
4 with a roughly 45 thousand dollars, correct?

5 A. When I did it came it out higher than, but, yes, it was
6 in the 50 thousand range. I took 2015 prorated I did 2014
7 prorated. I got 56,518 based just on 2015.

8 Q. I'm talking about the actual earnings from just the
9 income from Four Seasons over ten months project or then
10 calculating that over 12, I came up with around 45 thousand?

11 A. I would have to do it. I didn't do it that way.

12 Q. Do you have the numbers there, could you do it?

13 A. I could do it. I don't have the spreadsheet. So I
14 have to go to the actual tax returns.

15 Q. Two years home Four Seasons income?

16 A. Right, right, I get it. So I get -- I'm just talking
17 out loud while I do it. If that's okay. So in 2014 he earned
18 24,703 dollars from Four Seasons and that was for 6 months,
19 correct.

20 Q. How much was that?

21 A. 24,703 dollars.

22 Q. For six months?

23 A. So that comes out to 58,406, right -- no, down to 48.

24 Q. I'm not doing two different -- I just want to take the
25 -- what I want to you do take the 23 from 2014 and the money

1 from 2015 over that ten-month and then project that over 12
2 months?

3 A. Okay. So I don't have a calculator, but I get 50,100.

4 Q. So the 23 thousand in he made 23 thousand in 2014,
5 right, that's for six months?

6 MR. BURKE: No 24,703.

7 Q. I'm just going -- I didn't look I just thought that's
8 what you said?

9 A. It's a little more than that so, yes, I have to go
10 back. It's 24 and change. 24,703.

11 Q. Is that actually 6 month or seven months?

12 MR. BURKE: Five months.

13 A. I used six months. I don't recall the exact date.

14 Q. So if I took the calculation, let's do this then, let's
15 take his last years earnings because that's what I have the math
16 done already on, if I take the 2014 earnings 43,509 and I round
17 it up to 45 roughly around 45 thousand, I'm trying to get to
18 number that's about 75 percent so before 75 percent. So 45
19 thousand is about 75 percent of 60 thousand give or take?

20 A. Give or take.

21 Q. So if I use that as -- if I use that -- if I use his
22 actual his actual earned income from 2014, right, if I use that
23 as his actual earned income, and I project that out you which is
24 his last full year -- I'm assuming his prior income is a factor
25 that you could consider when you're projecting, correct?

1 A. Yes.

2 Q. In this case that's not what you use, but there might
3 be circumstances where you would take look at the person's prior
4 years income and project that out?

5 A. I look at all of his prior incomes and take it all into
6 account.

7 Q. So when you're looking what you're calculating what
8 you're doing you're considering the years that he made 78
9 hundred dollar and the years that he made 30 thousand dollars?

10 A. Right. I know his history. I know his age. I know
11 his job transitions. I take all of that into account.

12 Q. If I use a different number I can come up with a
13 different results, I can come up with a different end numbers?

14 A. Taking that at 75 percent is not correct the 43,509.
15 If you prorate, I do believe he stopped -- he started at the
16 roofing company in August, but I'm not positive, in which case
17 it's more than 50 thousand so that's a big difference.

18 Q. My point is he didn't make 60 you were projecting so I
19 could use -- I'm not going to quibble over the number, but I'm
20 saying let's say 50 thousand dollars -- roughly 50 thousand, I'm
21 fine with that, I just didn't have the math already done on 50
22 thousand. But if you're starting with 50 thousand as a base
23 number versus 60 thousand as base number the numbers resulting
24 at your calculation will be different, correct?

25 A. Correct.

1 Q. They will be lower?

2 A. Correct.

3 Q. Same thing if I took, again, I'm just I won't belabor,
4 if I averaged last couple of years, I could work out different
5 numbers if I let's just say I wanted to average 2013 and 2014
6 numbers, right, his whole numbers, I come up with an average of
7 38 thousand dollars a year which is his average income for 2013
8 and 2014, I project that out the numbers that the bottom line
9 numbers, the end numbers that you come up with will be
10 substantially lower?

11 A. If you chose to do that.

12 Q. If I chose, exactly right, if I chose to do that?

13 A. Correct.

14 Q. And only if I chose to do that, only if anyone else
15 chose to do that?

16 A. Yes.

17 Q. And if you chose to use 60 thousand then you're numbers
18 are going to be higher, correct?

19 A. And I have a reason to do that, but yes.

20 MR. EDWARDS: I hate to do this, can I have five
21 minutes?

22 (Brief recess is taken at this time.)

23 Q. How much are you compensated for your testimony for
24 your appearance today?

25 A. 4,800.

1 Q. Does that include the work you did preparing or is that
2 in addition to that?

3 A. It includes preparing, it does not include the original
4 report which I charged I believe it might have been 2800 or
5 three thousand.

6 Q. What does that add up to?

7 A. About 78 hundred.

8 Q. Now back if I used different -- doctor withdrawn.
9 Doctor you have copy of your February 24, 2022 report handy?

10 A. Yes.

11 Q. Aside from the Young and Young vocational rehab
12 assessment that you were given, does this report in any way
13 identify what else you relied upon specifically what else he
14 relied upon to project Mr. Karasu's work life expectancy?

15 A. Usually I cite within the text, but not I didn't put
16 all of the resources I had, no.

17 Q. Did you put any of the resources there other than the
18 Young and Young vocational reassessment?

19 A. Just looking, yes, I didn't cite it. I just said that
20 I said I calculated.

21 Q. You did not cite any source other than the material
22 given to you from Kelner and Kelner from another focus expert?

23 A. Correct.

24 Q. But today, you know, you gave us some today?

25 A. Yes.

1 Q. I'm going to ask to have this marked B and C?

2 (Exhibit marked defendants exhibits B and C for
3 identification).

4 COURT OFFICER: B and C being shown to the
5 witness.

6 Q. All right, Doctor, using and again using a different
7 number as a base presumption instead of the 60 if we used 45
8 thousand dollars and all these on your chart, everything that
9 you projected future was based upon a three percent rate,
10 correct?

11 A. Except for the years where I had the actual rate.

12 Q. I'm talking about if you look I'm only looking in the
13 future here?

14 A. Okay.

15 Q. So when we're going into the future year using the
16 average 25 year average which is three percent rate?

17 A. Correct.

18 Q. So all of the rates and just so I'm clear all the rate
19 that you used for all of your future projections was three
20 percent rate?

21 A. Correct.

22 Q. So if I use the number of 45 thousand dollars a year
23 which is not an exact, but it's within the range of what he
24 earned within the range of what he earned in 2014 and not exact,
25 but within the range of what he made in if I took the Four

1 Seasons income, you know, you gave me a number of 50 but I
2 already did the math on 45 to we're going to use 45?

3 A. Okay.

4 Q. So on 45 thousand dollars take a look, if you take a
5 look at what's marked for identification only at this point as
6 defendants B, using a three percent, using a base income a base
7 preinjury income of 45 thousand dollars as opposed to 60 and
8 using a three percent rate and projecting that out to the age 67
9 or, you know, to the age that actually we get from the
10 Government Labor and Statistics of when you can collect of when
11 you can collect full Social Security, if I project -- if you
12 take look at that document, Doctor, does the math on that look
13 about right?

14 MR. BURKE: Note my objection on the ground of
15 relevance and foundation, Judge, there is no basis for a
16 chart that is premised upon 45 thousand dollars as a base
17 for future projections.

18 THE COURT: Sustained.

19 MR. EDWARDS: Sustained? Does the chart based
20 upon -- okay.

21 Q. He made 43,509 in 2014, correct?

22 A. Yes.

23 Q. So 43,500 dollars is roughly close what's the
24 difference between that and 45 thousand dollars?

25 A. A little over 1 thousand.

1 Q. A little over 1 thousand so figuratively speaking can
2 you roughly estimate what a calculation would be on 43,509
3 dollars roughly if you could use as a base 45 thousand dollars?

4 MR. BURKE: Objection. Again on relevance and
5 foundation the 43 thousand dollar figure counsel is
6 replying upon is not based upon Four Seasons work as a
7 roofer he's including another type of income and for that
8 reason I object.

9 MR. EDWARDS: It's a claim for income loss.

10 THE COURT: Overruled.

11 Q. Roughly it would be close?

12 A. So what are you asking me?

13 Q. If since I know at least I have 43,500 dollars is what
14 he earned the year before the accident?

15 A. Right.

16 Q. And I have calculations based on 45 thousand dollars?

17 A. Right.

18 Q. Roughly, can you roughly estimate, could you roughly
19 determine what the calculations on 43,509 would be based upon 45
20 within a margin of error?

21 A. You're talking about was his work life until just until
22 today. I would need -- I mean I can't do three percent growth
23 on 45 thousand in my head.

24 Q. I'm not asking you to do this in your head. I have
25 done the three percent growth on 45 thousand on the chart that's

1 in front of you, does that look about right?

2 MR. BURKE: Just note my objection. The witness
3 has not been provided with a calculator and she has just
4 indicated that she could not do that calculations for
5 Mr. Edwards.

6 A. Can I answer, I think where you're heading is what
7 would happen to the losses.

8 Q. Correct?

9 A. If I use 45 thousand there would be none.

10 THE COURT: I'm going to rule. Overruled. You
11 could finish now. This worked out.

12 Q. There would be none?

13 A. If you use 45 thousand dollars as a base and 60 so
14 there is a lot of assumptions there, 45 thousand as a base and
15 that he would continue earning at 61 thousand dollars for the
16 rest of his life in his new job then there would be no loss.

17 Q. There would be no loss, in fact, there may be there
18 would be no loss, correct?

19 A. Correct.

20 Q. Which is not in consistent with your statement earlier
21 that if somebody could make roughly essentially the same salary
22 they were making when they were hurt, the damages would be zero
23 roughly the same as is that statement?

24 A. That's always true, yes.

25 Q. So using just so we have a number on 45 thousand

1 dollars if you take look at exhibit B for identification over
2 his life time, if I use three percent, the three percent growth
3 rate on 45 thousand through working through age 66 there is no
4 loss, correct?

5 MR. BURKE: Objection. Once again on foundation
6 and relevancy.

7 THE COURT: Overruled.

8 A. Correct.

9 Q. If I use the actual math numbers there is actually I
10 hate use gain but there is a negative loss let's say?

11 A. According to your numbers, yes.

12 MR. EDWARDS: I'm going to offer that into
13 evidence.

14 MR. BURKE: Objection on foundation that's not
15 accurate earnings with respect to Four Seasons.

16 THE COURT: Overruled. Defendant exhibit B in
17 evidence.

18 Q. With regard to C if I did the same calculations to age
19 62?

20 A. So you did at that age 62 for pre and posts.

21 Q. Correct. Is it roughly does that show does that show a
22 loss?

23 A. Yes.

24 Q. That's the loss?

25 A. I'm sorry it shows that there would be no loss.

1 Q. Other than that are the numbers on B are the numbers on
2 B and C all the except that they just cut off at age 62?

3 A. Yes.

4 MR. EDWARDS: I would offer C into the evidence.

5 MR. BURKE: Same objection.

6 THE COURT: Overruled.

7 (Marked into evidence).

8 Q. Now with regard to the, without going into whole thing,
9 if I used a different if I used a different post injury income
10 number if I didn't use the 60, if I used the lower number?

11 A. You mean pre or post?

12 Q. Pre, I'm sorry, right, if I used the different pre and
13 I was calculating hypothetically first calculating the past
14 earnings loss using a different base number, those numbers would
15 be lower as well?

16 A. If you used lower it would be lower if you used higher
17 it would be higher.

18 Q. Right. Thank you. So if somebody just on the Social
19 Security you work in the social security administration,
20 correct?

21 A. Yes.

22 Q. Is that where you started your career or early in your
23 career?

24 A. Yes.

25 Q. If somebody works you collects full benefits at 67?

1 A. At 67 is based on your birth year.

2 Q. Does that number float or is that set in stone number?

3 A. Set number.

4 Q. So if somebody works until 67 if somebody you're
5 calculation your calculation with regard to a reduced economic
6 reduced Social Security benefit was based upon working to an age
7 less than 67, correct?

8 A. So for pre I used 67 for post I used 62.

9 Q. Correct, but and when you use 62 you come up with a
10 loss of Social Security a reduced Social Security benefit?

11 A. Correct.

12 Q. But if you don't use 62 and you use 67 there is no loss
13 on Social Security benefit is there?

14 A. Yes, there would be.

15 Q. Did you do the calculation on that. Why would there be
16 I know I'm not supposed to ask a why question but I'm going to
17 do that?

18 A. Because Social Security is a defined benefit plan.
19 Meaning it's based on a formula and formula is based on how much
20 you earned in your highest years of earning. So if he lost his
21 highest years of earning, he's going to get less so even works
22 same number of years if he's earning less there is going to be a
23 loss.

24 Q. If he made more if right now these are actual earnings
25 he had in 2021, correct?

1 A. Correct.

2 Q. Those are actual earnings and those earnings as we
3 discussed are higher than the prior earnings. So are you saying
4 that if he earned at this level, if he earned if he earned at
5 this level and worked to age 67, that he would have -- he would
6 have a loss versus what he made here if he worked the 67?

7 A. The question is a little confusing. You're asking me
8 to compare if he earns 61 thousand for the rest of his life
9 until 67 compared to what?

10 Q. I don't know. You tell me he's got a loss. So I'm
11 looking at if he made -- if he's made 61,813 dollars in 2021 and
12 we use three percent growth rate over the rest of his work life
13 at his work life happens to be 67 you're telling me that he's
14 going to have a Social Security loss?

15 A. That's correct because I have his preinjury earnings as
16 higher than that.

17 Q. His pre and so if I take his pre injury earnings if I
18 take his preinjury earnings and I go based upon -- I go based
19 upon what's been marked in evidence as exhibit B, if you could
20 just take a look at that, if I go based upon exhibit B and on
21 your answer on your projections -- on your projections if I use
22 the same thing and I use the 45 thousand dollars base, and as I
23 use 45 thousand dollars base as a preinjury income, and I use
24 the 61,813 as a post injury income in let's just take the year
25 take 2032?

1 A. Yes.

2 Q. In 2032 using a 45 thousand dollars base income what
3 would his earnings be in 2032?

4 A. Pre or post.

5 Q. Using?

6 A. The 45 thousand?

7 Q. Using the 45 thousand dollar base his earnings in 2032
8 would be?

9 A. 75,939 dollars.

10 Q. And then using go for the same year using the 61,813
11 what would his earnings be what would his earnings be for the
12 same year?

13 A. 85,562.

14 Q. And 825 thousand is more than whatever I forgot the
15 number 85 thousand is more than 71 thousand?

16 A. Correct.

17 Q. So if I again if I use the 45 thousand dollars number
18 and he works to 67 using that he has no Social Security loss, is
19 that correct?

20 A. Using that that that's correct.

21 Q. There is no loss?

22 A. Correct.

23 Q. On that presumption?

24 A. Correct.

25 Q. Going back to this in evidence, you mentioned you had

1 done earlier reports that you had done a report back in 2019?

2 A. Correct.

3 Q. And the 2019 we were going to try the case in 2020 so
4 and this I don't see a mark on it, do you know what number that
5 is?

6 MR. BURKE: That would be exhibit 12A.

7 MR. EDWARDS: 12A.

8 Q. Plaintiffs 12A? Again, you're giving, you know, you
9 have opinions within reasonable degree of economic certainty and
10 as you mentioned earlier there is no crystal ball, you know,
11 you're using you're basing opinion on certain data and with a
12 certain degree, but there is no guarantees on any of it?

13 A. Sure.

14 Q. So now based upon your October 19 assessment, and 12A
15 in evidence the chart that you have prepared, had you come to
16 court in March of 2020, when this case was going to be tried,
17 your testimony would have been that Mr. Karasu's income in 2021
18 would only be 24 thousand dollars?

19 A. That's correct.

20 Q. Right. Based upon all the data everything you consider
21 in forming an opinion within a reasonable deme of economic
22 certainty?

23 A. Yes.

24 Q. But that would have been and that would have been well
25 you probably would have sat on the witness stand then but in

1 March of 2020, you would have come in and testified that based
2 upon your expert opinion, looking ahead, projecting ahead he's
3 only going to make 24,102 dollars in 2021?

4 A. That's correct.

5 Q. But the reality is that that didn't the reality that he
6 actually made 61,813 in 2021?

7 A. That's correct.

8 Q. Again just to as we've agreed twice there, if he's
9 making the same or more money from when he was hurt, the damages
10 is zero you gave that sworn testimony in other cases, correct?

11 A. If he's making more money every year from now until his
12 birth --

13 Q. It's my question let me ask you this did you ever
14 testify where you ever asked the following questions and given
15 the follow answer?

16 MR. BURKE: Can I see what you're reading?

17 MR. EDWARDS: Sure.

18 Q.

19 "QUESTION: For example, if he could get another
20 job making roughly essentially same salary he had been
21 making when he was hurt the damages would be zero,
22 correct?"

23 Your answer.

24 "Correct."

25 A. Yes.

1 Q. Did you give that testimony?

2 A. Of course, yes.

3 MR. EDWARDS: I don't have any other questions.

4 REDIRECT EXAMINATION

5 BY MR. BURKE:

6 Q. Dr. Dwyer, you started to say in response to one of
7 Mr. Edwards questions that you had a reason to start out with a
8 base of 60,327 dollars on the table that you testified about.
9 Just explain to the jury why you started out with a base of that
10 amount?

11 A. Because I took only the earnings from the roofing.
12 People transition jobs and careers. He became a roofer and was
13 earning at higher rate than what he had been earning before.
14 While I looked at what he did before I wouldn't use that. I
15 expected that he would continue to work at a roofer for the rest
16 of his work life because he demonstrated a capacity to earn at
17 that level.

18 So the roofing level now is what I have to determine.
19 I go to the U.S. Bureau Labor Statistics. And right now the
20 salary is about 67 thousand for roofers. Back then it was also
21 kind of aligned with what he was doing at the time hourly.

22 At the time in 2019 I looked it up that it was \$20.95
23 an hour on average. He was a new roofer earning 19 dollars an
24 hour. He had jumped 6 percent more than 6 percent. No it was 6
25 percent. In the 9 months that he was there in terms of his

1 wages. I'm taking all of it into account. I'm taking into
2 account that he had a propensity to do overtime. And I'm taking
3 into account what I understand about seasonable adjustment. And
4 so that's how I came to the 60 thousand. I still stand by it.
5 That's a reasonable estimate of what a roofer can earn and what
6 he would earn.

7 MR. BURKE: Thank you.

8 CROSS-EXAMINATION

9 BY EDWARDS:

10 Q. How old was Mr. Karasu at the time of his accident?

11 MR. BURKE: Objection. Beyond the scope of my
12 question.

13 MR. EDWARDS: It's leading into a question.

14 THE COURT: Sustained.

15 Q. He was a roofer right at the age he was a roofer for 8
16 months all together?

17 A. I believe it was 8 or 9 months.

18 Q. Can we without contesting that can we agree Mr. Karasu
19 was born on November 9 1974?

20 A. Correct.

21 MR. BURKE: Same objection. Beyond scope this
22 isn't a second cross examination.

23 THE COURT: Sustained.

24 MR. BURKE: I only asked one question. I didn't
25 get ruling on the objection.

1 THE COURT: I said sustained.

2 Q. All of your calculation based upon the -- based upon
3 the redirect by Mr. Burke he reestablished with your testimony
4 that all of your calculations were based upon only his work as a
5 roofer?

6 A. Correct.

7 Q. He worked as a roofer his -- he worked as roofer for 8
8 months, correct?

9 A. About that, yes.

10 Q. Also worked as an accountant --

11 MR. BURKE: Objection. Beyond the scope.

12 THE COURT: Sustained. Sustained. You know
13 better.

14 Q. Did you give consideration since everything is based
15 upon him being a roofer, did you give any consideration what so
16 all to his education background?

17 MR. BURKE: Objection. Same. Beyond the scope of
18 my single question.

19 THE COURT: Sustained.

20 Q. Since all of your calculations are based upon his being
21 a roofer did you give any consideration to any other things
22 that he had done?

23 MR. BURKE: Same objection.

24 THE COURT: Sustained.

25 Q. And based upon your only considering the worker did as

1 a roofer did you give any consideration to work at other
2 capacities that he's doing now?

3 MR. BURKE: Same objection.

4 THE COURT: Enough. Sustained.

5 MR. EDWARDS: No other questions.

6 MR. BURKE: Nothing else.

7 THE COURT: You may step down thank you.

8 We're going to go to lunch early I guess. It's
9 not even 12:30. Be back sharply at 2. Enjoy your lunch.

10 (Luncheon recess is taken at this time.)

11 COURT OFFICER: Jury entering.

12 THE COURT: Call your next witness.

13 MR. BURKE: Yes, Judge I'd like to call
14 Ms. Karasu.

15 THE CLERK: Raise your right-hand, do you swear to
16 tell the truth in all matters before this Court?

17 THE WITNESS: Yes, I do.

18 THE CLERK: Please state and spell your full name
19 and address for the record.

20 THE WITNESS: Ana A-N-A Cristina C-R-I-S-T-I-N-A
21 De Lucca D-E-L-U-C-C-A Karasu K-A-R-A-S-U date of birth
22 October 13, '72.

23 THE CLERK: And your address?

24 THE WITNESS: 1701 Auburn Road A-U-B-U-R-N Road
25 R-O-A-D, Wantagh, W-A-N-T-A-G-H, New York 11793.

1 THE COURT: You may be seated.

2 A N A C R I S T I N A D E L U C C A

3 K A R A S U, called as a witness by the Plaintiff, having
4 been first duly sworn, was examined and testified as
5 follows:

6 DIRECT EXAMINATION

7 BY MR. BURKE:

8 Q. Good afternoon. You gave us your address. Who do you
9 live at that address with?

10 A. With my husband and my daughter Julia.

11 Q. Tell me when was Julia born?

12 A. She was born in May 2nd, 2005.

13 Q. How old is she now?

14 A. She's 16.

15 Q. Just talk louder. When were you and your husband
16 married?

17 A. We are married in June 18, 20 -- I'm sorry 2005.

18 Q. Where did you meet Salih?

19 A. Met in New York.

20 Q. Can I have your date of birth?

21 A. October 13th, 1972.

22 Q. Approximately what year did you and Salih meet?

23 A. We met in -- it was end of 2003.

24 Q. And at the time you met Salih what kind of work was he
25 doing?

1 A. He was doing siding roofing and he was doing installing
2 windows like he had his company Net Home Improvement and he was
3 doing that basically. Siding. All the construction outside the
4 house.

5 Q. How long did he do that for from the time you met him
6 in 2003?

7 A. When I met him in 2003 he was already doing that.

8 Q. And so did he -- did he continue doing that for?

9 A. Yes, he continued until 2009, if I'm not wrong because
10 we moved to Brazil and he stopped. He didn't finish the company
11 he still active, but he didn't work.

12 Q. So you're saying that Net Home Improvement is a
13 corporation that he suspended activities with or froze it as you
14 say?

15 A. It's not correct to say frozen. It's still active but
16 he's not -- he did not have income for some period of time.

17 Q. Okay. So tell us about yourself. Where were you born?

18 A. I was from Brazil São Paulo Brazil.

19 Q. What was your highest level of education when you were
20 in Brazil?

21 A. I was going college to be translator, but I quit and I
22 came to United States.

23 Q. So did you complete high school?

24 A. Yes.

25 Q. Did you take any college while you were still living in

1 Brazil?

2 A. Yes, I did about two years, but I did not finish I
3 stopped.

4 Q. Are you United States citizen?

5 A. Yes, I am.

6 Q. When did you become a citizen?

7 A. In July 2020.

8 Q. Can you tell us a little bit about your educational
9 background as far as since you have come to the United States in
10 particular New York?

11 A. I went to Nassau Community College to get my associates
12 degree it was business.

13 Q. In what?

14 A. Business administration after I finish and I went to
15 SUNY Old Westbury and I was business too. But I changed my
16 major, so I added one more year and I did accounting.

17 Q. So when did you get your associates degree in business
18 from Nassau Community College?

19 A. When.

20 Q. When yes the year?

21 A. For Nassau it was I would say 2017 because it was right
22 after that I went to SUNY Old Westbury.

23 Q. When did you get your degree from SUNY Old Westbury?

24 A. 2019 may.

25 Q. What's that degree in what was the --

1 A. Business accounting.

2 Q. As of the time of Salih's accident in March of 2015,
3 were you working then?

4 A. No, before, no.

5 Q. Let's say from 2013 up until the time of the accident
6 were you employed outside the home?

7 A. No, no just home.

8 Q. And so?

9 A. I was a student and I was housewife like I was didn't
10 get out taking care of my house, my daughter.

11 Q. Are you currently employed now?

12 A. Yes, I am.

13 Q. What type of work do you do?

14 A. Book keeper.

15 Q. For what type of company?

16 A. Accounting office called Tusa and Associates.

17 Q. Is it a CPA firm?

18 A. It's a CPA firm.

19 Q. Approximately how many hours a week do you work?

20 A. 35, 40.

21 Q. From your tax returns it indicates an address in
22 Wantagh starting in 2013 does that sound right, when did you
23 move to Wantagh?

24 A. In 2013.

25 Q. And where had you been living in New York before you

1 moved to Wantagh?

2 A. I lived in Islip Terrace for one year. When we came
3 from Brazil in 2012 I moved to Islip Terrace.

4 Q. Now when you moved into the two-bedroom rental house in
5 Wantagh, did you do any internship work with any companies?

6 A. Yes, I worked for one year almost. I'm not sure. It
7 was a few months like one year. I worked at the house
8 development office of Subway the restaurant I worked over there
9 as an apprentice I started apprentice. Through the school.

10 THE COURT: Do you hear her?

11 You have to talk louder. Use your diaphragm and
12 talk out because if they don't hear you. What good is it.

13 A. I'm sorry.

14 THE COURT: You're still talking that way.

15 Q. So you said that you worked as an apprentice at the
16 Subway restaurant?

17 A. Yes.

18 Q. Does that mean you worked at one of the Subway
19 franchises we see?

20 A. It's not on the franchisee every when you have
21 franchise company, they have usually regional -- regional and
22 they have -- they take care of a few restaurants so I was
23 working the office that they take care Nassau and Suffolk
24 restaurants of Subway restaurants.

25 Q. So when you decided to go Nassau Community College and

1 then you decided to go to Stony Brook University to get these
2 degrees, what was your plan, why were you doing it?

3 A. Because we I want to grow as a profession and for our
4 family purpose as well. So I -- we decided that he would be
5 working and I will be studying and when I get my degrees my
6 daughter will be older and I could work.

7 Q. Now was there a point in time where you and Salih were
8 in Turkey and then in Brazil for a liver transplant?

9 A. Yes.

10 Q. Could you just run by the timeframe because looking at
11 some of the tax returns it appears that there is little income
12 in a year and more in another, when did he have his liver
13 transplant?

14 A. He did liver transplant. I don't remember the month
15 but it was 2011.

16 Q. So fair to say that when he had the liver transplant
17 that took place in Brazil?

18 A. Yes.

19 Q. And he would not have been working in the United States
20 during that recovery period?

21 A. No, we steady there for one year. That was the doctors
22 recommendation because he had so many follow-ups like that's why
23 we stayed and we came in 2012.

24 Q. So when did Salih begin working again in New York after
25 you returned from Brazil when he had the liver transplant?

1 A. Could you repeat the question?

2 THE COURT: You're going to do something here
3 because she's answering your questions, but she's
4 forgetting that she's -- everybody is listening and we have
5 to have to hear. It's nice that you're having that
6 conversation, but let us in on it. You have to speak
7 louder. I can't tell you how important it is. If I can't
8 hear you, they are not going to hear you.

9 A. Okay.

10 Q. You just have speak loud enough to the furthest
11 person --

12 THE COURT: Mr. Burke, she's not changing. She's
13 not making an effort. I know you think you may hear
14 yourself but you have to shout it out.

15 THE WITNESS: Sure. I'm sorry.

16 THE COURT: You want to reach the last juror there
17 you know. Don't turn. Now you're going to -- I don't
18 know. You have to use your diaphragm to speak. I have to
19 use mine all the time. Sound like I'm shouting. I'm just
20 trying to project.

21 THE WITNESS: Better like this?

22 THE COURT: Much louder. Try harder.

23 Q. All right. So let's go back to 2012 when you returned
24 to New York after the liver transplant that occurred in 2011 in
25 Brazil there was a period of time he was recovering, correct,

1 what month did you return to New York from Brazil in 2012?

2 A. We returned 2012, it was September September 12, 2012.

3 Q. And so from looking at the tax returns, when did you
4 first start working that produced income that was reported on
5 your income tax returns?

6 A. The first I start as apprentice it was 2015, if I'm not
7 wrong.

8 Q. Just give us approximations?

9 A. Okay. And I started as apprentice in 2015 and right
10 away they hire me. And I worked as employee and I work about I
11 would say a year. And after I got a job in Tusa Associates CPA
12 I'm still there.

13 Q. If you started in Tusa according to the tax returns in
14 2017, when did you start at Subway as an apprentice?

15 A. 2015 it was as apprentice. I'm sorry. I apologize. I
16 apologize. I start let me go back from I remember I start in
17 2017 as employee. So I stay one year so it was 2016 for sure,
18 yes, I'm sorry.

19 Q. All right. So in March of 2015 you learned that your
20 husband had been involved in an accident?

21 A. Yes.

22 Q. Can you just tell the ladies and gentlemen of the jury
23 how you and your husband divided up responsibilities in the
24 house outside the house, errands, driving Julia, how did you
25 divide that up before the accident?

1 A. Before the accident I was taking care of everything
2 except like you know I was cooking, taking care of my daughter,
3 taking her to school, everything related to my daughter. I was
4 driving, cleaning the house, except the garbage, he always, you
5 know, before he was doing and then he was doing any work outside
6 the of the house.

7 Q. Can you tell ladies and gentlemen of the jury, how did
8 Salih's life change after the accident compared to the way it
9 was before the accident?

10 A. My husband used to be very like a fun and happy. And
11 he had a lot of dreams. We had a lot of dreams together and
12 after the accident, I see like of course it was period of time,
13 you know, the three surgeries and now. But over, you know, what
14 I see from him that he became extremely quiet. And he became
15 moody and he got depressed. He's not the same person as before.

16 Of course there was improvement now after he start to,
17 you know, because the first three years surgery and surgery. He
18 had pain constant pain. So then of course nobody want to talk
19 or have interaction, but he definitely stopped interacting with
20 my daughter and I. It was not like before fun. Like so he did
21 that he really changed on that.

22 And after he got better he, you know, he got a little
23 improvement for sure, but he's still he's not kind of person
24 that I would say, like, I'm woman, I complain more if something
25 happens, but he's not he verbally complain. But I can see now

1 he's changed his life the behavior. He's everything doing with
2 me and my daughter.

3 Like for example right now he's working seven days a
4 week. Seven days a week and he doesn't complain. I know
5 because when he comes home he takes shower and he go sofa or he
6 puts his feet up. And he's gone. He's gone. He doesn't talk.
7 He doesn't interact. And he was not like that. When he was
8 working for example last job Four Seasons he used to live there
9 because he was interacting with the guys. And he was having,
10 you know, working and having fun. And now he just drive and go
11 home. He doesn't interact with anybody like even us because
12 he's so he's done. He gets home he. Has no energy.

13 Q. So when he comes, I mean, at the present time with
14 Salih working 60, 70 hours a week, what do you observe about him
15 when he comes home with regard to any observations you have
16 concerning pain?

17 A. For example, when he goes to sleep, he always shakes
18 his leg. Like it seems like he's sleeping he has pain. He gets
19 up during the night a lot because of the pain. And he whines
20 like, you know, like when makes sounds like he all the time
21 moving his leg like he has to kind of move his leg.

22 Q. When you say whining, do you mean groans, what kind of
23 noise?

24 A. Like sounds of pain you know like -- I like but doesn't
25 verbally complain, oh my God, he doesn't complain about life

1 like this, but he does sound like, you know, he does sounds of
2 pain.

3 Q. You say that he used to be fun and happy before the
4 accident? Since the accident, how do you know that he's not
5 happy or he's not enjoying his life?

6 A. Because he doesn't interact anymore even with his
7 family, his friends. He doesn't -- now he doesn't have time
8 2021 something different because he doesn't have the time too
9 because we are in such a debts that he has to work to make up.
10 He was always a provider and I feel like he has to make up some
11 way so for us so he works to pay the debts. And we don't have
12 interaction anymore. And he doesn't have interaction with, you
13 know, his family too much on the phone and our friends. We
14 don't have guests any more at guy house.

15 Q. So before the accident when he was working as a roofer,
16 did the two of you have a different type of social life with
17 your friends compared to the way it is now?

18 A. Yes, we did.

19 Q. How what was different about your activities before the
20 accident?

21 A. Yes, we used to get together as a family members. They
22 used to come at my house we used to go to their house. We used
23 to go to restaurants most, we never go to any -- it's more
24 restaurants, interact with family. And we don't do this
25 anymore.

1 Q. You mentioned debt. How has the accident impacted on
2 your family's ability to pay rent, utility, bills, grocery,
3 shopping, how has that affected it?

4 A. The beginning the first, you know, really in the
5 beginning, it was we are in bad, bad shape, but we had family,
6 my family members, my husband family members, they gave us money
7 to support the first specifically 2016. It was bad. 2016 it
8 was the worst one. And they lend us money.

9 And how we survived all these years is having off
10 credit cards. So we have debt on credit card a lot. And family
11 members that we have to pay.

12 Q. Now you mentioned when he was working as a roofer at
13 Four Seasons, did he enjoy the fact that he was working with a
14 crew of the same guys day in and day out?

15 A. He did he did he loved to work. He was used interact
16 with them. He's different now. He's not fun as before like he
17 was used to make like even jokes. He's not. He's quiet. I can
18 define he's very quiet person now.

19 Q. And how does he like working alone when he's working as
20 a driver for Sunrise Laboratories?

21 A. He doesn't talk to anyone. He just he doesn't
22 interact. He just grab the specimens and he goes to the car.
23 He doesn't interact with anyone.

24 Q. As a result of the accident, was there an adverse
25 impact with your intimate marital relations?

1 A. Yes, for sure.

2 Q. And as a result of the accident was there also an
3 adverse impact on Salih's relationship with Julia who would have
4 been approximately 9 years old?

5 A. Ten, yes, she was ten years old, yes, he used to take
6 her sometimes. She used to do dance. He used to drive her. He
7 used to enjoy. And he couldn't do for long period of time.

8 Q. Now how did the division of responsibilities around the
9 house, I imagine he couldn't do what he used to do, after the
10 accident in 2015 was he able to do any household chores in 2015?

11 A. No.

12 Q. And over the years, did he -- was he able to do a
13 little more and more?

14 A. Yes.

15 Q. Just tell the jury, explain to them how, you know, the
16 progress of Salih's abilities return?

17 A. At the beginning, I remember the first -- I don't know
18 about the time, but he had second surgery the last surgery and
19 that he start to -- start doing some chores. He was helping me
20 because I was working I went back to work. So he was doing some
21 cooking, some food for my daughter, light food for my daughter.

22 He was doing chores like little chores inside the
23 house, light chores, like dishes, that kind of stuff. He's
24 start to help also he starts to drive my daughter like to the,
25 you know, activities she was anything she has to do if her

1 friends he was engaging on that. When he started to drive.

2 Q. When did you start driving approximately?

3 A. After the third surgery I would say at the end of the
4 year of the third surgery.

5 Q. Now in 2015 the records of Dr. Acampa indicate that
6 your husband went to Dr. Acampa's office in Bay Shore 13 times
7 for 13 visits. How did your husband get to Dr. Acampa's office
8 in the year of the accident?

9 A. I was driving.

10 Q. Would you go to him on each of these visits?

11 A. Yes.

12 Q. Now even in 2017 he saw Dr. Acampa according to the
13 record in evidence approximately 22 times, who was taking him or
14 was he driving himself in 2017?

15 A. After the surgery still was driving him when the doctor
16 said to him, you can drive I gave him, I didn't drive him
17 anymore. That's when I stopped.

18 Q. All right. So he had his second surgery in April of
19 2015 and then the hardware removal was in July of 2017, so when
20 did he start working, I'm sorry, did he start driving again
21 before the hardware was removed in July of 2017?

22 A. It's hard to remember that, but I'm sorry.

23 Q. That's okay.

24 A. I don't remember, I'm sorry.

25 Q. With your husband you mentioned sometime after the

1 first year he began to do things around the house?

2 A. Yes.

3 Q. So give us an understanding as to what kind of
4 responsibilities he was able to start doing again?

5 A. Like I said, he started to do light cooking, you know,
6 dishes, I remember he was doing even garbage.

7 Q. What about mowing the lawn or shoveling snow?

8 A. Motion he start to do later on I believe 2019, but the
9 snow, I remember he did before, but I was doing together. For
10 example, I remember one snow that's how he start he was taking
11 the snow off my car like windows. And I was doing outside like
12 sidewalk because my neighbor he has machine and he helped us a
13 lot too.

14 Q. So in 2015 after the accident, is it fair to say that
15 mowing the lawn was now your responsibility?

16 A. Yes.

17 Q. It used to be your husband?

18 A. Yes, hundred percent, yes.

19 Q. And then by 2019 your husband testified he was able to
20 mow the front yard?

21 A. Yes.

22 Q. Who was responsibility for mowing the backyard?

23 A. I was doing it.

24 Q. Now was your husband involved at all in certain
25 activities with your daughter such as teaching her how to drive?

1 A. He couldn't.

2 Q. Why not?

3 A. Because he has to drive, he's working seven days a week
4 and she is going to have her road test this week. And the debt
5 from last years until 2021 until now he was working a lot of
6 hours. He doesn't have the time. He doesn't have the time.

7 Q. When your husband is having pain at the present time or
8 he's unable to do something that he used to be able to do, can
9 you see a change in his behavior, does it seem to bother him?

10 A. Yes, it does.

11 Q. How so?

12 A. Because he isolate himself.

13 Q. Isolating?

14 A. Yes, he goes to the bed and he's there. He doesn't do
15 anything. He doesn't want to be bothered, you know, he just in
16 pain.

17 Q. Now of course you're familiar with the way your husband
18 is walking now compared to the way he was walking before the
19 accident?

20 A. Yes.

21 Q. What did you observe about his ability to walk let's
22 say from the time of the accident up until they removed the
23 hardware in July of 2017 what did you observe?

24 A. The beginning I remember he was limiting more. He does
25 a little bit, I don't know if I can describe, but before he was

1 limiting. Now how can I explain, you know, like when he begin
2 walks like the word waddle. Now he waddles. That's how he
3 because I believe he doesn't have strengths in his leg. So he
4 waddles that's he doesn't limp in the morning he does in the
5 morning morning he does.

6 Q. He does what?

7 A. He limps because when he gets up everything morning he
8 has to take medication for his liver. This is for years I can
9 see the noise on my the floor, he does a limp like different
10 than later on I feel like later on he gets better. I don't know
11 if it's movement, but in the morning he does limp. Even his
12 co-workers one time he came home he mentioned that his he
13 coworker said, oh, what happened to your leg why you limping.

14 Q. Did he ever have any problem walking before the
15 accident?

16 A. No.

17 Q. Before the accident, did you ever see him walk in an
18 unusual way that looked like a waddle?

19 A. No.

20 Q. From your observation did Salih enjoy working as a
21 roofer?

22 A. He did.

23 MR. BURKE: I have nothing else. Thank you.

24 CROSS-EXAMINATION

25 BY MR. EDWARDS:

1 Q. Good afternoon, Ms. Karasu? This co-worker who you
2 said this was the coworker was over your house did and he made a
3 comment.

4 A. No, no, I just mentioned that right now he works in the
5 lab and he when he -- I don't know what time of the time because
6 they go they have to sign that they are in the office whatever
7 the house and after they go collect specimens outside. But I
8 don't know his routine over there, I cannot say that.

9 Q. You mentioned, I thought I heard you mention that a
10 co-worker, one of his he coworkers commented about how he
11 walked?

12 A. Yes. He said what do you have in your leg, why do you
13 limp.

14 Q. That co-worker, were you there, did you hear his
15 coworker say that?

16 A. No, no, it's just my husband came in to make a comment
17 with me that somebody noticed that he limps.

18 Q. Somebody that he works with?

19 A. Because that he said, Ana, do I limp, I do still limp
20 and I said you waddle. And he'd said this his friend mentioned.

21 Q. This was friends of his from work?

22 A. Yes.

23 Q. Has he started driving again in 2017? After the
24 removal?

25 A. A few months after a few months after I would say by

1 the end of the year when they removed all the hardware. I
2 cannot say the date. I don't remember.

3 Q. I don't need an exact date. That's fine. But after
4 that and then he's been driving of since then, correct?

5 A. Yes.

6 Q. When did you start at Nassau community when did you
7 start going to school?

8 A. I start.

9 Q. At Nassau.

10 A. At Nassau I did years ago I start but I quit and I went
11 back in 2016 when he was in the accident I already was studying.

12 Q. You had already started school?

13 A. Yes, I already I was active in the school in the
14 community college.

15 Q. At the time of the accident you had already enrolled in
16 Nassau Community College?

17 A. Yes.

18 Q. That was to get an associates degree in business
19 administration?

20 A. Exactly, yes.

21 Q. You started school before his accident?

22 A. Before that, yes.

23 MR. EDWARDS: Thank you. I have no other
24 questions. Thank you.

25 REDIRECT EXAMINATION

1 BY MR. BURKE:

2 Q. So you said you started at Nassau Community College
3 before the accident and then you quit and then you went back?

4 A. Yes.

5 Q. When did you quit?

6 A. Years ago before.

7 Q. Like how many years before the accident?

8 A. I was doing liberal arts let's see 2002 maybe 2002.

9 Q. And then you went back to Nassau community college in
10 2015 or 2016?

11 A. I believe, I cannot say my recollection I always
12 memories from when I finish because I went to Old Westbury as
13 soon as I finish Nassau. So it was right if I finish one
14 semester then next semester I was in the Nassau it could be
15 2016.

16 Q. And then you changed at some point you changed your
17 plan in terms of your education because now you wanted to go not
18 just general business but you wanted accounting?

19 A. Yes.

20 Q. When did you make that decision to focus on accounting?

21 A. When I was already in SUNY Old Westbury the last year I
22 had conversation with my teacher because I was working the Tusa
23 I had got a job in Tusa, my boss saying why don't you change
24 your major. So I went there advice from my advisor in the
25 school and that you should change your major you're going to end

1 up doing one extra year to do the extra subjects that's when I
2 changed my major.

3 Q. And you did that because you wanted to make more money?

4 A. Yes.

5 Q. Succeed?

6 A. Yes, it would be definitely better to me at Tusa.

7 Because at Tusa I was administrative assistant when I ended
8 there and after when I graduate now I'm bookkeeper.

9 Q. Okay. Because according to your tax returns you
10 started in Tusa 2017?

11 A. Yes.

12 Q. You made 97 hundred dollars approximately. And then in
13 2018 you went up to approximately 23 thousand in 2019 you went
14 up to approximately 31 thousand and then in 2020 you went up to
15 37 thousand seven hundred dollars, does that sound right?

16 A. Yes.

17 Q. So that degree is working for you?

18 A. Yes, it did.

19 RECROSS-EXAMINATION

20 BY MR. EDWARDS:

21 Q. When did you get the -- you got bachelors, did you get
22 a bachelors degree in SUNY Old Westbury?

23 A. Bachelors degree, yes.

24 Q. What year?

25 A. 2019.

1 Q. At the time of your husband's accident I thought I
2 heard you say you were a student at the time of his accident?

3 A. Yes.

4 MR. EDWARDS: Thank you.

5 REDIRECT EXAMINATION

6 BY MR. BURKE:

7 Q. You're saying it with a confused look on your face?

8 A. Yes, I'm sorry, because I don't recall recollect the
9 date because it was so close 2015 and 16, but I don't remember
10 I'm sorry.

11 MR. BURKE: That's fine. I have nothing else.
12 Nothing further.

13 THE COURT: All right. Thank you. You may step
14 down, Counsel, approach.

15 (Whereupon, a discussion is held off the record.)

16 THE COURT: All right. Counsel.

17 MR. BURKE: Yes, Judge, as we just discussed off
18 the record, plaintiffs have completed their case. We have
19 no further witnesses or evidence to submit. We have
20 concluded our case.

21 THE COURT: And you rest?

22 MR. BURKE: And we rest.

23 THE COURT: All right. It's okay if we can let
24 the jury go for the day?

25 MR. EDWARDS: Yes.

1 THE COURT: Just want to make sure because I never
2 know when you're going to end.

3 Trying to limit the time that you're hanging
4 around. We are going to adjourn for the day. We're going
5 to start tomorrow with the defendant's case so be here by
6 9:45. I know you have been very diligent and coming at
7 9:30. Since we start at 10, we just want you to be here on
8 time so 9:45 would be good. All right. Have a wonderful
9 evening. Remember you haven't heard the whole case. Don't
10 talk about it to anyone. All right. Just go home. Enjoy
11 your family, your friends and your dinner, and all that
12 stuff. Have a good evening. See you tomorrow at 9:45.

13 (Jury is exits the court room).

14 MR. EDWARDS: Your Honor, at this point now that
15 the plaintiff has rested. I have a motion to dismiss
16 plaintiff's claims for future medical costs. I would like
17 to mark as court exhibit the plaintiffs expert witness
18 disclosure for Ali Guy.

19 THE COURT: Don't we have it already?

20 MR. EDWARDS: I don't think it's --

21 THE COURT: He gave me whole bunch.

22 MR. EDWARDS: I don't know that it's marked as a
23 court exhibit. Basis of my motion, Judge, very simply is
24 that over objection Dr. Guy was permitted to testify with
25 regard to specific amounts, specific frequency of future

1 treatment with an orthopedist, with a physiatrist and for
2 physical therapy. And was permitted to testify with regard
3 to specific amounts of that.

4 There has been no disclosure that was provided as
5 I noted at the time the exchange from the witness who
6 testified merely contains a general reference future care
7 with no specific details. I was not in a position to
8 properly prepare to cross-examine the doctor with regard to
9 the frequency of future visits or with the amounts that he
10 suggested as the cost of those things and we had never been
11 provided any disclosure which was why I objected at the
12 time.

13 So I am moving to since there is nothing I am move
14 to go dismiss the plaintiffs claims for cost of my future
15 medical care. In addition I'm make motion to dismiss the any
16 for are or strike any testimony and dismiss the claims
17 based on that have any of Dr. Dwyer's testimony regarding
18 projected future losses based upon a reduced work life
19 capacity.

20 There was nothing stated by Dwyer within a
21 reasonable degree of certainty based upon any identifying
22 data. There was no support on the record from her
23 testimony with regard to the basis of her offering expert
24 testimony regarding a reduced work life capacity which is
25 certainly and by the witness's own admission beyond her own

1 field of expertise.

2 Those are my two motions.

3 MR. BURKE: And in response I would point out that
4 Dr. Dwyer's tables that were put in evidence had been
5 provided as part of the expert disclosure.

6 Counsel was on notice that Dr. Dwyer was going to
7 be testifying both about life expectancy and work life
8 expectancy. And there is no basis to strike Dr. Dwyer's
9 testimony in Dr. Ali Guy's expert disclosure as well as our
10 Bill of Particulars we indicate the need for future medical
11 care. Future medical costs. Dr. Guy in his report also
12 set forth that he would require future periodic medical
13 supervision.

14 At no time prior to the commencement of this trial
15 was any claim made that the expert disclosure was
16 inadequate. We are not required to provide a full trial
17 transcript of all of the details of any witness and counsel
18 I believe his motion should be denied because there was
19 adequate disclosure as identified by the Bill of
20 Particulars for Dr. Guys estimates of future medical needs.

21 MR. EDWARDS: I would one with regard to Dwyer my
22 motion is not based upon an inadequate disclosure. My
23 motion is based upon inadequate foundation presented by the
24 witness in offering the opinion. My motion with regard to
25 the future medical costs is based upon inadequate

1 disclosure and I would ask that the exchange from Dr. Guy
2 by marked as a court exhibit.

3 THE COURT: I did recall you objected to
4 Dr. Dwyer's testimony and I ruled on that, but so you're
5 dismissing on the again. So it's a renewal.

6 I will take that. And I'm going to deny the
7 motion with leave to move again under supplement whatever,
8 but we'll mark that the next court exhibit which let me see
9 is Court's Exhibit number VII.

10 (Matter is adjourned to Tuesday at 9:45 a.m.)

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<p>\$20.95 [1] - 293:22 \$40,000 [1] - 262:24 '72 [1] - 296:22 004428 [1] - 233:5 1 [6] - 250:7, 263:4, 263:14, 263:16, 283:25, 284:1 1,916,077 [1] - 260:13 10 [1] - 319:7 10007 [1] - 232:19 10038 [1] - 232:22 1040 [1] - 252:21 11 [1] - 262:25 11720 [1] - 234:2 11793 [1] - 296:25 12 [5] - 266:4, 277:3, 277:10, 278:1, 304:2 12,000 [1] - 253:2 12,885 [1] - 259:15 12,900 [1] - 253:2 12,925 [2] - 266:9, 266:18 120 [2] - 236:23, 274:4 12:30 [1] - 296:9 12A [14] - 249:1, 249:8, 253:5, 255:3, 256:17, 256:23, 257:14, 257:16, 257:18, 264:13, 291:6, 291:7, 291:8, 291:14 12B [12] - 249:1, 255:18, 255:25, 256:17, 256:23, 257:14, 257:16, 262:13, 263:19, 264:13, 264:23 13 [5] - 247:22, 258:14, 296:22, 310:6, 310:7 13,326 [1] - 249:17 13,376 [1] - 266:12 13th [1] - 297:21 14 [1] - 246:14 14th [1] - 232:10 15 [2] - 232:1, 233:2 16 [4] - 246:14, 260:7, 297:14, 318:9 16th [1] - 232:21</p>	<p>17 [1] - 234:1 1701 [1] - 296:24 18 [21] - 246:22, 246:24, 247:2, 247:3, 250:3, 252:20, 252:24, 253:1, 258:20, 259:7, 259:10, 260:14, 260:16, 262:6, 263:5, 263:14, 263:16, 263:21, 264:1, 297:17 19 [7] - 246:24, 247:5, 247:17, 247:20, 248:11, 291:14, 293:23 1972 [1] - 297:21 1974 [1] - 294:19 1980's [2] - 253:22, 268:20 1980s [1] - 253:22 199 [1] - 232:21 1998 [1] - 236:8 2 [7] - 250:7, 250:8, 250:20, 258:18, 260:6, 296:9 20 [5] - 247:14, 263:24, 272:18, 272:23, 297:17 2002 [2] - 316:8 2003 [3] - 297:23, 298:6, 298:7 2005 [2] - 297:12, 297:17 2009 [1] - 298:9 2010 [1] - 265:15 2011 [9] - 238:13, 265:16, 265:17, 265:19, 265:22, 265:25, 267:24, 302:15, 303:24 2012 [11] - 236:22, 266:3, 266:9, 274:6, 274:10, 301:3, 302:23, 303:23, 304:1, 304:2 2013 [7] - 266:5, 266:6, 280:5, 280:7, 300:5, 300:22, 300:24 2014 [16] - 243:1, 266:5, 266:7, 276:16, 276:24, 277:1, 277:6, 277:17, 277:25,</p>	<p>278:4, 278:16, 278:22, 280:5, 280:8, 282:24, 283:21 2015 [29] - 243:24, 247:15, 247:16, 248:5, 248:6, 248:11, 249:12, 249:16, 249:25, 255:5, 258:11, 266:10, 276:17, 276:25, 277:6, 277:7, 278:1, 300:2, 304:6, 304:9, 304:15, 304:19, 309:10, 310:5, 310:19, 311:14, 316:10, 318:9 2016 [14] - 233:5, 249:20, 250:4, 250:7, 252:19, 255:10, 258:15, 258:18, 304:17, 308:7, 315:11, 316:10, 316:15 2017 [20] - 244:3, 250:7, 250:20, 252:19, 253:1, 258:20, 259:8, 260:16, 263:21, 299:21, 304:14, 304:17, 310:12, 310:14, 310:19, 310:21, 312:23, 314:23, 317:10 2018 [10] - 238:14, 241:13, 241:21, 250:21, 251:9, 253:1, 255:14, 255:15, 259:12, 317:13 2019 [28] - 238:14, 241:7, 241:11, 241:14, 242:7, 249:6, 250:21, 251:4, 251:6, 251:8, 251:11, 253:2, 258:21, 259:15, 259:20, 261:16, 261:20, 261:23, 262:1, 262:17, 291:1, 291:3, 293:22, 299:24, 311:8, 311:19, 317:13, 317:25</p>	<p>2020 [22] - 238:13, 241:13, 244:20, 247:24, 248:16, 250:21, 251:11, 253:2, 253:6, 259:15, 260:12, 262:15, 265:16, 274:7, 274:9, 291:3, 291:16, 292:1, 299:7, 317:14 2021 [35] - 238:14, 242:2, 242:4, 243:23, 243:24, 244:3, 244:20, 245:2, 246:6, 246:12, 246:13, 246:19, 250:21, 251:12, 251:17, 251:19, 251:21, 255:10, 261:18, 261:23, 262:17, 262:21, 267:21, 267:22, 268:2, 268:4, 274:7, 274:8, 288:25, 289:11, 291:17, 292:3, 292:6, 307:8, 312:5 2022 [23] - 232:10, 241:7, 241:9, 242:2, 244:5, 244:6, 244:7, 244:19, 248:11, 250:22, 250:23, 251:3, 251:13, 251:17, 251:21, 255:19, 259:21, 262:11, 262:17, 263:20, 263:24, 267:24, 281:9 2032 [4] - 289:25, 290:2, 290:3, 290:7 2036 [3] - 254:8, 260:1, 260:3 2041 [7] - 252:12, 252:13, 252:14, 256:1, 256:3, 260:1, 260:24 2043 [1] - 261:7 2044 [1] - 261:7 2051 [1] - 262:3 21 [3] - 246:15, 246:16, 271:22 22 [4] - 246:20, 255:21, 265:4,</p>	<p>310:13 22,500 [1] - 253:2 228 [1] - 263:4 23 [4] - 277:25, 278:4, 317:13 24 [7] - 235:10, 236:8, 236:9, 246:15, 278:10, 281:9, 291:18 24,102 [1] - 292:3 24,703 [4] - 277:18, 277:21, 278:6, 278:10 25 [4] - 244:1, 265:23, 266:1, 282:16 250 [1] - 232:18 26th [1] - 249:25 27 [1] - 247:19 2700 [1] - 232:18 277,318 [1] - 263:13 28 [1] - 241:21 2800 [1] - 281:4 29 [1] - 262:22 293 [1] - 262:4 2nd [1] - 297:12 3 [5] - 250:20, 250:21, 251:15, 258:18, 263:14 30 [5] - 236:12, 241:20, 241:23, 263:12, 279:9 30's [1] - 248:19 31 [1] - 317:14 31,028 [1] - 266:2 312,570 [1] - 262:7 314 [1] - 262:5 31st [1] - 249:25 32.50 [1] - 248:19 33 [1] - 275:17 33,420 [1] - 266:6 335 [1] - 263:20 345 [3] - 232:7, 233:7, 233:12 35 [1] - 300:20 359 [1] - 263:5 36 [2] - 246:17, 246:19 37 [2] - 261:4, 317:15 377 [1] - 262:5 38 [1] - 280:7 398 [1] - 262:4 4,800 [1] - 280:25 40 [1] - 300:20</p>
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