In The Matter Of:

SRIDEVI KALIDAS & SIVA SANKARAN v.
ROBERT F. WARD, M.D. ET. AL.

RYAN ROCAP, DR. ROOT & DEBRA DWYER
October 20, 2017

Supreme Court State of New York - Civil Term
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New York, New York 10007
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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK : CIVIL TERM : PART 12
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N.S., an Infant by Her Parents and Natural Guardians, SRIDEVI KALIDAS and SIVA SANKARAN, : Index: 800049/2012
Plaintiff(s). :
- against - :
ROBERT F. WARD, M.D. WEILL CORNELL MEDICAL COLLEGE and THE NEW YORK-PRESBYTERIAN/WEILL CORNELL MEDICAL CENTER : TRIAL
Defendant(s). :
----------x
60 Centre Street
New York, N.Y. 10007
October 20, 2017

B E F O R E:

HONORABLE BARBARA JAFFE,
J U S T I C E
(And a jury of six plus three alternates)

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Senior Court Reporters

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COURT OFFICER: Jury entering.

(Whereupon, the sworn jurors enter the courtroom and take their respective seats.)

THE COURT: Good morning, everybody. Please be seated and thank you very much for your promptness. I really appreciate it. I know the lawyers and the parties appreciate it as well. Mr. Duffy.

MR. DUFFY: Your Honor, the plaintiff calls Ryan Rocap.

R Y A N R O C A P, a witness called by and on behalf of the Plaintiff, upon being duly sworn, was examined and testified as follows:

THE WITNESS: Yes, I do.

COURT CLERK: Please be seated. In a loud, clear voice, state your name.

THE WITNESS: Ryan Rocap.

COURT CLERK: Spell your name, sir.

THE WITNESS: R-Y-A-N R-O-C-A-P.

COURT CLERK: Your business address for the record.

THE WITNESS: 572 Broadway, Kingston, New York 12401.

COURT CLERK: Please give your attention to the Court.

DIRECT EXAMINATION

BY MR. DUFFY:

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Q. Mr. Rocap, you brought certain things to court here. What do you have in front of you there? It is a mic, speak into it.

A. What I have here is a day in a life video. It is a video that I was asked to shoot of your client the day on April 5th in Commack, Long Island basically showing day-to-day -- her day-to-day life.

Q. Just a little foundation. Are you employed?

A. I am. I am employed for a company called Total Child Solutions.

Q. And they were the people that we retained and they designated you as their employee to do this particular function for us?

A. Yes, that's correct.

Q. Now, you used certain equipment to do that?

A. Yes, I used two cameras.

Q. What were they?

A. I used a Sony a7S digital camera. And I used an Osmo handheld camera.

Q. Now, you got two items. Are they two versions of the same shoot?

A. Yes, they are.

Q. What's one and what's the other?

A. One of them is the master file which I provided to your firm. It is file basically to be played on line and the other

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file it is the same thing. It is just converted to be played on a DVD player.

Q. And the video as it exist on those DVD's, those -- are those -- what's the length of the entire video?

A. The entire video, the entire video unedited is somewhere around two and a half hours or three hours.

Q. And how long is it in this form?

A. 26 minutes.

Q. So why -- what is the editing? Why is that done and how does it wind up being 26 minutes?

A. Well, the first thing I usually do when I edit is to get out all of the stuff that doesn't matter meaning from walking with the camera and pointing it at the feet, that stuff isn't recorded. That's not needed. The other thing is that each section that I film or each therapy that I film can go on for 30 or 45 minutes. We condense them down to have an accurate depiction of what's going on so it could be viewed.

Q. So what you have in the edited version does it fairly and accurately represent the conditions you saw, the activities that you saw and what you -- does it truthfully and accurately represent what you videoed?

A. Yes, it does.

Q. Okay, and those are, in effect, representative sections of the total video?

A. Yes.

MR. DUFFY: Your Honor, I would offer these in evidence.

MR. BACH: No objection.

THE COURT: Thank you. We'll mark it as what? What's the exhibit?

MR. BACH: Plaintiff's 1.

MR. DUFFY: Plaintiff's 1 in evidence.

(Whereupon, the item was received and marked Plaintiff's Exhibit 1, DVD video, in Evidence.)

(Whereupon, the item was received and marked Plaintiff's Exhibit 1A, DVD video, in Evidence.)

MR. DUFFY: Your Honor, with this Court's permission, this video is the same video that had been exchanged in which we have downloaded into our computer. So I do not need this gentleman to play it and for sequential purposes of this morning, I have another witness. My intention would be to play the video later on this morning and I can let this gentleman go.

THE COURT: Any objection?

MR. BACH: No objection.

THE COURT: Very well.

(Whereupon, the witness was excused from the stand.)

MR. DUFFY: The plaintiff calls Dr. Barry root.

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B A R R Y R O O T, a witness called by and on behalf of the Plaintiff, upon being duly sworn, was examined and testified as follows:

COURT CLERK: Please raise your right hand.

THE WITNESS: Yes, sir.

COURT CLERK: Please be seated. Please state your name for the record.

THE WITNESS: Barry Root, R-O-O-T.

COURT CLERK: Your business address.

THE WITNESS: One Expressway Plaza, Roslyn Heights, New York 11577.

COURT CLERK: Please give your attention to the Court.

DIRECT EXAMINATION

BY MR. DUFFY:

Q. Now, would you advise the Court and tell the jury your -- first of all, are you a physician duly licensed to practice medicine in the State of New York?

A. Yes, I am licensed in 1986.

Q. Please inform the jury of your medical professional background. I suggest chronologically maybe starting back in your schooling, education and then your training going forward?

A. I grew up locally. I went to the college of Case Western Reserve University in Cleveland, Ohio. I graduated in 1977 with a degree in biology and a concentration in genetics.

I did a year away from that university to do genetics research at the University of Leicester in England. I then came back to the city university in New York for graduate studies in genetics. And I stayed for one year, particularly stayed to complete the program. And I left and went back to Ohio to the Ohio State University where I went to medical school. I went to medical school and graduated in 1984.

I was accepted for a specialty training program and residency training in physical medicine and rehabilitation at Nassau County Medical Center on Long Island. And I was there for three years. I was the chief resident in the third year and that was 1984 to 1987. When I finished my training in 1987, I took a position with Glen Clove Hospital which was known to become part of the North Shore. Now, it is called North Well Health Conglomerate.

At Glen Clove Hospital, I worked there for 30 years. I started the Department of Physical Medicine and Rehabilitation. I built that department and I left about a year ago. It's rehabilitation of medicine. It's the biggest department at that hospital now. And as I said, I was there for 30 years as the chairman of that department. I work privately. I teach residents and medical students at the Hofstra Northwell College of Medicine. I teach residents in physical medicine rehabilitation and family medicine on a regular basis. And I practice privately in Roslyn at this time.

Q. A couple of things about that. Have you, over the course of your career, done any publishing or presentations in your field of specialty?

A. I've lectured -- I can't tell you how many lectures. I've lectured at residency programs which is a medical staff to -- the surgical staff to the medical staff. I'm not sure, at Cornell Medical School and at Columbia. I've lectured at some national conferences. I've been invited to lecture at Metropolitan Hospital in Cleveland and various hospitals in Brooklyn and Queens. I've lectured to the Queens Medical Society. So I've lectured extensively. I've also written papers with my residents over the years. I would say none in the past five years led up to then, but pretty regularly I published some papers.

Q. Now, you use the terminology physical and rehabilitation of medicine. Give the jury an idea what is that?

A. Physical medicine and rehabilitation is a specialty in medicine that grew out of the second world war and the fact that there were soldiers that had been wounded that for the first time really survived their wounds. There were no antibiotics until the 1940s and because there were no antibiotics, where people have wounds, soldiers have wounds, they primarily didn't survive their wounds.

Most of New Yorkers has heard of Rusk, the Institute of Rehabilitation. Rusk Institute of Rehabilitation was founded by

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Howard Rusk. Howard Rusk was really one of the founder fathers of rehabilitation of medicine. What he did, he had a philosophy and the philosophy was that given the proper care, given the proper therapies, there is no reason for soldiers coming back from war who have been wounded to not have productive lives and he kind of pitched that idea to New York University and New York University opened what we now think as the Rusk Institute of Rehabilitation Medicine.

They treat EPT's, spinal cord injury patients, pediatric cases and physical medicine rehabilitation is about treating the pain, treating the weakness and helping people to reach their maximum goals and their maximum capabilities with the limitations of their disease processes.

Q. Now, at the request of my law firm, did you perform a physical examination of N.S. Sankaran?

A. Yes, I did.

Q. Now, I am going to be asking you some detailed questions in a few moments as to that examination. But I would first like to touch upon just the overall condition of N.S.

MR. DUFFY: Your Honor, with the Court's permission, I have N.S. here. I would propose that I bring her in, let Dr. Root spend two or three minutes just explaining the overall physical condition. N.S. would then leave and be allowed to return home. And I would then pick up on the details of the exam.

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MR. BACH: Any objection?

MR. DUFFY: No, your Honor.

THE COURT: Very well.

A. I saw N.S. in my office on September 5th of this year. She is 11-years-old. Rather than give you a line-by-line from my examination findings, I tell you that N.S. suffered a respiratory arrest and as a result she had a terrible injury to her brain. Her brain didn't get enough oxygen and as a result she has severe neurological deficits. She's totally immobile. She's able to sit only with the support of a CP monitor. She cannot roll in bed. She cannot crawl. She's quadriplegic which means she is not able to use her four extremities. And her extremities are non-flaccid. They are with a lot of muscle tone which is why her hands are closed and her elbows are clenched and she's held it in this position and that's because she has, as I said, spasticity or muscle tone.

And what happens in the brain when there is an injury is that there is typically -- there are patterns of a loss of balance in -- neurologically, a loss of balance. So the muscles that want to close her hand and flex her wrist and flex her elbow are all working, but the ones that want to open the hand and extend the wrist and open the elbow are not working. She's not -- none of this is conscious. She is not able to make a choice to open or close her hand. So she is, what we described as, spastic quadriplegic.

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She has a curvature in her spine because she hasn't walked ever. Her hips have not developed normally. When a baby starts to walk, the hips form a more normal healthy joint. If a baby doesn't start to work, the hips doesn't develop properly and the femur falls out of the cup and the ball of the socket don't form properly and so she's had hip dysplasia or abnormal hip joints that required surgery.

Her legs are different in length. Again, development is partially dependent upon use of the bones, use of the muscles, use of the joints. She's contracted, as I said, at the wrist and also at the feet. She's contracted at the feet. The feet are in a downward position. She has developed mental delays. She is not verbal although she does make certain sounds. She is cognitively impaired and she is not able to control her bowel or bladder so she wears a diaper.

She has a seizure disorder with daily seizures. She's at high risk for abnormal swallowing and having what we would say in the vernacular food going down the wrong tube, down the wrong pipe, which, of course, could give her pneumonia so she has a feeding tube that supplies her with all of her nutrition. She has reflux. She has a history of several episodes of pneumonia. She has a tracheostomy which allows for the delivery of either room air or oxygen into her lungs bypassing her mouth and nose.

She has a lot of secretions. Her tracheostomy, her

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trachea has to be suctioned frequently. She, so despite all of this, she also has a certain awareness. She seems to recognize her parents' voices and her parents' touch and the caregivers. She's familiar with -- she's not able to answer words yes or no but she can look towards her parents or away from them to signify that she has some understanding of what's going on in the room.

Q. Is that the overall?

A. Yes.

Q. All right. Now, Doctor, in addition to doing the examination, have you reviewed records dealing with N.S.'s situation?

A. I have reviewed extensive records, all of her records.

Q. And the general outline you've given, are those all things that you have acquired and learned either from the records or more specifically from your examination of her?

A. I reviewed the records extensively taking notes. I sat with the parents for two hours going through N.S.'s history, her daily routines, a variety of categories of her care, everything from a list of her disposable supplies, her durable medical equipment, her care needs and what she receives, her daily routine in order to write a comprehensive list of what she needs to continue getting the care that's necessary.

Q. Now, I am going to move on, in a few moments, to the plan but just dealing with the physical exam per se, is there

anything that you haven't covered in telling the jury the overall picture that we need to fill in as far as what you've acquired from the physical exam portion?

A. I think that the details of the exam are not as necessary as the list of diagnoses because they're completely lit. That is, I have pages of notes that are really detailed, oriented but the diagnoses tell the story, really the picture tells the story. This is a severely, severely disabled child with high care needs. Her survival is completely dependent upon the care that she gets. Her development is not normal. Yet, she has a certain awareness of what's going on in the room.

Q. Doctor, did you have an opportunity as well to view the video a day in the life showing certain care and activities with N.S.?

A. A day in the life video which I have reviewed takes a day's activities and compresses it to 21 or 23 minutes and it shows the nursing care that's necessary. All of the nursing care that's seen on the video is the same -- is the visual look at the list that I received from the parents and that was confirmed by the records that I reviewed. So, really, they're just three different -- it's my way of gathering all of the information not leaving anything out.

I also didn't mention earlier that after the parents left there was a series of communications back and forth between N.S. mother and I because I may have needed a dose of the

medication or an amount of time that something happened, just to confirm the details of her care.

Q. Now, if you can briefly, in viewing -- we are going to be viewing the video a little bit later. As lay people, we may not understand why certain things are done. Without going into specific minute-by-minute detail, can you give the jury what type of therapies does this child get on a daily basis and, again, if you can briefly but accurately tell us what is the need for that, okay?

A. There are a variety of treatments that the child gets. There are treatments that the child gets that are very basic and not at all surprising. So she is not able to control her bladder or bowel so they have to keep her in a dry diaper to keep her skin from becoming irritated. Her secretions build up in her trachea. They have to put a tube into her trachea to take away the secretions so that she doesn't have those secretions drip down into her lungs and give her pneumonia. They are clearly very successful of this. She hasn't been in the hospital for I think four years.

She has a feeding tube. This is a small tube in the side of her abdomen that connects to a tube that supplies nutrition to her. That tube needs to be changed every few months. The tubing that supplies the food to her has to be changed on a regular basis. So she has to be kept hydrated. She has to be kept more hydrated in the summer than the winter

like all of us. All of these things are done mechanically by experts that are taking care of her as opposed to having the normal capabilities of saying I'm thirsty which is really your body saying to you you are behind on fluids and you need more fluids.

She receives therapy from speech therapists, physical therapists, vision therapists and these are all -- an educational teacher comes to the home periodically.

Q. Briefly, tell us what each of those therapies is as just an overall picture so we know?

A. Sure, the physical therapist is concerned with her range of motion, maintaining motion at the joints, stretching the joints that are tightening up, trying to keep the muscles with as normal tone as possible.

The visual therapist is helping her to -- stimulating her to attend to what's going on in the room, to try to follow and to track. These are not things that she does well because of the extreme neurological damage. The speech therapist is concerned with her swallowing capabilities and they stimulate her with a small amount of food on her tongue to try to get her to swallow properly. They try to help position her. They try to teach the parents how to position her so that she can maybe swallow a small amount of food successfully.

So these -- these treatments are all aimed at keeping N.S. as healthy as she could be, helping her to -- helping the

caregivers to maintain her as well as they can. Because, you know, nurses and parents don't come with the automatic capabilities of being able to do every specialty item that's needed for a little girl like this. And so -- and so the therapists are helping the parents to take the best care of her as possible.

Q. Now, again, at the request of my office, did you base on all of the information including the records, including your examination, did you formulate something called a life care plan?

A. Yes, I did.

(Continued on next page)

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BY MR. DUFFY:

Q Let's start with basics. Tell the jury what is a life care plan.

A A life care plan is an attempt and a product that looks at an individual's care needs and it's individualized to meet the needs of the person for whom it's written. So a life care plan for N.S. includes a variety of topics and under each topic there is a list of recommendations, and following the list of recommendations comes the frequency and duration that those recommendations need to be carried out, the cost of implementing those recommendations and then the annual cost.

So ultimately it becomes, in N.S.'s case, a give or take 12-page spreadsheet detailing what N.S. needs to get the best care possible. And it's imperative that she gets the best care possible because without the best care possible her -- she's at risk. She's at risk for pneumonia, medical problems, complications, skin breakdown.

So this is an attempt to -- and her care has been excellent up till now, especially -- again, in the past four years no hospitalizations. She's really doing -- you know, she's stable and keeping her stable is the key and the reason for writing the life care plan is to

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keep the patient stable and to meet the needs that they have.

Q And, Doctor, to the extent that she's had hospitalizations, have these been situations where thankfully because of all the good care she gets they're well controlled and she recovers quickly?

A Her recoveries have been quick, her hospitalizations have been brief and, most importantly, there had been none in the past four years.

Q Now, Doctor, the life care plan you said is multiple pages and it has numerous subdivisions under general categories. Is that correct?

A That's correct.

Q You understand that, and I've advised you, that I have to submit, for verdict purposes, the general categories and the cost identified with the general categories. Correct?

A That's correct.

Q So I'm going to ask you, to the extent it's necessary, to explain to the jury where the subdivisions fit in. I'm going to be asking you questions directed towards the general categories. Okay?

A Okay.

MR. DUFFY: And, your Honor, to hopefully

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save some time, the life care plan, which has been exchanged, has the subdivisions as well. I would offer the entire life care plan in evidence but I intend to question the doctor as to the general categories.

THE COURT: Any objection?

MR. BACH: No objection.

THE COURT: Very well, it's in as Plaintiff's 2. Are we marking it as Plaintiff's 2?

MR. DUFFY: Please. Thank you, your Honor.

(Plaintiff's Exhibit 2 marked in evidence, as of this date.)

Q Now, Doctor, I guess I'm in the way here. This page, is this the listing of the general categories?

A This is the first category.

Q Oh, the first --

A The first category of the life care plan is routine medical care.

Q All right. Then let me change the question. What we need you to do is unless it's necessary to go down into each subcategory, please explain each general category and why it's needed and the role it plays and the annual cost identified with that.

Now, preceding that, I think I should just make a

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little clearer, if you would explain to the jury, have you done life care plans many times in your career?

A Yes, I have.

Q Sometimes for litigation?

A Yes.

Q When a patient comes under the care of a rehabilitation medicine, physical medicine person, whether it's in the formal setting of a presentation like this, or in some other format, does the doctor formulate here's what I want to do, here's what the plan is?

A Having run a rehabilitation department in a hospital for many years, I've discharged hundreds and hundreds -- thousands, really -- of patients. When a patient comes home from the hospital you have to have a plan for them, especially if the patient has a new disability that they didn't have before -- an amputation, spinal cord injury, traumatic brain injury.

So every time I discharge a patient from the hospital, the patient goes home with the plan. The plan includes what doctors need to be seen for follow-up and, hence, the first category routine medical care.

If I was to look at the second category, it says diagnostic testing. Diagnostic testing, when I send a

patient home from the hospital I may say to them, I want you to get a chest x-ray in two weeks, or I want you to get your knee x-rayed in six months. So part of the discharge plan is the diagnostic testing.

The third category that I have listed here is medications. Again, no surprise. N.S. and any patient I've ever discharged from the hospital has to go home with a list of medications. So this is how the life care -- life care plan in the setting of a medial-legal case is a natural extension of what rehabilitation doctors do because the patient is severely disabled and the patient has needs that need to be met.

So to go through the rest of the categories, we looked at routine medical care, diagnostic testing, medications. After medications I have as needed medications, any medications that need to be taken only if they need to be taken.

Q That's PRN?

A We call that PRN medication. That's a Latin abbreviation. We have a list of surgical interventions, none of which I've attached. Again, we'll come back to each of these, but none of these have -- they all have prices for what they would cost to have done.

The next category after operations is disposable

and consumable supplies. And the category after that is durable medical equipment. This is the equipment needs for this child.

The next one is orthotics. Orthotics is, again, a Latin phrase for braces, the braces that she needs to wear. After that is therapeutic intervention, meaning the physical therapy, the occupational therapy, the speech therapy, the vision therapy. And as we get to the end of the list of needs is home care.

The next category would be transportation and mobility and finally architectural renovations to create a safe living environment for this child.

Q All right. Now, if you would, you've got in what we -- you've just gone through and what we've run down, those subdivisions all have numbers with them but as I told you I need to have on the record the categories. Those will be what are called flat numbers. Is that correct? Meaning, they're today's numbers?

A That's correct.

Q And would you then, Doctor, would you take us through the categories. You've given us sort of an overview. To the extent that any additional information is needed for the understanding of the jury, please provide it, provide the number, the flat

number for that category, if you would please do that. I'm going to step back and just let you go.

A Okay. So the first page is routine medical care. And like the physical examination, I think rather than give you the nitty-gritty on a line-by-line basis, I think that I've already done the work for you, really.

For N.S.'s routine medical care, we have a variety of doctors involved. It's not surprising noting how disabled she is. The doctors' visits all have a unit cost and the frequency with which she sees her doctors is coming from the current frequency with which she sees these doctors, according to her parents, or according to the notes that I reviewed.

So, for example, the ophthalmologist only needs to be seen once a year while her gastroenterologist is seen a couple of times a year. So the prices are all included. And at the bottom the cost of her medical care for the doctors' visits comes to approximately $4,750 per year.

Now, it can be more than that; for example, if her -- she sees the neurologist twice a year, if her seizures were to become worse and the neurologist wanted to see her again in two weeks or again in a month. So this is a minimum for the medical care that

she's receiving at this time, and that's $4,750 per year.

The second category is diagnostic testing. Diagnostic testing I generated I think a page and a half list. And by the way, any medical care that would be routine that any child would need I've already subtracted out; that is, you know, every child needs to go to the doctor occasionally, every patient -- every patient gets a screen for diabetes every year. Every child, you know, gets a chest x-ray every so many years. So these things I've tried to eliminate out.

The diagnostic testing specific to N.S.'s needs would cost approximately $2,500 per year for this testing. And, again, that's all the testing. And then the details will be on the -- on this sheet.

The next page is the page on N.S.'s medications. Her medication costs are enormous and they're primarily enormous based upon one or two medications. Her antiseizure medication alone costs over $2,500 per year and her breathing medication costs approximately $13,000 per year, and this is a special medication that's used to keep the lungs open to prevent her from getting pneumonia. And all in all, her medication costs are approximately $21,886 per year.

The next page is also medications. These are what

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we call PRN, or as needed medications. And just so you have an idea of what these medicines cost, I've put in the unit costs but because these are not medications that she takes regularly I haven't put in an annual cost. I haven't put it in because I don't know what it is. Nobody knows what it is because these are as needed. It's like saying how many headaches are you going to have this year; how many Tylenol are you going to take; or are you going to get the flu this winter and need medication.

So these costs, this is really just for you to have an understanding that there are other medicines that she needs. There are costs associated with them but they're not -- I haven't specified.

The next page is for surgical costs, and surgical costs for N.S. are going to be highly variable. Certainly any operation that could be avoided should be avoided; however, any operation that's necessary has a cost associated with it. The -- so the possible costs or the possible anticipated cost for surgery for N.S. amount to as much as $216,000 over the course of her life. Hopefully she won't need most of these operations; however, going to the operating room is a huge expense and they need to be at least thought about on this level.

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The next page is disposable and consumable supplies. And these are mostly far less expensive than, for example, some of the medications. But they repeat, they repeat and they repeat because they're consumable. So this is her cost for diapers, for gloves, for suctioning her trachea, tubes for feeding, her special nutrient supply. Her foodstuff is not like you and I have, her food comes in a can, very special formula that provides the protein that she needs, or the calories that she needs to grow. And the cost for her disposable supplies and consumable supplies is approximately $5,127 per year.

Next is N.S.'s durable medical equipment, and the durable medical equipment comes to approximately $3,800 per year. She already has a lot of equipment, so I've tried to account for the equipment she already has. But the equipment does wear out on a schedule and some of the equipment is one-time only. I haven't put those into annual costs. And the equipment includes an electric hospital bed, it includes the special stroller that she moves around in. It includes a Hoyer lift as she gets bigger. Someone could hurt themselves getting her out of bed and into her stroller. So a lift to help get her out. And so these come to, as I said, $3,800 per year.

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She also needs to wear braces to keep her ankles and wrists from becoming more contracted and the braces that N.S. wears are custom-made. Because she's growing, they need to be replaced at a faster rate now than when she stops growing. So the prices will go down. Not the prices but the annual cost will go down when she stops growing. I've estimated the cost to be at $2,172 per year after age 18, but approximately $3,000 per year until age 18.

N.S. gets therapy from her local school district. However, it's supplemented by private therapy that's provided through St. Mary's Children's Hospital. The St. Mary's Children's Hospital is -- the therapy I think is a couple of times a week for physical therapy and occupational therapy and speech therapy. And for her to continue this therapy on a private basis the therapy would cost for each of those $18,000 per year. That's for twice a week. I'm sorry, up to three times a week until the age of 21. And so the total would be $54,000 per year for her ongoing therapy.

The most important item on the list is also the most expensive. And currently a nurse takes care of her, not an aide, not a trained personnel person but a nurse; and a nurse is there -- really needs to be there 24 hours a day. When a nurse isn't there her parents

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are in charge. Her parents have learned a lot at the nursing schools. It should be the parents' job to be parents not to be nurses, and so I've included the nursing costs.

The nursing costs based upon the cost in New York is $75 an hour. What I've put down is two eight-hour shifts per day every day of the year and the cost becomes $438,000 for that.

I also have her down for an aide for one shift per day at a cost of $225 per shift and that would be another $82,000. Typically in a case like this before, there should be a nurse having a supervisory role. We call that person -- we call that nurse, nurse supervision or nurse management, case management. And case management would be just a couple of hours a month just to make certain that all the pieces are fitting together properly.

Now, the expenses for her care to remain at home would be over $500,000 per year. It's a huge expense and its a huge responsibility. Doing it this way they have managed to keep her out of the hospital for several years and her health, her general health is good.

To put this in, you know, a frame of reference, were she to go to live in a facility where there is

nursing care around the clock but the nursing care is not dedicated to her, the cost would be approximately half of that. It could be in the $250,000 per year range. I think this is more about family choice than anything else. But in case the numbers look incredibly high, if you have a family member of your own that had to privately pay for this care, this is what the cost would be.

Transportation and mobility. Now, whether she lives at home and has to go to the doctor many times per year or whether she lives in a facility and has to go to the doctor many times per year or come home to visit her family, she's getting too big to pick up and put in a child seat in the back of a minivan. However, there are minivans that have removable seats, ramps and wheelchairs and wheelchair tie-downs for safety. And so I have included the price of a van with wheelchair accessibility and I've subtracted from that the cost of a family sedan just to try to keep the numbers as real as possible. The expenses for her transportation would be approximately $4,600 per year.

The last category that I have is architectural renovations. And since I'm not an architect, I can't estimate that but she should have -- she should live in a home that has widened doorways that a wheelchair can

go through, a home that has accessible bathroom that she can be wheeled into to take -- to be cleansed properly and -- and there should be rapid exit in the event of an emergency. So an architect should, and architects do, look at items like this to create an environment where -- where a disabled person can still be a member of their family and have accessibility to their own home. And those are my list of categories of the expenses associated with them.

Q Okay, thank you. Now, have you testified in court before?

A Yes, I have.

Q Have you testified in court in cases where I or a member of my firm called you?

A Yes, I have.

Q Have you testified before in court in cases where other plaintiffs' lawyers or defense lawyers have called you and asked you to do this same type of function?

A Yes, I have.

Q Are you paid for your time in formulating the plans, examining the patient, your time in discussing, educating the lawyer and your time in court?

A Yes, I am.

Q Tell the jury how you're paid.

A I charge by the hour.

Q Go ahead.

A $500 per hour.

Q Okay. Thank you.

CROSS EXAMINATION

BY MR. BACH:

Q Good morning, Dr. Root.

A Good morning.

Q My name is Charles Bach, I represent the defendants in this case, Dr. Robert Ward and New York Presbyterian Hospital.

Dr. Root, am I correct in saying that you have no opinion whether Dr. Ward met the standard of care when he treated N.S.? Is that true?

A That's correct.

Q And the same thing goes for the New York Presbyterian Hospital staff. As far as you know, both defendants may have given excellent care, you have no opinion one way or another about liability. True?

A That's correct.

Q When were you first contacted by Mr. Duffy's firm concerning this particular case?

A Since I saw this youngster on September 5th, I have to say it was -- I can't tell you specifically but more than likely in August.

Q So in this case that has been pending for over five years, your first -- the first time you heard about the case was just August a couple of months ago. Fair statement?

A Yes.

Q And before you examined the child, you reviewed some records or a lot of records that Mr. Duffy's office provided to you?

A That's correct.

Q Now, you made a comment about the excellent care that N.S. has been receiving over the past -- certainly the past four years. Did I quote you correctly, her care has been excellent?

A Yes.

Q Okay. And are you aware of -- withdrawn.

You said there had been no hospital admissions certainly in 2017 and 2016. Are you aware of her admission to Good Samaritan Hospital in 2015? Were those records supplied to you? And I'll be specific.

Did you review records from Good Samaritan Hospital on Long Island where N.S. was admitted for upper respiratory infection, she had become tachycardic and tachypneic at home, vomiting some streaks of brown, red colorations? They diagnosed tracheitis and she was admitted for two days and discharged on April 3rd of

2015. Were you familiar with that?
A I'm not certain.
Q Okay. If I told you that records reflect that admission that would not surprise you given your knowledge of this child's course. True?
A True.
Q And are you familiar with another Good Samaritan Hospital admission from October 16th to October 20th of 2014, for pneumonia secondary to increased pulmonary secretions and coughing? Were you familiar with that admission?
A I'm not certain.
Q And again that would not surprise you that she required that type of hospitalization in 2014 given her underlying condition. True?
A That's correct.
Q So can we agree, Dr. Root, that despite excellent care, the very severe deficits that this child suffers puts her at increased risks for these type of infections? True?
A We would certainly agree that she's an increased risk and all the more reason for her care to be as excellent as possible.
Q Right. And despite the excellent care that she's received, there are times when she's required

hospitalizations as we've just discussed. True?
A Yes.
Q Now, you mentioned therapies that were provided through the school. Is that through the Individuals with Disabilities Education Act? You said through school she gets therapy. They actually are from the St. Mary's Children's Hospital on Long Island?
A She gets school funded -- my understanding is that she has school funded therapies and she has supplemental therapies --
Q Okay.
A -- through St. Mary's.
Q And that -- the school funded therapies, is that through IDEA, that act, do you know?
A I don't know.
Q Okay. Do you know whether N.S. has attended school in the past?
A I believe she has not attended school.
Q Now, I'm going to ask you some questions about your report. Do you have that?
A Yes.
Q And by the way, do you have the notes that you mentioned, that you took while you reviewed the records?
A No, I don't.

Q Where are your notes?
A On my desk at home.
Q How many pages of notes did you leave on your desk at home?
A I have a pile of records and that includes some notes that I've written.
Q So the notes, I'm just interested in the notes.
A I couldn't tell you.
Q No idea how many?
A A couple of pages.
Q Just a couple of pages. Okay.
So I'm going to ask you now about your report. The information that you had at the time was on page 1 of your report that her most recent hospitalization was in 2013. But, obviously, if she was hospitalized in 2014 and 2015, that was information that was not supplied to you. True?
A I suppose, yes.
Q You mentioned that N.S. is severely cognitively impaired. True?
A Yes.
Q Would you agree that as result of the anoxic episode, N.S. has very limited awareness? True?
A I don't think we know.

Q She has total immobility, unfortunately. True?
A Yes.
Q You understand these are -- these are difficult questions that I have to ask for legal reasons. Right?
A I understand.
Q She is totally dependent on others for all activities and all care. True?
A Yes.
Q In your report where you do the review of systems, you say she has random eye movements, some tracking per mother, meaning some tracking of her eyes according to the mom. True?
A Yes.
(Continued on the next page.)

Dr. Root - by Plaintiff/Cross

Q. Did you, in your exam back in September at your office in Roslyn, confirm her visual tracking at all?
A. I believe that she response to her mother's voice. She looks to -- looks, yes.
Q. So mom was with N.S. when you examined N.S., is that what you are talking about?
A. Yes.
Q. So she reacts to familiar voices you said and then you mentioned that all of her nutrition is given through a tube. That's the percutaneous endoscopic gastrostomy tube or peg tube, correct?
A. That's correct.
Q. Her weight at the present time is like the second percentile does that sound about right?
A. I believe so.
Q. You mentioned that she's unable to sit, true?
A. Yes.
Q. And would you agree that as -- that peer review medical literature includes studies of the life expectancies of unfortunate children like N.S., fair statement?
A. Yes.
Q. It is understood that children that are severely cognitively impaired with no functional movement and dependent on others for all aspects of care have a markedly reduced life expectancy; is that a fair statement?

Dr. Root - by Plaintiff/Cross

A. Yes.
Q. Would you agree that N.S.'s life expectancy is probably into her 20s or maybe her 30s?
A. I think her life expectancy really cannot be determined. And I would say that the better the care she receives, the more thoroughly she's cared for, the longer she has a chance of surviving.
Q. Well, if you were asked -- withdrawn.
First, you had been the director of rehab medicine at Glen Cove, correct?
A. That's correct.
Q. And that facility for rehab medicine is for -- always for adults, true?
A. That's correct.
Q. Your patient population is at least 90 percent adults, fair statement?
A. Yes.
Q. There are rehabilitation medicine specialists who concentrate their clinical experience and skills on pediatric cases like this one, true?
A. Yes, there are.
Q. And you don't hold yourself out as a specialist in pediatric rehabilitation medicine, fair statement?
A. I hold myself out as an expert in rehabilitation medicine.

Dr. Root - by Plaintiff/Cross

Q. Not pediatric?
A. And then apply the principles to whatever patient I see.
Q. So your patient base, you're not day-to-day taking care of children with an intractable seizure disorder and deciding what anti-seizure medications to give true?
A. That would typically be a pediatric neurologist.
Q. And who's N.S.'s pediatric neurologist now?
A. Doctor Syco (phonetic.)
Q. And Dr. Syco is also on Long Island?
A. I believe so.
Q. Okay. Would you defer to a pediatric neurologist on an issue of life expectancy for a child such as N.S.?
A. Not necessarily.
Q. So if you were asked as a rehabilitation medicine specialist -- withdrawn.
You mentioned that if the care is excellent, that it's difficult for you to project life expectancy for this child, true? It is really a yes or no question.
A. Can you repeat it please? Sorry.
Q. Let me withdraw that and ask another question.
Is it also known in medical literature that too many therapies can also be difficult for a child like N.S.? Is that a fair statement?
A. I think it is a difficult question to answer. I don't

Dr. Root - by Plaintiff/Cross

know what too many therapies are.
Q. Okay. Did you discuss with N.S.'s mom how N.S. seems to be a little more relaxed or in her words, chilled, on the weekends when there aren't so many therapies going on? Did that ever come up?
A. We didn't discuss that, no.
Q. And if Miss Sankaran had testified to that at her deposition, N.S. is more relaxed on the weekends, in her view, when there are no therapies, does that make any sense to you, that observation?
A. It doesn't surprise me. I think most human beings are a little more relaxed on the weekends.
Q. I'm not talking about most people. I am talking about this type of situation with this unfortunate child, wheelchair bound, totally immobile and then therapies during the week but not on the weekends. That's all I'm saying. Does the mom's observation, would you dispute that?
A. No, I wouldn't.
Q. You mentioned N.S. turning of her head to indicate yes or no. Was that historical information that you obtained from the parents or is that something that you saw in your exam?
A. I did not observe her. Answering, yes or no, that's the information I had from the mom. I did observe her looking toward her mom when her mom spoke.
Q. But in terms of responding and answering a question

either yes or no during your careful examination, you didn't see that happen, true?
A. I don't believe I attempted to.
Q. You didn't try to see whether or not she would be able to respond to a question during your exam? Is that what you're telling the jury?
A. I believe that she was -- she was uncomfortable for a lot of the times she was there. She had a lot of secretions. She had to be suctioned multiple times. I think it was a stressful time for her.
Q. So for her to be brought to a doctor, that created stress in N.S. in your view?
A. Yes.
Q. And at anytime during that evaluation that you made, did you ever ask a question and see whether N.S. would respond by turning her head to indicate yes or turning her head another way to indicate no, did you ever do that just yes or no?
A. No.
MR. BACH: I have no further questions.
Q. Before I forget, let me just ask you. Counsel mentioned your fee of $500 an hour. Was that for all the work that you've done you billed by the hour?
A. That's correct.
Q. And how about for your court appearance today?
A. I bill $6,000 to come to court.

Q. Okay. So if we're finished by 11:05, it would be, I guess, a tops three-hour court appearance, you would get $6,000, fair statement?
A. I've closed my office for the day and cancelled all patients to come here for the day.
Q. You would agree with me that if you're working in the office for the day, you're not paid $6,000 is; that a fair statement?
A. Not necessarily.
Q. So $6,000 for today, $500 an hour, is it $500 an hour for the life care plan also or is that a separate charge?
A. That's correct.
Q. What's correct?
A. For all the work after.
Q. So what do you expect to be paid for your work for Mr. Duffy's firm in this case?
A. Probably in the neighborhood of 10 or $11,000.
Q. Sorry?
A. In the neighborhood of 10 or $11,000.
MR. BACH: Thank you, Dr. Root. I have no further questions.
REDIRECT-EXAMINATION
BY MR. DUFFY:
Q. Counsel asked you some questions about did you do any specific testing to try to see if N.S. used her, turning her

head or her gaze in showing cognition. Did you, looking at that video a day in the life, did you see a series of incidents where the teacher was using choices on a board where N.S. would, by eye gaze, make elections between options that the teacher gave her? Did you see such a thing?
A. Yes, I did see that.
MR. DUFFY: Thank you, Doctor.
THE COURT: You're excused.
(Whereupon, the witness was excused from the stand.)
THE COURT: We will take -- actually, we're going to take a brief recess. Don't discuss the case.
(Whereupon, a recess was taken.)
THE COURT: Please be seated. These are two of my interns I have invited up here briefly.
MR. DUFFY: Do you want me to play a day in the life?
THE COURT: Yes, please.
MR. DUFFY: Thank you.
(Video file played in open court.)
(Video file concludes.)
MR. DUFFY: I have my next witness this afternoon.
THE COURT: Very much. We are going to break for lunch. I did receive your note asking about hours next week. We are going to go the regular time next week which

means Monday 9:30, Thursday 9:30, Thursday 9:30, Friday 9:30. I don't know quite yet how long we are going to be, but we seem to be on schedule. Don't discuss the case. See you at 2:15.
(Whereupon, the sworn jurors exit the courtroom.)
(Whereupon, a luncheon was taken.)

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

COURT OFFICER: Jury entering.

(Whereupon, the sworn jurors enter the courtroom and take their respective seats.)

THE COURT: Good afternoon, everybody. Please be seated. Mr. Duffy.

MR. DUFFY: The plaintiff calls Debra Dwyer.

D E B R A D W Y E R, a witness called by and on behalf of the Plaintiff, upon being duly sworn, was examined and testified as follows:

THE WITNESS: I do.

THE COURT: You may be seated. Please state your name loudly and clearly for the record and give your business address.

THE WITNESS: Sure. Debra D-E-B-R-A, Dwyer, D-W-Y-E-R. My address is 17 Springbriar Lane. Springbriar is one word, B-R-I-A-R, Centereach, C-E-N-T-E-R-E-A-C-H, New York 11720.

THE COURT: Thank you.

DIRECT EXAMINATION

BY MR. DUFFY:

Q. Would you inform the Court and the jury of your educational and professional background, I suggest doing it chronologically?

A. Sure. I got my bachelor's degree in Queens College in

Flushing, New York in economics and English literature. I went on to get my master's and my Ph.D. from Cornell University in labor economics and health economics. From there, I did a postdoctorate fellowship at the Center for Policy Research in Syracuse University. I spent a year there studying international labor disability policies. From there, I was recruited to the Social Security Administration where I spent two years working in the division of economic research on disability policy. And then for the last 19, almost 20 years, I have been working at Stony Brook University as a faculty member.

I have affiliations as a professor at the Department of Economics and Health Sciences and also in the College of Engineering where I teach economics and public policy. I also recently accepted a position as the assistant dean in the College of Arts and Sciences to work on strategic planning and research.

Q. So your undergraduate and graduate degrees are what?

A. Economics and English literature under graduate and then PHD -- master's and Ph.D. in labor and health economics.

Q. And you are here today as an economist?

A. Yes.

Q. So all of us think we know what that is, what is an economist? What do you deal with? What does the field deal with, then we'll narrow it down to how it applies to what you're doing here today?

A. Sure. Economics in general is about how the economy or society decides what to do with their resources. It's broadly defined. Our resources are scarce and so we have to answer questions like what to produce, how to produce them and who gets what. I am a health and labor economist which means I focus at micro level on two specific markets, very large markets. So just about everybody is in the market for work, labor, and everybody is in the market for health care. And I study the trends in those two markets.

I would study things like growth rate and health care prices and what's going on with health care policies. I study the market, the job market, the education market and what's happening with fringes and wages and those sorts of things.

Q. Have you published peer review materials in the field of specialty on economics and your related field of special interest?

A. Sure.

Q. Give us an idea of a couple of them? How many -- first of all, give us an idea?

A. So how many is peer review, journals, articles not including book chapters, probably about 20. And then book chapters about three. I also --

Q. Give us an idea of a couple of -- just so we have an idea of what you've written in?

A. Sure. Most of my research has been at the intersection

of health and work. So I began my career for six or seven years focusing on social security policy questions. That had to do with how does health affect work, how does disability policies affect people who have disabilities in the labor market. So I published some papers in those areas. One of the more prominent works that I produced in that area is actually how to measure health and data so that you can put it into models to study how it will impact how people work. That's one of my most cited papers. It has been cited one of the most prominent papers in the field.

I've also done a lot of work on how to measure things like health care and disability and then more recently I have been doing a lot of work on addiction which also falls into the health care and work sector, how addictions affect particularly young people, their educational outcome, their work outcome. So I have looked at all the different types of addictions. Right now what I am really focused in on is addition to technology, how is cellphone use and internet use and being tied to a cellphone affect our young people particularly those people who have no life without it.

Q. Give us an idea research projects you are involved with and any grants and honors that you have been awarded? Give us an overview of that?

A. So I have received grants from the National Institute of Health through the National Institute of Ageing. I received

several grants from the Social Security Administration administered through the University of Michigan, so a number of foundational grounds along the way. I've earned awards in research. I have been nominated. My work has been nominated among the top 200 papers of all times in health economics.

Q. Now, as part of the field of economics and part of your function in economics, do you get involved in economic loss analysis for people seeking your input who are litigants in a lawsuit whether it is a plaintiff asking you to do that or whether it is a defendant asking -- in other words, anybody that's a litigant in a lawsuit do they seek out someone like yourself to do an economic loss analysis?

A. Yes, for the most part plaintiffs.

Q. And did you do such an economic loss analysis at our request in this case for N.S. Sankaran?

A. Yes.

Q. Now, we have already in evidence -- the way this has to go in, as you know, is we have the categories in flat numbers from Dr. Root. You are aware of that?

A. Yes.

Q. But your role as to that aspect of the proof is to provide, under the law, growth rates or inflation rates for each specific category; is that a correct statement?

A. Yes.

Q. And did you do that for us here?

A. Yes.

Q. And so if I could first move to that aspect. We have up on the screen the category and have you provided for each category the inflation rate that you feel is applicable for each category?

A. Yes.

Q. Could you go through and explain and perhaps certainly on the first one, explain how you come up with that. For example, one category is three percent. Another one is 3.8, another is 1.5. So as you go through, would you explain for the jury how these are different and why they're different?

A. Sure. I think to do that first I should explain what a growth rate is.

Q. Please do that, yes. I should have asked myself.

A. So, otherwise, it won't make any sense. So what Dr. Root provides is the category of services that Ms. Sankaran will need over the remainder of her life but gives the flat rate starting off in today's dollars. Those medical services are going to be required next year and the year after and for the next seven years or so. And so in order to be able to project into the future, we have to know what's going to happen with the prices for those same exact services.

So if we're talking about a doctor's visit that cost $100 today, it is not going to cost $100, 10 years from now. As we know, walking through the door for the same doctor visit you

are going to pay a little bit more because prices go up over time. As a health economist, what I'm looking at is what happens to prices over time so I can predict what I think is going to happen over the next few decades in order to be able to predict what the actual cost will be for the medical care for Miss Sankaran's medical needs for the rest of her life.

Q. I am interrupting you and I know and I apologize. Could you further explain how is it you come you with future growth rate? What information do you use as to what is happened, what is happening and what is expected to happen? How does that all fit in?

A. Sure. So what we use is federal data, federal statistics, the Bureau of Labor Statistics collects all kind of data on what happens in prices in general. You probably heard of the inflation rate, the Consumer Price Index, which is a standard bundle of goods that households use that combines the prices, all of them, and every year for decades they have been calculating what has been happening to the prices and what the growth rate has been in the prices. That's the inflation rate.

They also do this for subcategories of goods and services including medical services, but they don't just use overall medical services. So overall medical services for the past 25 years had been rising at an average rate of 4.2 percent per year. That means for every hundred dollars, you are spending another $4.20 every year for those services on average.

So what I need to decide is how far back do I go to look at the average growth rate and prices in order to be able to say what's going to happen into the future. And I've selected 25 years and that's the standard in my field. What we do is we look at business cycles. We look to see the trends in prices. Sometimes they go up. Sometimes they go down, capture enough periods of ups and downs that are representatives of what's going to happen in the future. That's what I did here.

And I did it for different subcategories as available by the Bureau of Labor Statistics so that's why you see for medical care that's things like pain specialists, orthopedists medical professionals, doctor/office visits have risen on average three percent per year for the last 25 years. That's the growth rate that I will recommend for projecting what's going to happen to those prices into the future. Should I go on then?

Q. Please do.

A. So then we do the same thing for all of the other categories. And as you can see, as Mr. Duffy said, they're different across the different categories. Diagnostic tests like x-rays, same rate, three percent per year. Pharmaceuticals, medications, prescription drugs had risen at a faster rate than the other services I've mentioned. They've grown on average over the last 25 years by 3.8 percent. And I should say I am being somewhat conservative on these growth

rates. Pharmaceutics have risen pretty fast on -- I am being pretty conservative in terms of what I think is going to happen in the future.

The next three categories all fall into medical supplies, so disposable consumables, orthotics, durable medical equipment, this is going to include things like wheelchairs, diapers, tubes, various replacement items on hardware that Miss Sankaran will need and the growth rate on that is actually slower than the general rate of inflation at 1.5 percent.

For therapeutic interventions like physical therapy, 2.5 percent; transportation and mobility also 2.5 percent. Home care, so that -- so now we have these two categories of care for the day-to-day needs for Miss Sankaran and that can either be done in the home and prices in the home care have risen at a rate of 2.5 percent or it can be done in a facility and there it would be a growth rate of four percent per year. That's all of the categories.

Q. Now, I am going to hand you this piece of paper. Is this from your report, the sheet that details those specific growth rates?

A. Yes.

MR. DUFFY: Your Honor, I would offer this in evidence.

THE COURT: Any objection?

MR. BACH: No objection.

THE COURT: Very well. That will be plaintiff's three.

(Whereupon, the item was received and marked Plaintiff's Exhibit 3, Suggested Health Inflation Rates, in Evidence.)

Q. Now, based on this information in the testimony in this case that this child is totally disabled and, therefore, will never work, did you do, at our request, an economic loss projection for lost income for this child's lifetime -- work life I should say?

A. I have.

Q. Now, first of all, in doing an economic loss analysis dealing with future loss earnings, does the education level of the parents play any role in forming such an analysis?

A. Absolutely.

Q. Explain why?

A. So in my research, I mentioned that in my research I looked at educational outcomes and psychological outcomes also for kids who may or may not be addicted to various drugs. So in that work, I'm required to think about what their expected educational outcomes would be and in the literature, the strongest predictor of educational outcomes for a child is the parent's educational outcome. So it is one of the most important predictors in what you think is going to happen with educational outcome for the kid.

(Continued on next page)

BY MR. DUFFY:

Q Now, in this case the testimony is that both of these parents have master's degrees. In doing your analysis, did you use that level or were you more conservative in what you used as the basis; and, if so, why?

A So the parents do have master's degrees in psychology and computer science, so they're a pretty educated family. I chose to be conservative. I usually err on the side of conservative. And I had N.S. going only for a bachelor's degree.

So Ms. Sankaran, what we used was the average weight rate for college. So we had her graduating college to determine what her annual earnings would be.

Q Did you then set forth -- we have it up on the screen, but its important that you not only tell us what it is but explain how this comes to be. First of all, what's the basis of these numbers, you know, what's the source and how do you project? Go ahead.

A Sure. So the US Census Bureau does surveys nationwide, they're a national representative, and they collect all kinds of data, also by gender, by year of birth, by educational status. So that $66,059 per year that you see under yearly loss in current dollars is the average earnings of a college graduate female in

D. Dwyer - By Plaintiff/Direct

2014. So that's what was available from the US Census Bureau. And, again, I used for the bachelor's degree not the master's degree.

Q Okay. And then you have a projection of number of years and then you have inflation rate. Explain that.

A So besides -- if you really want to calculate what the future earnings would have been had Ms. Sankaran been able to work an entire worklife expectancy, we begin with age 26, which is being conservative, that she would finish. It would take her that long to finish her college degree and also get established in a career. So 26.

We have her working to the age of 67. The reason we use 67, is under the Social Security Administration that is the normal age of retirement, which means that's the earliest age you can retire and collect your full benefit. So you can retire earlier than that but you would take a penalty. So we tend to use the normal age of retirement for people who we believe will have a career and will be tied to the labor force full time. So that's what we used for Ms. Sankaran. That represents 41 years of work that she would have lost.

And the growth rate, the inflation rate is what has happened on average over the last 20 years in the

D. Dwyer - By Plaintiff/Direct

labor market. So we also follow trends and wages on average wages, and all categories for the most part have increased at 3 percent per year.

Q Now, the loss of income for a career, that is a definable item from beginning to end and is based on the worklife expectancy that you've talked about. Is that correct?

A Correct.

Q And in the statistical analysis that you draw upon, there is a difference, is there not, between worklife expectancy and life expectancy?

A Sure.

Q Now, you have another item here.

A Yes.

Q Loss in -- go ahead, explain what that is.

A So besides income, we usually have benefits tied to a job and the employer is responsible for paying for at least part of those benefits. So in order to calculate the value of those benefits, again from the Census Bureau and also from the Bureau of Labor Statistics, we have data on the average percentage an employer pays for somebody's benefits. The average is 25 percent of someone's income and so that represents -- that's where that $16,515 per year comes in. So we add in the value of the lost benefits

D. Dwyer - By Plaintiff/Direct

for the same amount of time the worklife expectancy. And that, too, rises at an average rate of 3 percent per year.

Q Now, is this page the page from your report that deals with that particular projection?

A Yes.

MR. DUFFY: Your Honor, I'd offer that into evidence.

MR. BACH: No objection.

THE COURT: That will be Plaintiff's 4.

(Plaintiff's Exhibit 4 marked in evidence, as of this date.)

Q Now, you are paid for your time in doing your analysis, your time here in court today?

A Yes.

Q And any time you spent discussing these things with me or my staff?

A Yes.

Q And can you tell the jury how is it you're paid? What is the rate that you are paid at?

A So I charge a flat rate of $4,400 for preparing and for being here today.

MR. DUFFY: Nothing further. Thank you.

THE COURT: Mr. Bach.

CROSS EXAMINATION

D. Dwyer - By Defense/Cross

BY MR. BACH:

Q Good afternoon, Dr. Dwyer. How are you?

A Good. How are you?

Q I'm fine, thanks.

Would you agree with me that it is difficult to project economically what's going to happen a year from now, two years from now, or three years from now? And certainly economists will project that the economy is going to grow at 3 percent and it turns out it grows at 3.5 percent. Does that happen?

A Year to year we're not particularly precise, on average we are.

Q With respect to the wages of a college grad, are you saying that a college grad now, who is 26 and enters the workforce, earns on average $66,000 a year?

A That's not the starting pay, that's the average pay over a lifetime of work.

Q So, in other words, that $66,000 figure a year for a college grad, that takes into account a college grad who's been working 40 years. True?

A Yes.

Q Thirty-five years. True?

A Yes.

Q So adult children who -- adult children who are -- who are in the workforce now and they're age 30,

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if they're earning, say, 30, $35,000 a year with no benefits, that's not unusual. True?

A I can tell you what the average is for that age range but -- it sounds a little low, 30,000. But do you want me to look at --

Q Well, a little -- I want to see how badly I should feel about my daughter's income.

A Yeah. So a 30-year-old today would be earning, with a college degree, without benefits, 61,000.

Q I feel pretty badly, then.

So English majors with college degrees nowadays, fair statement, probably earn less than economics majors?

A Most likely, yes.

Q And of course we don't have a crystal ball. We have no idea what this child would have majored in. True?

A Right. Except --

Q No idea?

A Not no idea. They have parents who are on social science and computer science, but, yes, it could go in another direction.

Q Well, if the parents are in a particular profession, is it also likely that the child will not

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want to do what the parents have been doing?

A It's possible, yes.

Q Okay.

A The tentative -- but what they say and what they do, but tends to be somewhat -- you're right, we don't know which way it's going to go. This is the average for everybody, whether they're English or economics.

Q Okay. So would it have been more accurate to do this year by year, in terms of projected wage for picking, let's say, 30,000 or 40,000 and going year by year?

A No. I have actually done those comparisons and it comes out about the same.

Q And could we agree, also, that people who join the workforce then may go part time when they have children, they come out of the workforce, be stay-at-home moms, that happens from time to time as well. True?

A There are breaks, yes.

Q I think N.S.'s mom is a stay-at-home mom?

A Her mom you mean?

Q Yes.

A I'm not sure.

Q Would that be relevant to your analysis at

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all? Just yes or no.

A No.

Q Okay. Fair enough.

I wanted to ask you a question about the nursing care and specifically the cost of nursing care as Dr. Root described it.

A Okay.

Q You took whatever numbers Dr. Root provided and used those numbers to formulate your projections. Fair statement?

A I didn't use any numbers, I just used the categories.

Q The categories, okay. So you're not coming in here with any numbers, but you know that Dr. Root's numbers are the numbers that the plaintiff's attorney has put before this jury. True?

A Yes.

Q And you've seen his life care report and you know what his numbers are --

A Yes.

Q -- true?

A Yes.

Q So I want to focus in on the nursing care component.

A Okay.

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Q Do you recall what he said the average cost to hire a nurse would be per hour?

A I don't recall it, given I didn't have to use it for this report I just needed a category, but I can look it up for you.

Q Well, look up what Dr. Root said.

A What he had in his original report?

Q I'm going to -- you can look it up, check me out, but I'm going to ask you to assume that he said $75 per hour --

A Okay.

Q -- okay? Now, if you were advising parents who really needed to hire a skilled nurse, would you tell them to do the research and that they can get a skilled nurse for $40 an hour?

A Would I tell them that?

Q Uh-huh.

A I would tell them to do the research but I don't think I would tell them to hire someone at $40 an hour.

Q Well, let's do the math. If a nurse really costs $75 an hour, that nurse working 40 hours a week, 52 weeks a year, their salary would be, I think it's $438,000. True?

A I didn't do the math but that sounds about

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right.
Q Nurses would sure like to earn $438,000 a year. Right?
A You're making some assumptions to draw that --
Q Would you agree with me that if parents really needed to hire a nurse, they could go out and get competitive bids from agencies, part-time nurses, et cetera, and they could do a whole lot better than spending $75 an hour to get a nurse. True or false?
A False. I can explain that.
Q No, that's okay.
So, you've told us that the average age of retirement is 67. So you're projecting, I think you said 41 years of this child when she grows up, 41 consecutive years of being actively involved in the workforce. True?
A Part of that was true and part of it wasn't. I didn't say the average age, I said the normal age, which is not the same thing.
Q Okay. And you're saying that to forecast this to reasonable economic certainty you have to include fringe benefits as well as salary. So you have 66,000 roughly in salary, 16,000 roughly in fringe benefits. And you're multiplying that each year by

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what percentage?
A 3 percent.
Q So that salary including fringe benefits every year for 41 years, multiplied compounded by 3 percent?
A Correct.
Q Okay. Those come to enormous numbers, don't they, when you multiply that out 3 percent every year?
A It would be a large number in future value, yes.
MR. BACH: I have no more questions.
REDIRECT EXAMINATION
BY MR. DUFFY:
Q A couple of things. First of all, you were being challenged on presenting the figures, the categories of the percentages and that the numbers came from Dr. Root. You know that under the law that's how you have to put it in. Right?
A Yes.
Q I mean, that's what has to happen --
MR. BACH: Objection, Judge.
THE COURT: Please rephrase it.
Q In order to properly do an economic analysis for a lawsuit, you have to know what the law requires that you provide so that that can go onto a jury sheet

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for the jury. You have to follow the format, don't you?
MR. BACH: Objection.
THE COURT: Sustained.
Q In presenting those categories and the percentages the way you did, were you following what you understood was the requirement that you have for what you must do?
A Yes.
Q Now, Mr. Bach asked you a number of questions about what would be the cost and what the options are for the nurses utilizing a number from Dr. Root. Do you remember that?
A Yes.
Q I just want to ask you, are you aware that he didn't bother asking Dr. Root any of those questions?
A No, I'm not aware.
Q Okay. Who would be better qualified to answer why Dr. Root had $75 an hour? Dr. Root?
A So that's exactly why I said do you want me to explain, I think that's where I said that. But in any case, yes, I'm not qualified to say the value of the services that are required. There is a lot of variation in prices for specific services and I rely totally on the medical expertise to decide.

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Q When Mr. Bach asked you the question, he did a little transposition, didn't he, he said the nurse is getting the full $75. Right? Isn't that what he was saying?
A Yes.
Q But the way these things are done, the proper way to get coverage for someone who needs full coverage every day is through an agency, isn't it?
A Yes.
Q And the agency charges the number 75 and they --
MR. BACH: Objection, Judge. Objection.
THE COURT: Are you testifying?
MR. BACH: It sounds that way.
THE COURT: I don't think you should be testifying, Mr. Duffy.
Q If an agency is getting $75 an hour for providing a nurse, does the nurse get the full $75?
A No, that's where I said, "Do you want me to explain?" Now I recall. I said the $438,000 a year, he was making an assumption. The assumption he was making was that the nurse would get the full value of those services.
MR. DUFFY: Thank you.
THE COURT: Anything further, Mr. Duffy?

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MR. DUFFY: Nothing further.

RECROSS-EXAMINATION

BY DEFENSE COUNSEL:

Q You would agree with me that in the real world that we live in, parents can do better, in terms of getting a nurse to cover, they don't -- if they really had to spend the money, they wouldn't have to spend $75 an hour, they could get an excellent nurse on Long Island for $40 an hour. Agree or disagree?

A Disagree.

MR. BACH: All right. I'll leave it at that. Thank you.

THE COURT: Thank you. You're excused.

MR. DUFFY: Those are my witnesses for today, your Honor.

THE COURT: Okay. That completes the evidence for today. We're still on track. Not to worry, we are on track. So I will see you on Monday at 9:30. Don't discuss the case.

(Jury not present.)

THE COURT: Okay, I'll see you Monday. You may discuss the case.

(Matter adjourned to Monday, October 24, 2017, at 10 a.m.)

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