

Proceedings

1 THE COURT: The clerk has got to pick up the
2 records.

3 MS. STAVRAKIS HANSEN: Got it. Thank you.

4 THE COURT: Medical records always have to be
5 redacted. So keep in mind as well. You should have a copy
6 of the record. The copies should be presented to the jury.

7 So let's go in the back.

8 (Whereupon the trial is continued to Tuesday, April
9 8th at 2:15 p.m.)

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1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF KINGS - CIVIL TERM - PART 99

3 -----X

4 THE ESTATE of JOSE M. BALLEEN DECEASED, by and through its
5 ADMINISTRATRIX, SONIA B. DALTON,

6 Plaintiff,

7 -against-

Index No.
17162/2014

8 CORPORATION of PRESIDING BISHOP of the
9 CHURCH of JESUS CHRIST of LATTER DAY SAINTS
10 MANAGEMENT LLC and BROWN HARRIS STEVENS
11 RESIDENTIAL MANAGEMENT LLC

12 Defendant(s).

13 -----X

14 Kings County Supreme Court
15 360 Adams Street
16 Brooklyn, New York 11201
17 April 8, 2025

18 B E F O R E:

19 HONORABLE RICHARD J. MONTELIONE,
20 J U S T I C E

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

22 GORAYEB & ASSOCIATES
23 100 William Street, 19th Floor
24 New York, New York 10038
25 BY: MARIA STAVRAKIS HANSEN, ESQ.
For the Plaintiff

LITTLETON JOYCE UGHETTA & KELLY
39 Broadway, 29th Floor
New York, New York 10006
BY: ROBERT KELLY, ESQ.
SIMINYA MASSIAS, ESQ.

NAOMI SCHWARTZ, RPR
Senior Court Reporter

Proceedings

80

1 THE COURT CLERK: Calling in the continued trial of
2 index number 17162 of 2014, the Estate of Jose M. Ballen,
3 deceased, by and through its Administratrix, Sonia B.
4 Dalton, against Corporation of Presiding Bishop of the
5 Church of Jesus Christ of Latter Day Saints Management LLC
6 and Brown Harris Stevens Residential Management LLC.

7 Appearances, please, starting with plaintiff.

8 MS. STAVRAKIS HANSEN: Maria Stavrakis Hansen,
9 Gorayeb & Associates P.C., for the plaintiff, 100 William
10 Street, New York, New York 10038.

11 Good afternoon, your Honor.

12 THE COURT: Good afternoon.

13 MR. KELLY: And Robert J. Kelly and Siminya
14 Massias, Littleton Joyce Ughetta & Kelly, on behalf of the
15 defendants.

16 THE COURT: And you're an associate with the firm?
17 Do you want to state your appearance for the
18 record? Was it already stated?

19 MS. MASSIAS: Yeah. Siminya Massias.

20 MR. KELLY: I'm happy to have her do it, your
21 Honor.

22 THE COURT: So the jury is being called and will be
23 here momentarily.

24 THE COURT OFFICER: All rise. Jury entering.

25 THE COURT: Good afternoon, everyone.

Proceedings

81

1 Please, everybody, sit down.

2 Ms. Stavrakis Hansen, do you have a witness to
3 call?

4 MS. STAVRAKIS HANSEN: Yes, your Honor.

5 Plaintiff calls Dr, Jeffrey Kaplan to the stand.

6 Your Honor, do you mind if I stand here?

7 THE COURT: Oh, wherever you're comfortable.

8 THE COURT CLERK: Dr. Kaplan.

9 THE WITNESS: Yes.

10 THE COURT CLERK: Perfect.

11 Can you hear me?

12 THE WITNESS: I can.

13 THE COURT CLERK: Please raise your right hand.

14 Do you solemnly swear or affirm that the testimony
15 you are about to give will be the truth, the whole truth and
16 nothing but the truth?

17 THE WITNESS: Yes.

18 THE COURT CLERK: Okay. In a loud and clear voice,
19 please state your name and address for the record, spelling
20 your first and last name.

21 THE WITNESS: My name is Jeffrey Kaplan. That's
22 K-A-P-L-A-N. Jeffrey, is J-E-F-F-R-E-Y.

23 My office is at 160 East 56th Street in Manhattan,
24 10022.

25 THE COURT CLERK: Thank you.

ns

DIRECT -- DR. JEFFREY KAPLAN -- PLAINTIFF/STAVRAKIS HANSEN 82

1 THE COURT: And, please proceed.

2 MS. STAVRAKIS HANSEN: Thank you, your Honor.

3 DIRECT EXAMINATION BY

4 MS. STAVRAKIS HANSEN:

5 Q Good afternoon, Dr. Kaplan.

6 A Hi.

7 Q Can you please tell the jury, if you would, what is
8 your profession?

9 A I'm an orthopedic surgeon.

10 Q And are you currently employed?

11 A I am.

12 Q And where do you work?

13 A I work at New York Ortho, Sports Medicine & Trauma P.C.

14 Q And where is that located?

15 A 160 East 56th Street in Manhattan.

16 Q And can you please tell us about what an orthopedic
17 surgeon -- what does it mean to be to be an orthopedic surgeon?
18 What do you do?

19 A Sure.

20 Orthopedics is the study of bones and joints and the
21 supporting structures of the bones and joints, such as the
22 ligaments, cartilages, tendons, nerves.

23 Has to do with injuries or abnormalities to those
24 structures and then the treatment of those injuries or
25 abnormalities either with conservative care, meaning

DIRECT -- DR. JEFFREY KAPLAN -- PLAINTIFF/STAVRAKIS HANSEN 83

1 medications, physical therapy; or if those things don't work,
2 surgical treatment of those abnormalities.

3 Q Dr. Kaplan, tell us, if you would, about your
4 professional education?

5 A Education? I went to college at Yale University.

6 When I completed college, I went to medical school in
7 the city at Columbia University.

8 Following that, I did a training program in
9 orthopedics. I did that at a place called Campbell Clinic in
10 Memphis, Tennessee. It was actually the first orthopedic
11 training program in the United States.

12 Following that, I moved back to New York where I've
13 been in private practice ever since.

14 Q Thank you, Dr. Kaplan.

15 And are you board certified?

16 A I am.

17 Q And can you please tell the jury what it means to be
18 board certified as an orthopedic surgeon?

19 A Sure.

20 Board certification is simply a qualification you can
21 receive after college, medical school and a residential training
22 program.

23 Essentially, you take a series of examinations over a
24 number of years. Those are both oral examinations and written
25 examinations. They're given by a board of -- or a panel of

DIRECT -- DR. JEFFREY KAPLAN -- PLAINTIFF/STAVRAKIS HANSEN 84

1 expert physicians, in my case, the American Board of Orthopedic
2 Surgeons. And they have the chance to question you on your
3 practice, your surgical techniques, your surgical outcomes, your
4 clinical outcomes and basic college.

5 And they give -- and if they find that you are an
6 expert in the field, you will be deemed board certified.

7 Q Thank you, Dr. Kaplan.

8 And do you engage in any research or have you done any
9 publications, anything like that?

10 A I have done -- I've published a paper on reconstruction
11 technique after trauma to the knee. Published articles,
12 antibiotic treatment of bone inspections and anatomy of the
13 upper extremity.

14 Q And please tell the jury, do you have any professional
15 affiliations?

16 A I'm on the staff of New York Presbyterian Hospital in
17 the city.

18 I'm on the staff of Mount Sinai Hospital in the city.

19 I'm a member of the American Trauma Association.

20 I'm an orthopedist for the New York Athletic Commission
21 and Boxing Division.

22 Q And you've previously -- oh, I apologize.

23 A Go ahead.

24 Q And you previously mentioned you're in private
25 practice; is that correct?

DIRECT -- DR. JEFFREY KAPLAN -- PLAINTIFF/STAVRAKIS HANSEN 85

1 A That's right.

2 Q And do you regularly see patients?

3 A I do.

4 Q And in our case, Mr. Ballen contends that prior to
5 November 21st of 2014, he was in his usual state of good health
6 and had no complaints with respect to his shoulder, knee and
7 back and suffered a fall from a height of approximately five
8 feet on to a hard surface, injuring his shoulder, back and knee.

9 Do you have experience in applying professional skills
10 to problems of Mr. Ballen's kind?

11 A Yes.

12 Q And have you been previously qualified as an expert
13 witness in New York?

14 A I have.

15 MS. STAVRAKIS HANSEN: I offer Dr. Kaplan as an
16 expert in orthopedic surgery.

17 MR. KELLY: No objection, your Honor.

18 THE COURT: All right. I'm going to deem this
19 witness someone with specialized knowledge in the field of
20 orthopedics.

21 Please continue.

22 Q Doctor, did there come a time when Mr. Ballen came to
23 your office?

24 A Yes.

25 Q And when was that?

DIRECT -- DR. JEFFREY KAPLAN -- PLAINTIFF/STAVRAKIS HANSEN 86

1 A He was first seen at my office on 12/9/2014.

2 Q And did you yourself encounter Mr. Ballen or did
3 someone else from your office?

4 A At his initial visit, he was seen by another orthopedic
5 surgeon, Dr. Eric Crone.

6 THE COURT: Yes, Dr. Kaplan, I notice that you're
7 referring and you're looking at some papers.

8 Can you identify whatever you're using to refresh
9 your memory?

10 THE WITNESS: Yes, I'm using my -- a copy of Mr.
11 Ballen's medical chart.

12 MS. STAVRAKIS HANSEN: And, Your Honor, the medical
13 chart has been admitted into evidence as Plaintiff's Exhibit
14 1.

15 THE COURT: Thank you.

16 Q And, Dr. Kaplan, you can refer to your notes -- oh,
17 actually. Withdraw.

18 Doctor, did there come a time when you yourself
19 encountered Mr. Ballen?

20 A Yes.

21 Q And you can refer to your notes, if you wish.

22 Can you tell us the nature of the encounter and his
23 initial appointments with Dr. Crone?

24 A Yes. The initial encounter with Dr. Crone, as I said,
25 occurred December 9th of 2014.

DIRECT -- DR. JEFFREY KAPLAN -- PLAINTIFF/STAVRAKIS HANSEN 87

1 Dr. Crone took a history of an injury that had occurred
2 at work on November 21, 2014.

3 He indicates that he had a fall from a height of about
4 six feet while working on a ladder.

5 He notes that he was initially seen at Weill Cornell
6 Medical Center.

7 And, at the time, Mr. Ballen was complaining of pain in
8 the right shoulder with limited motion.

9 He was complaining of pain of the forearm, complaining
10 of pain of the right knee and complaining of low back pain. He
11 was noted to have some bruising about the back, as well as the
12 buttocks.

13 Those were his primary complaints.

14 Q And, Dr. Kaplan, in the initial history or the initial
15 encounter in the office with Mr. Ballen, was there any
16 indication that other than the November 21, 2014 accident there
17 was any other kind of accident or any prior complaints that Mr.
18 Ballen had with respect to his shoulder, knee or back?

19 A Dr. Crone does not report any prior injuries or
20 abnormalities to those areas. Additionally, I had questioned
21 Mr. Ballen about that in the past and he denied prior -- he
22 denied prior injuries or abnormalities.

23 Q And, Dr. Kaplan, what complaints did Mr. Ballen make to
24 you when you first encountered him?

25 A Let's see.

DIRECT -- DR. JEFFREY KAPLAN -- PLAINTIFF/STAVRAKIS HANSEN 88

1 When I first encountered him, he was referred to me by
2 doctor -- by Dr. Crone for an opinion regarding the shoulder and
3 knee. So I saw him first on -- let me see. My chart is a
4 little bit out of order here.

5 Q No problem.

6 A Yes.

7 Okay. Looks like I first saw him on 6/11/15.

8 He was seen for evaluation at the request of Dr. Crone
9 who had been treating him and noted an MRI with a rupture of his
10 rotator cuff.

11 He had conservative treatment to date, including
12 physical therapy, and we had requested and received permission
13 to proceed with a right shoulder arthroscopy and rotator cuff
14 repair, which is a surgery to repair a torn tendon in his
15 shoulder.

16 And, so, I spoke to him regarding his treatment. I
17 evaluated him in the physical examination and I discussed the
18 surgery with him.

19 Q And, Dr. Kaplan, you mentioned an MRI. Can you tell us
20 what the findings of the MRI were?

21 A Yes. He had an MRI performed of the right shoulder on
22 12/12/24 -- I'm sorry, 12/12/14 at the request of Dr. Crone and
23 that did show several findings, the most significant of which
24 was a complete full thickness tear of the supraspinatus tendon.

25 The supraspinatus tendon is one of the rotator cuff

DIRECT -- DR. JEFFREY KAPLAN -- PLAINTIFF/STAVRAKIS HANSEN 89

1 tendons.

2 When I use the term rotator cuff, I'm talking about a
3 group of tendons that make a cuff over the top of the arm bone,
4 depending on which muscle fibres cause the arm to rotate, so
5 it's called a rotator cuff.

6 And he had a complete full thickness tear of the
7 supraspinatus so it was pulled off the bone.

8 He had some additional findings, including some tear of
9 the cartilage in the shoulder, called the labrum.

10 He had a partial tear of his biceps tendon, which
11 inserts into the shoulder region as well.

12 Those were the primary findings.

13 Q And was there a treatment plan made for Mr. Ballen?

14 A There was. Again, he had failed conservative
15 treatment for about six months with Dr. Crone. Continued to
16 have pain and limited motion of the shoulder.

17 We felt that a shoulder arthroscopy was appropriate and
18 we had permission to do that procedure, authorization to do that
19 procedure and, so, we spoke to Mr. Ballen about that and we
20 proceeded with that surgery.

21 Q And, Dr. Kaplan, do you normally and customarily rely
22 on radiology reports in order to treat and formulate a treatment
23 plan?

24 A I do rely on the radiology reports, and I also view the
25 films.

DIRECT -- DR. JEFFREY KAPLAN -- PLAINTIFF/STAVRAKIS HANSEN 90

1 Q And have you in the past relied on radiology reports
2 from Kolb Radiology and Lenox Hill Radiology to form a treatment
3 plan for patients like Mr. Ballen?

4 A Those are both radiology facilities that we have sent
5 patients to in the past and have received reports.

6 Q And do you know if Mr. Ballen, you mentioned
7 conservative treatment in the past. Does that include physical
8 therapy?

9 A That's correct.

10 Q And are the findings on the MRI and treatment plan
11 consistent with Mr. Ballen's history of having fallen from a
12 height of approximately five feet on a hard surface?

13 A The finding of a rotator cuff tear, as well as a
14 cartilage tear and the biceps abnormality all can occur with a
15 fall, striking either the shoulder or the arm with the force
16 translates to the arm as a rotator cuff, yes.

17 Q And you already testified that the surgery was done; is
18 that correct?

19 A It was, yes.

20 Q And in your opinion, to a reasonable degree of medical
21 certainty, were the findings caused by the fall to Mr. Ballen of
22 the height of approximately five feet on hard surface?

23 A Yes, I believe they were.

24 Q And can you describe for us when was the surgery
25 performed?

DIRECT -- DR. JEFFREY KAPLAN -- PLAINTIFF/STAVRAKIS HANSEN 91

1 A So I performed the surgery on 6/26 of 2015.

2 Q And can you describe for us what surgery was performed?

3 A Sure.

4 The surgery that was performed was a rotator cuff
5 repair, which is to the torn tendon that's been pulled off the
6 arm bone, put sutures into the tendon and then anchor it back
7 into bone so it's back in place, covering the top of the arm
8 bone so that it has leverage to move and begin the rotator
9 action again.

10 It also helps with some pain control by putting a space
11 between the arm bone and the bone above it, which is part of a
12 shoulder blade called acromion.

13 That surgery is done arthroscopically, which means to
14 look into the shoulder joint with a telescope, and special
15 instruments are used to put a suture in the tendon and pull it
16 over and anchor it into the bone.

17 Additionally, we took out a portion of the cartilage
18 that was torn, that was removed. Something you can't fix.

19 So we removed that cartilage to try to help the
20 mechanics of the joint act a little bit more -- a little more
21 efficiently.

22 Q And, Dr. Kaplan, you mentioned knee injury and back
23 injury as well; is that correct?

24 A That's correct.

25 Q And the shoulder injury and surgery that you just

DIRECT -- DR. JEFFREY KAPLAN -- PLAINTIFF/STAVRAKIS HANSEN 92

1 testified to and the knee injury and the back injury that you
2 mentioned, are they a competent producing cause of pain for Mr.
3 Ballen?

4 A They are painful injuries, yes.

5 Q And after the surgery, did Mr. Ballen continue to treat
6 with you or follow up with you?

7 A He did.

8 Q And how many times did he visit the office after the
9 surgery?

10 A Many times. I would have to count that out for you.

11 Q No, that's fine.

12 A Certainly greater than 20.

13 Q And what kind of care was provided post surgery?

14 A Post surgery, Mr. Ballen was -- begun again in physical
15 therapy to try to regain his motion and regain his strength.

16 The surgery to reattach the tendon was successful.

17 However, he continued to have quite limited motion and strength
18 and continued to have some discomfort in the shoulder.

19 He developed some what's called capsulitis, which is
20 stiffening down of the shoulder joint, which is a known
21 complication of this injury and something that can occur after
22 surgery.

23 So while the rotator cuff was fixed, the motion, while
24 improved, was still quite limited. He never really gained above
25 90 degrees of what we call abduction, which is bringing the

DIRECT -- DR. JEFFREY KAPLAN -- PLAINTIFF/STAVRAKIS HANSEN 93

1 shoulder to the side, where normally is 120 -- I'm sorry, 180
2 degrees.

3 Q Thank you, Dr. Kaplan.

4 And I know you mentioned surgery for the shoulder.

5 Was surgery indicated for Mr. Ballen's knee or back?

6 A For the knee, we did indicate that he was a candidate
7 for surgery. He had symptoms which were associated with a torn
8 cartilage, called a meniscus, inside of the knee.

9 And, so, at a certain point, we had advised him that he
10 was a candidate for surgery.

11 He also had some joint surface damage in the knee.
12 That is addressed more appropriately with a series of
13 injections, which he did undergo, both steroid preparation and a
14 medication called Euflexxa, which is a lubricant that we inject
15 into the knee to try to make it work more efficiently.

16 Q And --

17 A As far as the back goes --

18 Q That was my next question.

19 THE COURT: You've got to --

20 MS. STAVRAKIS HANSEN: I apologize.

21 THE COURT: Wait for the answer.

22 A So as far as the back goes, he was referred for pain
23 management for injections and medications for the back.

24 So I've never made a recommendation for a lumbar
25 surgery for him to the point that we had seen him.

DIRECT -- DR. JEFFREY KAPLAN -- PLAINTIFF/STAVRAKIS HANSEN 94

1 Q And when was the last time that you treated Mr. Ballen?

2 A The last time that I saw him was 8/7/2017.

3 MS. STAVRAKIS HANSEN: Thank you very much, Dr.
4 Kaplan.

5 I don't have any further questions.

6 THE COURT: Cross-examination?

7 MR. KELLY: Just a few questions, your Honor.

8 Thank you.

9 THE WITNESS: Yes, sir.

10 CROSS-EXAMINATION BY

11 MR. KELLY:

12 Q Good afternoon, Dr. Kaplan.

13 A Hello, sir.

14 Q Can you tell the jury approximately how many rotator
15 cuff surgeries you've performed in your career?

16 A I would say it's well over two to 300.

17 Q And is there a term used in medical science
18 degenerative condition?

19 A Yes.

20 Q What is a degenerative condition?

21 A Degenerative is a term which indicates that a process,
22 in this case, I mean, or in the case of a joint, there is time
23 that passes and there are wear and tear changes that can occur
24 normally in a joint.

25 Q And did you find any evidence of degenerative changes

DIRECT -- DR. JEFFREY KAPLAN -- PLAINTIFF/STAVRAKIS HANSEN 95

1 in Mr. Ballen's shoulder, right shoulder?

2 A There certainly are some degenerative changes in Mr.
3 Ballen's surgery. Not the rotator cuff tear, in my opinion.
4 Not the labral tear, in my opinion.

5 Q And can degenerative conditions cause pain?

6 A Yes, they can.

7 Q Did you find any evidence of degenerative conditions in
8 Mr. Ballen's right knee?

9 A Yes.

10 Q Could you describe them, please?

11 A There was an arthritic change in the knee that would
12 have been a wear and tear change and the arthritic change almost
13 certainly predated the injury.

14 However, the buckling, which Mr. Ballen was having, was
15 the reason that we recommended surgery, was not present prior to
16 the accident. It was after the accident. And, so, that's what
17 I was indicating was the causal condition which would require
18 surgery, not the arthritic condition.

19 Q Was the degenerative condition found in Mr. Ballen's
20 right knee also a source of pain?

21 A Potentially. Not everyone who has arthritis even knows
22 they have arthritis, that type of arthritis, the wear and tear
23 arthritis.

24 And he certainly indicated to me that he had no prior
25 pain.

DIRECT -- DR. JEFFREY KAPLAN -- PLAINTIFF/STAVRAKIS HANSEN 96

1 So if he had pain after the accident, that would have
2 been reasonable that it would be activated by that type of
3 injury.

4 Q Did you find any evidence of degenerative changes in
5 Mr. Ballen's lower back?

6 A He did have some degenerative -- age-appropriate
7 degenerative changes, I believe.

8 Let me just refer back to his MRI report. See what's
9 noted here.

10 There are no significant degenerative changes noted in
11 the low back on the MRI, simply the disc herniation at L4-L5 and
12 some foraminal narrowing.

13 Q I'm sorry --

14 A Those are not considered degenerative changes in this
15 case.

16 Q Did you also look at X-rays of Mr. Ballen's lower back?

17 A I did, yes.

18 Q Did you find any evidence of degenerative changes
19 there?

20 A Let's see.

21 I take it back. I may not have X-rays of his back. He
22 may have been sent for an MRI. Let me just double check that.
23 Just will take me a minute to go through it.

24 Yes, I think I misspoke. I did not have a note of an
25 X-ray of his low back.

DIRECT -- DR. JEFFREY KAPLAN -- PLAINTIFF/STAVRAKIS HANSEN 97

1 Q Could you please take a look at the note that you
2 dictated following Mr. Ballen's visit on February 9, 2016?

3 A Yes.

4 Q And that's from Exhibit 1?

5 A I'm sorry. Calendar date again, sir?

6 Q February 9, 2016.

7 A Okay, yes, February 9, 2016.

8 Q Thank you.

9 And there is a paragraph in the middle, towards the
10 middle of the page labeled objective transcription.

11 Do you see that?

12 A Oh, yes, okay, yes, I see it. That's what I was
13 looking for. I just didn't see it.

14 Q Okay.

15 A It says X-ray of the lumbar spine shows marked changes
16 at L5-S1 vertebral segment, which appear to be degenerative in
17 nature. There is marked foraminal stenosis.

18 Q And those vertebral segments or that particular segment
19 is part of the lower back, is it not?

20 A It is. That's two years after his injury.

21 So as we talked about, time is what degeneration means.

22 So two years after his injury, that could easily have
23 been from his injury. Those objective changes --

24 MR. KELLY: Objection, your Honor.

25 A A disc herniation --

DIRECT -- DR. JEFFREY KAPLAN -- PLAINTIFF/STAVRAKIS HANSEN 98

1 MR. KELLY: Objection, your Honor.

2 Can I ask that the last part of that answer be
3 stricken as nonresponsive?

4 THE COURT: I'm sorry.

5 Read back the last question.

6 (The court reporter read back the last question.)

7 THE COURT: That part of the testimony is stricken
8 as unresponsive.

9 MR. KELLY: The first part of the answer was
10 responsive and then --

11 THE COURT: That's correct.

12 A I'm sorry. I was just trying to answer thoroughly.
13 But you're correct. Sorry about that.

14 MR. KELLY: I have no other questions, your Honor.
15 Thank you, Dr. Kaplan.

16 THE COURT: Redirect?

17 MS. STAVRAKIS HANSEN: No, your Honor. No
18 questions. Thank you.

19 THE COURT: Thank you so much, Doctor.

20 MS. STAVRAKIS HANSEN: Thank you, Dr. Kaplan.

21 THE WITNESS: Thank you.

22 THE COURT: You have no further testimony or
23 evidence that you want to present today; is that correct?

24 MS. STAVRAKIS HANSEN: Yes, your Honor.

25 And just to make sure that the record is clear, so

Proceedings

99

1 we already admitted into evidence Plaintiff's 1 and
2 Plaintiff's 2.

3 THE COURT: That is correct.

4 THE COURT CLERK: That's correct.

5 THE COURT: That's stipulated?

6 MR. KELLY: Yes. Oh, I'm sorry, your Honor.

7 THE COURT: Well, that's it for today.

8 I want to thank you for your attention and I want
9 to thank you for being prompt.

10 I know somebody had some issues getting in.
11 Understandable.

12 The transit system isn't always as dependable as we
13 wish it was.

14 I will see everyone Friday morning, 9:30.

15 We will try to get started as close to 9:30 as
16 possible.

17 As you know, sometimes there are things beyond our
18 control.

19 But what we can control, let's control, and let's
20 try to do the best to get here at 9:30 as we can.

21 Thank you all, again. And have a good afternoon.

22 THE COURT OFFICER: All rise.

23 Jury exiting.

24 (Jury exits.)

25 THE COURT: The door is closed. Okay, good.

Proceedings

100

1 I received plaintiff's request to charge and a
2 proposed verdict sheet.

3 Counsel, did you send a request to charge or do you
4 have one?

5 MR. KELLY: We reviewed them, your Honor. And we
6 just need 30 seconds for an answer on that.

7 THE COURT: Okay.

8 MR. KELLY: We have no objection, your Honor -- I'm
9 sorry.

10 Your Honor, I wonder if I could have more than 30
11 seconds. Like two minutes.

12 THE COURT: I'll do even better. Why don't you
13 just send them to me tonight?

14 MR. KELLY: Okay.

15 THE COURT: And I'm going to try to schedule a
16 charging conference on Thursday. We'll try to do it
17 virtually.

18 MR. KELLY: Okay.

19 And, Your Honor, I'm working on the scheduling with
20 plaintiff's counsel so that we can keep the witnesses tight
21 on Friday, if we can have them follow each other.

22 MS. STAVRAKIS HANSEN: So counsel was informing
23 that -- depending on how long, which I don't anticipate it
24 being that long, he might be able to squeeze in his witness
25 in the morning so this way we have time for closing,

1 deliberations and all that stuff in the afternoon so that
2 would work out perfectly.

3 THE COURT: That would be ideal.

4 MS. STAVRAKIS HANSEN: I'm going to try to have my
5 witness here prompt and to get started so hopefully it works
6 out.

7 THE COURT: Thank you.

8 MR. KELLY: Thank you, your Honor.

9 (Whereupon the trial is continued to Friday, April
10 11, 2025 at 9:30 a.m.)
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1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF KINGS - CIVIL TERM - PART 99

3 -----X

4 THE ESTATE of JOSE M. BALLEEN DECEASED, by and through its
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7 -against-

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15 360 Adams Street
16 Brooklyn, New York 11201
17 April 11, 2025

18 B E F O R E:

19 HONORABLE RICHARD J. MONTELIONE,
20 J U S T I C E

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

22 GORAYEB & ASSOCIATES
23 100 William Street, 19th Floor
24 New York, New York 10038
25 BY: MARIA STAVRAKIS HANSEN, ESQ.
For the Plaintiff

LITTLETON JOYCE UGHETTA & KELLY
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BY: ROBERT KELLY, ESQ.
SIMINYA MASSIAS, ESQ.

NAOMI SCHWARTZ, RPR
Senior Court Reporter

25

1 THE COURT CLERK: Calling in the continued trial of
2 index number 17162 of 2024.

3 The Estate of Jose M. Ballen, deceased, by and
4 through its Administratrix, Sonia B. Dalton, against
5 Corporation of Presiding Bishop of the Church of Jesus
6 Christ of Latter Day Saints Management LLC and Brown Harris
7 Stevens Residential Management LLC.

8 Appearances, please, starting with plaintiff.

9 MS. STAVRAKIS HANSEN: Maria Stavrakis Hansen for
10 Jose Ballen, plaintiff, Gorayeb & Associates, 100 William
11 Street, New York, New York 10038.

12 Good morning, your Honor.

13 THE COURT: Good morning.

14 MR. KELLY: Robert J. Kelly, Littleton Joyce
15 Ughetta & Kelly, 39 Broadway, New York, New York, on behalf
16 of the defendants.

17 THE COURT: Good morning.

18 MR. KELLY: Good morning, your Honor.

19 THE COURT: So I'm going to take this opportunity
20 to go over the proposed charges and the verdict sheet.
21 Let's not waste any time.

22 I need to know the next court exhibit number so
23 just be patient.

24 Do you know what the next court exhibit number is?

25 THE COURT CLERK: I'm so sorry.

Proceedings

104

1 Court Exhibit 11, Judge.

2 THE COURT: 11.

3 Plaintiff's request to charge is Court Exhibit 11.

4 Defendant's is Exhibit 12.

5 Plaintiff's proposed verdict sheet is Court Exhibit

6 13.

7 Defendant's proposed verdict sheet is Court Exhibit

8 15.

9 MS. STAVRAKIS HANSEN: Your Honor, I think you

10 skipped one number.

11 THE COURT: 14. Sorry. 14.

12 And I'm going to hand out the Court's version of

13 the verdict sheet and ask counsel if there's any objection

14 to it.

15 Any objection from plaintiff?

16 MS. STAVRAKIS HANSEN: No objection, your Honor.

17 MR. KELLY: Your Honor, I have a question.

18 I have no objection to the form of the verdict

19 sheet.

20 But the medical expense letter that plaintiff is

21 submitting, certified letter showing approximately 73,000

22 dollars in payout by the comp carrier, includes 46,000 in

23 indemnity payments for lost wages.

24 And defendant's position is that plaintiff has not

25 established a lost wage claim.

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1 Plaintiff, decedent, worked a total of three weeks
2 of perhaps about the preceding six years and no projection
3 of lost wages has been submitted in evidence on behalf of
4 the plaintiff, so we would object to having to pay any
5 indemnity that was paid by the comp carrier.

6 MS. STAVRAKIS HANSEN: Your Honor, also, I don't
7 know if you -- I got the certification that you directed me
8 to get for the letter. I don't know if your Honor -- I
9 don't think your Honor saw it yet. I can print it to your
10 attention.

11 THE COURT: Does it give a breakdown?

12 MS. STAVRAKIS HANSEN: Yes.

13 THE COURT: In terms -- and is there any objection
14 to simply the parties stipulating that the medical
15 reimbursement is the 73,000 and whatever the actual dollar
16 amount is, minus the lost wages.

17 MS. STAVRAKIS HANSEN: So, the letter -- yes. So
18 there has been testimony through the transcript that he
19 didn't work after the accident and he didn't work up until
20 the date of his death, so there is -- it says -- it has the
21 Workers' Comp insurer has paid 46,000 --

22 THE COURT: You've got to slow down. I can't keep
23 up.

24 MS. STAVRAKIS HANSEN: Okay, sorry.

25 And then there's the medical bills as will.

Proceedings

106

1 THE COURT: So I'll ask the question again.

2 Are you willing to stipulate as to the medical
3 reimbursements, the lost wage claim? I don't remember
4 hearing any testimony regarding what the actual wages were
5 and the difference between what Workers' Compensation paid
6 and what his actual wages would have been had he been able
7 to work.

8 So are you making a wage claim here?

9 MS. STAVRAKIS HANSEN: Your Honor, there is a wage
10 claim up until the date of death. So from the date of the
11 accident to the date of death.

12 THE COURT: So where is the proof in the record in
13 terms of his usual and regular salary? 'Cause from my
14 understanding, you'd only be entitled to the difference that
15 he was paid through Workers' Comp and the salary he would
16 have earned.

17 MS. STAVRAKIS HANSEN: Well, he actually has to pay
18 back the Workers' Comp.

19 THE COURT: He has to pay Workers' Comp back?

20 MS. STAVRAKIS HANSEN: Yes.

21 THE COURT: For the -- all right. So why isn't
22 there a separate proposed verdict sheet which would include
23 the lost wages?

24 Counsel, do you agree that Workers' Comp would have
25 to be reimbursed for the lost wages?

Proceedings

107

1 MR. KELLY: Your Honor, I don't agree that that
2 should be automatic, your Honor. I think the entitlement to
3 future wages needed to be established on behalf of the
4 plaintiff.

5 THE COURT: I don't think there's a claim for
6 future wages. I think there's just the claim for the wages
7 that --

8 You're just seeking reimbursement for Workers'
9 Comp; is that correct?

10 MS. STAVRAKIS HANSEN: Yes. And there's --

11 MR. KELLY: And --

12 MS. STAVRAKIS HANSEN: And one of the proposed
13 charges is the reading into the record that that's what
14 Workers' Comp is and it needs to be reimbursed.

15 THE COURT: Well, your proposed verdict sheet
16 didn't mention wages.

17 MS. STAVRAKIS HANSEN: It's not in the verdict
18 sheet.

19 THE COURT: Right. If it's not in the verdict
20 sheet and it's your proposed verdict sheet, why should the
21 Court assume that you're seeking wages?

22 MS. STAVRAKIS HANSEN: That's fine, your Honor. If
23 you want us to stipulate just for the medical benefits
24 within the letter, then we can redact it and then we'll just
25 keep the verdict sheet as it is.

ns

Proceedings

108

1 But what I'm saying is even if we just stipulate to
2 the one amount for the medical benefits, there is a proposed
3 charge that has to be read into the record for the jury to
4 understand that that money needs to be paid back. That's
5 what I was just trying to get at.

6 But in terms of the lost earnings, if your Honor
7 just wants to redact the amount and not discuss it at all,
8 that's fine.

9 THE COURT: Listen, if you've made the claim for
10 lost claim wages, where would I find that in NYSCEF?

11 MS. STAVRAKIS HANSEN: In the BPs.

12 I have a copy of the verified bill of particulars,
13 if your Honor wants to look at it.

14 THE COURT: Why don't I just look at it.

15 And this was uploaded to NYSCEF; is that correct?

16 MS. STAVRAKIS HANSEN: I'm not sure, your Honor.

17 THE COURT: Then I'll mark it as a court exhibit.

18 THE COURT CLERK: That will be 15, Judge.

19 MS. STAVRAKIS HANSEN: And I'm just going to refer
20 you to page six.

21 THE COURT: Is there any charge related to wages
22 that has not been proposed?

23 MS. STAVRAKIS HANSEN: No, your Honor.

24 Your Honor, like I said, just to keep it simple
25 because I understand what you were saying about the verdict

ns

Proceedings

109

1 sheet, it's only for medical expenses and pain and
2 suffering. So if you want us to stipulate to the amount
3 within the letter and just keep the amount of loss of
4 earnings and not even mention it, that's fine by us.

5 THE COURT: All right.

6 So let me ask you: I could take the question out
7 in terms of medical completely if both sides simply
8 stipulate to it and then the jury only determines the pain
9 and suffering. But whatever you stipulated the amount would
10 be added to the pain and suffering is ordered -- whatever
11 the verdict is on the pain and suffering, you just add to it
12 the stipulated amount.

13 MR. KELLY: And, Your Honor, roughly the way those
14 numbers work would be there is a gross number of 73,000 in
15 the certification in the letter, 46,000 of which was
16 indemnity, which I characterize as a lost wage claim so that
17 would come out and it would reduce the medical expense
18 stipulation to 27,000 roughly.

19 THE COURT: Let me ask counsel.

20 Is that acceptable -- look, I don't want to take a
21 claim away from any party that has the claim and who's made
22 the claim. I'm just saying that right now that's not what's
23 reflected in the verdict sheet.

24 If you stipulate to the roughly 27,000 dollars,
25 that whole question could come out and then it's just pain

Proceedings

110

1 and suffering that the jury will determine and then the
2 parties agree that any judgment amount will add to that, the
3 27,000.

4 MS. STAVRAKIS HANSEN: I'm okay with that, your
5 Honor.

6 THE COURT: All right.

7 MR. KELLY: We'll stipulate to that, your Honor.

8 THE COURT: So I'll change the verdict sheet to
9 take the second question out.

10 So I'm going to -- I don't think it's necessary for
11 me to mark this as a court exhibit, so I'm just going to
12 hand back the verified bill of particulars.

13 So let's go through the charges.

14 Plaintiff's request to charge, now we don't have to
15 charge it. That's 1:65.1. So that's out.

16 I would like you both to agree on the exact amount
17 so that when the verdict is finally reached, there won't be
18 any dispute, then it will be exact amount of dollars so just
19 figure out what that is, take your calculators out and just
20 let me know.

21 2:77.

22 2:277, both of you have requested it. It's in.

23 2:280, both have requested it so that's also in.

24 2:2 -- 2:280.1. I think it's appropriate.

25 Any objection?

Proceedings

111

1 MR. KELLY: Your Honor, I don't have it in front of
2 me.

3 THE COURT: All right. That deals with loss of
4 enjoyment of life and the charges -- it's short enough.
5 I'll just read it.

6 In determining the amount, if any, to be awarded
7 plaintiff for pain and suffering, you may take into
8 consideration the effect that Jose Ballen's injuries have
9 had on plaintiff's ability to enjoy life up to the time of
10 this day.

11 Loss of enjoyment of life involves the loss of the
12 ability to perform daily tasks, to participate in the
13 activities which were a part of the person's life before the
14 injury and to experience the pleasures of life. Period.

15 MR. KELLY: No objection.

16 THE COURT: All right.

17 There's also a request for 2:280.2 and that I'm
18 going to charge. It basically says that plaintiff will not
19 be required to pay income taxes on the award.

20 So now I'm going to go to defendant's request to
21 charge.

22 The introduction, 1:20, is in.

23 1:22, falsus in uno, is in.

24 1:23, burden of proof, is in.

25 1:24, return to courtroom, is in.

ns

Proceedings

112

1 1:25, consider only testimony and exhibits, is in.

2 1:25 A, juror's use of professional expertise is

3 in.

4 1:25 C is in. That has to do with interested

5 witnesses.

6 Can you give me the full name of the son who

7 testified?

8 MS. STAVRAKIS HANSEN: Yes, he's in the stand.

9 Do you want me to spell it out?

10 THE COURT: Yes.

11 MS. STAVRAKIS HANSEN: Just give me one second.

12 Sorry, your Honor. It's J-O-A-Q-U-I-N, E is the

13 middle name initial and Ballen is B-A-L-L-E-N.

14 THE COURT: 1:25 C is in.

15 1:26 is in. That has to do with special verdicts

16 and general verdicts supported by written interrogatories.

17 1:27, exclude sympathy, is in.

18 1:27 A, being a fair juror, is in.

19 1:28, having to do with jury function, is in.

20 The conclusion, 1:30, is in.

21 There was a request for 1:55, an admission by a

22 party, but I assume that's out at this point; is that

23 correct or withdrawn?

24 MR. KELLY: Yes, your Honor.

25 THE COURT: All right.

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Proceedings

113

1 1:64 is out. The standard is preponderance of the
2 evidence, not clear and convincing.

3 1:70, I don't think it applies here. Direct and
4 circumstantial evidence. So unless I hear otherwise, that's
5 out.

6 Expert witness, 1:90, is in.

7 Can you give me the names of all the doctors who
8 have testified? I do have Jeffrey Kaplan's name.

9 So who are the other doctors who will be
10 testifying?

11 MS. STAVRAKIS HANSEN: On plaintiff's side, Your
12 Honor, it's Dr. Chaim Mandelbaum.

13 THE COURT: Can you spell first and last name?

14 MS. STAVRAKIS HANSEN: Yes. Give me one second.

15 C-H-I-M --

16 THE COURT: C-H-I-M?

17 MS. STAVRAKIS HANSEN: C-H-A-I-M. Mandelbaum is
18 M-A-N-D-E-L-B-A-U-M.

19 THE COURT: And what's his specialty?

20 MS. STAVRAKIS HANSEN: Pain management.

21 THE COURT: And, Mr. Kelly?

22 MR. KELLY: Michael J. Katz, K-A-T-Z, MD, your
23 Honor.

24 THE COURT: And is he an orthopedic surgeon?

25 MR. KELLY: Yes.

ns

Proceedings

114

1 THE COURT: Any other doctors?

2 MR. KELLY: Not for us.

3 MS. STAVRAKIS HANSEN: No, your Honor.

4 THE COURT: So let me just insert those names.

5 So there is a total of four doctors. Michael Katz,

6 Jeffrey Kaplan, Chaim Mandelbaum. I'm sorry, three doctors.

7 MS. STAVRAKIS HANSEN: Yes, your Honor.

8 THE COURT: All right.

9 PJI 277 A, comments by counsel during closing, is
10 in.

11 2:280 is in.

12 2:285, I don't know if we need to put in that
13 charge anymore because you're stipulating as to the medical
14 expenses here, so I'm going to leave that out. It will be
15 less for the jury to have to consider.

16 MR. KELLY: That's 285, your Honor?

17 THE COURT: 2:285, that's correct.

18 There is a request to charge the jury. It's listed
19 as paragraph 24.

20 Is there any objection from plaintiff?

21 It's basically notifying the jury that the
22 plaintiff died in June of 2018. In fact, I think I have
23 this covered already.

24 MS. STAVRAKIS HANSEN: I believe you did in the
25 first charge conference, your Honor.

ns

Proceedings

115

1 Is this regarding the death and that it's unrelated
2 to the injuries?

3 THE COURT: But there should be mention of it in
4 these charges, but I think I did cover it, so just give me a
5 moment to go over it.

6 I did cover it.

7 Let me read into the record. It's under 2:280.

8 Plaintiff is entitled to recover a sum of money
9 which will justly and fairly compensate his estate for any
10 injury or disability and pain and suffering from the date of
11 the accident on November 21, 2014 through June 10, 2018,
12 when he died, which is a period of three years, six and a
13 half months.

14 I could add to that his death is completely
15 unrelated to the facts of this case and we would ask you not
16 to speculate as to the cause of death.

17 MS. STAVRAKIS HANSEN: That's fine.

18 THE COURT: All right.

19 And paragraph 25 is already addressed in one of the
20 PJI charges regarding the jury's right to ask for a readback
21 or further directions from the Court, if necessary.

22 And paragraph 26, alternate jurors is already
23 covered under the PJI charge.

24 So that concludes this charging conference, unless
25 there's any other issue that either counsel wants to bring

ns

Proceedings

116

1 to my attention?

2 MS. STAVRAKIS HANSEN: No issues, your Honor.

3 MR. KELLY: Your Honor, I just have one brief point
4 to clarify on the request to charge.

5 Number 15, admission by a party via statement.

6 You asked me if the charge was withdrawn. I just
7 want to make it clear for the record that the proffer of the
8 admission that we argue that you rule upon earlier has not
9 been withdrawn.

10 THE COURT: I understand. You're preserving all
11 your rights. If there's any new ground that you wanted to
12 present to the Court, but I understand your position is that
13 the hospital record containing the purported admission
14 should have been let into evidence.

15 It was a pretrial motion for summary judgment where
16 the Court said you would have the right, but you would have
17 to produce the doctor who made the entry and this Court
18 happens to agree with that determination. It's hearsay.
19 Utter hearsay without someone laying the foundation for the
20 admission of that record.

21 So we have all members of the jury?

22 THE COURT OFFICER: I'll just double check.

23 THE COURT: Thank you.

24 MS. STAVRAKIS HANSEN: And, Your Honor, just one
25 last thing, the certified -- the certified document from

Proceedings

117

1 NYSCEF for the medical expenses, do you want us to put it
2 into evidence or because we're stipulating to the amount, it
3 doesn't need to be in it?

4 THE COURT: As long as you stipulate on the record,
5 you don't need to put it in. But if you want to put it in,
6 you could put it in, but it should not go to the --

7 MS. STAVRAKIS HANSEN: To the jury.

8 THE COURT: -- to the jurors, yes.

9 MS. STAVRAKIS HANSEN: So I might just put it in,
10 but not to the jurors.

11 THE COURT: But make a record and just figure out
12 what that number is.

13 MS. STAVRAKIS HANSEN: 27,307.69 dollars.

14 THE COURT: Did you get that?

15 Thank you.

16 MS. STAVRAKIS HANSEN: Also, Your Honor, before we
17 begin, there's records, subpoenaed records that have not
18 been moved into evidence, but we have stipulated on that so
19 I don't think we should premark them.

20 THE COURT: If you can premark them, that would be
21 great. And we'll mark them for identification.

22 If you can stipulate to it, they will be entered
23 into evidence.

24 MS. STAVRAKIS HANSEN: Thank you.

25 THE COURT: Counsels, I'm sure today is the last

Proceedings

118

1 day, should we let this alternate go and just continue with
2 this trial?

3 In other words, alternate one is not here.

4 MS. STAVRAKIS HANSEN: Yeah, that's fine. As long
5 as we have one other alternate just in case something
6 happens in the next few hours.

7 THE COURT: Yes.

8 MR. KELLY: No objection.

9 THE COURT: Let's just get the jury in.

10 If the juror comes, he could join the jury, but
11 there's no way we're going to use him because he will not
12 have heard the testimony, but at least he could be -- I
13 don't want to just reject him without thanking him for his
14 jury service.

15 MR. KELLY: Your Honor for the Court's convenience,
16 we have Dr. Katz testifying by Zoom later this morning and I
17 have a redacted copy of his report.

18 THE COURT: Okay. Thank you.

19 Is that report going into evidence?

20 MR. KELLY: No.

21 THE COURT: That's fine. If I have his report, it
22 will just be helpful for me to follow along.

23 MR. KELLY: That's right.

24 THE COURT: Thank you.

25 THE COURT OFFICER: All rise. Jurors, entering.

1 THE COURT: Good morning, everyone. And please sit
2 down.

3 Thank you.

4 Ms. Stavrakis Hansen, do you have a witness to
5 call?

6 MS. STAVRAKIS HANSEN: Yes, your Honor.

7 We call Dr. Chaim Mandelbaum.

8 THE COURT OFFICER: Remain standing.

9 THE WITNESS: Thank you.

10 THE COURT CLERK: Please raise your right hand.

11 Do you solemnly swear or affirm that the testimony
12 you're about to give the Court will be the truth, the whole
13 truth and nothing but the truth?

14 THE WITNESS: Yes, I do.

15 THE COURT CLERK: Please have a seat.

16 In a loud and clear voice, please state your name
17 and address for the record. It could be a business address.

18 THE WITNESS: It's Chaim, C-H-A-I-M. Mandelbaum,
19 M-A-N-D-E-L-B-A-U-M.

20 Address is 75 Maiden Lane, suite 1206, New York,
21 New York 10038.

22 THE COURT CLERK: Thank you very much.

23 THE COURT: Please proceed.

24 DIRECT EXAMINATION BY

25 MS. STAVRAKIS HANSEN:

DIRECT -- DR. CHAIM MANDELBAUM -- PLAINTIFF/STAVRAKIS HANSE120

1 Q Good morning, Dr. Mandelbaum.

2 A Good morning.

3 Q Can you start by telling the jury a little bit about
4 your profession?

5 A Yes.

6 I am a board certified anesthesiologist, as well as
7 board certified in pain medicine. I attended Downstate for
8 medical school. That was followed by one year of internal
9 medicine at Staten Island University Hospital, which was
10 followed by three years of anesthesiology at Mount Sinai
11 Hospital in New York, followed by a fellowship in pain
12 management for a year.

13 Currently, I am doing solely pain management and seeing
14 pain management patients, which incorporates everything from
15 musculoskeletal pain to nerve pain, headaches, chronic headaches
16 and chronic pain that have not responded well to other
17 treatments.

18 Q And, Dr. Mandelbaum, can you tell the jury what it
19 means to be board certified?

20 A Yes. So board certification means that I've met the
21 standards and qualifications to practice medicine in those
22 specialties.

23 Q And, currently, are you at a hospital, your own private
24 practice or something else?

25 A I'm in a private practice. But I am affiliated with

DIRECT -- DR. CHAIM MANDELBAUM -- PLAINTIFF/STAVRAKIS HANSE121

1 New York Presbyterian Hospital and Methodist here in Brooklyn.

2 Q And, Doctor, for your time today, you are being
3 compensated from our office; is that correct?

4 A Yes. I do get compensated from the time spent
5 preparing and adjusting my schedule.

6 Q And how much are you being paid?

7 A 400 dollars an hour.

8 Q And, Doctor, did there come a time when you first
9 treated Mr. Ballen?

10 A Yes.

11 Q And when was that?

12 A That was on June 29th of 2016.

13 Q And when you first see a patient, is there a procedure
14 that you go through?

15 A Well, first, we get information from the patient.
16 We're getting a history of why the patient's there, what their
17 complaints are, what kind of prior treatment they had, what kind
18 of imaging they had, and then we'll go on to physical
19 examination. We'll look at the radiographs and the X-rays and
20 MRIs and then we come out with a plan as far as treatment.

21 Q And in this particular case, when you first saw Mr.
22 Ballen, what was the history taken?

23 A So the history was that he sustained an injury on
24 November 21st of 2014 and he was working as a painter. He was
25 on a ladder that shifted and he ended up falling approximately

DIRECT -- DR. CHAIM MANDELBAUM -- PLAINTIFF/STAVRAKIS HANSE122

1 five feet.

2 Q And did you review any records?

3 A Yes. So there were records -- prior to coming to my
4 office, this is almost a year and a half later in 2016, he was
5 already seeing Dr. Kaplan. He did have MRIs of his shoulder.
6 He had MRIs of his knee. He both injured that, as well as his
7 lower back, and he already had shoulder arthroscopy by Dr.
8 Kaplan.

9 Q And after taking a history and reviewing the records,
10 did you do anything else at that first visit?

11 I know you mentioned physical examination. Can you
12 just describe exactly what was done?

13 A Correct. So we would do a physical examination to see
14 which body parts are affected, what are his limitations, which
15 areas are painful so that we can come up with a plan of action
16 at that point as far as treatment.

17 Q And what were your findings on physical examination
18 performed on Mr. Ballen at the initial visit?

19 A So on his shoulder, this is his right shoulder, he was
20 having some pain anteriorly on palpation, which is feeling the
21 shoulder.

22 Range of motion, he did a decent range of motion, but
23 limited at that point. And don't forget he is postoperative at
24 this point when we had seen him.

25 But his forward flexion was about 170 degrees,

DIRECT -- DR. CHAIM MANDELBAUM -- PLAINTIFF/STAVRAKIS HANSE123

1 extension to 40 degrees, so both were diminished.

2 Abduction at 140 degrees, and he was having pain with
3 that type of movement.

4 There was notable crepitations, which is like cracking
5 of his shoulder, upon movement.

6 With his lower back on physical exam, he did have spasm
7 across the lower back in the lumbar spine, which is the lower
8 part.

9 He did have pain with extension of his spine and
10 flexion, so bending forwards was somewhat limited and he did
11 have pain.

12 He was noted to have slightly diminished strength in
13 both lower extremities and he was noted to have a positive
14 straight leg raise at 45 degrees on the right and 60 degrees on
15 the left.

16 And what that means is with him sitting and lying down,
17 when you raise his leg up to a certain point, he starts feeling
18 pain shooting down into his legs. More on his left side, which
19 usually is characteristic if there is nerve irritation on a
20 nerve in the lower back.

21 Once you lift the leg, you're pulling the nerve and
22 irritating it some more and it reproduces some of his pain and
23 that was his complaint when he first came in also.

24 With his knee, he had some mild swelling, some
25 tenderness on palpation.

DIRECT -- DR. CHAIM MANDELBAUM -- PLAINTIFF/STAVRAKIS HANSE124

1 He did have some limited range of motion, but he was
2 able to flex it and extend it.

3 Q And, Dr. Mandelbaum, after physical exam history and
4 reviewing the records, did you have a recommendation for
5 treatment after that first initial visit?

6 A Yes.

7 So just to recap, I mean, he came into the office
8 complaining of this initial office visit mostly of lower back
9 pain shooting down his left leg, some numbness, tingling.

10 He did have an MRI that was positive for an L4-5
11 herniated disc and that was hitting against the L4 nerve root
12 which would typically radiate into his left leg and that's where
13 he was radiating -- the herniation was toward the leg.

14 The physical exam corroborated that.

15 He did have pain shooting down his left leg, the
16 positive straight leg raise on the left side.

17 Our plan of action was one, to do an injection. I
18 mean, he had already done physical therapy, which should be
19 ongoing, but to do an injection, called a transforaminal
20 injection, to inject steroids, a small dose close to the nerve
21 that's being compressed to help with the pain shooting down into
22 his leg. That together with some medication, a muscle relaxant,
23 anti-inflammatory were discussed with him.

24 Q And, Dr. Mandelbaum, before we continue, I see that
25 you're looking through your notes. Can you just tell us for the

DIRECT -- DR. CHAIM MANDELBAUM -- PLAINTIFF/STAVRAKIS HANSE125

1 jury, what those records are?

2 A Yes. These are a copy of my records from the office
3 from -- they're electronic records, but they're printed out for
4 court today.

5 Q And prior to coming here today, did you print those
6 records out; is that correct?

7 A Yes.

8 Q And they're a true and complete copy of your office
9 records for the treatment of Mr. Ballen?

10 A Yes.

11 Q And they were dictated or written out and generated in
12 the normal course of business?

13 A Yes.

14 Q Now, I know you mentioned MRIs for Mr. Ballen; is that
15 correct?

16 A Correct.

17 Q Do you usually order MRIs for your patients?

18 A If they've had already diagnostic studies, including
19 MRIs, yes, we will typically order an MRI.

20 Q But in the normal course of treating patients, do you
21 normally order MRIs?

22 A Yes.

23 Q Thank you.

24 Dr. Mandelbaum, when was the next time you saw Mr.
25 Ballen?

DIRECT -- DR. CHAIM MANDELBAUM -- PLAINTIFF/STAVRAKIS HANSE126

1 A We saw him on July 13th of 2016.

2 Q And can you tell us what Mr. Ballen's complaints were
3 on that visit?

4 A So he was -- major complaint was back pain and pain
5 shooting into his left leg with numbness into his left leg, left
6 foot.

7 Q And did you take a history again on that second visit?

8 A Yes. The history was about the injury, which he had
9 already stated. No further injury at this followup office
10 visit.

11 He still had the right shoulder pain and the right knee
12 pain, but his major complaint was the lower back and left foot,
13 numbness.

14 Q And did you perform a physical examination on that date
15 as well?

16 A Yes.

17 Q And what were your findings?

18 A So the findings were similar to the first examination
19 done in the prior month.

20 He did have spasm across his lower back which was
21 continued.

22 He had the positive straight leg raise with the
23 shooting pain more into that left lower extremity upon raising
24 his legs.

25 And he still had pain with range of motion of the

DIRECT -- DR. CHAIM MANDELBAUM -- PLAINTIFF/STAVRAKIS HANSE127

1 shoulder and pain with the knee, both on palpation. Some
2 swelling in the knee was noted as well.

3 Q And at that time did you make a recommendation in terms
4 of treatment?

5 A Yes. Again, we had discussed with him doing the
6 transforaminal injection to help subside that nerve irritation
7 from the disc that was hitting against the nerve.

8 We did make some adjustments in medication as well.

9 Q And, Dr. Mandelbaum, can you just explain to us the
10 injection that you just mentioned, what medication is or what
11 type of injection it is?

12 A So I don't have a model of a spine, but you can imagine
13 that you have the spinal cord running through the vertebral
14 bodies which are the bone in the back. There are nerves that
15 come out of the spinal cord.

16 In between the bones and the back, there are discs and
17 that disc can move. So if you have a disc that's moved a little
18 towards the left side where the nerve is actually coming out of
19 the spine, it's going to compress that spinal cord -- that
20 nerve. And that's the nerve that goes down into the lower
21 extremity.

22 So under X-ray guidance, you can take a needle and
23 direct it toward that nerve and you can actually see under
24 fluoroscopy or X-ray the L4, where the L4 nerve comes out from
25 the spinal cord and the L5 nerve comes out from the spinal cord

DIRECT -- DR. CHAIM MANDELBAUM -- PLAINTIFF/STAVRAKIS HANSE128

1 and you can inject a small dose of steroid medications. In this
2 case, it will be Methylprednisolone and Dexamethasone, and the
3 idea is that the steroid medication is going to decrease on the
4 nerve that is compressing the disc.

5 Q And did Mr. Ballen have the injection done?

6 A No.

7 Q On that date, no, right?

8 A No.

9 Q And when you give a shot of steroid like you just
10 mentioned, what's the expectation?

11 A The expectation is to one, decrease the swelling along
12 the disc, improve his symptoms, which are the radiating pain
13 into his lower extremity, together followed by physical therapy
14 to help strengthen his lower extremity and give it time for that
15 disc to heal.

16 So the long-term expectations are to help with his pain
17 and symptoms, hopefully avoid surgery because if it doesn't
18 work, there are not a lot of other options.

19 If he's still having all of that pain, surgery is
20 certainly an option where they go in and remove the disc that's
21 compressing the nerve.

22 These injections are intended so that the patient can
23 avoid surgery.

24 Unfortunately surgery is not always the answer for back
25 pain. Patients sometimes still have surgery. So there are more

DIRECT -- DR. CHAIM MANDELBAUM -- PLAINTIFF/STAVRAKIS HANSE129

1 inherent risks with surgery than there are with injections.

2 Q And, Dr. Mandelbaum, on that second date visit, July
3 13, 2016, did he Mr. Ballen indicate to you the level of pain
4 for his back?

5 A It was an eight out of ten. Usually we ask patients on
6 a visual analog scale, which is a scale from zero to ten, zero
7 being no pain and ten being the most severe pain that you can
8 imagine and his answer was an eight out of ten.

9 Q And the injection that you just mentioned earlier, are
10 there any side effects to that medication?

11 A Yes. So it is a steroid medication.

12 Steroids do present side effects.

13 For instance, if someone were a diabetic, it can
14 increase sugar level. If not, it can throw patients off
15 hormonally because it does affect the hormonal system.

16 It can make patients hyper.

17 It can cause swelling in the legs.

18 So those are the general side effects of the steroid
19 themselves.

20 Q And how do you monitor the patient when he's taking the
21 steroid injection?

22 A Well, one, we will tell patients that these are the
23 side effects. So he can make them hyper -- it can make them.

24 Usually the side effects are self-limited so they don't
25 really cause any major issue, but we will tell patients, their

DIRECT -- DR. CHAIM MANDELBAUM -- PLAINTIFF/STAVRAKIS HANSE130

1 appetite may increase, they may have swelling in their legs.

2 I've seen hiccups after steroids. That's very
3 annoying, but it does happen and if patients have any issues
4 they're told to call our office, and there are some treatments
5 that we can deal with that may help the side effects from
6 steroids, if needed.

7 Q And, Dr. Mandelbaum, when was the next time you saw
8 Mr. Ballen?

9 A So that was August 10th of 2016.

10 Q And on that date, what complaints, if any, did
11 Mr. Ballen make to you?

12 A He was still complaining of lower back pain, radiating
13 pain into his left lower extremity.

14 On the pain scale, it was a seven out of ten. He still
15 had the shoulder pain and the knee pain, but his major complaint
16 was the back pain.

17 Q And did you perform a physical examination on that date
18 as well?

19 A Yes.

20 Q And did you take a history again?

21 A Yes.

22 Q And what was that history?

23 A So the history was of his injury that occurred on
24 11/21/2014, having fallen and injured his back, his shoulder,
25 his knee.

DIRECT -- DR. CHAIM MANDELBAUM -- PLAINTIFF/STAVRAKIS HANSE131

1 Physical examination was similar to the prior physical
2 examination which he had again, spasm across his lower back. He
3 had the shooting pain into the left leg, with the positive
4 straight leg on the left. He still had pain on feeling his
5 shoulder, as well as his knee and still some swelling in the
6 knee.

7 Q And what treatment was recommended on that date when
8 you saw Mr. Ballen?

9 A So the recommended treatment was to do the
10 transforaminal injection to help -- that's the steroid close to
11 the nerve root that's coming out from the spinal cord.

12 He also -- well, he was seeing Dr. Kaplan, and also
13 before that, I believe he had some knee injections so I wasn't
14 actively treating that. And of course he just had the shoulder
15 surgery.

16 There was discussion about doing a facet joint
17 injection, frequency of the facet joint, being that he had pain
18 standing up right and with movement, extension of his spinal
19 flexion.

20 There are changes that are noted in his joints in the
21 back as well and those joints could be specifically injected
22 either with a steroid or you can burn or freeze the nerve that
23 goes to those joints that help with ongoing pain, together with
24 physical therapy so that was discussed. I believe it was
25 discussed in the earlier office visit as well.

DIRECT -- DR. CHAIM MANDELBAUM -- PLAINTIFF/STAVRAKIS HANSE132

1 Q And, Dr. Mandelbaum, when was the next time you saw
2 Mr. Ballen?

3 A That was on October 17th of 2016.

4 Q And on that date, did you yourself see Mr. Ballen or
5 someone else in your office?

6 A That was Dr. Thomas.

7 Q And was Dr. Thomas your partner at the time?

8 A Yes.

9 Q And what complaints, if any, did Mr. Ballen make on
10 that date?

11 A So his main complaint during that date was his right
12 shoulder pain. He was complaining of pain in the right
13 shoulder, limited range of motion, a lot of muscle spasm.

14 He stated that it was seven to eight out of ten.

15 Some of the medication he was taking helped it to four
16 out of ten, but he had some nausea with the medication that he
17 was taking at that time. He still had back pain and knee pain,
18 but his main complaint was of the shoulder.

19 Q And was there a history taken again?

20 A Yes.

21 Q And was that history the same on all the other times?

22 A Yes.

23 Q And was there a physical examination performed?

24 A Yes.

25 Q And what were Dr. Thomas's findings after physical

DIRECT -- DR. CHAIM MANDELBAUM -- PLAINTIFF/STAVRAKIS HANSE133

1 examination?

2 A So his findings were similar to my findings when I had
3 seen him. He was still having spasm across the lower back. He
4 still had the positive straight leg raise on the left.

5 He still had also noticeable, which was before also,
6 slightly asymmetric reflexes of his patella, which is the
7 reflexes of the knee. The right and left were slightly
8 different and they should be about equal. But that can also
9 present with nerve damage, so that kind of goes along with his
10 presentation.

11 He does have a gait disturbance, he uses a cane to
12 ambulate, and the right knee, mild swelling as well.

13 Q And was there a treatment plan recommended or treatment
14 recommended by Dr. Thomas on that date?

15 A Yes.

16 Q And what was that?

17 A It was to do the transforaminal injection, which is the
18 steroid injection along the nerve and physical therapy to the
19 right shoulder. That was the -- and discussion about the radio
20 frequency of the facet.

21 Those are the joints in the back, to freeze the nerve
22 that goes to the joints, was discussed and the plan was actually
23 to do the transforaminal injection first and then to reevaluate
24 and possibly the facet joint injections.

25 Q And, Dr. Mandelbaum, was prescription drugs recommended

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DIRECT -- DR. CHAIM MANDELBAUM -- PLAINTIFF/STAVRAKIS HANSE134

1 to him on that date?

2 A I'm sorry, was?

3 Q Were prescription drugs, were any prescriptions given
4 to Mr. Ballen?

5 A Yes, yes.

6 Q And what prescriptions were given?

7 A Well, he was on a muscle relaxant, as well as, and I
8 don't know if a prescription was given for Oxycodone.

9 And he was at one point given or he was on medication
10 for sleep, which I don't see, but there was a muscle relaxant
11 called Lorzone, as well as Oxycodone for pain.

12 Q And when was the next time Mr. Ballen visited your
13 office?

14 A On April 25th of 2017.

15 Q And can you tell us what Mr. Ballen's complaints were
16 on that date?

17 A Yes. He was complaining still of the right shoulder
18 pain, which was his major complaint, but he still had back pain
19 and knee pain.

20 He stated that it was an eight out of ten, his overall
21 pain. Some relief with the medication that he was taking to
22 four out of ten.

23 Q And was a physical examination formed on that date?

24 A Yes.

25 Q And what were the findings in the physical examination?

DIRECT -- DR. CHAIM MANDELBAUM -- PLAINTIFF/STAVRAKIS HANSE135

1 A So the findings were with the right shoulder. He still
2 had tenderness on palpation. He still had pain with range of
3 motion and did not have full range of motion of the right
4 shoulder.

5 He still had spasm across the lower back with a
6 positive straight leg raise, more on the left.

7 He still had pain with range of motion and extension
8 and flexion of his lumbar spine.

9 He still is noted to have a slight reflection
10 difference between the right and left side.

11 He still had the gait disturbance and he was still
12 using a cane to ambulate.

13 Q And at that time was there a recommendation for
14 treatment?

15 A Yes.

16 Q And what was that?

17 A So, similar to what we had discussed before, as far as
18 doing the steroid injection in the lower back, the facet joint,
19 radio frequency, as well, physical therapy to the right
20 shoulder, which was I believe started during the past office
21 visit, which I believe he was doing at this point and we also
22 had discussed actually the muscle injections, which were
23 discussed in the prior office visits as well.

24 These are trigger point injections which are
25 intramuscular injections with a local anesthetic which causes

DIRECT -- DR. CHAIM MANDELBAUM -- PLAINTIFF/STAVRAKIS HANSE136

1 the muscles to relax, because he was having spasm across the
2 lower back so that's part of the overall treatment for him.

3 Q And on that date, on April 25th of 2017, now, almost
4 three years after the accident, did he indicate his level of
5 pain at that time?

6 A Yes.

7 Q And what was that?

8 A So it was an eight out of ten.

9 Q And when was the next time Mr. Ballen visited your
10 office?

11 A It was on June 20th of 2017.

12 Q And what, if any, complaints did Mr. Ballen make on
13 that date?

14 A So his main complaint on this office visit was of his
15 back, pain and spasm and radiating pain into his left lower
16 extremity. He was still complaining of the shoulder pain and
17 the knee pain, but the major complaint was the back pain and
18 spasm radiating into his leg.

19 Q And what, if any treatment -- withdraw.

20 Was a physical examination performed on that date?

21 A Yes.

22 Q And what were your findings -- what were Dr. Thomas's
23 findings on that date?

24 A So they were, again, a spasm across the lower back.

25 He still had the pain with the extension and flexion of

DIRECT -- DR. CHAIM MANDELBAUM -- PLAINTIFF/STAVRAKIS HANSE137

1 his lower spine.

2 He still had slight weakness in his lower extremities.

3 The left lower than the right.

4 He had the asymmetric reflexes and the positive leg
5 raise on the leg, which was more positive on the left than the
6 right side.

7 He was still noted to have the gait disturbance and was
8 using a cane.

9 The knee was still mildly swollen with some tenderness
10 on palpation.

11 Q And what, if any, treatment was recommended on that
12 date?

13 A So the treatment, as I stated before, was of the
14 steroid injection along the nerve root called transforaminal
15 injection. He was doing or had done physical therapy to the
16 right and -- right shoulder. Recommendations were for
17 intramuscular trigger point injections, as well as discussion
18 regarding doing facet joint injections.

19 Q And can you please describe the difference between
20 trigger point injections and facet point injections?

21 A So I stated before, the trigger point injections are
22 intramuscular injections. It's basically taking a needle and
23 injecting a local anesthetic right directly into the muscles at
24 multiple areas where the spasm is and it does help.

25 One, it numbs up the area. It helps the muscles relax.

DIRECT -- DR. CHAIM MANDELBAUM -- PLAINTIFF/STAVRAKIS HANSE138

1 It's really for symptomatic treatment. It's very helpful when
2 patients are actively doing physical therapy or exercising on
3 their own because it relieves the pain and then they can stretch
4 out the muscle and strengthen the muscle with less pain.

5 The facet joint injections are basically the injecting
6 along where the joints are, where one vertebral body rests on
7 the other one.

8 These are removable joints and those joints could be
9 inflamed and they can be injected either with a steroid or burn
10 the little nerve that goes to those joint areas.

11 Q And was this the last time that Mr. Ballen visited your
12 office?

13 A Yes.

14 Q And, Doctor, I would like for you to assume that on
15 November 21, 2014, Mr. Ballen was working on a ladder about five
16 feet high, at which point the ladder moved and he fell to the
17 ground.

18 He went to the ER at Weill Cornell and was seen by
19 various physicians and had surgery to his shoulder.
20 Subsequently.

21 He's had no complaints or injuries to those body parts
22 before the accident.

23 Do you have an opinion within a reasonable degree of
24 medical certainty as to whether these injuries and pain you've
25 treated him for are causally connected to his accident that took

CROSS -- DR. CHAIM MANDELBAUM -- DEFENSE/KELLY

139

1 place on November 21, 2014?

2 A Yes.

3 Q And, Doctor, do you have an opinion with a reasonable
4 degree of medical certainty as to whether those injuries were
5 permanent?

6 A Yes.

7 MS. STAVRAKIS HANSEN: Thank you, your Honor.

8 Thank you, Doctor.

9 I don't have any further questions.

10 THE COURT: Any cross-examination?

11 MR. KELLY: I have a few questions, your Honor.

12 THE COURT: Okay.

13 CROSS-EXAMINATION BY

14 MR. KELLY:

15 Q Good morning, Dr. Mandelbaum.

16 A Good morning.

17 Q You prepared a report in this case, didn't you?

18 A Yes.

19 Q And did you address it to Gorayeb & Associates PC?

20 A Yes.

21 Q Is that, to your knowledge, the law firm that's
22 representing Mr. Ballen and his family in this case?

23 A Yes.

24 Q Have you worked on other matters with other patients in
25 conjunction with Gorayeb & Associates?

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CROSS -- DR. CHAIM MANDELBAUM -- DEFENSE/KELLY

140

1 A Probably, yes.

2 Q About how many?

3 A I don't know. I can't give you a real answer 'cause I
4 do not know the number.

5 Q Do you agree that the X-rays that were performed on
6 Mr. Ballen at Cornell Weill Hospital showed no acute fractures?

7 A Do I agree? I don't have those radiographs in front of
8 me, but I don't believe there were any acute fractures.

9 Q Are you aware of any other surgery that was performed
10 on Mr. Ballen aside from the right shoulder arthroscopy?

11 A He had herniary repair in 2005, an appendectomy and a
12 tonsillectomy.

13 Q None of those had anything to do with the accident in
14 this case, correct?

15 A Correct.

16 Q And you did not perform surgery on Mr. Ballen, did you?

17 A No.

18 MR. KELLY: Thank you, Doctor.

19 Those are all the questions I have, your Honor.

20 THE COURT: Any redirect?

21 MS. STAVRAKIS HANSEN: No redirect.

22 THE COURT: You can step down.

23 (Witness exits.)

24 THE COURT: Do you have any additional witnesses to
25 call?

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Proceedings

141

1 MS. STAVRAKIS HANSEN: No, your Honor.

2 THE COURT: Any additional evidence to present?

3 MS. STAVRAKIS HANSEN: Yes, your Honor.

4 So we have stipulated for the records of
5 Comprehensive Medical Care which is the office of Dr.
6 Mandelbaum and we are now moving that into evidence as
7 exhibit -- Plaintiff's Exhibit 3.

8 THE COURT: All right.

9 MS. STAVRAKIS HANSEN: And then, Your Honor, we've
10 also stipulated --

11 THE COURT: That's in evidence.

12 MS. STAVRAKIS HANSEN: And, Your Honor, we've also
13 stipulated to subpoena records from Lenox Hill Radiology,
14 which we'll be moving into evidence as Plaintiff's Exhibit
15 4.

16 THE COURT: All right. That's in evidence.

17 MS. STAVRAKIS HANSEN: Thank you.

18 And then we're also moving into evidence cold
19 radiology records as already been previously stipulated and
20 that will be Plaintiff's Exhibit 5.

21 THE COURT: That's in evidence.

22 MS. STAVRAKIS HANSEN: And, finally, Your Honor,
23 there's also a letter that we'll be moving into evidence as
24 exhibit, Plaintiff's Exhibit 6 and it's the certified letter
25 from NYSIF.

Proceedings

142

1 THE COURT: That's in evidence also.

2 MS. STAVRAKIS HANSEN: That should be it, your

3 Honor.

4 Thank you very much.

5 THE COURT: Are you resting?

6 MS. STAVRAKIS HANSEN: Yes.

7 THE COURT: Mr. Kelly, do you have any witnesses to
8 present?

9 MR. KELLY: I do, your Honor. We have Dr. Katz
10 testifying remotely.

11 Could we possibly have five minutes or so?

12 THE COURT: We're going to take a break.

13 Let's say ten minutes. Thank you.

14 MS. STAVRAKIS HANSEN: And, Your Honor, can we have
15 a brief sidebar after?

16 THE COURT: Yes.

17 THE COURT OFFICER: All rise. Jury's exiting.

18 (Jury exits.)

19 THE COURT: Does it have to be a sidebar or -- so
20 we'll go out in the hallway.

21 MS. STAVRAKIS HANSEN: Thank you.

22 THE COURT: Do we need to place this on the record
23 or no?

24 MS. STAVRAKIS HANSEN: No.

25 If your Honor determines after, then we can just

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1 put it on the record.

2 THE COURT: Okay.

3 (Off-the-record discussion held.)

4 (Short break in the proceedings.)

5 (The following takes place in the back chambers,
6 out of the presence of the jury:)

7 THE COURT: I have to tell you, I have no idea by
8 reading the colloquy that I've been handed up -- -- I'm
9 referring to a copy of the decision that was handed up to me
10 by counsel.

11 It is Berneago B-E-R-N-E-A-G-O, versus New York
12 City Health and Hospitals Corporation.

13 So why don't you just make a record of what you are
14 requesting of the Court?

15 MS. STAVRAKIS HANSEN: Well, I'm not requesting
16 anything from the Court.

17 I was just bringing it to your attention and to
18 defense counsel prior to the witness going on the stand that
19 my intention is to ask him questions in terms of his
20 credibility, his truthfulness and try to impeach him in
21 terms of a prior bad act that is related to his
22 truthfulness.

23 Again, I won't be going into details. I don't have
24 anything that I will be presenting into evidence such as the
25 transcript and exactly what was said, but I am going to

1 refer to the case and whether or not certain part of his
2 testimony was put into question and whether he recalls that.

3 For your Honor I also have the transcript from the
4 same case in which Judge Hart, there is a lot of testimony
5 and Judge Hart regarding what had happened in that case and
6 the --

7 THE COURT: All right. Counsel has just handed up
8 to the Court a transcript of July 1, 2013, the index number
9 is 23985 of 2009 and I've been referred to page five which
10 the Court is reading.

11 Let me show this to counsel and then you'll make a
12 record and then I'm going to make a decision.

13 (Short pause in the proceedings.)

14 THE COURT: The court case that was handed up is 20
15 pages and I have not read 20 pages of that decision. I did
16 read several of the paragraphs. It does not help me to
17 decide, you know, any of the issues in terms of a finding of
18 perjury on the part of this doctor.

19 But let me hear from counsel.

20 MR. KELLY: Your Honor, I think that this is a
21 pretty serious form of impeachment and that it should rest
22 on a more solid foundation that we've seen here where I'm
23 not sure who it is that's speaking in the transcript that I
24 just read.

25 THE COURT: I think it was the doctor --

Proceedings

145

1 MS. STAVRAKIS HANSEN: Judge Hart --

2 THE COURT: It was the Court.

3 MR. KELLY: Judge Hart. So Judge Hart seems very
4 upset with Dr. Katz but I don't see that transforming into
5 any type of a concrete finding.

6 I'm not sure what's in this decision, but I do
7 think there should be a certified record or a disciplinary
8 finding or some other official statement by a Court or a
9 disciplinary body that is the foundation for this type of
10 impeachment because the use of it would be to completely
11 negate and neutralize Dr. Katz's testimony.

12 And I think in order for that to be sustained, it
13 needs to rest on more solid ground.

14 THE COURT: So let me ask. That colloquy that took
15 place, was it before this witness or outside the presence of
16 this witness, the doctor?

17 MS. STAVRAKIS HANSEN: I believe it was outside --
18 which one? This one?

19 THE COURT: That's correct.

20 MS. STAVRAKIS HANSEN: Outside of his --

21 THE COURT: This one being the transcript that was
22 handed up.

23 MS. STAVRAKIS HANSEN: Yes, yes, that was outside
24 of -- I believe she had subpoenaed him, the doctor, to come
25 in and he didn't show up with his attorney.

Proceedings

146

1 And like I said, I'm agreeing, there's no
2 conviction of perjury.

3 THE COURT: So this is the Court's decision: You
4 can ask about how long his examinations of patients are.
5 You can ask him about the prior proceedings in the matter of
6 Berneago, index number 23985, 2009. But you cannot comment
7 on the Judge's findings that this witness lied.

8 MS. STAVRAKIS HANSEN: Understood.

9 THE COURT: And you cannot comment that the Judge's
10 determination that the examinations could not have been held
11 in a minute and 56 seconds.

12 MS. STAVRAKIS HANSEN: Understood.

13 THE COURT: The credibility of this witness is up
14 to the jury and it's not to be influenced by what an
15 individual judge determined at an unrelated proceeding,
16 especially when these issues of credibility are only to be
17 determined by the jury and not the judge.

18 But you can impeach regarding isn't it true that
19 you could not have conducted these IMEs in the timeframe
20 that the witness has indicated.

21 And isn't it true in another proceeding, and you
22 can mention this proceeding that there was an issue raised
23 when you indicated that it took you more than ten minutes to
24 conduct the IMEs, but it actually took between a minute and
25 a minute and a half; isn't that true?

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Proceedings

147

1 You can ask those questions, but don't refer to the
2 Court, making their findings and don't refer to any of the
3 language saying wasting time trying cases.

4 MS. STAVRAKIS HANSEN: Of course, your Honor.

5 THE COURT: Or the application of frivolous conduct
6 under rule 130, which is also mentioned on page five.

7 But, you can impeach. But you can't refer to the
8 findings by the Judge.

9 MS. STAVRAKIS HANSEN: Understood, your Honor.

10 THE COURT: Okay. That's it.

11 MS. STAVRAKIS HANSEN: Thank you.

12 THE COURT: Thank you.

13 (Short break in the proceedings.)

14 THE COURT: Let's go on the record.

15 Yes, counsel, you want to state that again?

16 MR. KELLY: Your Honor, the defendants will not be
17 calling Dr. Katz as our expert today.

18 THE COURT: Do you have any other witnesses or
19 evidence to present?

20 MR. KELLY: I do not have any other witnesses.

21 I have to take a look at the evidence, but I don't
22 think I have any other evidence.

23 THE COURT: Do you rest?

24 MR. KELLY: If -- I hate to ask for another
25 moment's indulgence.

ns

Proceedings

148

1 THE COURT: Take another moment.

2 (Short break in the proceedings.)

3 MR. KELLY: Defendants rest, your Honor.

4 MS. STAVRAKIS HANSEN: Just for the record, we need
5 to make a record of the stipulated amount for medical
6 expenses. It's already -- the letter has already been put
7 into evidence, however, the exact amount for the record is
8 27, 307 dollars and 69 cents.

9 THE COURT: All right, thank you.

10 Are both of you ready to make closing arguments?

11 MS. STAVRAKIS HANSEN: Yes, your Honor.

12 MR. KELLY: More or less, your Honor. Yes, I am.
13 I did prepare for one. There has been a slight change of
14 circumstance, but --

15 THE COURT: Do you need a few minutes to get your
16 notes together?

17 MR. KELLY: Yes.

18 THE COURT: So let's just take a few moments and
19 then when we call the jury.

20 It's possible that -- I don't know how long your
21 closings are going to be, but it's possible that I can
22 charge them for lunch.

23 MR. KELLY: I'm five, ten minutes maximum, your
24 Honor.

25 THE COURT: Take a few moments and let me know when

1 you're ready.

2 THE COURT OFFICER: All rise. Jury's entering.

3 THE COURT: Everyone please sit down.

4 Thank you.

5 The defendant has rested so you're going to hear
6 closing arguments and then I'm going to charge you on the
7 law and then you will start your deliberations this
8 afternoon when you get back from lunch at around 2:15.

9 Mr. Kelly, do you care to make a closing statement?

10 MR. KELLY: I would like to, your Honor. Thank
11 you.

12 THE COURT: Okay.

13 MR. KELLY: Members of the jury, this is the last
14 opportunity I'll have to address you about this case and I
15 just want to bring a few points to bear for your
16 consideration before you retire to the jury room.

17 As you've heard at various points in this case,
18 your obligation now is to evaluate the evidence in the most
19 fair and impartial manner that you can to determine
20 reasonable compensation for Mr. Ballen for the approximately
21 three years and seven months that he lived after this
22 accident.

23 And as you will hear, you're not to decide the case
24 out of sympathy for Mr. Ballen or any other emotions you may
25 feel.

Proceedings

150

1 This job you have calls upon you to be objective
2 and detached and look at what would be the appropriate level
3 of compensation for Mr. Ballen in that limited period of
4 time.

5 And you heard from Mr. Ballen. He told you about
6 what hurt him in those three years or so.

7 You also heard from his doctors who went through
8 his complaints. They also went through his treatment.

9 So what do we have at the end of the day? It's
10 been a short case. There isn't that much evidence, but we
11 know Mr. Ballen fell off a ladder and we know he went to the
12 emergency room and reported certain injuries.

13 And over the course of the case, those injuries
14 have revolved around his right shoulder or right rotator
15 cuff, his right knee and his lower back.

16 You heard this morning that there were no reported
17 fractures.

18 There was an injury to his rotator cuff that
19 required surgery that was only -- it was the only one of
20 those three areas of injury that required surgery.

21 And you heard from Dr. Kaplan yesterday or Tuesday,
22 that there were some degenerative changes in Mr. Ballen's
23 lower back and that those degenerative changes could also be
24 a source of pain.

25 So take those three years and seven months and that

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1 relative span of treatment that he got centering on the
2 surgery on his rotator cuff, because beyond that, he was
3 treated with physical therapy. He was treated with
4 medication. He was treated with some injections, but did
5 not require surgery.

6 And the rotator cuff surgery appears to have been
7 somewhat successful at least in that he had a very mild
8 deficit in his range of motion in his right shoulder and a
9 relatively mild loss of strength in his right arm.

10 Now, pain and suffering damages are difficult to
11 quantify. They're not something that you can look up in a
12 book.

13 The only book that you really have is your life's
14 experience and the evidence presented in this case and the
15 law that's provided to you or will be provided to you by
16 Judge Montelione.

17 And in the end, putting all those things together,
18 it's your call as to an appropriate level of compensation.

19 We on behalf of the defendants, we'd respectfully
20 suggest that 100,000 dollars would fairly compensate
21 Mr. Ballen for his injuries when you consider the time
22 period involved and we ask that you give that number very
23 strong consideration as you deliberate.

24 I want to thank you again for all the great
25 attention that you've given us in this case and we look

Proceedings

152

1 forward to your verdict.

2 THE COURT: Ms. Stavrakis Hansen, do you care to
3 make a closing statement?

4 MS. STAVRAKIS HANSEN: Yes, your Honor. Thank you.
5 Good morning, members of the jury.

6 As you sit here today, you've now gotten all of the
7 evidence that I want you to evaluate and consider.

8 As I mentioned when I first met everyone, this is
9 your opportunity in this case to do your duty as a jury and
10 provide reasonable compensation for Mr. Ballen through his
11 family since he's now passed away.

12 Up until now, you've heard evidence that Mr. Ballen
13 fell off a ladder and suffered injuries.

14 You heard from Mr. Ballen himself from his
15 transcript, as to the pain, as to what he suffered, as to
16 what his life was like after the accident.

17 You heard what his life was prior to the accident.

18 Then you also heard from Mr. Ballen's son, Joaquin
19 Ballen, who also testified as to what his life was like
20 prior, as to what his daily life was like after the
21 accident. What pain he was in. How his life changed his
22 daily life changed.

23 That after that, you heard from two doctors, two
24 well credentialed doctors that were treating Mr. Ballen when
25 it was happening. Prior to Mr. Ballen's death.

Proceedings

153

1 They testified that Mr. Ballen had to do physical
2 therapy. He was prescribed medication for pain, muscle
3 relaxers.

4 He also had to undergo injections, invasive
5 procedures where it was with fluoroscopy. They had to use a
6 certain machine in order to perform these injections to
7 really hit Mr. Ballen's nerve roots.

8 At this point, all of the evidence that you've
9 heard is what I want you to consider and then according to
10 your life experiences, common sense and then a long -- along
11 with the law that will be provided to you by Judge
12 Montelione.

13 It is your responsibility to take all the evidence
14 and come to a determination at what you consider to be
15 reasonable compensation.

16 I mentioned this before. I struggled with this
17 throughout the entire trial. What are we doing this for?
18 Mr. Ballen has passed away.

19 However, you heard from his family. You heard
20 testimony. You heard how close they were. You heard that
21 the whole family was caring for him and were there and could
22 see and could observe the pain that he was in. Observe that
23 he had to use a cane. Observe that he had to have surgery
24 to his right shoulder at that age, he was approximately 60
25 to 63.

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1 At this point, I'm asking you to come up with
2 reasonable compensation. I want you to use your common
3 sense. I want you to look at the evidence. There are
4 medical records that have been placed into evidence and you
5 will take a look at and at this point, I'm respectfully
6 asking you to bid to you that we recommend that you come up
7 with 900,000 dollars for it to be reasonable compensation
8 for Mr. Ballen.

9 Thank you for your time. And I appreciate you all.

10 THE COURT: Members of the jury, we now come to
11 that portion of the trial when you are instructed on the law
12 that applies to this case after which you will retire for
13 your deliberations.

14 You have heard and seen all the evidence introduced
15 by the parties and through arguments of their attorneys, you
16 have learned the conclusions each party believes should be
17 drawn from the admitted evidence.

18 You will recall that at the beginning of the trial
19 I stated certain principles. Briefly, they were that you
20 were to bound to accept the principles of law as I give them
21 to you, whether or not you agree with them.

22 You are not to ask anyone else about the law. You
23 must not consider or ask anyone else about the law from
24 anyone other than me.

25 During the trial, I have ruled on some objections.

Proceedings

1 You must not conclude from any rulings I have made
 2 or anything that I have said that I favor any party to this
 3 lawsuit. Your view of the evidence and your decisions on
 4 the issues of fact will decide this case.

5 The law requires that your decision be made solely
 6 on the admitted evidence.

7 Anything I excluded from your consideration was
 8 excluded because it was not legally admissible.

9 In deciding how much weight, if any, you choose to
 10 give to the testimony of Jose Ballen, and all the other
 11 witnesses who testify, there is no magical formula that can
 12 be used.

13 The tests used in your everyday affairs to decide
 14 the reliability or unreliability of statements made to you
 15 by others are the tests you will apply in your
 16 deliberations.

17 In deciding how much weight, if any, to give to a
 18 witness's testimony, you may consider the interest or lack
 19 of interest of that witness in the outcome of this case.
 20 The bias or prejudice of the witness, if there be any. The
 21 age of the witness. The opportunity and ability that the
 22 witness had to observe the facts about which he or she
 23 testified and the probability and improbability of the
 24 witness's testimony when considered in light of all the
 25 other evidence in the case.

1 If it appears there is a conflict in the evidence,
2 you will have to consider whether and to what extent, the
3 apparent conflict can be reconciled by fitting the different
4 versions together.

5 Otherwise, you will have to decide which of the
6 conflicting versions, if any, you will accept.

7 By the processes I've just described, and any
8 further instructions I may give you, you, as the sole judges
9 of the facts, must decide whether you believe the testimony
10 of the witnesses and what portion of the testimony you
11 accept and what weight you give to it.

12 If you find that any witness has willfully
13 testified falsely as to an important matter, the law permits
14 you to disregard completely the entire testimony of that
15 witness upon the principle that one who testifies falsely
16 about one important matter is likely to testify falsely
17 about everything.

18 You are not required, however, to consider such a
19 witness as totally unbelievable.

20 You may accept so much of the witness's testimony
21 as you deem true and disregard what you deem is false.

22 The burden of proof rests on plaintiff, the
23 administrator of the estate of Jose Ballen. That means
24 plaintiff must establish by a fair preponderance of the
25 credible evidence, that the claim Jose Ballen, now deceased,

Proceedings

157

1 makes is true.

2 The credible evidence means the testimony and
3 exhibits that you find believable and reliable.

4 The preponderance of the evidence means the greater
5 part of the evidence.

6 It does not mean the greater number of witnesses or
7 the greater length of time taken by any party.

8 The phrase refers to the quality of the evidence.
9 That is its convincing quality. The weight and effect it
10 has on your minds, not to the quantity.

11 The law requires that for plaintiff to prevail on a
12 claim, the evidence that supports his claim must appeal to
13 you as more nearly representing what took place than the
14 evidence opposed to his claim.

15 If it does not or it weighs so evenly that you are
16 unable to say there is a preponderance on any side, then you
17 must decide the question against plaintiff.

18 It is only if the evidence favoring plaintiff's
19 claim out weighs the evidence opposed to it that you can
20 find in favor of plaintiff.

21 If during your deliberations, your recollection of
22 any part of the testimony should fail or if you have any
23 question about my instructions to you on the law, then you
24 have the right to return to the courtroom for the purpose of
25 having the testimony read to you or your question addressed.

Proceedings

158

1 In deciding this case, you may consider only the
2 exhibits that were admitted in evidence and the testimony of
3 the witnesses as was read to you during the trial or as was
4 presented personally during the trial.

5 Under our rules of practice, an examination before
6 trial or testimony that was recorded before trial was taken
7 under oath and is entitled to equal consideration by you,
8 even though it was taken before the trial and outside this
9 courtroom.

10 However, arguments, remarks and summations of the
11 attorneys are not evidence. Nor is anything I have said or
12 may have said with regard to the facts is evidence.

13 As I instructed you previously, it's important to
14 remember that you may not use any Internet services or
15 social media, including, for example -- my apologies to you.
16 I'm reading from the opening instructions and not from
17 closing damages instructions.

18 So let me look at my notes.

19 Some of it is repetitive so I'm going to skip what
20 I've already said to you.

21 You'll be happy to see that it's almost verbatim,
22 so I'm just going to continue where I left off.

23 Thank you.

24 Although as jurors, you are encouraged to use all
25 of your life experiences in analyzing testimony and other

Proceedings

159

1 evidence in reaching a fair verdict, you may not communicate
2 any professional expertise you might have or other facts not
3 in evidence to the other jurors.

4 You must base your discussions and decisions solely
5 on the evidence admitted during trial and that evidence
6 alone.

7 You may not consider or speculate on matters not in
8 evidence or matters outside the case.

9 Jose Ballen, the original plaintiff, now deceased,
10 testified through his deposition testimony.

11 Because plaintiff, Jose Ballen, under oath answered
12 certain questions put to him by the lawyers for defendant
13 and a stenographer recorded the answers and questions and
14 transcribed them into a document which the plaintiff later
15 signed before a notary public, the portions of the
16 transcript of examination before trial that you heard are to
17 be considered as if the plaintiff was testifying from the
18 witness stand.

19 Both Jose Ballen and his son Joaquin Ballen, are
20 both interested witnesses. That is they have an interest in
21 the outcome of the case that may have affected their
22 testimony.

23 An interested witness is not necessarily less
24 believable than a disinterested witness. The fact that they
25 are interested in the outcome of the case does not mean that

Proceedings

160

1 they have not told the truth.

2 It is for you to decide from the demeanor of the
3 witnesses on the stand and such other tests as your
4 experience dictates whether or not the testimony has been
5 influenced intentionally or unintentionally by their
6 interest.

7 You may reject the testimony, if, after careful
8 consideration of all the evidence in the case, including the
9 cross-examination of the witness, you decide you do not
10 believe the testimony or you find it is not reliable.

11 On the other hand, you are not required to reject
12 the testimony of such a witness and may accept all or such
13 part of their testimony as you find believable and reliable
14 and reject such part as you find unworthy of acceptance.

15 The testimony is entitled to such weight as you
16 decide it is worth.

17 This case will be decided on the basis of the
18 answer you give to a written question that will be submitted
19 to you.

20 The question calls for a numerical figure, a dollar
21 amount.

22 While it is important that the views of all jurors
23 be considered, five of the six of you must agree on the
24 answer to this question.

25 When five of you have agreed on the answer, the

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Proceedings

161

1 foreperson of the jury will write the answer in the space
2 provided for the answer and each of you will sign in the
3 appropriate place to indicate your agreement or
4 disagreement.

5 When you have answered the question that requires
6 an answer, report to the Court.

7 In reaching your verdict, you are not to be
8 affected by sympathy for any of the parties, what the
9 reaction of the parties or the public to your verdict will
10 be. Whether it will please anyone or be popular or
11 unpopular or indeed any consideration outside the case as it
12 has been presented to you in this courtroom.

13 Your verdict will be determined by the conclusions
14 you reach, no matter whom the verdict helps or hurts.

15 You may recall that at the beginning of the trial,
16 I instructed you on the concept of a fair juror.

17 A fair and impartial juror -- as a fair and
18 impartial juror, you must guard against the application of
19 any stereotypes or attitudes about people or groups that
20 might lead you to render a biased decision based on those
21 stereotypes or attitudes.

22 Keep in mind that base based upon stereotypes or
23 attitudes is not always obvious or conscious.

24 In assessing the testimony and other evidence in
25 the case, you must not be swayed by those stereotypes or

Proceedings

162

1 attitudes.

2 As jurors, your duty is to decide from all the
3 testimony you've heard and the exhibits that have been
4 admitted into evidence what the facts are.

5 You are the sole and exclusive judges of the facts.
6 Neither I nor anyone else can take over your responsibility
7 to decide the facts of the case, which you will do by the
8 answer you provide on the verdict sheet.

9 As sole judges of the facts, you must decide which
10 of the witnesses you believe, what portion of their
11 testimony you accept and what weight you give to it.

12 You'll recall that Jeffrey Kaplan and Michael Katz
13 testified -- concerning their qualifications --

14 MS. STAVRAKIS HANSEN: Your Honor.

15 THE COURT: Concerning their qualifications as
16 medical doctors in the field.

17 Did I get that wrong?

18 MS. STAVRAKIS HANSEN: Yes.

19 THE COURT: I'm so sorry.

20 Which doctors?

21 MS. STAVRAKIS HANSEN: It's Dr. Kaplan and Dr.
22 Mandelbaum.

23 THE COURT: Mandelbaum. Sorry.

24 What is Dr. Mandelbaum's area of expertise in
25 orthopedics or something else?

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Proceedings

163

1 MS. STAVRAKIS HANSEN: Pain management.

2 THE COURT: I have Chaim Mandelbaum in terms of
3 pain management.

4 So it was only two doctors who testified?

5 MS. STAVRAKIS HANSEN: Yes, your Honor.

6 THE COURT: I'm sorry about that.

7 You heard testimony from Dr. Jeffrey Kaplan
8 regarding his expertise in the field of orthopedics and you
9 heard from Chaim Mandelbaum who testified concerning his
10 qualifications in the field of pain management and gave his
11 opinion concerning issues in the case.

12 When a case involves a matter of science or
13 requires special knowledge or skill that most people do not
14 have, a qualified witness is permitted to state his or her
15 opinion for the information of the Court and jury.

16 The opinion stated by these witnesses were based on
17 particular facts as they obtained knowledge of them and
18 testified about them or as the attorneys who questioned them
19 asked them to assume.

20 You may reject any opinion, if you find the facts
21 to be different from the facts that form the basis for the
22 opinion.

23 You may also reject an opinion, if, after careful
24 consideration of all the evidence in the case, including the
25 cross-examination of any of these witnesses, you decide that

Proceedings

164

1 an opinion is not convincing.

2 In other words, you are not required to accept any
3 opinion to the exclusion of the facts and circumstances
4 disclosed by other evidence.

5 Opinion testimony should be evaluated in the same
6 way as the testimony of any other witness.

7 It is given to assist you in reaching a proper
8 conclusion.

9 It is entitled to such weight as you find the
10 witness's qualifications in the field warrant and must be
11 considered by you, but is not controlling upon your
12 judgment.

13 During counsel's closing remarks, respective
14 counsel suggested a specific dollar amount that he or she
15 believes to be appropriate compensation for specific
16 elements of plaintiff's damages.

17 An attorney is permitted to make suggestions as to
18 the amount that should be awarded, but those suggestions are
19 arguments only and not evidence and should not be considered
20 by you as evidence of plaintiff's damages.

21 The determination of damages is solely for you, the
22 jury, to decide.

23 Plaintiff is entitled to recover a sum of money
24 which will justly and fairly compensate his estate for any
25 injury or disability and pain and suffering from the date of

1 the accident on November 21, 2014, through June 10, 2018,
2 when he died, which is a period of three years, six and a
3 half months.

4 His death was completely unrelated to the facts of
5 this case and we ask that you not speculate as to cause of
6 death.

7 In determining the amount, if -- in determining the
8 amount to be awarded -- to be awarded plaintiff for pain and
9 suffering, you may take into consideration the effect that
10 Jose Ballen's injuries have had on plaintiff's ability to
11 enjoy life up to the time of his death.

12 Loss of enjoyment of life involves the loss of the
13 ability to perform daily tasks to participate in the
14 activities which were a part of the person's life before the
15 injury and to experience the pleasures of life.

16 Plaintiff will not be required to pay income taxes
17 on the award and you must not add to or subtract from the
18 award in the amount on account of income taxes.

19 I will keep the alternate juror separate from
20 deliberating jurors during deliberations.

21 As I told you before, only six of you will be
22 deliberating and additional jurors were required as a
23 safeguard against the possibility that one or more of you
24 might be unable to complete his service.

25 Those of you who will not be deliberating, must not

Proceedings

166

1 communicate anything about the case in any fashion with the
2 sitting jurors or anyone else after a verdict has been
3 rendered.

4 I may instruct you otherwise.

5 I commend all of you for your faithful attendance
6 and attention.

7 On behalf of the Court and the parties, I thank you
8 for your service.

9 I've now outlined for you the rules of law that
10 apply to this case and the processes by which you weigh the
11 evidence and decide the facts.

12 The first thing you should do in the jury room is
13 choose a foreperson.

14 A foreperson has several duties. It is the
15 foreperson who keeps order in the jury room and makes sure
16 that you each have an opportunity to speak and just as
17 important, to listen to your fellow jurors.

18 When you have a question or request, the foreperson
19 will write a note, place the date and time on it and sign
20 it.

21 Similarly, the foreperson will mark your answer on
22 the foreperson's copy of the verdict sheet.

23 However, despite all these duties, the foreperson's
24 view of the evidence and his vote is entitled to no greater
25 weight than that of any other juror.

Proceedings

167

1 Your function to reach a fair decision from the law
2 and evidence is an important one. When you're in the jury
3 room, listen to each other and discuss the issues among the
4 case yourselves.

5 It is the indict of each juror to consult one
6 another and to deliberate with the goal of reaching a jury
7 on a verdict.

8 If you can do so without violating your individual
9 judgment and your conscience.

10 While you should not surrender conscientious
11 convictions of what the truth is and what the weight and
12 effect of the evidence and while each of you must decide the
13 case for yourself and not merely consent to the decisions of
14 your fellow jurors, you should examine the issues and the
15 evidence before you with candor and frankness and with
16 proper respect and regard for the opinions of each other.

17 Remember, in your deliberations, that the dispute
18 between the parties is for them a very important matter.

19 They and the Court rely upon you to give full and
20 conscientious deliberations and consideration to the issues
21 and evidence before you.

22 By doing so, you carry up to the fullest your oath
23 as jurors to truly try the issues of the case and render a
24 true verdict.

25 At this point, I'm going to tell you that we're

ns

Proceedings

168

1 going to take a break so you're going to have a longer lunch
2 hour, to 2:15.

3 When you return, you can go immediately to the jury
4 deliberation room and you can start your deliberations.

5 You won't have to come back to this courtroom.

6 And I'm going to ask you that before now and 2:15,
7 as tempting as it is, please do not discuss this case with
8 anyone.

9 To do so wouldn't be fair to the parties because
10 you should all be in the room and you should start it all at
11 once.

12 And the last thing I'll say is you can't -- you
13 cannot start the deliberations until all six jurors are in
14 that deliberation room.

15 Thank you so much for your attention and have a
16 good lunch and you can start the deliberations at 2:15.

17 Thank you.

18 THE COURT OFFICER: All rise. Jury's exiting.

19 (Jury exits.)

20 THE COURT: Counselors, do you want the evidence to
21 be in the deliberating room or do you want to wait until
22 they ask for the evidence?

23 MS. STAVRAKIS HANSEN: I'm okay with if we want to
24 wait 'till they ask for it, if there is a note or something.

25 MR. KELLY: Same here, your Honor.

Proceedings

169

1 THE COURT: That's fine.

2 THE COURT CLERK: Very good.

3 THE COURT: So all we'll give them is the sheet.

4 THE COURT CLERK: Yes, and if they request it.

5 THE COURT: And if you want to leave your cellphone
6 numbers, you know, you don't have to be here at 2:15.
7 We'll call you if there is a jury note or there is
8 a verdict.

9 (Jury is deliberating.)

10 THE COURT: The Court received a jury note. I'll
11 read it into the record.

12 Quote, we the jury have reached a verdict, end
13 quote.

14 So we'll call the jury.

15 THE COURT OFFICER: All rise. Jurors entering.

16 THE COURT: Everyone please sit down. Thank you.

17 It's my understanding that the jury has reached
18 their verdict. I'll ask the foreperson to stand and the
19 clerk will take the verdict.

20 THE COURT CLERK: As to question number one, the
21 amount awarded to the estate of Jose M. Ballen deceased by
22 and through its administratrix, Sonia B. Dalton, for pain
23 and suffering as a result of the accident on November 21,
24 2014, to the date of Jose M. Ballen's death on June 10,
25 2018.

Proceedings

170

1 THE FOREPERSON: 750,000 dollars.

2 THE COURT CLERK: Was that five out of six or six
3 out of six?

4 THE FOREPERSON: Six out of six.

5 THE COURT CLERK: The verdict has been rendered.

6 THE COURT: Thank you.

7 Do either counsel wish the jury to be polled?

8 MS. STAVRAKIS HANSEN: Yes, your Honor.

9 MR. KELLY: Yes, please, your Honor.

10 THE COURT: Let's poll the jury.

11 THE COURT CLERK: Members of the jury, you've heard
12 the verdict as rendered by your foreperson.

13 I will now ask you individually if that is your
14 verdict.

15 Answer yes or no.

16 As to question number one, the amount awarded to
17 the estate of Jose M. Ballen, deceased, by and through its
18 administratrix, Sonia B. Dalton, for pain and suffering as a
19 result of the accident of November 21, 2014, on the date of
20 Jose M. Ballen's death on June 10, 2018, for 750,000
21 dollars.

22 Juror number one?

23 JUROR: Yes.

24 THE COURT CLERK: Juror number two?

25 JUROR: Yes.

ns

Proceedings

171

1 THE COURT CLERK: Juror number three?
2 JUROR: Yes.
3 THE COURT CLERK: Juror number four?
4 JUROR: Yes.
5 THE COURT CLERK: Juror number five?
6 JUROR: Yes.
7 THE COURT CLERK: Juror number six?
8 JUROR: Yes.
9 THE COURT CLERK: The jury has been polled.
10 THE COURT: On behalf of the parties and their
11 counsel and the Court, I want to thank you each and every
12 one of you.
13 There is a reason why everyone, including the
14 Judge, stands when the jurors enter a room. That is because
15 you are integral to our system of justice.
16 Your being here is also an assurance if you need
17 your day in court, someone like yourselves will be sitting
18 in the same seats you're sitting in, to help you render a
19 decision and do justice in your case.
20 Have a great weekend.
21 With the thanks of the Court, again.
22 And I think it's going to be six years before you
23 are called again for jury service so hopefully this hasn't
24 been too much of an imposition to you.
25 Very best of luck to each of you. Thank you.

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Proceedings

172

1 THE COURT OFFICER: All rise. Jury's exiting.

2 (Jury exits.)

3 THE COURT: All right, everybody. You could sit
4 down.

5 All right. Are there any post-verdict motions?

6 MS. STAVRAKIS HANSEN: No, your Honor.

7 MR. KELLY: Your Honor, we will renew our motion
8 for a judgment. We will probably be filing a motion --

9 THE COURT: I'm so sorry --

10 MR. KELLY: I'm sorry.

11 We would renew our motion for a judgment NOV. And
12 we will be filing a motion.

13 THE COURT: Why don't you -- I'm going to give you
14 an opportunity to put in moving papers regarding the amount
15 of the judgment.

16 MR. KELLY: Okay.

17 THE COURT: And you know frankly, I try doing a
18 little research on the number, what would be appropriate in
19 this case and, of course, there's no case directly on point
20 with all the facts in this case.

21 You have to analogize as closely as possible to
22 some of the cases that are out there.

23 So let me give you 15 days in which to bring a
24 motion.

25 And how much time are you going to need, counsel?

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Proceedings

173

1 MS. STAVRAKIS HANSEN: Your Honor, if we can get 15
2 days from the date that they file their motion. I think
3 that's only fair, if, or unless you want.

4 THE COURT: No, that's fine. If everybody's in
5 agreement, I would --

6 MS. STAVRAKIS HANSEN: Honestly I would rather have
7 30 days. But if you are going to give them 15 days I didn't
8 feel comfortable asking for 30 days. If counsel needs an
9 opportunity to bring a motion, or if the Court --

10 THE COURT: The reason why there are shorter
11 deadlines for these motions is that everything is fresh in
12 my mind.

13 MS. STAVRAKIS HANSEN: That's fine, your Honor. 15
14 days is fine then.

15 THE COURT: And I'll give you maybe three days for
16 reply.

17 MR. KELLY: Um could we ask for five, your Honor?

18 THE COURT: All right. Five days for the reply.

19 And do you want exact dates or you'll -- well,
20 let's give it exact date.

21 What is today's date?

22 THE COURT CLERK: April 11th.

23 THE COURT: So April 28th, defendant's motion
24 papers are due.

25 May 13th the opposition papers are due. And five

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business days is the following Tuesday, May 20th.

I know this might be expecting too much, but if you both could agree on a number, that would alleviate the need for a motion.

Thank you so much.

MS. STAVRAKIS HANSEN: Thank you.

MR. KELLY: Thank you.

C E R T I F I C A T I O N

I hereby certify that the foregoing is a true and accurate copy of the stenographic proceedings of the hearing held in the above matter.

Naomi Schwartz

NAOMI SCHWARTZ, RPR
Senior Court Reporter