TRIAL TRANSCRIPT - ALI ERAJ GUY, M.D.; 1996 Trial Trans. LEXIS 688

SUPREME COURT OF NEW YORK, KINGS COUNTY, CIVIL TERM: PART 30

Index No. 9652/93

May 14, 1996

Reporter
1996 Trial Trans. LEXIS 688 *

FRANK DRISCOLL, JR., Plaintiff, -against- NEW YORK CITY TRANSIT AUTHORITY, Defendant.

Expert Name: Dr. ERAJ GUY, M.D., F.A.A.P.M.R.

Disclaimer

Certain information may have been removed or redacted. LexisNexis, its subsidiaries, affiliates and related entities bear no responsibility whatsoever for such content or any removal or redaction thereof.

Counsel

[*1] KELNER & KELNER, ESQS., Attorneys for the Plaintiff, New York, New York, BY: ROBERT S. KELNER, ESQ.

OFFICE OF THE GENERAL COUNSEL, Attorneys for the Defendant New York City Transit Authority, Brooklyn, New York, BY: PATRICK J. LEACH, ESQ.

Judges

BEFORE HONORABLE RUTH MOSKOWITZ, Justice, and a jury.

Proceedings

132

[1]
[2]MR. KELNER: On the record, I would like to

[3]state that I have in my hands, pursuant to a

[4]conversation that was had yesterday with the Court

[5]and Mr. Leach, the plaintiff's mother dug through

[6]her closet and found, "State of New Jersey, **[*2]** Board

[7]of Education, To all Persons to Whom These letters

[8]May Come Greeting, be it known that Frank N.

[9]Driscoll, having satisfied the full and statutory

[10]and regulatory requirements of the State of New

[11]York for high school diploma -- " I'm sorry, "of

[12]the state, for the high school diploma, has been

[13]awarded this diploma," etcetera, and I have a --

[14]given at Trenton, New Jersey, November, 1990, high

[15]school diploma which is the GED that Mr. Driscoll

[16]testified to.

[17]Rather than offering it in evidence,

[18]Mr. Leach has been nice enough to stipulate that

[19]it is a document that was received by Mr. Driscoll

[20]and that he has this degree.

[21]MR. LEACH: So stipulated.

[22]MR. KELNER: And I will give this back to his

[23]mother to take home.

[24]At this time I would like to offer into

[25]evidence the relevant portions of the hospital
133

[1]
[2]records which we have here, subject, of course, to

[3]redaction and, as I discussed with the Court, I

[4]would like to be able to do that with counsel, the

[5]Joint Diseases records, the Brooklyn Hospital

[6]records.

[7]Since there were pages missing from the prior

[8] **[*3]** Brooklyn Hospital records, I would like to request

[9]of the Court the chance to be able to bring

[10]these back to my office for a medical person to

[11]review certain aspects of this. This was produced

[12]pursuant to subpoena and has just been given to us

[13]by the Court.

[14]THE COURT: You may bring it back to your

[15]office and return it tomorrow.

[16]Shall we mark them?

[17]MR. KELNER: Yes, please, and we also have

[18]the films from Joint Diseases Hospital, as well as

[19]various certified bills which, of course, would be

[20]reserved to the Court pursuant to our stipulation.

[21]I would like to offer all of those into

[22]evidence.

[23]THE COURT: Well, let's mark each one

[24]separately.

[25](Plaintiff's Exhibits 7 and 8 were received
134

[1]
[2]in evidence.)

[3]THE CLERK: Plaintiff's 7 in evidence is the

[4]Brooklyn Hospital records, Plaintiff's 8 in

[5]evidence is Hospital of Joint Diseases.

[6]MR. LEACH: I'm going to have to object to

[7]the receipt of the x-rays in evidence. I got no

[8]notice they were going to use testimony pursuant

[9]to the CPLR.

[10]MR. KELNER: If he objects I will not put

[11]them **[*4]** into evidence, I will withdraw the offer.

[12](Pause.)

[13](Discussion held off the record.)

[14](Jury enters.)

[15]THE COURT: Good morning.

[16]Call your next witness.

[17]MR. KELNER: Thank you.

[18]Your Honor, at this time I call Dr. Ali Guy

[19]to the witness stand.

[20]A L I G U Y, M.D., a witness called on behalf of the

[21]Plaintiff, after having been first duly sworn by

[22]the clerk of the Court, was examined and testified

[23]as follows:

[24]THE CLERK: Have a seat, Dr. Guy, and give

[25]the court reporter your full name and business
135

[1]
[2]address.

[3]THE WITNESS: My name is Dr. Guy, Ali Guy,

[4]A-l-i, G-u-y.

[5]My office address is 7 Grammercy Park, New

[6]York, New York, 10003.

[7]MR. KELNER: May I proceed, your Honor?

[8]THE COURT: Please.

[9]MR. KELNER: Thank you very much.

[10]DIRECT EXAMINATION

[11]BY MR. KELNER:

[12]Q Dr. Guy, are you a physician duly licensed to

[13]practice in the State of New York?

[14]A I am.

[15]Q When were you licensed to practice, doctor?

[16]A 1985.

[17]Q And would you just generally trace your medical

[18]career for the Judge and **[*5]** jury?

[19]A My undergraduate, I went to Queens College.

[20]Medical school, I went to Dominican Republic.

[21]I graduated from the University of Northeast and

[22]then I did three medical residencies.

[23]I did my first medical residency at Mt. Sinai

[24]School of Medicine, Mt. Sinai Medical Center, in the field

[25]of internal medicine for a period of 18 months.
136

[1]
[2]I did one year of general surgery at Cabrini

[3]Medical Center, now affiliated with Mt. Sinai.

[4]Then I did three years of physical medicine and

[5]rehabilitation at Mt. Sinai Medical Center.

[6]I'm board certified in the field of physical

[7]medicine and rehabilitation.

[8]In order to become board certified you must first

[9]complete satisfactorily one to two years of prior

[10]prerequisite training in another specialty besides physical

[11]medicine and rehabilitation.

[12]You must then complete at least a three-year

[13]training program in physical medicine and rehabilitation.

[14]You must satisfactorily pass your yearly in-service

[15]examinations, score 70 percent or higher.

[16]You must then complete an eight-hour examination

[17]after **[*6]** you complete your training program and graduate from

[18]the residency training program.

[19]You must then be in private practice for at least

[20]18 months, be sponsored by two other board certified

[21]doctors in your own specialty who know you personally.

[22]There have to have been no complaints against you

[23]in any capacity; legal, ethical or criminal.

[24]You then fly to the Mayo Clinic where all the

[25]research and textbooks are written in Minnesota.
137

[1]
[2]You then get tested orally by a group of different

[3]doctors in the fields of orthopedics, neurology,

[4]rehabilitation, electrodiagnosis and that examination takes

[5]about four hours.

[6]You must prove to these doctors that your training

[7]and your knowledge is equal to theirs, if not more.

[8]And once you do that then you pass the

[9]examinations and you are given a title of a diplomate or

[10]board certified, which is the highest degree you can obtain

[11]in your level of specialty.

[12]I'm also a clinical instructor at Hospital for

[13]Joint Diseases Orthopedic Institute where I teach and train

[14]the residents from the NYU Medical Center.

[15]I'm the **[*7]** director of the neuromuscular equipment

[16]clinic at Hospital for Joint Diseases Orthopedic Institute.

[17]I'm also on staff at Cabrini Medical Center.

[18]My field, the field of physical medicine and

[19]rehabilitation, deals with traumatic injuries. We are

[20]considered trauma specialists.

[21]We deal with orthopedic problems, fractures, neck

[22]problems, back problems, birth defects.

[23]Our job is to rehabilitate an injured patient, try

[24]and bring them to the optimal level of care as close to as

[25]their level prior to their injuries and we have training in
138

[1]
[2]orthopedics, as I indicated, neurology, kinesiology, which

[3]is the study of movement.

[4]We train in many disciplines; internal medicine,

[5]surgery, and physical therapy.

[6]We try to avoid surgery, if at all possible. Our

[7]difference from an orthopedic surgeon is that we do not do

[8]orthopedic surgery. We do the same diagnosis, management,

[9]out nonsurgical.

[10]Many times an orthopedic surgeon refers a patient

[11]to us once there's really no surgical need for them to

[12]follow the patient.

[13]The difference between us and a neurologist is

[14] **[*8]** that a neurologist concentrates more on central neurology,

[15]that's the brain neurology, we concentrate more on

[16]peripheral neurology or spinal neurology. That's the

[17]spinal cord and the nerve roots from the spinal cord and

[18]the nerves in the hands, arms, legs, etcetera.

[19]We do rehabilitation after head injury, after

[20]spinal cord injury.

[21]My particular training in spinal cord injuries is

[22]as follows:

[23]As part of my rotation from Mt. Sinai I had nine

[24]months of intensive training at the spinal cord injury unit

[25]at the Bronx Veterans Hospital, where we saw all kinds of
139

[1]
[2]spinal cord injuries from quadraplegics to paraplegics,

[3]complete spinal cord injuries with incomplete spinal cord

[4]injuries.

[5]And so our job is to, once again, to treat these

[6]patients with therapy and rehabilitation to try to restore

[7]their function as best as we can.

[8]Q Thank you, doctor.

[9]By the way, is your specialty in physical medicine

[10]and rehabilitation also called physiatry?

[11]A Yes.

[12]Q So if the word physiatrist is used, is that -- not

[13]psychiatrist, physiatrist, if that is used, then **[*9]** is that a

[14]synonym for a specialist in rehabilitation medicine and

[15]physical medicine?

[16]A The answer is yes.

[17]Q Okay. Now, did I call you sometime back and tell

[18]you that I had a young client who was in Connecticut who

[19]came from New York who wanted to be closer to his family?

[20]A Yes, you did.

[21]Q And was that individual Frank Driscoll?

[22]A Yes.

[23]Q Did I request of you that you make arrangements to

[24]transfer him from Whitewood, which was where he was in

[25]Connecticut, to New York for the purpose of rendering
140

[1]
[2]treatment down here?

[3]A Yes.

[4]Q And before you saw this patient did you have

[5]occasion to review his medical records?

[6]A I did.

[7]Q Okay. Did there -- could you do this, doctor?

[8]Could you trace, especially with the -- let's just

[9]deal with the Brooklyn Hospital record first.

[10]Could you go through that Brooklyn Hospital

[11]record --

[12]MR. KELNER: Let the record indicate that the

[13]doctor has the records which have been offered

[14]into evidence and received in evidence.

[15]Q Could you trace his course at the Brooklyn

[16]Hospital and **[*10]** explain specifically the injuries that he had,

[17]the surgery that he had, so as to give us a better

[18]understanding of what this man went through?

[19]A Yes.

[20]Patient was brought to the hospital emergency room

[21]at the Brooklyn Hospital unresponsive. They had a John

[22]Doe. They didn't even know his full name. He was found

[23]unresponsive.

[24]They brought him in after he had resuscitation.

[25]He had some vital signs. He had a pulse, he had a blood
141

[1]
[2]pressure.

[3]He had multiple injuries including injuries to his

[4]head, to his neck, to his back, his legs. He had a pelvic

[5]fracture and he was found to have a subluxation in his

[6]neck. The C6 over C7.

[7]Definition of a subluxation means a movement, one

[8]vertebra slips over another one.

[9]This is a rough diagram of the spine with the

[10]vertebras, the disks, the spinal cord and other structures.

[11]When you say subluxation -- C6 means the sixth

[12]cervical vertebra. In the neck we have seven cervical

[13]vertebra.

[14]Subluxation means one shifts over like so

[15]indicating).

[16]THE COURT: Would you just turn it around for

[17]me?

[18] **[*11]** (Shown to Court.)

[19]A (Cont'g) And what happens is the facets -- this is

[20]called the posterior facet -- the facets get locked, the

[21]spine becomes unstable. Fragments get dislodged in the

[22]spinal canal. This has a high risk of moving and severing

[23]the spinal cord, which is right behind it and in the

[24]middle.

[25]So he underwent a C6-C7 cervical spine
142

[1]
[2]stabilization procedure with clamps and other stabilizers

[3]to make sure that this level does not move again. Okay?

[4]He was also found to have a fracture of the C5-C6

[5]vertebral body.

[6]C5-C6 means the fifth cervical vertebra and sixth

[7]cervical vertebra.

[8]Q So those vertebra, those bones, were fractured or

[9]broken?

[10]A Broken, yes.

[11]Q So he had a broken neck in two places?

[12]A Yes.

[13]Q Go ahead.

[14]A He had contusion to his head, to the brain. There

[15]was some abrasions and ecchymosis on the side of his face.

[16]THE COURT: What's ecchymosis?

[17]THE WITNESS: Ecchymosis means black and

[18]blue. It's a bleeding under the skin. When you

[19]have a few drops of blood under the skin the skin

[20]becomes black and **[*12]** blue called ecchymosis.

[21]Q Okay, can I interrupt you for one second because

[22]we're talking about the black and blue marks and you also

[23]mentioned that he had a head injury.

[24]What did you call it, a brain contusion?

[25]A Yes.
143

[1]
[2]Q And was that in what was called the right frontal

[3]lobe of the brain?

[4]A Yes (indicating).

[5]Q Tell us what a brain contusion to the right

[6]frontal lobe means?

[7]A Okay, contusion means a blow.

[8]The brain has different parts: The frontal is the

[9]front part, the parietal is the top part, occipital is the

[10]back part and temporal is the sides.

[11]Each part of the brain has different functions.

[12]The frontal lobe controls memory, controls thought

[13]process and personality.

[14]So if you have a blow to the temporal lobe on the

[15]sides, you get different alterations of function.

[16]If you have a blow to the frontal part you can

[17]expect memory problems, behavioral problems, anxiety,

[18]depression, agitation, mood swings. You can expect

[19]problems with motor function.

[20]If you get a blow to the occipital lobe, which

[21]controls the **[*13]** vision and balance, you can expect blurring of

[22]vision, you can expect problems with equilibrium, etcetera.

[23]So each part of the brain controls a different

[24]function.

[25]So he had a blow to the right frontal area.
144

[1]
[2]Also documented by a CT scan with and without

[3]contrast of the head.

[4]Q Now, did that indicate that there was -- does a

[5]contusion mean that there is bleeding within the brain,

[6]sir?

[7]A There was no bleeding. It indicated that there

[8]was a blow. A contusion to the superficial layers of the

[9]Drain, but no internal bleeding.

[10]Q Okay, thank you.

[11]A He had multiple cuts in his body. He was given a

[12]tetanus toxoid booster. He was given some intravenous

[13]antibiotics in the emergency room.

[14]To continue, he was found to have -- at the time

[15]of the initial arrival or later on or just trace the whole

[16]course?

[17]Q Just trace through -- one of the points that I

[18]would like you to specifically mention is that he had a

[19]cervical --

[20]MR. LEACH: Your Honor, please --

[21]MR. KELNER: Withdrawn.

[22]MR. LEACH: -- let's let the doctor testify.

[23] **[*14]** MR. KELNER: Withdrawn.

[24]Q Can you look at the hospital records and tell us

[25]about the operation that involved his cervical fusion?

145

[1]
[2]A Yes. Okay, on 10/22/91 he under went a C6-C7

[3]stablization procedure of the spine with posterior cervical

[4]fusion and debridement of the cervical spine fracture.

[5]What that means is that posterior means the back.

[6]This is the back of the spine (indicating). Let

[7]me fix this spine up a little bit to make it more aligned.

[8]This is the posterior aspect of the spine.

[9]When I say a posterior stabilization procedure

[10]means that they stabilized, put these back into the proper

[11]alignment, and if there was any pieces of bone stuck in the

[12]pathway they suck it out or they pull it out, they clear

[13]the pathway, make sure everything is properly aligned and

[14]there's no bony fragments stuck in the pedicles that slide

[15]when you go forwards and backwards and this was stabilized

[16]with stabilizers, with Halifax clamps, special clamps to

[17]hold the vertebra down in place to prevent any further

[18]movements.

[19]And he also had screws in place to help with the

[20]stablization **[*15]** procedure.

[21]Q The screws would go into the bone?

[22]A The screws go into the bone and to the Halifax

[23]clamps, both.

[24]The bone chips were removed from the bony area and

[25]these were packed around the fractured sites bilaterally as
146

[1]
[2]well as around the spinous process to help with the bony

[3]fusion.

[4]So, they put some bone fragments around the area

[5]that was broken to help -- bone heals with callus

[6]formation, it's a bone cement, so it helps to make the area

[7]stronger.

[8]So this patient had a spinal procedure with

[9]clamps, screws and bone, small bone fragments to help

[10]cement the fracture site.

[11]And he had another procedure performed on 12/4/91.

[12]He had a transverse lumbar flap and osteotomy -- ostectomy

[13]means you remove a piece of bone -- with a superior ileac

[14]crest. That's from your hip bone, that was removed, and

[15]they used that to close the open area that was in his lower

[16]back and, in fact, I can show it on him where the area was

[17]closed.

[18]Q We would like to do that when we go through this

[19]part, doctor.

[20]A Okay, fine.

[21]Q In other words, you're talking **[*16]** about the flap, the

[22]surgery for his bed sore?

[23]A That's right.

[24]Q At this point in time with the graft of skin to

[25]cover the open wound, is that correct?

147

[1]
[2]A That's right, that's right.

[3]Q All right, by the way, doctor, is it absolutely

[4]necessary for a paralyzed patient to be moved so that they

[5]don't develop bed sores?

[6]A Is it absolutely possible?

[7]THE COURT: Necessary.

[8]Q No, is it a required procedure?

[9]A Yes, it is necessary, yes.

[10]Q Are bed sores, you know, little tiny things that

[11]are unimportant in a quadraplegic patient or is this

[12]something that is serious?

[13]A This is something that is very serious. When you

[14]have a patient that cannot move, if a patient stays

[15]under -- on their butt or on their lower back for a period

[16]of time, you get an exponential increase in pressure at the

[17]skin level.

[18]Okay, if a person is normal you have good capilary

[19]filling, you have good blood flow, good immune response,

[20]everything is working properly.

[21]When a patient has a spinal cord injury everything

[22]is working at partial efficiency, depending **[*17]** on what area.

[23]So when a patient is laying in bed you have to

[24]change position from time to time so all the pressure

[25]doesn't go to one area.

148

[1]
[2]They have all kinds of special beds for these

[3]patients. They have a Clinitron bed, which is on water.

[4]They have beds on a cushion of air. They have beds with

[5]special gel foam material.

[6]But the key thing is to move the patient from side

[7]to side and sometimes if you don't move them on time you

[8]start to get a little ulceration or a little scraping of

[9]the skin and once that skin disrupts or tears slightly, you

[10]get rapid formation of large ulcerations or holes or cuts

[11]or skin breakdowns in the area where the pressure is

[12]applied.

[13]Q Thank you.

[14]Is there anything else that you want to tell us

[15]about in -- well, obviously, the quadraplegia is the point

[16]want --

[17]A Just to continue his hospital course, when he came

[18]in he was in the surgical intensive care unit for

[19]approximately one month. He had a tracheostomy. He was

[20]being artificially ventilated with a tracheostomy tube and

[21]he had a pelvic fracture and they were monitoring **[*18]** his vital

[22]signs, his breathing capacity, and they were monitoring his

[23]electrolytes.

[24]When you have a spinal cord injury you have an

[25]alteration of your electrolytes.

149

[1]
[2]Electrolytes are sodium, potassium, calcium,

[3]magnesium, etcetera.

[4]The two most dangerous electrolytes are the sodium

[5]and potassium. If your potassium goes too high it can stop

[6]pour heart. If it goes too low down it can slow down the

[7]heart mechanism. So you need adequate supply of potassium

[8]for heart function.

[9]Sodium works in direct opposite with potassium.

[10]If your sodium goes up your potassium goes down and vice

[11]versa, so you have to be very careful with these exchanges

[12]of electrolytes.

[13]So that's basically what he was being monitored

[14]for and he had a scar in his posterior aspect of his neck

[15]and in front part of his neck from the tracheostomy, not to

[16]mention all the other scarring on his lower back from the

[17]decubitus that he had and from the surgical procedure.

[18]Q What is quadraplegia, doctor?

[19]A Quadraplegia means you're paralyzed in all four

[20]extremities, arms and legs.

[21] **[*19]** Q And what was the diagnosis reached at Brooklyn

[22]Hospital?

[23]A C6-C7 quadraplegia.

[24]Q Doctor, is there anything else about the Brooklyn

[25]Hospital course that you feel that we should know about?

150

[1]
[2]A Well, the important parts, I believe, were

[3]mentioned.

[4]Q All right. Did there come a time that you

[5]examined Frank Driscoll?

[6]A Yes.

[7]Q Do you want to eliminate those records, just to

[8]give you more room up there?

[9]A The first time I saw Mr. Driscoll was on 8/20/92

[10]at the time of admission to Hospital for Joint Diseases

[11]Orthopedic Institute.

[12]Q All right. Could you trace your dealings with him

[13]and his course at that hospital?

[14]A Basically, I took a history that he was basically

[15]hit and run over by a train.

[16]He had sustained injuries to his neck, to his

[17]head, to the chest, the face, the back, the legs, the

[18]pelvic fracture, and I examined him and then I ordered

[19]physical therapy for him -- physical therapy, occupational

[20]therapy, psychotherapy, vocational therapy and social

[21]therapy for him.

[22]Q Okay. What are those different therapies and **[*20]** why

[23]were they necessary?

[24]A Well, when he came in he had a lot of spasticity.

[25]Spasticity is defined as increased tone or

151

[1]
[2]tightness of all the muscle groups and joints.

[3]When you have spinal cord injury, in the initial

[4]phases, you have what is called a flaccid state where the

[5]tone is diminished, there is no tone.

[6]Afterwards the tone becomes increased, everything

[7]becomes tight.

[8]So because of his tightness of all the muscles and

[9]joints we had to give him range of motion.

[10]We gave him passive range of motion. Passive is

[11]what the therapist does. Active is what the patient does.

[12]So we had to stretch all his muscle groups in his

[13]arms, in his hands, to prevent any further contractures of

[14]his fingers.

[15]His fingers were very badly deformed. We call it

[16]flexion contracture which means that the fingers have been

[17]contracted in this state and he cannot open them, the

[18]tendons have been tightened to a point that they cannot

[19]straighten out, even with passive attempts.

[20]So, I ordered for him occupational therapy to

[21]improve his range of motion, decrease **[*21]** his spasticity, to

[22]try to improve his strength as best as possible. That was

[23]also done by physical therapy.

[24]We gave him psychotherapy because he was very,

[25]very emotionally disturbed. He was depressed. He was very
152

[1]
[2]anxious. When he was sitting in his chair he was bouncing

[3]from side to side, I remember this vividly, and a couple of

[4]points he told me personally that he feels very depressed

[5]because he said to me, "Look at me. I'm not a normal

[6]person. I'm not a freak and I'm very very depressed and

[7]I'm very, very upset," and because of the head trauma he

[8]would argue and fight with people very easily and very

[9]readily.

[10]So that sort of came under some control, but that

[11]will not be cured completely. That will follow him for the

[12]rest of his life.

[13]And we also gave him the benefit from cognitive

[14]therapy to try to improve his cognitive function, that's

[15]the higher intellect, his abstract thinking from the head

[16]trauma by different mechanisms that occupational therapists

[17]use, and that was basically what we prescribed for

[18]Mr. Driscoll.

[19]Q Have you -- could you trace his course **[*22]** at Joint

[20]diseases Hospital?

[21]A Yes.

[22]Q And explain that to the Court.

[23]A He was started on a comprehensive rehab program of

[24]occupational therapy, physical therapy, psychiatry.

[25]He was seen by urologist. He had some problem
153

[1]
[2]with -- am I allowed to mention this?

[3]Q Yes.

[4]A -- with his private part. He had some purulent,

[5]pus, discharge from his genital area and the urologist had

[6]to see this and treat this.

[7]We also sent him for ultrasound of the kidneys to

[8]make sure there is no pus or bacteria or infection seeded

[9]in his kidney system.

[10]He received cognitive therapy, he received

[11]psychotherapy.

[12]He showed some improvements and then he was sent

[13]back to his prior facility in Waterbury, Connecticut.

[14]Q The -- did you reach a diagnosis of his condition,

[15]doctor -- withdrawn.

[16]What is a diagnosis?

[17]A Diagnosis is what a doctor points to as what is.

[18]wrong with a patient.

[19]Q And what was your diagnosis with regard to Frank

[20]Driscoll?

[21]A He had a C7 quadraplegia.

[22]C7 means -- C7 is the seventh cervical vertebra or

[23] **[*23]** the last cervical vertebra.

[24]As I indicated to you earlier, all the nerves come

[25]off the spinal cord and C6 means that the nerve roots at
154

[1]
[2]the level of the 6th cervical vertebra.

[3]Each of these nerve roots branch off and give

[4]motor and sensory to each parts of the arms and hands.

[5]Each part of the arm is supplied by a specific nerve root

[6]from the neck.

[7]For instance, the biceps is supplied by nerve

[8]roots from the fifth and sixth cervical vertebra.

[9]The forearm is supplied by the C6 nerve root and

[10]the wrist flexion-extension is supplied by C6 and C7 nerve

[11]roots and the fingers are C7.

[12]So when I say a C7 quadraplegia means that is the

[13]Last functional level that you can trace the origin of this

[14]injury to, C7.

[15]So, my diagnosis, once again, was C7 quadraplegia,

[16]status post subluxation and fracture of C5-C6 with cervical

[17]fusion and debridement of the cervical spine fracture,

[18]sacral decubitus ulcer with a myocutaneous flap.

[19]Myocutaneous flap is that skin graft with the skin

[20]and muscle attached to the area that had the massive hole

[21]present in his lower back **[*24]** and the sacral area.

[22]Severe reactive anxiety depression.

[23]Reactive means as a result of. In this case it

[24]was a result of his spinal cord injury.

[25]Bowel and bladder incontinence --
155

[1]
[2]MR. KELNER: He just has to use the restroom,

[3]your Honor. Please excuse the interruption.

[4]Q Could you please continue, doctor?

[5]A Yes, sir.

[6]Bowel and bladder incontinence.

[7]Incontinence means you have no control over it, it

[8]comes out by itself.

[9]He's got permanent scarring of the front and back

[10]part of of the cervical spine.

[11]He has internal derangement of the cervical spine

[12]with traumatic myofascial pain syndrome.

[13]Myofascial pain syndrome is destruction to the

[14]muscle fibers.

[15]And also he has status post pelvic fracture and a

[16]right frontal lobe contusion.

[17]Q Doctor --

[18]MR. LEACH: I'm going to ask that the last be

[19]stricken. That's not the report that I have.

[20]MR. KELNER: What's that?

[21]MR. LEACH: I have a report from the doctor,

[22]it has a diagnosis, it does not include the last

[23]remark. I'm going to ask it be stricken.

[24] **[*25]** THE COURT: Since I haven't seen either

[25]one --
156

[1]
[2]MR. KELNER: Your Honor, he was discussing --

[3]THE COURT: I'll let you ask him questions

[4]about this on cross-examination. I can't make

[5]that conclusion, that it's not in there, but you

[6]can question him on cross-examination.

[7]Q Doctor, was the brain contusion one of the

[8]specific diagnoses in Brooklyn Hospital's records?

[9]A Yes.

[10]Q And were you specifically treating him for his

[11]spinal injury or his brain injury?

[12]A Everything.

[13]Q Okay. Did you write down in your note the brain

[14]injury as well?

[15]A I, in my narrative report of 8/31/94, I did not

[16]mention the right frontal contusion nor the pelvic

[17]fracture.

[18]Q But that certainly was something you were aware

[19]of --

[20]THE COURT: Don't -- you're leading him,

[21]please.

[22]Q Was that something you were aware of as per the

[23]Brooklyn Hospital records?

[24]A Yes.

[25]Q Okay. Thank you.

157

[1]
[2]MR. LEACH: My objection stands, Judge. He

[3]just stated --

[4]THE COURT: No, you can cross-examine him

[5]about it and let the jury determine **[*26]** what was

[6]there, what wasn't there, what the treatment was.

[7]Q Okay, doctor, what is a prognosis?

[8]A Prognosis is the future outcome.

[9]Q By the way, before I get to that, what was the

[10]cause of his quadraplegia, his paralysis, and was that, by

[11]the way, from his chest down total paralysis?

[12]A Yes, C7 is the level -- C7 is from the nape of the

[13]neck down.

[14]So from the nape of his neck down he's paralyzed,

[15]or you could say from the upper portion of his chest he was

[16]paralyzed, and the cause of his quadraplegia was the

[17]traumatic event of the spinal cord injury.

[18]Q So his spinal cord was injured at that level --

[19]A That's right.

[20]Q -- and that caused -- is that essentially the

[21]equivalent of cutting an electric wire from that point

[22]down?

[23]A Yes.

[24]MR. LEACH: Objection, your Honor.

[25]THE COURT: Yes, you're leading.
158

[1]
[2]Please, Mr. Kelner.

[3]MR. KELNER: I'm sorry, all right.

[4]Q Was -- is there anything that can be done to

[5]return that function to him from his chest down so that he

[6]will have feeling below that level?

[7]A **[*27]** The answer is no for a very good reason.

[8]Q Could you tell us the reason?

[9]A Once you have a spinal cord injury most of the

[10]improvement occurs within the first six months, I would say

[11]80 percent.

[12]The other 10 percent returns within the next six

[13]months and if any further improvement were to come back it

[14]would occur within the next two years from the time of

[15]injury.

[16]Anything after two years that is left is

[17]considered permanent and there is no future expectation of

[18]any future return or improvement.

[19]That means the functions of the spinal cord that

[20]has been cut or traumatized is permanent and irreversible.

[21]It will never return again and no one has ever claimed that

[22]a spinal cord injury after two years has a chance of

[23]improvement. So, it is considered permanent.

[24]Q Okay. What is his basic prognosis now?

[25]A Prognosis means future outcome.

159

[1]
[2]Well, his future outcome, he's left with a

[3]permanent injury and he's confined to a wheelchair.

[4]A spinal cord injury affects every part of the

[5]body, from head to toe. It affects the blood system.

[6]You heal **[*28]** very poorly when you get a contusion or a

[7]blow to the skin. You become anemic, your nutritional

[8]status goes down. Your energy level goes down. You get

[9]depressed, you get anxious, because you cannot do a lot of

[10]things you can normally do and when you see other people

[11]around your age you get more depressed and upset because

[12]you can't do those things and if you have permanent

[13]disfigurement you have other problems, reactive depression

[14]from that.

[15]Also, spinal cord injury affects your

[16]cardiovascular system, makes you weak.

[17]You have a situation called autonomic

[18]hyperreflexia, which can be an emergency if left untreated.

[19]What happens is, if his bowel or bladder gets

[20]distended you send a signal to the brain, a very noxious,

[21]irritating, signal, and the brain responds with a more

[22]exaggerated noxious signal and the blood pressure shoots up

[23]to the sky.

[24]You get a pounding headache, you get lacrimation

[25]of the eyes, the nose becomes stuffed and what you have to
160

[1]
[2]do is lay the patient down and remove the impass from the

[3]feces or if the bladder is blocked or distended you have to

[4] **[*29]** remove the urine and this usually corrects itself.

[5]And also the fact you never know what could happen

[6]to you, you can have an accident, and this patient has had

[7]accidents. He has about two or three times more accidents

[8]where the Foley catheter breaks and urine goes all over his

[9]legs and he loses control of his feces, it goes all over

[10]his clothes, etcetera.

[11]That also causes a psychological problem, not

[12]knowing whether you're going to lose control of your bowel

[13]and bladder, and sometimes if it gets impacted that also

[14]causes a tremendous amount of abdominal pain.

[15]Also, spinal cord injury has an affect on your

[16]immune system. Every year you have to get a vaccination

[17]for the influenza and pneumococcal vaccine because you are.

[18]very susceptible to any organism that goes through your

[19]body --

[20]THE COURT: Can I stop you?

[21]Just slow down a bit.

[22]A (Cont'g) Also, the bones become very brittle, the

[23]calcium comes out of the bones.

[24]You have tremendous amount of muscle wasting.

[25]Muscle breaks down and gets filled with fat and water so
161

[1]
[2]when muscle breaks down and is filled **[*30]** with fat and water

[3]your muscle strength diminishes and all these things affect

[4]your overall function.

[5]So spinal cord injury doesn't just make you

[6]paralyzed, it affects every part of the body, head to toe,

[7]including the blood, the gastrointestinal tract, your

[8]immune response, your heart response, your lungs,

[9]everything is affected, and your energy level is very, very

[10]low and your ability to tolerate stress is extremely,

[11]extremely low.

[12]Q Doctor, and all of these things that you've

[13]mentioned -- well, withdrawn.

[14]Doctor, I want you to assume that Frank Driscoll

[15]has testified, here in court, that he has no feeling or

[16]control over his body from his chest down; that he has less

[17]strength in his arms, but can move the arm itself on both-

[18]sides; that his fingers are in a claw position where the

[19]use of his fingers -- he mentioned the word tinedysis,

[20]where if he raises the finger or arm in a certain way then

[21]they will open and close on their own, but no control over

[22]his fingers; that he has no bowel or bladder control and,

[23]in fact, has, I believe he said, three to four urinary

[24]accidents **[*31]** per week and two or three bowel accidents per

[25]week --
162

[1]
[2]A Right.

[3]Q -- that his memory is not what it used to be and

[4]that his legs go into spasm where they shake and, in fact,

[5]that did happen in court yesterday a number of times.

[6]I ask you, doctor, whether in your opinion all of

[7]those problems which occurred as a result of this accident

[8]are permanent?

[9]A Yes, they are all permanent.

[10]Q Now, after all of these things, doctor, is this

[11]injury going to kill him earlier than a normal life

[12]expectancy, in your opinion?

[13]A The answer is no because of the reason that if a

[14]person survives the first six months of a spinal cord

[15]injury, which is the most vulnerable period where he is at

[16]the highest risk of having complication, if he survives

[17]that, his chances for continuous normal lifestyle is very

[18]good.

[19]And, better yet, once he survives the first two

[20]years where other complications can continue, then you

[21]expect a normal life expectancy.

[22]Q So, Doctor, can you express with a reasonable

[23]degree of medical certainty to us your opinion as to

[24]whether Frank **[*32]** Driscoll will have a normal life expectancy?

[25]A Yes, he should have a normal life expectancy, yes.
163

[1]
[2]Q Doctor, as part of your work with spinal injury

[3]patients, is it necessary for you to become knowledgeable

[4]as to the cost of their care and items that they need for

[5]their care?

[6]A Not just part of your training and knowledge with

[7]spinal cord injury, but part of being a physiatrist your

[8]job is to know disability and impairment, the level of

[9]disability, and all future expenses, it's part of your

[10]training.

[11]So it is part of my training to know future

[12]medical costs and expenses.

[13]Q All right, could you tell us, please, specific

[14]items or therapies that are necessary for Frank Driscoll

[15]and what their costs would be and give us an idea as to

[16]what he will need in the future?

[17]A First of all, he's going to need a home attendant

[18]or a companion to be with him, I would say, conservatively

[19]16 hours because I figure you sleep the other eight hours.

[20]Q Stop just one second.

[21]I want you to assume that there has been testimony

[22]that the place where he resides right **[*33]** now provides him with

[23]three hours of attendant care per day.

[24]In your opinion, is that sufficient for someone in

[25]Frank's condition?

164

[1]

[2]A The answer is no for a very good reason.

[3]Mr. Driscoll needs, ideally, a 24-hour attendant,

[4]someone that's with him continuously for the following

[5]reason:

[6]He is at high risk for very severe depression. If

[7]you have a companion you can ventilate some of your

[8]feelings and you can speak to someone continuously, that

[9]helps with some of the depression.

[10]It has been proven that loneliness or segregation

[11]in a seclusion, in one area, makes depression worse.

[12]Sunlight helps with depression. Darkness makes depression

worse. So a one-to-one companion continuously helps with depression.

Also, it is needed because if his legs go into severe spasticity, I refer to it as a flapping tremor, it is so painful, it is so painful and is so scary, that if you don't stop it it can actually break brittle bones that have been -- the calcium has become completely demineralized. That's how severe his problem is.

Second, if he gets into a medical **[*34]** emergency, as I indicated, autonomic hyperreflexia where his blood pressure shoots up to the sky and he gets a pounding headache, what you have to do is help him. You have to lay him down in a recumbant position, check the bowel and bladder and make

165

sure he is not impacted or distended and help correct whatever the problem is.

Or if he has an ingrown toenail that can be causing this problem. Anything that stresses or irritates the problem can cause this autonomic hyperreflexia phenomenon.

So if he is alone he will not be able to help himself. If he is with a 24-hour home attendant he can help himself.

Or if he needs help with certain activities of daily living.

He needs one help for security purposes so if lie's --

THE COURT: Slow down please, doctor.

A (Cont'g) So if he's bathing himself, that he doesn't fall and injure himself he needs someone to -- for

[18]contact, guarded and supervision, so he doesn't slip and

[19]fall.

[20]Second, he needs someone to help prepare meals for

[21]him.

[22]He needs someone to help with certain aspects of

[23]grooming **[*35]** and clothing. Although he can do some of it

[24]himself, he still needs help.

[25]He needs help with shopping for food and just in
166

[1]
[2]case of emergencies or other situations where he can't do

[3]it himself.

[4]So for all these reasons he needs as much help as

[5]possible and conservative number is at least 16 hours.

[6]Q Okay. Are the people that do that job people that

[7]have special training to do that job?

[8]A They should have some training, especially with

[9]spinal cord injury patients, so at least they know what

[10]things to look for.

[11]Ideally, it would be a registered nurse or a rehab

[12]nurse, but the expense is so high that we can't really ask

[13]for that ideal of a situation so the next best thing is a

[14]home attendant, a skilled home attendant.

[15]Q And what is the hourly cost in the present job

[16]market for people with those skills?

[17]A Approximately $ 20 an hour.

[18]Q Okay. Now, can you tell us -- and you feel he

[19]should have a minimum of 16 hours per day of a person of

[20]that training?

[21]A That is correct.

[22]Q What other items are necessary for him in terms of

[23]this **[*36]** condition and what his needs will be?

[24]A He will require periodic hospitalizations for

[25]urinary tract problems.

167

[1]
[2]Spinal cord injury patients very frequently, very

[3]occasionally and commonly, develop urinary tract infections

[4]which goes into the bloodstream and causes what is called

[5]urosepsis, an infection of the bloodstream from the urine,

[6]and you have to do a whole workup, make sure that the

[7]kidney, the ureters and the bladder is not infected, that

[8]it does not have any pus cavities, and this you do with

[9]intravenous antibiotics so the patient has to be

[10]hospitalized and I estimate this to be approximately ten

[11]Jays and an average hospital stay is about $ 750 per day.

[12]He will need nutritional supplementation.

[13]He will need --

[14]Q Before we go to that, just one second.

[15]You said $ 750 per day and that is approximately

[16]ten days, is that correct?

[17]A Yes.

[18]Q I want you to assume that Frank Driscoll has

[19]testified that since he has been at Whitewood, up until the

[20]present, he has had four urinary infections and four

[21]hospitalizations, which would be within the **[*37]** past three

[22]years -- two years -- two to three years.

[23]Do you have an opinion that you can express with

[24]reasonable medical certainty as to what the minimum number

[25]of hospitalizations would be and what the likely maximum

163

[1]
[2]would be for urinary tract infection care?

[3]MR. LEACH: Your Honor, I'm going to object

[4]to that. We have his report. He's given his

[5]estimate of the future expense. He must be

[6]confined to his report.

[7]THE COURT: I'm going to permit it. You can

[8]cross-examine him on this issue.

[9]A In my report I indicated once every two years.

[10]That's a very, very conservative estimate. But maximum,

[11]the sky is the limit. You can have urinary tract

[12]infections as much as 20, 30 times per year or as low as

[13]once a year.

[14]MR. LEACH: I object to the hypothetical

[15]nature of his testimony.

[16]THE COURT: Yes, sustained. Sustained.

[17]Q All right, were there any other hospitalization

[18]requirements that you believe that he will have, according

[19]to your opinion based upon reasonable medical certainty?

[20]A Yes. He will require periodic stays in the

[21]hospital for intensive **[*38]** physical therapy purposes.

[22]When I say intensive physical therapy purposes, it

[23]means, the definition is, it has to be three to four hours

[24]or more of therapy.

[25]The reason is because spinal cord injury, if you
169

[1]
[2]leave it untreated, the tone of the muscle goes up, becomes

[3]tight. You get spasticity.

[4]That's why he's taking Baclofen, 20 milligrams,

[5]four times a day, to diminish that tightness of the muscle

groups and if you do nothing about the spasticity when it gets progressively worse, such as stretching the muscles and retaining it, it gets progressively worse where it will lever respond to range of motion procedures.

So he will be required for periodic hospital stays for physical therapy.

Q How long should he have those hospital stays for physical therapy and how much will they cost?

A Once every two years at a cost of $ 15,000 per hospital stay. It's a very, very expensive hospitalization.

THE COURT: Doctor, would that be necessary, let's say, if he received physical therapy three times a week, would it be be necessary for him to go to the hospital **[*39]** for it?

THE WITNESS: Physical therapy three times per week at home for maintenance?

THE COURT: Yes.

THE WITNESS: Okay, that might be avoided if he received physical therapy at home three times per week at about an hour each session, but that's continuously and if you add up the figures, that would also come up to a very high amount. It might be just as high as the hospital stay.

Q Okay. What other costs do you anticipate that will be incurred as a result of his care?

A He will require periodic surgical skin graft or flaps or revisions and that will cost approximately five to seven thousand dollars per revision.

[11]In other words, if he's sitting in his wheelchair

[12]all day long or he's sitting in a sofa or bed all day long

[13]lie's at high risk for skin breakdown and once that skin

[14]breakdown continues and he has an ulceration you correct

[15]that with skin flaps or myocutaneous flaps and the cost of

[16]that is five to seven thousand dollars.

[17]Q Anything else, Doctor?

[18]A Yes, nutritional support. He will require

[19]nutritional support and transportation costs. **[*40]**
[20]Nutritional support he's going to need in terms of

[21]very high protein diet, very fixed calorie diet so he

[22]doesn't lose weight.

[23]Spinal cord injury patients are prone to losing

[24]weight and his overall condition needs to be monitored by a

[25]nutritionist and a very rough estimate of that is
171

[1]
[2]approximately $ 2,000 per month,

[3]Then he's going to require transportation with an

[4]ambulette service to go to different doctors and hospitals

[5]and clinics. A very conservative number for that is $ 50

[6]per trip.

[7]Q Fifty dollars per trip?

[8]A Yes, each way.

[9]Q Okay. What if he -- I want you to assume that he

[10]has testified that he has a board to transfer from his

[11]wheelchair and can transfer into a car on that.

[12]He does not own a car, but if there were a

[13]personal attendant that he had and he were able to purchase

[14]a car, could he use that instead of an ambulette if he had

[15]a person for that time?

[16]A Yes, he could.

[17]Q Okay. What other costs does he have, doctor?

[18]A Well, he's going to need to be seen periodically

[19]by a physiatrist, a neurologist, a psychiatrist **[*41]** and an

[20]internist to check his overall medical condition and from

[21]time to time a urologist to check his bladder function and

[22]his urinary condition and each visit is approximately $ 100

[23]per specialist.

[24]Q Could you give us an estimate as to -- for the

[25]rest of his life as to an average annual cost for doctors
172

[1]
[2]visits that he should be having, and leave out psychiatry

[3]with regard to this because I want to discuss that with you

[4]separately.

[5]A Well, the doctors visits, if you calculate it, he

[6]will -- ideal situation -- sometimes you don't have the

[7]ideal situation.

[8]Ideally, he should be monitored by a physiatrist

[9]once a month; that's $ 100. A neurologist once every one to

[10]three months; that's $ 100. He needs to see a urologist

[11]once every three to six months minimum.

[12]He needs an ultrasound or IVP once a year; that

[13]costs approximately $ 600.

[14]He has wheelchair costs and repairs. An average

[15]wheelchair lasts approximately five years. He's going to

[16]have repairs with parts breaking down, etcetera, and I made

[17]an estimate in my report. Roughly it's going to be about

[18]$ **[*42]** 1000 per year for his wheelchair repairs and costs.

[19]Q Okay.

[20]THE COURT: As a quadraplegic would he be

[21]able to use a motorized wheelchair or you don't

[22]recommend that for a --

[23]THE WITNESS: He can use a motorized

[24]wheelchair, but it's very, very expensive and

[25]breakdown is much, much higher.

173

[1]
[2]A motorized wheelchair is anywhere between

[3]15,000 to $ 20,000 and breakdown and repairs are

[4]much, much higher.

[5]Q Are there any other costs that he would have,

[6]doctor, that you would anticipate, other than psychiatric

[7]costs?

[8]A I think I pretty much covered all the other costs.

[9]Q Okay. Now, I want you to assume that he has

[10]testified that he has conversations with his home attendant

[11]right now with whom he feels a close relationship and he

[12]talks to her about the same kinds of things that he used to

[13]speak to psychiatrists or psychologists.

[14]He has further testified that he is not seeing a

[15]psychiatrist right now.

[16]Do you have an opinion that you can express with

[17]reasonable medical certainty as to whether he should also

[18]have psychiatric care?

[19] **[*43]** A Yes, in my opinion he should.

[20]Q And why is that, doctor?

[21]A His roommate is not a qualified person trained

[22]in --

[23]Q This is not the roommate, this is his home care

[24]attendant?

[25]A The home attendant is not a qualified doctor

174

[1]
[2]trained in the field of psychology or psychiatry. They are

[3]not allowed to make a diagnosis.

[4]If a person is severely depressed and you do

[5]nothing about it, the next step is a suicide attempt, G-d

[6]forbid.

[7]And if a person becomes very depressed they don't

[8]eat, they don't sleep, they become very angry, become very

[9]agitated. They don't do the things that they are supposed

[10]to. They isolate themselves and the problem gets

[11]progressively worse.

[12]So a psychologist can -- psychologist or

[13]psychiatrist, they can intervene very quickly, very rapidly

[14]and very effectively and reverse a serious potential

[15]problem.

[16]Q Do you have an opinion that you can express with

[17]reasonable medical certainty as to how often he should see

[18]either a psychologist or psychiatrist?

[19]A Ideal situation is once -- one to three times per

[20]week, depending **[*44]** on the psychiatrist's assessment of him.

[21]If he feels he's doing good, once a week. If he feels he's

[22]having an interventional problem, three times a week.

[23]So it depends on the situation. So sometimes once

[24]a week and sometimes three times a week.

[25]Q And let's assume he only went one time a week to a
175

[1]
[2]psychiatrist.

[3]Do you have an opinion as to what that would cost

[4]per week?

[5]A Psychiatrist visit is $ 100 per session.

[6]Psychotherapy is approximately $ 150 per session.

[7]Q Okay. Doctor, before we demonstrate certain

[8]things on Frank Driscoll, which I would like you to show to

[9]the jury, do you have an opinion that you can express with

[10]reasonable medical certainty as to whether Frank Driscoll

[11]will ever be able to work on a sustained basis?

[12]A The answer is no, for a very good reason.

[13]THE COURT: You don't have an opinion?

[14]THE WITNESS: I do have an opinion.

[15]THE COURT: Oh, okay.

[16]Q What is your opinion?

[17]A The answer is no, he cannot work for any length of

[18]time to maintain any job, for a very good reason.

[19]Q Could you tell us, please? **[*45]**
[20]A He's filled with multiple problems.

[21]If he was just a straight spinal cord injury, C7,

[22]maybe yes, maybe no.

[23]But he has had head trauma with frontal lobe

[24]contusion. He has a traumatic brain injury with a

[25]permanent injury for that alone.
176

[1]
[2]He is at high risk for becoming very agitated and

[3]very nervous and depressed and being unproductive. He

[4]cannot think clearly. He cannot remember correctly,

[5]completely.

[6]His legs go into flapping tremors.

[7]It takes him about three to four hours to get

[8]himself ready.

[9]He's always worried and preoccupied with accidents

[10]from bladder leakages, from fecal accidents, etcetera.

[11]That makes a person worry tremendously.

[12]And also the extremes of weather, heat and cold,

[13]aggravate his condition.

[14]So putting all that stuff together he will never

[15]be able to hold down any job and, besides, which employer

[16]would hire him in this condition?

[17]For all these reasons, the answer is no, he cannot

[18]be engaged in any type of gainful occupation.

[19]Q Okay.

[20]MR. KELNER: Frank, I would like you to come

[21]up to this **[*46]** area.

[22]Q And, Doctor, we were unable to demonstrate because

[23]of the outfit that he wore yesterday the surgery that he

[24]lad for the skin flap.

[25]We have demonstrated his neck scar.

177

[1]
[2]We have demonstrated his hands, to some degree,

[3]although if there's anything else you would want to

[4]demonstrate, that's fine.

[5]But what I would like you to demonstrate on him

[6]some of the problems that he has and specifically the

[7]scarring from the flap surgery that you described earlier

[8]in your testimony.

[9]MR. KELNER: With the Court's permission.

[10]THE COURT: Certainly.

[11]THE WITNESS: May I be allowed to stand up,

[12]Judge?

[13]THE COURT: Certainly.

[14](Witness steps down.)

[15]Q Should I turn him back that way?

[16]A First let me show his fingers.

[17]First of all, you can see there's massive wasting

[18]of all the muscles in his hands. These are called the

[19]intrinsic muscles of the hands. Normally, a normal person

[20]has nice thick muscles in the hands. He has complete

[21]wasting.

[22]Also he has flexion contractures of the distal

[23]joints -- distal means ending -- of his **[*47]** fingers. These are

[24]the proximal joints, these are the distal. This is because

[25]the nerve supply to this part is cut off from the spinal
178

[1]
[2]cord. There is no power going to here, that's why it's

[3]like this.

[4]Now, some people -- this is a very controversial

[5]situation -- some people believe that you can correct this

[6]with a tendon transplant and a tendon prolongation.

[7]It doesn't work because there is no power supply

[8]reaches this area and this contracture continues.

[9]His fingers are in a state of contracture. If I

[10]go any further I might break a bone or joint. I'm not

[11]going to attempt to do that.

[12]But surgical procedures for this problem do not

[13]work or last on a long-term basis.

[14]So this is the problem with his hands and you

[15]could see it again here as well with the wasting and

[16]clawing of the fingers. He has no ability to have full

[17]complete grasp of any object. He can grasp objects, but

[18]not to hold it safely.

[19]Next I want to turn him around. I want to show

[20]you his problems with his back.

[21]Also, when he sits forward he's in C7, he doesn't

[22]have full strength **[*48]** in the trunk-stabilizing muscles. He

[23]tends to list forward or sit in a kyphotic position. When

[24]you sit -- kyphosis means hunched back, hunched position.

[25]When you sit in a hunched position you throw all
179

[1]
[2]your muscles into spasm; neck, upper back and mid back

[3]muscles go into spasm.

[4]When a muscle goes into spasm it becomes hard, the

[5]fibers shorten. When the fibers shorten you lose the

[6]normal range of motion and you develop other problems,

[7]trigger points, knots, the muscle fibers and tightness.

[8]THE WITNESS: Can I push you forward?

[9]A (Cont'g) I don't know if you can all see these --

[10]these are the flaps that he had. See these marks? This

[11]was a good plastic surgical revision.

[12]THE COURT: What's that bump there?

[13]THE WITNESS: This is soft tissue.

[14]MR. KELNER: Could we move him?

[15]Q Could we turn him this way also?

[16]A If I turn it this way then this is going to be

[17]covering the view of everybody. It goes all the way down

[18]and this lump, as the Judge asked, this is fatty tissue.

[19]In a spinal cord injury muscle gets replaced by

[20]fatty tissue and this **[*49]** also may be part of the fat from the

[21]muscle transplant that was performed here and the area

[22]below it is also at high risk for future breakdowns and he

[23]will require procedures like this to correct it. These are

[24]expensive.

[25]Extensive scarring here --
180

[1]
[2]THE COURT: Can I interrupt you for a moment?

[3]THE WITNESS: Yes.

[4]THE COURT: To this juror over here, I

[5]appreciate that you want to remember everything.

[6]However, I'm going to instruct you not to

[7]take notes and I'll tell all of now you it may be

[8]very difficult for you to remember everything.

[9]If there is anything that you need to have

[10]read back when in your deliberation the reporter

[11]has taken down every word that everybody has said.

[12]There will be exhibits in evidence and if you

[13]need any refreshing of your recollection it can be

[14]done.

[15]We can have the testimony read back once,

[16]twice or as many times as you need it, but the

[17]rules are that you can't take notes because, for

[18]example, let's say somebody took notes

[19]inaccurately and that person would then tell other

[20]people on the jury this is what happened **[*50]** and it

[21]may not be. I'm not saying you wouldn't be

[22]accurate, you probably would be, but our rules say

[23]that you can't. There have been some experiments

[24]going on in the court system with the consent of

[25]the lawyers where we permit jurors to take notes.
181

[1]
[2]THE FOREPERSON: I was writing down

[3]questions, actually, my questions.

[4]THE COURT: But you can't ask those

[5]questions. We have no system where you can ask

[6]questions. Hopefully, all your questions will be

[7]answered but, but jurors are not permitted.

[8]THE FOREPERSON: I didn't realize that.

[9]THE COURT: No, they are not. It would be

[10]make a tremendous logistical problem.

[11]It might be a good idea, but if I permitted

[12]it I would be reversed on appeal, so I don't want

[13]that to happen.

[14]All right, I'm sorry, I don't mean to

[15]embarrass you, but I happen to catch you doing it

[16]because I'm standing here.

[17]A JUROR: I was ready to do it too.

[18]THE COURT: I understand. It seems to make

[19]sense, but it's just not permitted, but any time

[20]you need anything read back you can do it and I

[21]hope all your questions are answered. **[*51]**
[22]A (Cont'g) I don't know if I was able to demonstrate

[23]to everybody.

[24]A JUROR: Yes, we saw that.

[25]A Next situation is he's got a very bad scar on his
182

[1]
[2]neck and he has metal in his neck and he has a fusion at

[3]the level of C5-C6.

[4]When you have a fusion at the level right in the

[5]middle of your neck the areas above and below it are at

[6]high risk for herniation, the disks can become herniated,

[7]because if he ever gets a blow or any slight impact to his

[8]neck, this area has no mobility. Because it has no

[9]nobility it makes the areas above and below it vulnerable

[10]to a very devastating injury. You can get a herniated disk

[11]above it and below it.

[12]Now, because of traumatic arthritis, which is an

[13]accelerated form of arthritis, this level undergoes rapid

[14]degeneration. You have spurs forming here. This space

[15]where the nerve root exits the spinal cord becomes small

[16]and pinches a nerve like so and he will lose power to

[17]already weakened muscles in his arms, elbows and wrists.

[18]So that is another problem.

[19]I'm not going to even try and demonstrate his

[20]lower extremity **[*52]** because he's going to go into a flapping

[21]tremor and it might be difficult to stop, but because of

[22]lack of mobility you have heterotopic ossification, which

[23]forms in spinal cord injury patients, which means that a

[24]massive amount of callus or bone cement is formed in the

[25]hips. The hips lock. You have no movement. So that

183

[1]
[2]has -- your legs and hips have to be moved around

[3]continuously. He can't do it himself, somebody has to do

[4]it.

[5]Otherwise, if that forms, that will become painful

[6]and that will cause an irritating affect to his autonomic

[7]nervous system --

[8]THE COURT: That's why, doctor, I hate to

[9]interrupt you, but it seems to me, I'm not an

[10]expert, that rather than these hospitalizations,

[11]if he had continuous physical therapy --

[12]THE WITNESS: Nobody will pay for it, your

[13]Honor, nobody, okay? That's the system. You have

[14]to go on medical need. You have to show something

[15]got worse and then they will authorize it, but

[16]they will not give management --

[17]MR. LEACH: I'm going to object.

[18]THE COURT: Don't answer it. I didn't mean

[19]to open up Pandora's box.

[20] **[*53]** A To continue with heterotopic ossification, from

[21]inactivity muscle is lost and bone mass is lost so if he

[22]falls with very brittle bones he's at high risk for having

[23]massive fractures. That's basically it.

[24](Witness resumes stand.)

[25]Q Doctor, by the way, what was the cost of a new
184

[1]
[2]wheelchair like this, approximately?

[3]A The cost of a new wheelchair like this is

[4]approximately $ 1500.

[5]MR. KELNER: Just one second, your Honor.

[6](Pause.)

[7]Q Doctor, I have a question.

[8]In your report, just to clarify, you said --

[9]MR. LEACH: Objection, he's going to lead the

[10]witness.

[11]THE COURT: Please don't lead the witness.

[12]Q Could you refer to your report on Page 2?

[13]Are there different wheelchairs which will cost

[14]approximately $ 3,000?

[15]MR. LEACH: Objection, he's leading the

[16]witness in a very flagrant manner.

[17]THE COURT: Tell us about the costs of

[18]wheelchairs and the advantages and disadvantages

[19]of certain wheelchairs.

[20]THE WITNESS: We have all kinds, light

[21]aluminum alloy, you have the sports wheelchairs

[22]with cosmetically appealing structure **[*54]** frame,

[23]ability to fold.

[24]The wheelchair itself has a certain price.

[25]Then the other adaptive equipment added to it
185

[1]
[2]starts to run up the other bills.

[3]For instance, foot rests cost money, arm

[4]rests cost money, hip guides cost money and if you

[5]give him any type of an anterior chest harness for

[6]support so he don't list forward and fall off the

[7]chair, that also costs money.

[8]So depending on the style and the adaptive

[9]needs that you give him, that will determine what

[10]the range is. The range would be approximately

[11]from anywhere from $ 1500 to $ 3,000.

[12]Q I want you to assume that he has testified that he

[13]has this wheelchair, which he uses, and that he also has a

[14]special wheel care which he uses in the morning that is

[15]used for his bowel routine with an open bottom where he

[16]will ride the wheelchair over the toilet and use that for

[17]the purpose of a bowel movement.

[18]What would the cost of that type of wheelchair be?

[19]A That would be a little bit more expensive,

[20]approximately $ 2500.

[21]Q Doctor, what about his special supplies like

[22]catheters, enemas, the **[*55]** special wipes that are used by him

[23]so that he doesn't have skin breakdowns, medical supplies

[24]required for a quadraplegic's life routine?

[25]What would the costs of those be?
186

[1]
[2]MR. LEACH: I'm going to object, your Honor,

[3]it's not in his report.

[4]MR. KELNER: it was not in the report, I will

[5]stipulate to that, but it's something that it's

[6]clear that he requires, your Honor, and if we

[7]can --

[8]THE COURT: All right, I will permit it. I

[9]will permit it.

[10]MR. KELNER: And I would just like to state

[11]if in our papers --

[12]THE COURT: I already said I will permit it.

[13]MR. KELNER: Thank you.

[14]Q Can you just give us an approximate annual

[15]estimate as to what the costs of those supplies could be?

[16]A The monthly supply of Texas catheters and condoms

[17]is approximately $ 150 per month.

[18]The enema solution kits cost approximately $ 50 per

[19]kit, okay and he will need at least one of those every two

[20]to three days.

[21]Diapers, if he uses diapers for control of his

[22]towel incontinence, the cost of diapers, whatever the cost

[23]is, $ 20 a week.

[24]He's going **[*56]** to need periodic urine cultures for his

[25]urine. Urine culture is about ten to $ 15. That should be
187

[1]
[2]done on a weekly basis to catch any early organisms in his

[3]urine.

[4]The rest are -- I'm trying to think of everything.

[5]It's very hard to think of everything with this many

[6]injuries.

[7]Q Leg bags, Doctor?

[8]MR. LEACH: Objection.

[9]THE COURT: What are the leg backs?

[10]MR. KELNER: They catch the urine.

[11]THE COURT: I thought you said leg back.

[12]MR. KELNER: Bags, b-a-g-s.

[13]A They are made of a very sophisticated plastic

[14]polymer. They cost 15 to $ 20 per bag. He will need one of

[15]those bags per day. You do the arithmetic, you arrive at

[16]the yearly cost of that.

[17]THE COURT: They can't be reused?

[18]THE WITNESS: You don't want to reuse those

[19]because it sends germs upwards and backwards, so

[20]they are used once and thrown away.

[21]Q If he were to move out of his present apartment

[22]into his own home, are there special types of construction

[23]that would be necessary if he lived in his own home rather

[24]than in the place where he is right now?

[25]MR. LEACH: **[*57]** Same objection, Judge, not in the
188

[1]
[2]report.

[3]THE COURT: Overruled.

[4]A When a handicapped patient of this caliber wants

[5]to go live at home you would have to have the following

[6]adaptive measures.

[7]Number one, you need a special ramp to go from the

[8]street level to the doorway.

[9]You have to have another ramp if there's any steps

[10]to get him to where he has to go.

[11]You have to have special bathroom railings,

[12]special guards, special bath care, special shower handle,

[13]you have to have a special toilet for him, a raised toilet

[14]so he can be accommodated when he wants to take care of his

[15]needs.

[16]These are just the house adaptive needs that he

[17]needs.

[18]Then the other comes from the vehicle, going to

[19]the area. The vehicle has to have special adaptive needs.

[20]Am I supposed to mention that as well?

[21]Q Well, what specific needs would there be?

[22]A The vehicle has to have a special ramp to get the

[23]wheelchair onto the vehicle, has to have special safety

[24]guards, rails --

[25]THE COURT: So he doesn't have to get off the
189

[1]
[2]wheelchair, just sit **[*58]** in the wheelchair in the

[3]vehicle, is that what you're telling us?

[4]THE WITNESS: The vehicle has to have special

[5]safety measures so the wheelchair doesn't move,

[6]special guards or straps that hold it in place,

[7]and sometimes they have the ramps that goes up

[8]like a portable elevator and that costs about

[9]$ 35,000. That's very expensive.

[10]THE COURT: Like the knew handicapped buses?

[11]THE WITNESS: Yes, yes, something like that.

[12]A (Cont'g) I believe I covered everything.

[13]Q Okay, if you were to buy a not large, a small

[14]house on a -- a ranch-type house, an existing house, not to

[15]design a new house with an architect specifically for this

[16]purpose, but if he just bought a small, what I would call a

[17]ranch-style house, where it's all on one level without

[18]steps, what would the average cost be to adapt a small home

[19]for the purposes of accommodating a person such as this?

[20]MR. LEACH: Same objection, your Honor, it's

[21]not in the report.

[22]THE COURT: Overruled.

[23]A It would cost approximately 75 to $ 100,000.

[24]MR. KELNER: Thank you very much, doctor. I

[25]have no further questions. **[*59]**
190

[1]
[2]THE COURT: We'll take a short recess now

[3]before cross-examination.

[4](Jury exits.)

[5](Brief recess.)

[6](Jury enters.)

[7]THE COURT: All right, cross-examination.

[8]CROSS-EXAMINATION

[9]BY MR. LEACH:

[10]Q Good morning, doctor.

[11]A Good morning.

[12]Q Doctor, are you being compensated for your

[13]appearance here today?

[14]A I am.

[15]Q And for how much?

[16]A With this particular case, $ 300 per hour.

[17]Q That includes consultation prior to coming here?

[18]A That includes pretrial preparation, yes.

[19]Q And what's the total?

[20]A Approximately one and a half hours of pretrial

[21]preparation.

[22]Q And so what would your total pay be?

[23]A I'm sorry?

[24]Q What would your total compensation be?

[25]A It depends on what time I'm kept here today.
191

[1]
[2]Q If I'm brief you get less money, am I correct?

[3]A I'm sorry?

[4]Q If I'm short with you you get less money, is that

[5]correct?

[6]MR. KELNER: Stipulate to the questions now.

[7]A That's correct.

[8]Q You did confer with plaintiff's counsel during **[*60]** the

[9]break, is that correct?

[10]A Yes, we were talking about things --

[11]Q I didn't ask you what you were talking about.

[12]Doctor, you didn't specifically mention, but you *

[13]did examine after Mr. Driscoll left the Hospital for Joint

[14]Diseases, you examined him one time in August of 1994, did

[15]you not?

[16]A August 31st, 1994, correct.

[17]Q Although you did not specifically mention that in

[18]your testimony, I believe.

[19]Was that at the request of plaintiff's counsel?

[20]A I don't remember. It may have been.

[21]Q Well, you were no longer his treating physician at

[22]that time, were you?

[23]A No, I was no longer his treating physician.

[24]Q And you have not examined him or interviewed him

[25]since August 31, 19 --
192

[1]
[2]A I have.

[3]Q When was that?

[4]A This morning, right here in the courtroom.

[5]Q You examined Mr. Driscoll in court this morning?

[6]A That's right, in the room, the attorney's room

[7]right down the hall.

[8]Q And was your testimony today partly based on that

[9]examination and conversation today?

[10]A It pretty much was the same **[*61]** as my prior

[11]evaluations of him before.

[12]Q Did you receive any information from him today

[13]that you used in your testimony, any information at all?

[14]A Anything new? No. Anything that I didn't know?

[15]No. Pretty much the same.

[16]Q When you say "pretty much the same," did you

[17]update prior conclusions and confirm them today?

[18]A No.

[19]Q You did not?

[20]A I did not.

[21]If you're asking me if I added two extra diagnoses

[22]that was not listed in my narrative of --

[23]Q I'm not asking you that.

[24]I asked you, for example, you stated when he was

[25]your patient back in the Hospital for Joint Diseases he was
193

[1]
[2]depressed.

[3]Did a conversation with him today confirm that

[4]depression?

[5]A Yes.

[6]MR. LEACH: I move to strike his testimony in

[7]its entirety, Judge. There's been an examination

[8]for which I did not receive a report. That's

[9]entirely improper.

[10]MR. KELNER: Your Honor, he said, if we could

[11]clarify -

[12]THE COURT: I'm not going to strike his

[13]testimony. We're just going to go ahead. The

[14]jury can consider that along with the rest of the

[15] **[*62]** cross-examination.

[16]Q Were you paid for your examination in August of

[17]1994?

[18]A I have not been paid, no.

[19]Q You were not his doctor when he was at Whitewood,

[20]is that correct?

[21]A I'm sorry?

[22]Q When he was at Whitewood you were not his doctor?

[23]A Whitewater?

[24]Q Whitewood.

[25]A Obviously not, no.
194

[1]
[2]Q And you were not his doctor when he was at Gaylord

[3]Hospital?

[4]A Nor was I his treating doctor at Gaylord Hospital?

[5]Q Right.

[6]A No, the answer is I was not his treating doctor at

[7]that time.

[8]Q In your report, Doctor, if I could find the right

[9]page here, it's on Page 4, you state that, "According to

[10]the literature -- " can you find that in the report?

[11]A Yes.

[12]Q " -- once a patient survives a spinal cord injury

[13]for the first 12 months after the injury a normal life

[14]expectancy is to be anticipated."

[15]You did not cite that literature in your report or

[16]in your testimony.

[17]What literature -- to what literature did you

[18]refer?

[19]A The basic texts, the basic literature, "Textbook

[20]of Physical Medicine **[*63]** and Rehabilitation", Dr. Racknerson

[21](ph), Miller, the predominant doctors that write about

[22]spinal cord injury.

[23]Q Are you familiar with the National Spinal Cord

[24]Injuries Statistical Center?

[25]A I'm sorry?

195

[1]
[2]Q Are you familiar with the National Spinal Cord

[3]Injuries Statistical Center?

[4]A No, I'm not familiar with that journal.

[5]Q Are you familiar with the Medical Rehabilitation

[6]Research and Training Center in Prevention and Treatment of

[7]Secondary Complications of Spinal Cord Injury in

[8]Birmingham, the Birmingham Center?

[9]A Is that a journal or an article?

[10]Q No, it's a center.

[11]A I'm sorry.

[12]Q Michael Devivo works with the Birmingham

[13]Rehabilitation Center --

[14]THE COURT: It's a center.

[15]A I am not familiar with that, no.

[16]Q Now, doctor, with respect to a head injury, isn't

[17]it true that after swelling occurs, once the swelling goes

[18]down the head injury is complete?

[19]A No, you're strongly mistaken, that is not correct.

[20]Would you like to know why?

[21]Q The head injury can have repercussions two or

[22]three years later. **[*64]**
[23]Is that your testimony?

[24]A Yes.

[25]Would you like to know why?
196

[1]
[2]Q No, let me go on with my questions and see if we

[3]can develop it.

[4]Are you saying his head injury will have no affect

[5]on his life expectancy?

[6]A Absolutely not, not after the first 12 months, and

[7]and now we're in a five-year post event, so --

[8]Q Let's back up.

[9]MR. KELNER: Your Honor, he's interrupting.

[10]THE COURT: No, let him answer the question.

[11]Q I don't understand the answer, but go ahead.

[12]A You asked me does a head trauma affect life

[13]expectancy.

[14]Q Yes.

[15]A The answer to your question is once a patient

[16]survives the first six months in a head trauma chance of

[17]dangers from life is over and once it goes after two years,

[18]there is no life-threatening situation from the head

[19]trauma.

[20]Q Is there a continued development of repercussions

[21]from the head trauma after two years, a continued

[22]deterioration?

[23]A Not a continued deterioration, the same

[24]deterioration that was present has not been able to correct

[25]itself.

197

[1]

[2]Q All right, **[*65]** but the damage is done after two years

[3]after a head injury, is that what you're saying?

[4]A The damage has not corrected itself.

[5]Q The damage is complete and will not increase after

[6]two years, is that correct?

[7]A Yes, that is correct.

[8]But the personality changes can worsen.

[9]Q In your report you refer to a spinal cord injury

[10]when you state that after a certain period that will not

[11]affect a person's life expectancy, but there are all sorts

[12]of different spinal cord injuries, of course, are there

[13]not, doctor?

[14]A I'm talking about a C7 quadraplegia, as in this

[15]case.

[16]Q And you're saying it has no affect on his life

[17]expectancy?

[18]A If he survives the first two years the answer is

[19]no. You expect a normal life expectancy.

[20]Q Doctor, did you not testify that under certain

[21]conditions his blood pressure could shoot to the sky?

[22]A Yes, I have.

[23]Q That's a dangerous situation, is it not?

[24]A It's a dangerous situation if you leave it

[25]untreated. The pounding headaches will not -- the patient
198

[1]
[2]won't allow it to be left untreated.

[3] **[*66]** Q But that has no affect on his life expectancy, is

[4]that your testimony?

[5]A If you leave that condition -- if you leave that

[6]condition untreated it can affect life, but that condition

[7]is dangerous in the first two years.

[8]Once you've survived that the body somehow adjusts

[9]itself and doesn't allow the blood pressure to shoot up to

[10]that high of a level.

[11]Q So it's no longer a problem for Mr. Driscoll?

[12]A It is a problem, but the life-threatening effect

[13]diminishes as he continues to survive year after year after

[14]the initial time of his spinal cord injury.

[15]Q What about you stated the spinal cord injury

[16]affects his immune system?

[17]A Yes.

[18]Q Does that not have a consequence on his life

[19]expectancy?

[20]A Not to a point to have an affect on his life

[21]expectancy.

[22]There are many people that have altered immune

[23]systems. My wife has systemmic lupus. She has an altered

[24]immune system. According to the literature on all the

[25]systemmic patients I know, they all live a normal

199

[1]
[2]lifestyle, but you have to take certain precautions like

[3]the flu vaccine, pneumococcal **[*67]** vaccine. And you have to be

[4]careful of infections.

[5]Q Why do you have to be careful of infections if it

[6]has no affect on your life expectancy?

[7]A Because the body may not fight it the way yours

[8]and my body have normal immune system will defend it.

[9]Q In fact, your life might be shortened because of

[10]your weakened immune system?

[11]A The weakened immune system is not the caliber of

[12]an HIV patient where it's completely destroyed where it

[13]cannot take care of itself.

[14]THE COURT: So if you take ample precautions

[15]you can live a normal life?

[16]THE WITNESS: Absolutely, normal precautions.

[17]Q You also stated his ability to tolerate stress is

[18]extremely limited.

[19]A His ability to tolerate stress --

[20]Q I didn't ask you a question yet, doctor.

[21]You did testify to that fact, did you not?

[22]A Yes, I did.

[23]Q And that would have an impact on his health, would

[24]it not?

[25]A It would have an impact on his psychological
200

[1]
[2]health condition, yes, but not ---

[3]Q Let me back up, doctor.

[4]Were you talking about psychological stress?

[5]A **[*68]** I was talking about psychological stress.

[6]Q Okay, I understood you to be talking about

[7]physical stress, so withdraw the question.

[8]Now, doctor, what is paraplegia?

[9]A Paraplegia is when you're paralyzed in the lower

[10]extremities.

[11]Q That is --

[12]A Both lower extremities.

[13]Q That is that person would have the use of his

[14]arms?

[15]A Yes.

[16]Q And, of course, Mr. Driscoll is not a paraplegic,

[17]he's a quadraplegic, is that correct?

[18]A Correct.

[19]Q The terms complete and incomplete quadraplegic are

[20]terms used in your profession?

[21]A Yes, a complete quadraplegia means that the

[22]paralysis is complete, there is no function at all,

[23]whatsoever.

[24]Incomplete means you are quadraplegic -- quad means

[25]four, four extremities, that are paralyzed -- but you have
201

[1]
[2]some movement.

[3]So Mr. Driscoll is an incomplete quadraplegic.

[4]Q Is it not true, Doctor, that the life expectancy

[5]for a paraplegic, somebody with no use of his legs, is

[6]shorter than that of a normal person, all things being

[7]equal?

[8]A Again, again, the key here is what **[*69]** happens to him

[9]after the first two years.

[10]If he survives the first two years without

[11]complications, he lives, anybody can expect to live a

[12]normal lifestyle.

[13]Q And that's true of a paraplegic?

[14]A Paraplegic, quadraplegic, monoplegic, triplegic,

[15]all of them.

[16]Q Are you saying there's no difference between the

[17]life expectancy of a normal 20 year old, a normal -- a

[18]normal 20 year old and a paraplegic or a partial

[19]quadraplegic?

[20]Is that your testimony?

[21]A Yes, there is a difference. The paraplegic is

[22]paralyzed from the waist down --

[23]Q No, no, I said --

[24]A Lifestyle -- life span.

[25]Again, you keep asking me the same question.

202

[1]

[2]The answer is the same. It depends on what

[3]happens within the first two years after the trauma.

[4]If they survive the first two years without any

[5]real complications, you expect a normal life expectancy.

[6]Q For both the quadraplegic or a partial?

[7]A That's correct --

[8]Q For a paraplegic, a partial quadraplegic or a

[9]total quadraplegic, is that your testimony?

[10]A That is correct, yes.

[11] **[*70]** Q Doctor, with respect to the nutritional supplement

[12]you think is indicated for Mr. Driscoll, when you examined

[13]him in August of '94 you did not note that there was a

[14]vitamin deficiency in your report, did you?

[15]A Note as in terms of diagnosis, per se, vitamin

[16]deficiency?

[17]Q Yes.

[18]A No, I did not, no.

[19]Q And you didn't diagnose a weight loss either, did

[20]you?

[21]A That was not the scope nor purview of my treatment

[22]of him.

[23]Q you were -- let me back up.

[24]At no point, either when he was at the Hospital

[25]for Joint Diseases or in August of '94 did you diagnose a
203

[1]
[2]vitamin deficiency, did you?

[3]A When a patient -- no, I did not diagnose a vitamin

[4]deficiency, that is correct.

[5]Q Thank you.

[6]And you did not note lost weight when you examined

[7]him in August of '94, did you?

[8]A I did not, no.

[9]That goes without saying; spinal cord injury

[10]patients lose weight.

[11]Q Please answer the question, doctor.

[12]A The answer is no.

[13]Q You were asked to assume that Mr. Driscoll

[14]testified yesterday that he had home care attendant for

[15] **[*71]** three hours a day and that he had access to emergency

[16]services in case he needed somebody when she was out.

[17]Is it your testimony that in your opinion that's

[18]inadequate home care?

[19]A Yes, for the reasons I explained earlier.

[20]Q Do you know the cost of Mr. Driscoll's home care

[21]attendant today on an hourly basis?

[22]A It's still between --

[23]Q No, no, what the cost to him actually is today for

[24]his three-hour home care attendant, do you know what that

[25]was?

204

[1]
[2]A I do not know.

[3]Q Were you aware, doctor, that -- are you familiar

[4]with Gaylord Hospital?

[5]A I know it exists. I'm not familiar with what kind

[6]of services they have and what they provide.

[7]Q Were you aware that Mr. Driscoll had undergone

[8]physical rehabilitation there on an out-patient basis after

[9]he was discharged from Whitewood?

[10]A Yes.

[11]Q Do you know of any reason why he could not

[12]continue, if it's necessary, to obtain physical therapy

[13]there on an out-patient basis rather than checking in?

[14]A Do I know why? No, I do not know why, no.

[15]Q Are you aware he's receiving no **[*72]** physical therapy

[16]at the present time?

[17]A Yes, I'm aware of that.

[18]Q Are you aware that he pushes his wheelchair all

[19]over the village and that's his exercise at the present

[20]time?

[21]A Yes, I'm aware of that. He's able to propel his

[22]wheelchair.

[23]Q Since his completion of the -- or since he

[24]received the physical rehabilitation services at Gaylord

[25]hospital do you know if he's sustained any decrease in his
205

[1]
[2]range of notion?

[3]Do you know of that?

[4]A Decrease in range of motion?

[5]Q Yes.

[6]A Since my evaluation back on --

[7]Q No, since he left Gaylord Hospital since he was

[8]having physical rehabilitation.

[9]A I don't know what his condition was since he left

[10]Gaylord Hospital, so how can I answer that question?

[11]Q Thank you.

[12]Doctor, you showed us Mr. Driscoll's back today.

[13]A Yes.

[14]Q And you saw it in August of 1984 (sic), did you

[15]not, when you examined him?

[16]A Did I notice his back?

[17]Q I'm sorry in August of '94 you examined

[18]Mr. Driscoll.

[19]Did you observe his back at that time?

[20]A I'm sure I observed **[*73]** it, but it's not in --

[21]Q You did not note it --

[22]A Yes, there is, the answer is yes.

[23]Q You did not note any ulcer on his back at that

[24]time, did you?

[25]A It says, "Healing skin graft present from the
206

[1]
[2]sacral flap."

[3]Q That was from the operation?

[4]A Yes.

[5]Q And you did not note any ulcer after the

[6]operation, did you?

[7]A No, no.

[8]Q And, in fact, you saw none today, did you?

[9]A Yes.

[10]Q You saw an ulcer on his back today?

[11]A Yes, I saw him today. There still is no

[12]ulceration.

[13]Q Okay. Since the operation for that flap which you

[14]described, to your knowledge there's been no ulceration,

[15]has there?

[16]A To my knowledge, no.

[17]Q And, in fact, he should be able to prevent a

[18]further ulceration by taking care of himself, isn't that

[19]correct?

[20]A Hypothetically, yes.

[21]Q He can turn himself, can he not, with his arms?

[22]A He should be able to, yes.

[23]Q And did you not testify this morning, doctor, that

[24]Mr. Driscoll should see a psychiatrist if he's severely

[25]depressed because the next step might be **[*74]** a suicide attempt?
207

[1]
[2]A I said what -- what I believe I said was if he

[3]does not see a licensed psychologist or psychiatrist who

[4]can carefully diagnose a severe depression and a severe

[5]depression continues, the next step night be suicide.

[6]I believe that's what I said.

[7]Q Has Mr. Driscoll threatened suicide or attempted

[8]suicide in the recent past?

[9]A To me? No.

[10]Q Has he stopped eating and stopped sleeping in the

[11]recent past, as far as you know?

[12]A I haven't gone into those specific questions this

[13]morning.

[14]Q So you really think the psychiatrist should be

[15]monitoring him to be making sure no trouble arises, is that

[16]correct?

[17]A That's one.

[18]Second, two, he's on anti-depressant, Zoloft.

[19]Q I'm sorry, I can't hear you.

[20]A He is currently on an anti-depressant, Zoloft.

[21]Someone needs to monitor that. Someone needs to refill

[22]that prescription. Someone needs to check for side

[23]effects.

[24]Q That certainly doesn't require one to three times

[25]a week?
208

[1]
[2]A And why is he getting Zoloft? Because he is

[3]depressed.

[4] **[*75]** Also, one of the best ways to deal with depression

[5]is with psychotherapy, so periodically he will need

[6]psychotherapy, not just medication alone.

[7]Q And on what do you base that opinion, doctor?

[8]A Based on my past experience with these problems.

[9]Q And based on your conversation with him this

[10]morning?

[11]A Yes, and based on my conversation this morning.

[12]MR. LEACH: Can I have a moment, Judge, and I

[13]think I can finish up quickly?

[14]THE COURT: Yes, you may.

[15](Pause.)

[16]MR. LEACH: I have no further questions.

[17]THE COURT: Is there any redirect?

[18]MR. KELNER: Very short, your Honor.

[19]REDIRECT EXAMINATION

[20]BY MR. KELNER:

[21]Q You were asked a question about the head jury that

[22]Mr. Driscoll sustained by Mr. Leach.

[23]You started to give an answer with regard to

[24]ramifications in the future as a result of the contusion of

[25]the front -- right frontal lobe of his brain.
209

[1]
[2]Can you tell us what those ramifications would be?

[3]A Basically I was asked if you have a head injury

[4]does that head injury get progressively worse and the fact

[5]there **[*76]** was no bleeding does that mean does is it going to

[6]get better on its own.

[7]When you have a closed head injury the effects are

[8]far more devastating than an open head jury.

[9]In an open head injury you have a skull fracture,

[10]the pressure is released. That is the key.

[11]In a closed head jury the pressure is not

[12]released. So the pressure -- you get different parts of

[13]the brain involved, not just the frontal area that was hit.

[14]The frontal area controls, as I indicated,

[15]behavior, controls memory and controls cognitive function.

[16]Once that's traumatized and it doesn't improve

[17]after the first two years it is considered permanent.

[18]His emotional problem and his behavioral problem

[19]still remains a problem and if it has lasted after two

[20]years it is considered permanent.

[21]So that's what I was trying to explain.

[22]Q Okay, now, with regard to incomplete quadraplegia,

[23]I think that was the language that was used, from the chest

[24]down he is absolutely paralyzed, is that correct?

[25]A Yes, absolutely correct.

210

[1]
[2]Q No feeling, no sensation, no ability to move

[3]voluntarily? **[*77]**
[4]A That is correct.

[5]Q I'm not talking about spasms right now.

[6]A That's correct.

[7]Q Spasms you cannot control on your own, that's not

[8]something --

[9]MR. LEACH: Object to the leading.

[10]THE COURT: Yes, you're leading.

[11]Please, Mr. Kelner.

[12]Q Can you control spasms on your own?

[13]A No, you cannot.

[14]THE COURT: That's still leading.

[15]Q Does -- what, if any, control does a patient such

[16]as Mr. Driscoll have with regard to spasms?

[17]A Let me define spasm.

[18]Spasm --

[19]MR. LEACH: Judge, this is improper redirect.

[20]I didn't go into spasm.

[21]MR. KELNER: He went into complete and

[22]incomplete quadra ---

[23]THE COURT: No, I'm going to sustain the

[24]objection. He didn't go into spasm.

[25]Q With regard to the statement of the incomplete
211

[1]
[2]quadraplegia, were you referring to the arms, in other

[3]words the upper extremities, rather than the lower

[4]extremities?

[5]A That's what incomplete C7 quadraplegia means. It

[6]means that the C7 level is incomplete, is not a complete

[7]quadraplegia, you have some function at the level of C7.

[8] **[*78]** But if you had a complete C7 quadraplegia, then

[9]you would have to go and say it's a C6 incomplete

[10]quadraplegia, which means you have some function from the

[11]C7 nerve root fibers.

[12]Q And that function that you're talking about would

[13]be with regard to the arms, as we've already seen?

[14]A With regards to the elbows and some wrist flexion

[15]and extension, but no finger flexion and extension.

[16]Q Okay. You were asked before about the ulcers or

[17]bed sores or decubitus ulcers that can be developed,

[18]pressure sores, I think.

[19]Those are all the same thing, correct?

[20]A Yes, right.

[21]Q You were asked by Mr. Leach about that.

[22]With a patient that was seriously trying to take

[23]care of himself, if he is a C7 quadraplegic and he is

[24]making the absolute best efforts to take care of himself, I

[25]mean, not neglecting himself in any way, do those people
212

[1]
[2]also get bed sores or ulcers or decubitus of the buttock

[3]area or any other area?

[4]MR. LEACH: Object to the form, Judge.

[5]THE COURT: Yes, sustained, it's a leading

[6]question.

[7]Q Could you tell us the incidents of decubitus **[*79]** with

[8]those types of people?

[9]A With C7 quadraplegics?

[10]Q Yes, sir.

[11]A The incidents, means the prevalence or chance or

[12]possibility, of decubitus is about ten to 15 percent and --

[13]MR. LEACH: I object, your Honor, and move it

[14]be stricken. The possibilities and conjecture are

[15]not a subject of this lawsuit.

[16]THE COURT: Overruled. I'll permit it.

[17]A (Cont'g) The fact he doesn't have it now does not

[18]mean he will not get it in the future.

[19]If he just sits on an area for an extra one hour

[20]longer the process begins and very rapidly, at a very high

[21]exponential rate, breaks the skin down.

[22]Once the skin breaks down and he cannot see it or

[23]someone else cannot check it, it's a downhill course and

[24]it's inevitable and that ulceration will occur.

[25]MR. KELNER: Doctor, thank you very much.
213

[1]
[2]MR. LEACH: I have nothing more, Judge.

[3]THE COURT: All right, thank you, doctor, you

[4]may step down.

[5](Witness excused.)

[6]MR. KELNER: I have a very short witness,

[7]your Honor.

[8]MR. LEACH: May I approach, Judge?

[9]THE COURT: Yes.

[10] **[*80]** (Discussion held at the bench, off the

[11]record.)

[12]MR. KELNER: Mrs. Driscoll.

[13]VIRGINIA DRISCOLL, a witness called on

[14]behalf of the Plaintiff, after having been first

[15]duly sworn by the clerk of the Court, was examined

[16]and testified as follows:

[17]THE CLERK: Have a seat, ma'am.

[18]Your name for the record?

[19]THE WITNESS: Virginia Driscoll.

[20]DIRECT EXAMINATION

[21]BY MR. KELNER:

[22]Q Mrs. Driscoll, try not to be nervous and keep your

[23]voice up so the last people in the jury box can hear you.

[24]Are you related to Frank Driscoll?

[25]A Yes, I'm his mother.

End of Document