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1 backwards, rotating their neck forward, backward, side to side,
2 seeing if there's any limitations there. We test their
3 sensation to see if there's any numbness in any part of the
4 body. We check the reflexes. We check their strength and their
5 upper and lower extremity. We then do a series of provocative
6 maneuvers, which are special tests to identify whether there are
7 issue with the nerves and signaling from the brain through their
8 muscles. So those are kind of some tests, whether there are
9 certain injuries that are involved with that as well. And that
10 includes for the neck, the low back and the ankle.

11 Q Did you take a history when you first met with
12 Ms. Benitez?

13 A Yes, I did take a history.

14 Q What is your understanding of her complaints and how
15 this accident occurred?

16 A So essentially from her history she was doing well
17 prior to an accident that occurred on September 14, 2018, where
18 she was struck by a motor vehicle. And after that, subsequent
19 to that, she's had injuries or complainants to her neck, her low
20 back and her right ankle, involving pain as well as numbness, as
21 well as some weakness, too.

22 Q And you mentioned before as part of your life care
23 plan, you also reviewed some medical records?

24 A Correct.

25 Q If you can -- if you have to refer to your report, can

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1 you list the medical records that you reviewed in preparation of
2 your life care plan for Ms. Benitez.

3 A Sure.

4 To go through those, I reviewed the MRI images of her
5 neck, her low back and her ankle. We reviewed an EMG, a nerve
6 conduction study as well. I went through her hospital records
7 that were from Lincoln Medical Center emergency room.

8 THE COURT: Doctor, would you mind just slowing
9 down a little.

10 THE WITNESS: Sure, no problem.

11 A I reviewed the physical therapy notes from Tristate
12 multispecialty, her chiropractic notes, her acupuncture therapy
13 notes, her medical records as well, which is the physicians at
14 Tri-State Multispecialty Medical Services.

15 And let's see, medical records from the surgical
16 centers. Medical records from her pain management physician.
17 Medical records from her ankle physician, Dr. Persich. Medical
18 records from Dr. Z. Bartelo [phonetic]. Medical records from
19 Total Orthopedics Sports Medicine in Brooklyn. Medical records
20 from Physical Medicine Rehabilitation of New York, an
21 independent medical examination by Dr. Rosner. Narrative
22 reports by Dr. Kosharsky, as well as Dr. Persich. Narrative
23 reports by Dr. Lerman. A life care plan by Dr. Provder. An
24 operative report by Dr. Kosharsky, including a L5-S1
25 discectomy. An operative report for a right ankle arthroscopy

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1 by Dr. Persich, and an operative report from an ACDF C4-C5,
2 which is a neck surgery by Dr. Lerman.

3 Q You had mentioned a life care plan that you reviewed.
4 That was a life care plan provided by the defendants
5 in this case, correct?

6 A Correct.

7 Q Now, as far as your physical exam of the plaintiff,
8 was that something that's important to you in performing the
9 life care plan?

10 A Yes, it's very important to do a physical examination
11 because that helps, you know, identify what some of the
12 disabilities, some of the injuries that the patient had
13 sustained.

14 Q And can you tell the jury, in performing the physical
15 exam of Ms. Benitez, what were your findings; what was your
16 diagnosis of her condition at the time you performed that exam?

17 A Sure.

18 So on her physical examination we found that she had
19 decreased or limited range of motion in her neck, her low back
20 and her ankle. She did have pain when you pushed on the
21 different various body parts and the muscles that are associated
22 with the neck, low back and ankle.

23 And also when we pushed on her ligaments and tendons
24 in those same areas, we can see some scars that were noted on
25 her skin from the surgery that she had. I did note that she had

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1 some numbness in her lower extremities.

2 Q And, Doctor, before you continue, you mentioned scars.

3 Do you know which body parts?

4 A One neck scar, which was from the cervical spine
5 surgery. A low back scar from the lumbar spine surgery, and
6 four scars from the ankle, from the ankle surgery.

7 Q Go ahead. Continue.

8 A And then there was also some noted kind of weakness in
9 her upper and lower extremities. And we also found that some of
10 those provocative maneuvers that I mentioned before that show
11 that there's been some nerve injury or nerve irritation also in
12 her neck and low back, as well as pain in her ankle.

13 Q And from your physical exam -- withdrawn.

14 Just to be clear, this was done on March 12, 2024,
15 correct?

16 A Correct.

17 Q And from your physical exam of Ms. Benitez, did you
18 have an impression or diagnosis of what her, you know,
19 complainants meant?

20 A Yes.

21 So -- and it's a multitude kind of diagnosis or
22 impressions after the exam and the history. Those include
23 things that involve her neck, her lower back and her ankle. So
24 there was chronic neck pain. There was cervical spine
25 derangement, or damage to the cervical spine. Radiculopathy,

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1 which is pain that stems from the neck down to the arms, as well
2 as low back pain that goes into the lower extremities. Some
3 people are familiar with sciatica. That's kind of the other
4 term for it. There was also diagnosis of a loss of range of
5 motion in both the neck and the back. And she also had
6 undergone certain treatments, including epidural injections and
7 trigger point injections for both the neck and back, and those
8 were all part of the impression, as well as undergoing the
9 surgeries that I mentioned to the neck and lower back. There
10 was also -- had strain of the ligaments of the ankle.

11 Q And this diagnosis and the impression, did you
12 attribute this to the accident of September 14, 2018?

13 A Yes.

14 MS. KLAUM: Objection; leading.

15 THE COURT: Overruled.

16 Q And was that within a reasonable degree of medical
17 certainty?

18 A Yes, it was.

19 Q Okay. Now, after your physical exam of Ms. Benitez
20 and your review of the records, did you begin to formulate a
21 life care plan?

22 A Correct, yes.

23 Q And what were your findings for the life care plan?

24 A So based on the history and the exam and her medical
25 records, we created -- I created a life care plan that outlines

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1 things that she's going to need going forward in the future.
2 Those included seeing a physiatrist or physical medicine
3 rehabilitation doctor to essentially monitor her progress
4 throughout her lifetime and prescribe things like physical
5 therapy, occupational therapy, complimentary therapies, which
6 including acupuncture, massage, that kind of thing. She would
7 also need to see a pain management physician to perform
8 procedures like epidural injections, steroid injections, trigger
9 point injections, as well as to monitor/prescribe pain medicine.
10 So that might include anti-inflammatory medicine, it might
11 include nerve and muscle pain medicine. It might include
12 antidepressants that both affect muscle and pain as well as
13 mood. But those are all things that were gone through with the
14 pain management physician. Also seeing a spine surgeon because
15 she has undergone a neck and low back spine surgery, and is
16 likely to require further surgery as well. So follow up with
17 them on a regular basis, as well as seeing an orthopedic, ankle
18 and foot doctor to monitor her ankle pain, her ankle injuries as
19 well, and potentially requiring injections or surgery going
20 forward.

21 She'll also need physical therapy and occupational
22 therapy periodically at least throughout her lifetime that will
23 treat flareups essentially. Things happen in life, so
24 periodically you're looking to have flareups that will occur,
25 and she'll need physical therapy to help treat those.

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1 She'll also need assistance at home. So those are
2 things that include housekeepers, home health aides, case
3 managers, nursing care kind of periodically throughout her
4 lifetime, which help with basic tasks that she would otherwise
5 normally be able to do.

6 The other thing that are included are aids. That
7 might include ankle braces, a back brace that she might need
8 periodically when she's in a flareup. She'll certainly need a
9 motorized bed for instance so that it can take pressure off the
10 neck and back when there's nerve compression after surgeries and
11 throughout her lifetime.

12 And then also requiring transportation to get to these
13 medical appointments. So that would include, you know, having a
14 potentially motorized scooter so that she can travel in on
15 public transportation, buses, trains. And then, you know, when
16 thing becomes a little too difficult you can use para trains in
17 certain instances which are Assess-a-Ride, which allows patients
18 to get picked up and dropped off to medical appointments.

19 MS. KLAUM: Move to strike the testimony. No
20 foundation.

21 THE COURT: Overruled.

22 Q And Dr. Shah, your life care plan, these are
23 recommendations that would depend on Ms. Benitez, whether she
24 does them or not, based on either her availability to do these
25 things or ability to pay, correct?

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1 A Correct.

2 MS. KLAUM: Objection.

3 THE COURT: Overruled.

4 MS. KLAUM: Leading.

5 THE COURT: Actually, I'm sorry, sustained.

6 Q Dr. Shah, these recommendations would depend on
7 Ms. Benitez, whether she does it or not, correct?

8 A I'm sorry, I couldn't hear you.

9 Q Oh.

10 The recommendations in your life care plan would
11 depend on Ms. Benitez, whether she, you know, does them or not.?

12 A Yeah.

13 Q And based on certain factors that -- withdrawn.

14 Now, in your life care plan, did you attribute future
15 costs of the treatment and/or devices and such that you earlier
16 testified to?

17 A Yes, I do.

18 Q And I know your life care plan is very detailed, as
19 far as the costs are concerned. Can we sort of summarize them
20 so we're not here for an hour talking about different numbers?

21 A Sure, of course.

22 So essentially the life care plan in terms of the
23 numbers are divided into several tables. So I'll kind of go
24 through broadly each table and the costs associated with it.

25 So the first table is -- involves, essentially, their

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1 physicians. So those are the doctor visits that I mentioned
2 with physiatry, pain management and orthopedic surgeon for the
3 spine as well as the ankle, and some of the costs associated
4 with the injections and medication trials when those are
5 performed by those physicians.

6 That total cost over her lifetime is \$296,775 to
7 \$353,828.

8 Q Dr. Shah, before you continue, how do you -- like,
9 what's your basis for those costs and these numbers?

10 A Sure.

11 So essentially what we do is we go through several
12 sources at least two to three sources to identify how much
13 certain things cost out-of-pocket. So that would be for a
14 physician, like a pain management physician, an orthopedic
15 physician, what their average costs are. And we use that
16 average as the cost per visit. And then we identify how often
17 they're going to need to see these physicians.

18 So, for example, a spine surgeon we're expecting that
19 she'll see them once a year. That can sometimes be more of when
20 they are going through a surgery, or it might be a little less
21 when they're doing well.

22 The same thing for an orthopedic ankle surgeon, once a
23 year. Same thing for a physical medicine rehabilitation doctor
24 would be between one and two times a year. By doing that
25 frequency and how often they are being seen, we calculate the

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1 total lifetime cost.

2 Q Okay. Continue with your cart.

3 A And then move on to the second table. The second
4 table essentially involves therapies. So that includes physical
5 therapy, the occupational therapy, the complimentary therapies
6 which are acupuncture, massage therapy, chiropractic care, that
7 kind of thing, as well as an exercise protocol at the gym with a
8 trainer. And then a vocational evaluation, which is to identify
9 a job that she may be able to perform without pain flareups and
10 something that she's capable of doing.

11 That total cost came out to \$169,426 to \$212,836.

12 Q And that's over the course of Ms. Benitez's lifetime,
13 right?

14 A Correct, those are the lifetime costs.

15 Q What's her expected -- life expectancy?

16 A Life expectancy is 82; an age of 82 years old and .48,
17 or the date that that I examined her would be 42 years. 42.6
18 years.

19 Q And how did you figure that for life expectancy?

20 A That comes the CDC chart on the expectancy,
21 essentially for her age. Her age is 39 years old. When I saw
22 her, 39.920 Hispanic female and what their life expectancy would
23 be based on that, correct.

24 Q Can you continue with your table.

25 A So Table 3 is surgeries. And so it's expected or

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1 probably that she will require a neck surgery, a low back
2 surgery and an ankle surgery. All of those have been
3 recommended by her treating physicians. And that total cost for
4 the surgery plus the post-surgery rehabilitation was 284,000 to
5 \$293,000.

6 Q And the surgeries, what do you include in those costs?

7 A So the costs of the surgery is the -- for the actual
8 surgery, is the physician costs, as well as the hospital cost,
9 the anesthesiologist cost, any imaging that is required while
10 they are doing the surgery itself. And then post care costs
11 include physical therapy, physician follow-up visits, those kind
12 of things.

13 Q Continue.

14 A Then we get to Table 4. Table 4 is durable medical
15 equipment or assistive aids. So those include some of the
16 things that I mentioned before, which is, you know, canes,
17 walkers, adjustable bed frames, motorized scooters, and even
18 just ergonomic tables and chairs to sit on on a daily basis.

19 Those costs come to a total of \$25,199 to \$33,904 over
20 the lifetime.

21 Q Are there any additional future costs?

22 A Yes.

23 So the next table goes to home and community-based
24 services. Those include the housekeeping services, home health
25 aides, nursing, visiting nurses and private case manager and

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1 home health aides.

2 And that, over the cost of a lifetime will cost
3 \$720,185 to \$928,628.

4 Q Anything else?

5 A And the last table is for transportation. So that's
6 just the cost that's associated with traveling to her medical
7 appointments and her therapy visits and those things. The cost
8 we use are essentially assuming public transportation for a good
9 chunk of her life, followed by para transit services which is
10 Assess-a-Ride in New York for when she's a little bit older and
11 might not be able to use public transportation on a regular
12 basis.

13 The cost for transportation throughout her lifetime is
14 \$41,317 to \$43,474.

15 Q Now, Dr. Shah, in some of your figures, there is a
16 range.

17 Why is that?

18 A The range is -- as I mentioned before, we use a --
19 multiple sources. So we use multiple sources to accurately
20 depict what the cost of a certain item will be. And so we use
21 the lowest cost to the cheapest possibility and the most
22 expensive possibility, and we use that range.

23 Q Now, Dr. Shah, would you agree with me that the future
24 is uncertain?

25 A Yes.

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1 Q So this life care plan in totality doesn't mean that
2 Ms. Benitez will do everything in the life care that you
3 suggest?

4 A Correct.

5 Q Now, how many life care plans have you prepared in
6 your career?

7 A Several hundred.

8 Q Are the costs in Ms. Benitez's life care plan
9 comparable to other life care plans that you've prepared?

10 A For the types of injuries that she sustained, they
11 are.

12 Q Now, I expect that the defendants will produce their
13 own expert in life care planning. In their report, they claim
14 that Ms. Benitez needs no future care, and that she won't incur
15 no future medical costs.

16 Would you agree or disagree with that?

17 MS. KLAUM: Objection, Your Honor. Form.

18 THE COURT: Sustained.

19 Q Did you review the life care plan that the defense
20 provided?

21 A Yes, I did.

22 Q Do agree or disagree with the opinions in that life
23 care plan?

24 A I agree with what was provided in the life care plan.
25 I think it had similar things that I included in mine as well.

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1 It just was not a comprehensive.

2 MR. RYBAK: Okay. Thank you. I have nothing
3 further.

4 THE COURT: Any cross-examination?

5 MS. KLAUM: Yes, Your Honor.

6 Q Dr. Shah, you like medicine better than law?

7 A I like them both. But, yes, I'm a practicing
8 physician, so I guess I like that a little more.

9 Q But you practiced law out in Illinois, right, it can't
10 be as great as practicing law in New York, right?

11 A New York is great, great place, yes.

12 Q Dr. Shah, okay, so let's be clear then.

13 You're not a treating physician of Ms. Benitez?

14 A Not a treating physician, correct.

15 Q You saw her once, March of this year, correct?

16 A Correct.

17 Q And you also did not meet personally with any doctors
18 that treated her since September 2018, correct?

19 A Correct.

20 Q And, in fact, are you aware that Dr. Lerman did not
21 even testify in this trial and will not be testifying in this
22 trial; are you aware of that?

23 A I am not.

24 Q Are you aware that Dr. Kosharsky did not testify in
25 this trial and will not be testifying in this trial?

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1 A I'm not aware.

2 Q Now, you created this plan -- strike that.

3 By the way, you said I testified a number of times
4 before, but that's only for plaintiff, right?

5 A Correct.

6 Q So you created this life care plan, yes?

7 A Yes.

8 Q Dr. Shah, anyway, you created it as of March 12, 2024.

9 So in other words, that means that what you're
10 proposing those costs started then, right?

11 A Correct.

12 Q Now, were you aware that Nereyda Benitez testified in
13 this trial and admitted she has not had any treatment for about
14 over four years now; were you aware of that?

15 A I know.

16 Q Pardon?

17 A Yes, I'm aware of that.

18 Q Are you aware she doesn't take any medications, maybe
19 the occasional Advil, you're aware of that, too, right?

20 A Correct.

21 Q And so yet if we look at the first page of your life
22 care plan, right, you have expenses for doctors' visits, and you
23 go on to Page 2, pharmaceutical trials. And you have that
24 beginning of March 12th and projected costs.

25 So she hasn't had any of these doctors' visits,

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1 correct?

2 A Correct.

3 Q And she hasn't taken any pharmaceutical trial,
4 medications or any prescription drugs for this matter, correct?

5 A Currently, no.

6 Q Right.

7 So any of these costs that started in March 12, 2024,
8 they should really, as going up to today, they should be zero
9 over here, right?

10 A In terms of projections, you can potentially say that
11 those are costs that should have happened in March 12th. When
12 it didn't happen in March 12th and she eventually starts to
13 undergo appropriate treatment, then those costs could still
14 happen tomorrow.

15 So if you exclude those costs of those trials, then we
16 would be doing a disservice to her if she couldn't accept these
17 trials. Looking at them now in a year, it's still a trial she
18 needs to undergo.

19 Q All right. Well, that's your opinion that it's a
20 disservice or that it's appropriate treatment, but you only saw
21 Ms. Benitez once, right?

22 A Correct.

23 Q And you're not a treating physician?

24 A Correct.

25 Q And you're not a spine surgery, correct?

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1 A Not a spine surgeon.

2 Q So you have no independent opinion, Dr. Shah, as to
3 whether, nor should you, right, as per your board certification
4 as a physiatrist as to whether she's going to need future fusion
5 surgery?

6 A Well, I am an interventional spine fellow -- I'm
7 sorry, fellowship training in interventional spine physician,
8 and I work in an orthopedic company alongside other orthopedic
9 spine surgeons and neurosurgeons. And part of my job is to
10 recommend surgery and also treat patients before they go through
11 surgery as well as after surgery.

12 So having that understanding of what is very likely to
13 be required is still part of that purview.

14 Q But you're not a surgeon?

15 A Correct.

16 Q So you're not in a position to evaluate fully what the
17 surgical necessities might be, right, you could not write a
18 letter of medical necessity for surgery, correct?

19 A Correct.

20 Q And you're not an anesthesiologist, correct?

21 A Correct.

22 Q And so that he means you are not licensed or permitted
23 to do a, say a lumbar percutaneous discectomy, correct?

24 A I could if I decided to get trained in it. It's a
25 type of procedure that falls into an area of what I do, but I

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1 have not myself trained in that specifically.

2 Q So -- and you're not a podiatrist, correct?

3 A No.

4 Q You're not a podiatric surgeon, right; you don't
5 operate on ankles, correct?

6 A Correct.

7 Q And so you would not be a doctor who would write a
8 referral or a prescription or a letter of medical necessity for
9 an ankle surgery, would you?

10 A Not specifically for an ankle surgery, no.

11 Q Or for a discectomy or for a fusion surgery, correct?

12 A Correct.

13 Q And pain is subjective, correct?

14 A Yes.

15 Q And you prescribe a lot of different modalities for
16 pain flareups, et cetera, in this life care plan.

17 But, Doctor, you don't have -- I mean, for the past
18 four years, Ms. Benitez has had no care, right, and you don't
19 have any sort of logbook in terms of what her every day pain
20 complaints were during those four years, do you?

21 A No, I don't.

22 Q Now, are you aware that there's a Planet Fitness gym
23 right near where Ms. Benitez's lives?

24 A I'm not aware there's a Planet Fitness. But I know
25 there's a YMCA next to where she lives.