SUPREME COURT OF THE STATE OF NEW YORK.
COUNTY OF KINGS: CIVIL TERM: PART 81

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MAREK GAJEWSKI,

Plaintiff,

- against -

Index No.
507505/2017
JURY TRIAL

WILLTROUT REALTY, LLC AND M&Y DEVELOPERS, INC., AMB MECHANICAL CORP.,

Defendants.

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360 Adams Street
Brooklyn, New York 11201
November 17, 2022

B E F O R E:

THE HONORABLE CARL J. LANDICINO,
J U S T I C E
(And a Jury)

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

LIPSIG, SHAPEY, MANUS & MOVERMAN, P.C.
Attorney for the Plaintiff
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BY: KENNETH J. KUTNER, ESQ.

ALSO PRESENT: BARBARA DANICKA-TUELL, POLISH INTERPRETER

CHRISTINA INGRAVALLO
Senior Court Reporter

THE COURT OFFICER: All rise, jury entering.

(Whereupon, the jury entered the courtroom.)

THE COURT: Thank you. Good morning. You can be seated.

THE JURY: Good morning.

THE COURT CLERK: Calling case number 1 on the Part 81 trial calendar, in the matter of Gajewski versus Willtrout, index number 507505 of 2017.

Counsels, please note your appearances for the record.

MR. SHAPEY: Alan M. Shapey, attorney for Plaintiff.

MR. KUTNER: Ken Kutner, attorney for the Defendants.

THE COURT: Good morning. We're ready to proceed with the witness. Mr. Shapey?

MR. SHAPEY: Yes, Your Honor.

THE COURT: Okay.

MR. SHAPEY: At this time Plaintiff calls Dr. Debra S. Dwyer.

THE COURT CLERK: Good morning.

Can you please raise your right hand for me? Thank you.

Do you swear or affirm under penalty of perjury that the statements you are about to make are the whole

truth?

THE WITNESS: Yes.

THE COURT CLERK: You can lower your hand and be seated.

Please just state in a clear voice your full name and address for the record.

THE WITNESS: Sure. It's Debra, D-E-B-R-A, S. Dwyer, D-W-Y-E-R. And the address is 17 Springbriar Lane, Centereach, New York 11720.

THE COURT CLERK: Thank you.

THE WITNESS: You're welcome.

THE COURT: Good morning. The attorneys are going to be asking you some questions, all right, it's not a conversation, it's question and answer. All right? If you're unclear about the question, just say so and I will try to clarify it for you. If you hear the word, objection, I ask you to stop testifying and just wait until I direct you further. Okay? If you need to take a break, you let me know.

THE WITNESS: Sure.

THE COURT: Just relax.

You may inquire.

DR. DEBRA S. DWYER, having been duly sworn, testifies as follows:

DIRECT EXAMINATION BY

MR. SHAPEY:

Q Good morning Dr. Dwyer.

A Good morning.

Q What kind of doctor are you?

A I'm not a medical doctor. I have my PhD in labor and health economics.

Q Can you tell the jury about your educational background, Doctor?

A Sure. I got my Bachelor's degree in economics, English literature from Queens College, Flushing, New York and my Masters from Cornell University in labor and health economics. And then I did a one-year post-doctoral fellowship at the Center for Public Research in Syracuse University.

Q Can you tell the jury what type of work you did in the career of economics?

A Sure. When I finished my post-op which involved research and teaching, I was recruited to the Social Security Administration in Washington, D.C. where I worked for the division of economic research and I was part of a team that evaluated disability policies. From there I came to Stony Brook University where I was working for the State University System to date for about 23 years and I had served as a professor in the department of economics. I chaired the Department of Health Care Policy and Management. I moved onto become the assistant dean for strategic planning in College of Arts and Sciences.

And served on the financing budget committee while I was there. I since left administration at the university, and I'm teaching health economics and public policy and a number of other courses. Mainly at Farmingdale State College which is a part of the State system. I was able to get a grant with the chairperson of economics from Farmingdale on financial literacy, so we're producing financial literature curriculum for high school, particularly vulnerable populations in Long Island. And I'm also doing this work, I have my own consulting business where I consult on issues of policy as well as this type of forensic economics.

Q So Dr. Dwyer, are you a professor?

A Yes.

Q And what courses have you taught over your career?

A A lot. It's been decades so I've taught everything from principles of economics to undergraduate students to PhD level courses that specialize in statistics in microeconomics and health economics and public policy. And I also did a lot of teaching on how to teach research and ethics, those types of courses.

Q Are you an author of any articles that peer review journals?

A Yes, I have a couple of dozen in peer review journals in the area of health and labor economics.

Q Have you supervised any grants to do research within

the field of economics?

A Yes, over the course of my career I've received grants to do work in the areas of Social Security and labor economics overlapping with health. Currently I have a small grant to did this financial literacy work in New York, I've had like fellowships along the way.

Q Tell us about that work you're doing now, what does it involve?

A So I have some research, a whole body of research that I presented at places like the National Science Foundation on how to minimize inequality and inequity in our education system. And in that research I learned a lot about how different models of behavior exists for people from different populations. And that research triggered expertise in the area of assisting younger people who are making career decisions, in making better decisions so that we have a more productive labor market force. And in doing that we have a new financial literacy product, there's plenty of financial literacy curriculum and videos out there. Where post-Covid so we take that into account and we build on the research that I've done with my colleagues to produce what we are hoping to fill gaps along vulnerable populations in terms of having the types of resources that they need that they had not had access to, to make better career choices.

Q Do you serve on any boards of directors?

A Yes, I am on the Board of Directors of an organization called Airleap, A-I-R-L-E-A-P, that's the Association for Integrity in Research and Economics and Policy. I probably missed one of the letters in there. So I'm on the Board of Directors of a group that seeks to bring integrity and ethics to the field of economics and research in particular. I'm a member of the National Academy of Social Insurance, and I sit on the Board of Directors of my church, Presbyterian Church where I'm a leader in strategic budgeting and planning within the church.

Q And does that involve your expertise in the field of economics?

A Yes, it is volunteer work.

Q Do you have a subspecialty in the field of economics?

A Yes, as I said I'm a labor and health economics. Economics a very, very broad it's about how we use resources, what to produce, how to produce it, who gets what. My focus so everybody who examines economics, my focus is on the health sector of the economy, it involves health care policy, what is happening with the transit health care, the implications of the policies we have on outcomes, and then I also study what is happening in labor market. And in particular, I'm interested in the overlap. So how health problems affect work that I'm a labor, I'm trained as a labor economist to find out what's going in the workforce.

Q Dr. Dwyer, did my firm retain you to perform an

analysis of the economic losses sustained by Marek Gajewski due to injuries that he sustained to March 10th, 2017?

A Yes.

Q And also to analyze the future cost of whatever healthcare he may be required to have from January 1st, 2023 to the end of the statistical life expectancy?

A Yes, based on the life care plan of a Dr. Jacob Rauchwerger.

Q And have you done this type of analysis before?

A Yes.

Q You talked to us about consulting work you do?

A Yes.

Q Do you consult with lawyers?

A Yes.

Q And can you tell us about that kind of work?

A Sure. I'm brought into cases like this, it's known as forensic economics, and it's very related to labor and health economics. So, basically, my role is to determine what the economic damages are associated with an injury regardless of who's liable for that injury. So my role is just to say what is the dollar value of loss from an inability or diminution and inability to perform work. So there's that category of loss work and the economic damages associated with that. And the reason you want an economist is we're projecting into the future. We don't have crystal ball. We have to make decisions

in the future where there's uncertainty and my expertise helps minimize that uncertainty and come up with a reasonable prediction of what those losses are going to be. In terms of predicting the future healthcare costs, I'm not a medical doctor, I can't assess the quality of medical doctors recommendations. All I do is take those recommendations, trust the medical expertise, and I'm provided with the prescriptions, the type of services that are required, say physical therapy or office visits. I'm provided with a frequency that they will be needed and the duration over the lifetime. And I'm provided with the costs of those services in today's dollars. Costs are very complex in healthcare and they are tied to the intensity of service. So all of that is provided to me by a medical expert. My job is to say how much money will Mr. Gajewski need today to cover all of those experiences into the future. And in order to do that, you have to take into account that prices are going to go up. And these days I find I don't really need to explain what inflation means anymore because it's all over the papers, prices go up over time, they go up in all areas including medical care. If you only took the today's dollars worth of prescribed care and multiple by the number of years you are expecting Mr. Gajewski to live he'll not have enough because the prices are going to go up. So my job is to predict within a reasonable degree of certainty what's going to happen to those prices to ensure that Mr. Gajewski has a reasonable estimate

today to cover those expenses.

Q So first I want to ask you about your analysis of Mr. Gajewski's past and future lost earnings; all right?

A Okay.

Q So I want you to assume that Marek Gajewski was born on April 9th, 1958. I want you to assume that he was working as a plumber in Brooklyn and that he suffered injuries on March 10th, 2017. And I want you to assume that because of the nature and extent of those injuries he could no longer return to his former occupation as a construction worker. I want you to assume based on Exhibit 2 in evidence, and, Your Honor, can I hand this up to the witness?

THE COURT: Show Mr. Kutner.

MR. KUTNER: Yes.

Q May I approach?

THE COURT: Sure.

Q So I want you to assume based on Exhibit Number 2 in evidence that in the last full year he worked, Mr. Gajewski earned $19,594. I want you to assume that he worked in 2017 until the date of his injury and he continued to earn money at that amount. I want you to assume, these he has never worked again and is disabled from performing the work that he did before. I want you to assume that he was going to work to age seventy that he enjoyed his work, and he had no plans of retiring.

Do you have opinions to a reasonable degree of economic certainty as to what Mr. Gajewski's loss of income is from March 10th, 2017 through the end of this year, we will call that past loss earnings, and what it would be in the future starting January 1st, 2023 until he retires at age seventy?

A I do.

Q And did you prepare a chart that would assist you in explaining to the jury what your opinions are?

A I did.

MR. SHAPEY: So, Your Honor I ask this been marked as Plaintiff's Exhibit, I believe we're up to 14.

THE COURT: Fifteen. You want to show that to Mr. Kutner?

MR. KUTNER: Yes, may I see that, Judge? Okay.

Not admitted, Judge, it's for demonstrative purposes.

MR. SHAPEY: I will offer in evidence for sure.

THE COURT: In evidence as what?

MR. SHAPEY: An illustration of her opinions with numbers that the jury can consider when they deliberate.

MR. KUTNER: I don't think that should go into evidence. Dr. Dwyer is here to testify and say her findings and conclusions.

MR. SHAPEY: But if the jury wants to see in the jury --

THE COURT: It's testimony they can see the testimony.

MR. SHAPEY: It's a memory, it is a memory aid it would help the jury remember.

THE COURT: They are not all admissible.

MR. SHAPEY: Can we use it for identification then?

THE COURT: She can definitely use it during her presentation, correct.

MR. KUTNER: Yes, Judge.

THE COURT: Absolutely.

MR. SHAPEY: All right, thank you.

THE COURT: This is for ID.

Q All right, so Dr. Dwyer, does this chart illustrate what your opinions are with regard to Mr. Gajewski's past and future lost earnings?

A It is.

MR. SHAPEY: Your Honor, can I display this to the jury and ask she be permitted to come down and point certain things out in this chart?

THE COURT: As she answers your questions, right.

MR. SHAPEY: Yes.

THE COURT: Sure. You want to put it on the easel?

MR. SHAPEY: Yes, thank you.

Q I wonder if we have a marker, Judge?

A I have one.

Q Thank you. So I'll displays it to the jury now, Your Honor, Exhibit 15?

THE COURT: Can I see it?

MR. SHAPEY: Yes.

THE COURT: Okay.

Q Dr. Dwyer, can you tell us the methodology you used to determined Mr. Gajewski's past and future lost earnings?

A Sure. What I use, the first thing I need to do is decide what his earnings capacity was, and that part is not that difficult, I have his 2016 earnings record that he earned as Mr. Shapey said $19,954 and that was his last full year of work in 2016 working for AMB Mechanical. Now I need to determine what would the loss be from not working for the rest of his life commencing in March of 2017. So I use this as a basis, but people get wage increases over time. Sometimes they get promotions but there's an average national level of wage increases, and the average for the last twenty years based on data from the U.S. Bureau of labor Statistics are three percent. People on average get a three percent raise.

MR. KUTNER: Excuse me, a second. Dr. Dwyer can we move the easel over so I can get a view of the jury as the Doctor is testifying. I don't need to stand up and see this.

Q So you're talking about three percent per year?

A So I was saying the average for the last twenty years

was three percent and the reason we take an average is there's some years where it's only like one percent. If you think about the 2008 through 2012 recession right. Now, it is over six percent. So if I took just one period of time, if I was doing this report in 2010, and just took the current rate, it would be a major underestimate of what is happening now. And if I took the six percent we're dealing with now, I'll overestimate what raises would be because it's not going to persist at six percent. So we take an average so that would smooth it out and we'll have some periods in the future where it would be higher in particular we're not projecting that far out, it's going to be pretty high over the next few years, and some periods where it's going to drop. So we use an average of three percent.

Q So how did you determine that average?

A So that's based on the annual changes in wages from U.S. Bureau of Labor Statistics data from I think it was 2001 to 2021, that's twenty year average we use. So we're not including 2022 because it's not final yet. Just we know at this point it's about 6.3 percent. So just using that twenty year average we get three percent. So all I need to do then is take that $19,594 starting salary and give a three percent raise every year. So for example in 2018 we expected he would have earned $20,708 and the growth rate in 2018 was just over three percent. So growing by three percent every year until the time he's expected to retire. So as Mr. Shapey said the assumption he

would have retired at age seventy because he reports he likes his job and wasn't planning to retire. So it's age seventy is a reasonable age, particularly given he doesn't have a pension or fringe benefits. So giving the lifetime lost in earnings is $262,268 with $126,507 being in the past. And then the remainder being in the future.

Q So you did not include the value of any fringe benefits in your calculations; correct?

A I did not.

Q And you didn't have him promoted to foreman or any other position; correct?

A No, this is keeping him at the same occupation level with the raises on that occupational level salary.

Q So in your opinion to a reasonable degree of economic certainty, what are his total loss earnings assuming he can't work again as a plumber and he would have worked until age seventy?

A $262,268.

Q And you divided that up into past, which is the last five and a half years roughly, and future starting January 1st, 2023; correct?

A Correct.

Q All right.

Now, did you also analyze the cost of future healthcare that Dr. Jacob Rauchwerger will be testifying that Mr. Gajewski

will need in the future?

A I did.

Q Can you go back to the witness stand for that?

A Sure.

MR. SHAPEY: Thank you and I'll take this down, Judge.

THE COURT: Okay.

Q So Dr. Dwyer, again I want you to assume that Mr. Gajewski was born on April 9th, 1958 and for the purpose else of your calculations I want you to assume that the future healthcare costs to use round numbers will begin on January 1st, 2023; all right?

A Okay.

Q Now, I want you to assume that Dr. Rauchwerger who's on the stand this week will continue his testimony tomorrow and I want you to assume he'll testify that Mr. Gajewski requires future medical care over his lifetime. That he will require pain management visits twelve a year at $200 per visit. He'll require physical therapy, three visits per week at $125 per visit. He will require medications that will cost an average of, $1,500 a month. He'll require interventional pain management treatment such as injections at an average of $17,500 per year. He'll require orthopedic visits three times per year $300 per visit. And he'll require a neuromodulation trial and implant and maintenance of those devices two times over his

lifetime at a cost of $100,000 each.

A Okay.

Q Now, assuming that to be true, have you formed opinions to a reasonable degree of -- excuse me, a reasonable degree of economic certainty as to the total cost of Mr. Gajewski's future medical care commencing on January 1st, 2023?

A I did.

Q And did you also prepare a chart that will allow you to explain that analysis to the jury?

A Yes.

MR. SHAPEY: All right, I'll show this to--

MR. KUTNER: May I see it, please.

MR. SHAPEY: Yes.

Can I have this marked and as Plaintiff's 16, Your Honor?

THE COURT: Sure.

MR. KUTNER: Again, Your Honor, just for the record we have no objection for it being marked for identification but not to go into evidence.

THE COURT: And the jury can utilize it for the purposes of testimony.

MR. KUTNER: Yes, Judge.

MR. SHAPEY: Thank you.

Dr. Dwyer, are these the illustrations you prepared?

A Yes.

Q And will this assist the jury in understanding your testimony?

A Yes.

MR. SHAPEY: Your Honor, can I display this to the jury and ask Dr. Dwyer to step down?

Dr. Dwyer, can you tell us what the top part of the chart is, the columns that go across and the columns that go down?

A Sure. The columns, the row that goes across here is the recommendations of the doctor and that's what I explained before. This is the information that I receive from the doctor and that's my basis for all of my projections. And Mr. Shapey I just went through of all of these categories. What you see in the columns then is starting in 2023 I use current dollars. So that twelve visits per year at $200 a visit comes to $2,400 a year. In today's dollars you see that the numbers are going up. All the way down and that represents the inflation that we expect to happen to these prices. They are going to go up over time. So the reason they hire me is by how much, that's the big deal. So what I'm going to give you is the twenty-five year average for the closest match to the inflation rate for these categories of services. So the data came from the U.S. Bureau of Labor Statistics they are the ones that put out inflation rate called the consumer pricing index. And the overall

inflation rates is based on what a particular household buys. But they also break it down, they collect prices on just about everything and break it down by medical care as well. And even within that they break it down further. So what I do is I try to come up with the closest match to that data and then I have to decide how far back am I going to go to take that average. So for the wage growth rate I use twenty years. For the healthcare, the medical care growth rates or inflammation rates I use twenty-five years. And the reason I use twenty-five is in my expert opinion captures the business cycle well, so that I capture enough of those high periods of inflation and the low periods of inflation to once again to be able to project when we know some years will be higher. Right now we're over eight percent in medical care for the category I'm using it's over six percent right now. So it's not as high as the eight percent but the numbers you'll hear from me are going to be lower because I'm not going to use that six percent into the future. So the office visits, general medical care growth rate over the last twenty-five years has been 2.8 percent, and that's what I use. So in that first column the pain management visits that costs $2,400 today is going to cost $2,467 next year. And that's going to happen every year. It's not that Mr. Gajewski is getting more services, it is that the cost of the same servicing is going up. Now this is going to go up until his life expectancy, so that's the next assumption I make as an

economist, what is the life expectancy. That's comes from the life tables that's produced from the National Center of Health Statistics. Every year they put out based on methodology called survival analysis, the life expectancy by gender depending on the year you were born. So I use the male life expectancy for those born in 1959 and the data come from 1997 life tables because that's what the courts rely upon. But they update this every year. Based on that, and I didn't bring my sheet with me, I'm going to refer as to what the life expectancy was, since I didn't memorize it, is 80.6, so he's expected to live to the age of 80.6 and that's where we stop the costs.

Q Let me ask you a question of life expectancy. You are using a statistical average?

A Yes.

Q From data that's more than twenty years old?

A Yes.

Q Does that statistical average include people who are smokers?

A Yes. That's what they do is they take a snapshot of the general population. So they have a very large representative sample of everybody in the population, the extremely healthy, the extremely sick, and I'm using the average, it includes everybody and I'm just taking the average.

Q So that statistical average is that people that die young, people who die old, and people that smoke?

A Yes.

Q Can you tell us what the growth rate is that you used for all the other categories of medical services?

A Sure. So physical therapy falls under the category of other professional services. And I use a growth rate of 2.2 percent that hasn't grown as fast as some of the other categories of medicine. For example, medication. Pharmaceutical costs risen faster then the general rate of inflation and the twenty-five year average there is 3.5 percent. Interventional treatment, orthopedic visits 2.8 percent. All of these fall into that general medical care office visit category. The neuromodulation trial how I did this is a little bit different. So it's recommended over his lifetime that he's going to need $200,000 worth of these services in today's dollars. But the timing of it is indeterminant. So what I did was I took the $200,000 divided it by the years remaining, fifteen years, and I come up with $13,333 annual. That way we take into account the uncertainty about when it will happen. And the growth rate I used here was also for office visits. Although, it's possible it will take place in a hospital. If it takes place in a hospital the growth rate would be four percent because hospitalization prices have gone up faster than the general rate of inflation. So 2.8 percent is what I used for this.

Q And Dr. Dwyer, can you tell the jury what your opinions

are to a reasonable degree of economic certainty as to the total cost of the future medical care Mr. Gajewski will require for each of those categories?

A Sure. So that's his total row on the bottom. The total cost in pain management visits, $45,078. The total cost of physical therapy over his lifetime $350,245 that's three visits per week. Medications that $18,000 worth of medications would cost $356,369. The interventional treatment that would average $17,500 per year will come out to $328,695 over Mr. Gajewski's life. Orthopedic visits $900 a year, lifetime cost $16,904. And finally those two procedures, the neuromodulation total lifetime expected cost of $250,428.

Q So roughly you projected these costs over a time period of about fifteen years?

A Yes.

Q Now, if you used the inflationary rates that we're expecting today some between six to eight percent, what would that have done to these numbers?

MR. KUTNER: Objection.

THE COURT: What is your objection?

MR. KUTNER: It's speculation. She has already testify, Your Honor, the Doctor already testified that she used a twenty year average because things aren't predictable into the future, so it's pure speculation.

Q My question is simply if you had used those higher

rates six to eight percent, I know you didn't, but if you had, what would that have done to the numbers?

MR. KUTNER: I am objection, Judge.

THE COURT: Are you asking her for an actual calculation?

MR. SHAPEY: No, the just the concept.

THE COURT: If the rate was higher?

MR. KUTNER: I don't think that's something that the jury needs Dr. Dwyer to tell them if the rates are higher, the numbers will be higher. That's okay. All right, you can answer that.

THE WITNESS: So yes I said earlier if I used the rates that I have right now we know until November they are at 6.3 percent, so of course it would be higher. And next year I know that the averages are going to go up.

Q And if this if this trial was being held next year or the year after, would you be adjusting these averages upward?

MR. KUTNER: Objection.

THE COURT: Sustained.

Q Now, do you have any opinions as an economist as to whether Mr. Gajewski will in fact need this care?

A No, I'm not a medical doctor.

Q Okay. And the opinions that you express today with regard to Mr. Gajewski past and future lost earnings, and the total future cost of his future healthcare, are these opinions

you hold to a reasonable degree of economic certainty?

A Yes.

MR. SHAPEY: Judge, I'll offer Exhibit 16 in evidence.

MR. KUTNER: Objection.

THE COURT: Sustained.

MR. SHAPEY: Then I have no further questions, Your Honor.

CROSS-EXAMINATION BY

MR. KUTNER:

Q Good morning Ms. Dwyer.

A Good morning.

Q My Ken Kutner, I'm with the firm Perry Van Etten Rozanski & Kutner. We've never met before. I represent the Defendants in this lawsuit. And I'm going to ask you some questions today. I want you to respond with a yes or no. If you can't, let me know and I'll ask the question differently. Okay?

A Okay.

Q All right.

So you are here and you are not projecting six or eight percent now because you're telling the jury you are being reasonable; correct?

A Yes.

Q Now, part of your responsibility or I think you said

your role here is to review all the documents, gather all the information, correct, that's relevant for you to reach your conclusions; correct?

A Yes.

Q Now, you have to be accurate to be correct; right?

A The input, yes, the resources have to be accurate, yes.

Q So if you're information that you're basing your conclusions on are inaccurate or not complete, your conclusions is going to be faulty; correct?

A Potentially, yes.

Q Now, you were retained by Plaintiff's Counsel; correct?

A Yes.

Q And how much are you being paid for your testimony here today?

A $4,000--.

MR. SHAPEY: Objection to the form of the question. The form should be paid for your testimony, I'll object to the form.

THE COURT: Rephrase that.

Q I'm sorry.

How much are you being paid for your time in court today?

A $4,800.

Q And let's take Plaintiff's Counsel, Lipsig, Shapey's Office, how many times of you testified for them?

A I started in 2012, I don't really know off the top of my head, not that many. Probably, I don't know four or five, I don't recall.

Q Okay. And how many times for plaintiff's counsel in general have you testified since you started this in 2012?

A Over a hundred.

Q For plaintiffs; correct?

A I only did one for defense.

Q Okay. So let me see, I'm not a numbers guy, that's essentially 99.999 percent for plaintiffs; correct?

A Yes.

Q And you're here to project numbers as high as possible for this case; correct?

MR. SHAPEY: Objection.

THE COURT: She can answer.

THE WITNESS: No, I come up with what I believe is reasonable.

Q What you believe is reasonable; correct?

A As an expert, yes.

Q Now, how much time did it take you to make up the numbers that you shown the jury hear on these demonstrative exhibits?

A A couple of days.

Q And you were paid for that time; correct?

A Yes.

Q And how much were you paid for that?

A I don't recall precisely. I don't have it on me, probably about $3,000.

Q So it's $4,800 each time you appear in court for testimony; correct?

A Yes.

Q And now there's plenty of time you're doing work for plaintiff counsel you prepare the report and you don't have to come in and testify; correct?

A Correct.

Q So how much in a given year those reports at $3,800 or so you do and prepare a year for plaintiffs counsels?

A Probably about forty or fifty.

Q Now, you told the jury you went to certain books, you came up with your reports, and you put your own view on them, correct, you put up these numbers, these arbitrary numbers in front of jury?

MR. SHAPEY: Objection to the form of that question.

THE COURT: Don't characterize the question, sustained.

Q So what you did was you used your understanding of the past to predict, what's going to happen in the future; correct?

A Yes.

Q Now, and your testimony here is -- withdrawn.

Your appearance here is $4,800?

A Yes.

Q And how many hours? Is that a full day, half day?

A That's a flat rate regardless to be out of the office.

Q So you'll here from what four to six hours?

A Yes, I guess so.

Q So you're getting anywhere from $800 to $1,200 per hour?

A I guess.

MR. KUTNER: Now, Your Honor, can I just approach? I didn't have an opportunity to look at Dr. Dwyer's file. I didn't get any reports or anything. Can I take a look at that?

THE COURT: The file?

MR. KUTNER: She has a file that she brought with her on the stand.

THE COURT: Yeah.

MR. KUTNER: I would like to see what is in it.

THE COURT: Why? She is not reading from it. She is using it to refresh are her recollection; right?

MR. KUTNER: I understand. I didn't get any reports all I received was an expert exchange.

MR. SHAPEY: That's all he is required to receive, Judge.

THE COURT: I'm sorry?

MR. SHAPEY: I gave him what we were required to give him. I don't want to suggest I didn't provide him with the appropriate disclosure.

MR. KUTNER: No, I'm just saying I didn't see the report.

THE COURT: Do you have any objection to that?

MR. SHAPEY: No, no. It's just the timing.

MR. KUTNER: Thank you, Judge.

Q Doctor, you did a prior report for this before September of 2022; correct?

A Yes.

Q And then you did a supplemental report and adjusted your numbers; correct?

A Correct.

Q Now, the future medical costs that you're telling this jury that Mr. Gajewski is going to require is $1,547,719; correct?

A Correct.

Q And that's based upon the figures that Dr. Rauchwerger made up; correct?

A Yes.

Q So you didn't look at Mr. Gajewski's past medical records to see how many times he actually sought or received the particular services that are on this board; correct?

A Correct.

Q Now, you don't have a crystal ball, you told the jury that; correct?

A Correct.

Q You don't know what healthcare he is going to actually receive in the future; correct?

A Correct.

Q You don't know whether he could go back to work in some form; correct?

A No.

Q Okay. You're not aware that Dr. Patel who was called as an expert here on I believe Monday afternoon testified that he conclude Mr. Gajewski was capable of doing a sedentary job?

A I'm not aware.

Q So if he's capable of doing a sedentary job, some type of sedentary work, then your numbers would be incorrect; correct?

A It would be an offset.

Q Right. And if that, and if that sedentary job paid him as number of $19,594 that his 2016 W-2 showed that he earned, that it would be a complete offset; correct?

A Sure.

Q All right. So your file doesn't have your original report in their from August of 2019; does it?

A No.

Q So in your original report you indicated earnings in

the year 2017 up to the time of injury at an hourly or a weekly rate of $680; do you remember that?

A It is awhile ago. I don't recall exactly but it sounds about right.

Q Now, you had no documentation whatsoever to support that amount of $680 per week; correct?

A I don't think so. I don't remember where I got it from.

Q So there was no W-2 from 2017?

A Correct.

Q Okay. You didn't have a W-2 from 2014?

A I did not.

Q No W-2 from 2015?

A I did not.

Q So you're projecting these future, these future earnings based on a W-2 form from a single year?

A Correct.

Q But you told the jury that when you do your analysis you go back as far as twenty years to get the average of what the growth rate is going to be; correct?

A That's a different assumption so, yes.

Q So no tax return from 2017?

A No, I didn't have one.

Q No, tax return from 2016, '15, '14?

A No.

Q So you don't know how much he paid in taxes, in any of those years what were taken out?

A I do not.

Q And you originally based on that 2017 report you had future lost earnings to age seventy of $394,280; correct?

A It sounds about right.

Q So that's about eleven years from age fifty-nine to age seventy, you are tell the jury he is going to work; correct?

A A little more than that.

Q But at $394,000, again not being a numbers guy, that comes out to about $35,000 a year?

A $3,835 yeah.

Q And we have a W-2, the only document in evidence that shows what he's earned $19,594; correct?

A Yes, and once I received that I adjusted it.

Q So once you had actually had documents that showed what he made you could adjusted it then?

A Of course.

Q Now, you spoke of the U.S. Bureau of Labor Statistics; correct?

A Yes.

Q And you're a familiar with that; right?

A Yes.

Q And according to U.S. Bureau of Labor Statistics, someone who's fifty-nine years old on March 10th, 2017 with

essentially a high school diploma, that Mr. Gajewski had, is expected to work another 5.3 years; correct?

A That's from a very outdated study but, yes.

Q That is he a U.S. Bureau of Labor Statistics that's current; correct?

A That's not a correct report.

MR. KUTNER: Your Honor, could you please instruct the jury as to what the work life expectancy based on U.S. Bureau of Labor Statistics?

MR. SHAPEY: Objection to making a request to the Court in middle of testimony.

THE COURT: I don't have personal knowledge of what that would be, Counsel.

MR. KUTNER: Could the Court on take judicial notice--

THE COURT: I can take judicial notice of a lot of things but I don't have anything to base it on.

Q So fifty-nine years old and if you take that report of the U.S. Bureau of Labor Statistics and add another 5.3 years would put him to 64.3 years old; correct?

A Yes.

Q And he turned sixty-four April of this year; correct?

A Yes.

Q So your report tax on another six years assuming or with your crystal ball projecting he'll work to age seventy;

correct?

A There's a basis for it but, yes.

Q And the last six years, of course, are compounded with this growth rate and the earnings are higher; correct?

A Yes.

Q Right. Now, if you took the amount that he actually earned in 2016, $19,594 and you multiplied it by 5.3 years to age sixty-four, that will come out to about $105,750 or so correct?

A If I take the roughly $20,000 for five years?

Q Yes, twenty thousand you get $110,000; right?

A Yes.

Q And you add three percent on that?

A Well you have to compound it.

Q Compound it so what would that be the past five years to age 64?

A I'm just looking because I have the data. He is currently age 64?

Q Yes.

A Okay so.

Q Let's say a rough number $125,000, $130,000?

A Yeah, give me on second. Yeah I'm sorry, about $138,000.

Q And so that $138,000 and you have him at $268,000 through the age 70; correct?

A $262,000.

Q So the last six years or so from sixty-four to age seventy, you're adding another $140,124, I'm sorry again I'm not a numbers guy?

A It's another $150,000.

Q Now, did you look at any of the Acturial tables to see how many sixty-five year old plumbers there are?

A Over, in my career, I reviewed --

Q No, before coming here today, did you look at the acturial tables to see how many sixty-five year old plumbers are in the workforce?

A Not specific to this case.

Q Did you see acturial tables to see how many seventy-year plumbers there are in the workforce before coming here today?

A No.

Q Now, the U.S. Life Expectancy Table, you told the jury today that Mr. Gajewski's life expectancy is to age 80.6; correct?

A Correct.

Q And that's based on the supplemental report, your projections for future medical care through age 80.6; correct?

A I'm not clear on the question.

Q Okay.

Your projections for the future medical costs that are

on this, on your calculations, that's through age 80.6?

A Yes.

Q Now, Ms. Dwyer, in May of this year did you testify in a case called Carl Lavolita (phonetic)?

A Yes.

Q And Dr. Kaplan testified in that case for the Plaintiff also; correct?

A Yes.

Q And just six months ago in that case you gave testimony in your transcript that the future life expectancy was 77.2 years; do you remember that testimony?

A I don't remember.

Q So here you have -- does it sound correct because I have the transcript somewhere here?

A It could be, I don't recall what his age was at the time.

Q Let me see. I have an answer here that goes on about four pages. But I'll represent to you, you said in this case the life expectancy we used is 77.2, would that refresh your recollection.

A I'm sure I said it.

Q So here, you have another 3.6 years added on for Mr. Gajewski who smokes a pack and a half cigarettes for forty-six years; correct?

A Yes, but I don't know what the age was for Mr.

Lavolita, I don't remember.

Q But you told us that that 80.6 is for the overall population; correct?

A For the overall population of males born in the year 1958.

Q Okay.

Now, there's many other factors that impact life expectancy; correct?

A Yes, many factors.

Q Occupation?

A Yes.

Q Physically demanding job?

A Possibly not as much.

Q Smoker?

A Yes.

Q Social alcohol?

A I'm not a medical doctor, it depends on how much.

Q Diet, weight?

A Sure.

Q Whether you're regularly see a doctor, don't regularly see a doctor?

A Sure.

Q Did you talk to any of Mr. Gajewski's doctors about those factors?

A I did not.

Q Did you ask any of his doctors about his prior medical history?

A No.

Q You made no inquire whatsoever about his prior health and habits?

A I did not.

Q Now, did you actually get a translator and interview Mr. Gajewski about his intention to work to age seventy?

A I did not.

Q You didn't ask him about his health?

A No.

Q You didn't ask him about when he intended to retire?

A The only time I ever do that is when I don't get the information I need from counsel.

Q So you got the information you needed from Plaintiff's Counsel?

A Yes.

Q Why not go right to the source? You had access to Mr. Gajewski; right?

A I'm sure, I would have if I needed to.

Q But you didn't need to speak directly to Mr. Gajewski to come in here and project all these numbers?

A No, I have a basis for all of them.

Q Now, if you had to do it again, next time you come in here to testify on behalf of a Plaintiff, are you going to go

directly to the Plaintiff and ask him or her what their health and habits or what their intention is for how long, you know, they plan to work?

A Every case is different, sometimes I do, sometimes I don't.

Q Okay. But you didn't in this one?

A I did not.

Q Nothing prevents you from interviewing the Plaintiff; correct?

A I don't believe so, no.

Q Now, all of these future medical costs here that you were projecting. That's all based on Dr. Rauchwerger's medical care plan; correct?

A Correct.

Q And you didn't look at the physical therapy records, right, to see he has had seventy visits in the last five and a half years?

A No, it is irrelevant.

Q That's irrelevant, okay.

Looking back at what his medical -- withdrawn. Okay.

So despite seventy visits over the last five and a half years, Dr. Rauchwerger has him going for physical therapy three times per week or one hundred and fifty-six times a year until he's eighty years old; is that correct?

A Yes.

Q Okay. Two thousand four hundred and ninety-six physical therapy visits until he's eighty years old; correct?

A Okay.

Q $350,245 for physical therapy?

A That is what was prescribed, yes.

Q And if he doesn't have any single one of those physical therapy visits there's going to be no costs; correct?

A That's an assumption, yes.

Q Dr. Rauchwerger has monthly pain management visits for him until he's eighty years old; correct?

A Yes.

Q One hundred and ninety-two visits over the next sixteen years?

A Okay.

Q And Dr. Rauchwerger seen him twenty times in the past three years, so if he stops pain management visits the moment the case is over there will be no costs; right?

MR. SHAPEY: Objection, irrelevant. No evidence.

THE COURT: Well it's the same question as if you use six percent rather then three percent; right?

MR. SHAPEY: Except she is not--.

THE COURT: I'll allow it.

MR. KUTNER: Thank you, Your Honor.

THE COURT: You can read that back.

(Whereupon, the referred to portion of the

record was read back by the Reporter.)

THE WITNESS: I don't believe that's true, no.

Q You have medication costs projected to $365,369 to age eighty; correct?

A Yes.

Q Did you look at Dr. Kaplan's records and in which he prescribed medications on three, three occasions in the past five and a half years?

A I did not.

Q And did you look at Dr. Rauchwerger's records to see that he's prescribed medications three times over the last three years?

A I did not.

Q Did you look at Dr. Rauchwerger's reports that indicate Plaintiff has consistently told him he doesn't need to refill his pain medications?

A Not a word.

Q So he doesn't fill any prescription medication at $365,000 whatever it is, it's not going to be incurred; correct?

A Not necessarily.

Q Okay.

Interventional treatment, you have at $328,695; right?

A Yes.

Q If doesn't have the treatment he wouldn't incur the costs; correct?

A Correct.

Q So he had three lumbar sympathetic blocks in the last five and a half years, did you ask Dr. Rauchwerger what the cost of that treatment was?

A I did not.

Q Well we will get down to more realistic number. There's $16,904 for orthopedic visits; correct?

A Yes.

Q Did you know that Dr. Kaplan told Plaintiff on August 22nd, 2022 that there is no future plan for orthopedic care?

A Not a word.

Q So if Dr. Kaplan says there is no future plan for orthopedic care, he is not going to incur those costs so we can knock off the $16,904; correct?

A I can't distinguish between two different medical expert opinions.

Q Now neuromodulation trial and implants you have $100,000 each times two; correct?

A Yes.

Q He hasn't had a single one yet; has he?

A I don't know.

Q No idea if he's going to have it in the future; correct?

A There's a positive probability he will, that's what I know.

Q So you're going to predict he'll have the implant in the future, but you told the jury that you are not a medical expert; correct?

A No, that's not what I meant. I can explain.

MR. KUTNER: All right, thank you.

THE COURT: Mr. Shapey?

REDIRECT EXAMINATION BY

MR. SHAPEY:

Q Dr. Dwyer, can you explain the concept of -- let me ask it this way, I'll withdraw that question.

Does life expectancy vary depending on when you were born and how long you have lived?

A Yes.

Q Can you try to explain that concept?

A Sure. I mentioned earlier that the methodology that's used to predict life expectancy is called survival analysis. That means that that's why we take into account the year you were born because every year that you survive another year your probability of living longer grows. So if the life expectancy for someone born in 1958 is now sixty-four he is demonstrated a high survival probability to make it to that point, then his life expectancy will be higher. If you're younger, if I gave you the life expectancy for someone who's twenty today, it would be in the seventies, it would be lower then eighty, that's how the methodology works.

Q So let me give an example or help me with an example. You projected Mr. Gajewski and we will use round numbers, living to age eighty. If he lives to age eighty-one, does that mean he has negative life expectancy or no future life expectancy?

A No, it's all probability analysis. So the probability of surviving another year after eighty has gone down significantly based on this data.

Q Counsel questioned you about why you didn't use work life expectancy numbers.

A Okay.

Q Can you explain that?

A Sure. First of all the numbers he is sighting are from a very early study done by the Bureau Laborers Statistics. I believe that's where he is taking it from the work life tables. So they are pretty outdated. Most of my research, a lot of published research is the area of studying retirement and models of behavior, so I take all of that into account. I take into account a lot of things, not just especially for retirement age I take into account the specifics of the case, and one of the big factors in predicting when you're going to retire is whether you can afford to do so or not. And that's going to depend what you had been earning, whether you have a private pension or not, whether you're getting a public pension. When you don't have high school or you have very low education and you have low earnings less than minimum wage, on average you're not able to

retire at an earlier age. So the self report from the Plaintiff which I learned through the Counsel of age seventy or that he didn't want to retire thought seventy was a reasonable age and in my research I have plenty of people that say they will never retire and I have to make a decision when I'm quoting data, on what to do with that. And specifically economic life expectancy when they say they will never retire and in this case I used seventy.

MR. SHAPEY: Thank you I have no further questions.

THE COURT: Anything further.

MR. KUTNER: No.

THE COURT: Thank you.

(Whereupon the witness is excused.)

THE COURT: We will take five minutes.

THE COURT OFFICER: All rise, jury exiting.

(Whereupon, the jury exits the courtroom.)

(Whereupon, a recess was taken.)

THE COURT: Let's go on the record.

MR. KUTNER: Your Honor, in my continued cross-examination of Mr. Gajewski, I plan on asking him whether he had anything to drink that day on September 2nd, 2018 before the incident. Given your prior ruling, I just want to alert, Your Honor, I'm going to ask about his activities before the subsequent fall on that day.

THE COURT: That's fine.

Do you have any objection to that Mr. Shapey?

MR. SHAPEY: Well, I have an objection. The question suggests an answer and it puts in the mind of the jury maybe there's something there.

THE COURT: Are you telling me that during a trial, especially a motor vehicle trial, we don't have questions asking what were you doing before? Did you have any alcohol? Are you under the influence of any medication? We never ask questions like that generally?

MR. SHAPEY: Usually at a deposition.

THE COURT: Do we ask when we allocute a client for purposes of settlement? Yeah we do.

MR. SHAPEY: I don't know.

THE COURT: It doesn't assume anything, it just gives them a sense of what your state of mind was at the time. It's not an unreasonable question. He is not going to challenge him with anything because I made my ruling.

MR. SHAPEY: That's what I'm afraid of.

THE COURT: Well he's not going to do it.

MR. KUTNER: No, I respect the Court's ruling.

THE COURT: Yeah.

MR. SHAPEY: The other issue I have, I think Counsel will show photographs that maybe in the nature of a surveillance video, that's photos have not been exchanged.

MR. KUTNER: No, no they are the area of the

accident.

MR. SHAPEY: The area of the accident?

MR. KUTNER: The second accident.

MR. SHAPEY: He never exchanged them. That's totally unfair. If I can't sit with the my client and go over photos that's totally unfair.

MR. KUTNER: Your Honor, we can make a ruling at the time; right?

MR. SHAPEY: You can't sandbag me like that. I would have asked him myself if I had the photographs. Now I'm in huge disadvantage and I'm prejudiced, that is wrong and trial by ambush.

THE COURT: Were there demands of any photographs made by the Defendant?

MR. SHAPEY: Sure, yes.

THE COURT: Why would you bring it today?

MR. SHAPEY: Why would you sandbag me like this.

MR. KUTNER: I'm not sandbagging anything. It's a photo of July of 2018 taken on Google, which the CPLR allows the Court to take judicial notice of now of the location, July 2018, two months before it happened I just want to show --

THE COURT: Let me tell you something you're making a presumption that that's where it happened.

MR. KUTNER: I know where it happened.

THE COURT: Do we have a mark of an exhibit of where this accident took place?

MR. SHAPEY: No.

MR. KUTNER: He testified --

THE COURT: Let's say you show him another curb and nowhere near it, it's in the Bronx somewhere, and he says yes, that's why Mr. Shapey is supposed to see those things before so he has an opportunity one to clarify it and make sure it's correct, and be prepared to question on it.

MR. KUTNER: Your Honor, he testified where he fell and the market in which he fell, the market is front of which he fell, it is a picture of the market. So it shows where they picked him up, he told us on direct they picked him up --

THE COURT: You want to show me what you have?

MR. SHAPEY: Here is the problem --

THE COURT: Mr. Shapey --

MR. KUTNER: This is the photograph Google Maps July 2018, he fell in front of Biedronka Market on Manhattan Avenue.

MR. SHAPEY: He never said that. He said after he fell he was brought to sit in front of the store.

MR. KUTNER: They picked him up and put him in front of the market.

MR. SHAPEY: This should have been exchanged so I

could have spoke to my client. As an attorney and understood what it means in the picture of this case.

THE COURT: Why are you laughing, Mr. Kutner?

MR. KUTNER: Why am I laughing, I'm not laughing I'm smiling.

THE COURT: It's not a liability case. So showing that unless there's something that you stand to prove showing exactly what it is he said he stepped off a curb. If you're saying that the curb was too high or a crack there or something that you stand to prove on that, what is the difference the guy stepped off an elevated curb.

MR. KUTNER: It goes to show where he was crossing the street, Your Honor, it goes to comparative negligence.

THE COURT: Where he was crossing in the street? What does that have to do with anything?

MR. KUTNER: All right, Judge.

THE COURT: In other words he wasn't in the crosswalk?

MR. KUTNER: Yes.

THE COURT: What does that have to do with anything? You want to ask if he was in the crosswalk?

MR. KUTNER: All right, Judge.

THE COURT: What is the relevance of that, Counsel?

MR. KUTNER: Relevance of that is you have somebody that claims he is in chronic pain for a year and a half

prior to this accident, who's walking with a limp, who all he had to do was walk up to the next corner so he could turn --

THE COURT: Ask the questions. You can ask whatever questions you want. But to show that at this point, what if he says no that's not where -- you know.

MR. KUTNER: All right, Your Honor.

THE COURT: You should, you should exchange photos when photos are demanded, okay, and if it hadn't come up yet I think it's little prejudicial to the Plaintiff. That doesn't mean you can't ask him questions like that.

MR. KUTNER: All right.

THE COURT: The alcohol question is fine. Where, where, how, you know, whatever you would typically ask, that's fine.

MR. KUTNER: All right, Your Honor.

THE COURT: So if there was something special about that there then maybe it would have some bearing.

MR. KUTNER: I believe it is, you know, I believe it's --

THE COURT: Let's see what he says in relation to your questions. Okay, and then if there's something of concern in relation to what you believe you know to be the spot, then we can address it.

MR. SHAPEY: But you understand my concern?

THE COURT: How can I not?

MR. SHAPEY: Thank you, Judge.

THE COURT: There's a reason why we have discovery; right? And that is a Google shot?

MR. KUTNER: Yes, from July 2nd thousand one 178 the most recent in time prior to the accident.

MR. SHAPEY: But, Judge, just to make a point I should have been able to sit down with my client and go over this so I could prepare him. As his attorney, I've been denied that that opportunity.

MR. KUTNER: I have no objection.

MR. SHAPEY: And he rolled back the clock.

MR. KUTNER: I have no objection if he wants to show that now.

MR. SHAPEY: I can't, he is in middle of his testimony. I can't talk to him that's the prejudice.

THE COURT: All right, let's see what he testifies to and then we can talk about it.

MR. SHAPEY: Should I bring my client in, Judge?

THE COURT: Sure.

He has no objection to him showing it to him now, the objection would be if you spoke to him and he said you can't speak to him but if you want to show him that, okay, and you want to take a minute and show it to him then we can do that I have no objection to that if the adversary has no

objection to it.

MR. SHAPEY: But it doesn't cure the prejudice because I couldn't use it on direct because it didn't exist now they exist. You're supposed to exchange these ahead of time, it's litigated five and a half years and now my client on cross-examination and we're finding out about photographs the first time. That's what is unfair. Me going there now and showing him the photographs doesn't cure the prejudice that I can't use it on my open case.

THE COURT: I understand but you could have.

MR. SHAPEY: I could have what?

THE COURT: You could have used the photo.

MR. SHAPEY: There was no need to.

THE COURT: And, it is a Google map, I mean he didn't, he did identify where he was on that date, it's not a mystery.

MR. SHAPEY: I would never dream to use a photograph of that intersection for any reason. If Counsel intended to do it, he should have placed me on notice before my client took the stand. We've been together a month on this trial, Judge.

THE COURT: I would have liked it exchanged if you were going to use it. That's just, that's especially if there was a demand for photos and things that you wanted to use. Let's take the testimony and then if you feel you

really need it, then I'll make a further ruling.

MR. KUTNER: Thank you, Judge.

THE COURT: You want to bring him in?

MR. SHAPEY: Yes.

THE COURT: Okay.

All right, Mr. Shapey.

MR. SHAPEY: Yes, Your Honor.

THE COURT: You're calling your client?

MR. SHAPEY: No, he's in the middle of cross.

He is in the middle of cross?

THE COURT: You're in the middle of cross, okay.

I understand you did direct, it's your witness.

MR. KUTNER: He can go up if you like, Judge.

THE COURT: You can come up, sir.

This is examination of cross-examination of the Plaintiff.

THE COURT OFFICER: All rise, jury entering.

(Whereupon, the jury entered the courtroom.)

THE COURT: Thank you. You can be seated.

MR. KUTNER: May I continue, Your Honor?

THE COURT: Yes.

As you recall we were in the middle of the Plaintiff's testimony. We're in the middle of cross-examination by Mr. Kutner.

Sir, you're still under oath. Yes?

THE WITNESS: Yes.

MR. KUTNER: Thank you.

MAREK GAJEWSKI, having been previously sworn, testifies as follows

CONTINUED CROSS-EXAMINATION BY

MR. KUTNER:

Q Good morning Mr. Gajewski.

Mr. Gajewski, you attended physical therapy on three separate occasions since March 10th, 2017; correct?

A Yes.

Q Between June and September of 2017 before the surgery, you went about twenty to twenty-five times; correct?

THE INTERPRETER: Twenty to twenty-five; right? Before surgery; right?

Q Yes.

A Twice a week.

Q And then after the surgery you went for physical therapy on your left foot between December 26th, 2017?

THE INTERPRETER: December 26th, 2017?

Q And April 11th, 2018 about thirty times; is that correct?

THE INTERPRETER: For the foot therapy for the leg?

MR. KUTNER: Left foot, left heel.

A Yes.

Q So the last time you received physical therapy for your

left heel was April of 2018?

THE INTERPRETER: April 2018, left foot; right?

MR. KUTNER: Yes.

A Yes.

Q And then after the right ankle injury you went to therapy from October 30th, 2018 until January 14th, 2019, sixteen times; dozens that correct?

THE INTERPRETER: Okay, can you slow down?

THE COURT: Can you read back the last question?

(Whereupon, the referred to portion of the record was read back by the Reporter.)

THE WITNESS: Yes.

Q The last physical therapy that you received for your right ankle was January 2019; correct?

THE INTERPRETER: Right ankle; right?

MR. KUTNER: Yes.

THE INTERPRETER: He is asking the date.

Q January 2019, January 14th, 2019.

A Yes.

Q Now, Dr. Kaplan has been your orthopedic doctor since May of 2017; correct?

A Yes.

Q And he is not prescribed any physical therapy since January of 2019; correct?

A Yes.

Q Now, Dr. Kaplan prescribed medication for you on July 17th, 2017?

THE INTERPRETER: July 17th, 2017?

Q He prescribed Voltaren or a gel for your foot, an ointment?

A Yes.

Q And that prescription had three refills; correct?

A Yes.

Q And he prescribed also a pill Diclofenac on July 17th, 2017?

THE INTERPRETER: Diclofenac?

MR. KUTNER: Diclofenac, yes.

A It's an ointment. An ointment, yes.

Q I'm not trying to trick you Mr. Gajewski. He prescribed an ointment and a pill; correct?

A Yes.

Q And he prescribed a cane for you at the same time?

A Yes.

Q Just before your heel surgery, he prescribed a narcotic medication Percocet for you in October of 2017; correct?

A I do remember that. I got something but I do not know the name of the medication.

Q Okay. It was for pain that you could use after the surgery on your heel; correct?

A Yes.

Q And that was the only time that he prescribed that medication; correct?

A Yes.

Q And then on April 2nd, 2019, Dr. Kaplan renewed the ointment and the pill medication; correct?

A Yes.

Q And those are the only prescriptions that Dr. Kaplan ever given to you that we discussed, correct, for medication, those are the only prescriptions that he gave you that we discussed and -- withdrawn. Let me withdraw and I'll re-ask. I'm sorry.

The prescriptions on July 17th, 2017 and April 2nd, 2019 and then the one prescription for Percocet are the only prescriptions that Dr. Kaplan gave for medication?

THE INTERPRETER: He is asking what month in 2019.

Q April.

A Yes.

Q Now, before Dr. Kaplan performed the heel surgery, he explained why he was doing it, right, the purpose?

A Yes.

Q And he said that the reason was to stop that arthritic pain that you had in that left heel; correct?

A It wasn't for arthritic pain, it was because the surgery, the heel had the two fractures and he has to fuse the two fractures.

Q And he told you that when he fused it, it was going to result in a some loss of your motion in your left foot; correct?

A Yes.

Q And he told you as a result you may have some problems on uneven surfaces, right, going from one surface to another?

A Yes.

Q And he said part of the surgery would be cutting through skin and tissue; correct?

A Yes, he is going to make a cut and he's going to fuse with the screws.

Q And he told you one of the risks would be possible issues with the nerves in the area; correct?

A Yes, he was explaining to me everything before the surgery itself.

Q Now, between October 25th, 2017, the surgery date and September 2nd, 2018 when you had your second accident, you were seeing Dr. Kaplan every four to six weeks; correct?

THE INTERPRETER: September 2nd, 2018 you said he had the second what?

MR. KUTNER: Accident.

THE INTERPRETER: Can I, can you repeat the beginning of the question, I lost it.

THE COURT: Can you read that back?

MR. KUTNER: Please.

(Whereupon, the referred to portion of the

record was read back by the Reporter.)

THE WITNESS: The first visit was after the surgery, five days after the surgery to take out the stitches. And at the time I get also rehabilitation and I get the boots, the rehabilitation boots. And I was going there to Dr. Kaplan visit every three to four weeks.

Q You mentioned the custom shoes. Dr. Kaplan prescribed custom made shoes; correct?

A Yes.

Q And they were measured specifically for your feet; correct?

A I went to the place to -- I get a referral and I went to 2nd or 3rd Street, sorry, I made a mistake, 2nd or 3rd Avenue. I do not recall exactly, close to 14th Street and they take prints, you know, of both of my feet.

Q And then the shoes came with inserts for your left heel; correct?

A Inserts to both of the shoes.

Q And you had the custom shoes made only one time; correct?

A Yes.

Q Now, you last saw Dr. Kaplan on August 24th, August 24th of this year; is that correct?

A Yes.

Q And Dr. Kaplan told us every time you went to see him

there was a Polish interpreter present; is that correct?

A Yes.

Q And the interpreter, like we have here, is translating everything that the doctor said to you and what you said to the doctor; correct?

A Yes.

Q And Dr. Kaplan told you at the time that there is no plan for future orthopedic treatment; correct?

A In August the interpreter told me that there would be no continuation, continuation, yes, yes.

Q Now, Dr. Kaplan's records indicate that you don't have a primary care physician; is that correct?

A Yes.

Q Now, the September 2nd, 2018 incident that occurred in Greenpoint, in Brooklyn on Manhattan Avenue; is that correct?

A Yes.

Q And what time did you go there that day?

A I get there about 6:00, 7:00 o'clock because I wanted to still get to the bank.

Q Now, you're familiar with Greenpoint; correct?

A Some of it, yes.

Q Well you told us on direct examination you lived there for five months in 2007; correct? You lived on Nassau Street in Greenpoint?

A Yes, 2007, yes.

Q It's a well-known area in Brooklyn with many Polish immigrants, restaurants, banks, markets; correct?

A The banks on McGuinness Boulevard and Nassau, they are mainly shops, you know, and the restaurants are also somewhere else.

Q Now, in 2018 you were still living at 249 Ocean Parkway; is that correct?

A Yes.

Q Okay, and you would go to Greenpoint often from 249 Ocean Parkway; correct?

A No, not often. Not often. Only if I had a need, for example, to go to the bank.

MR. KUTNER: I am sorry, I didn't hear part of the answer, can I have it read back.

THE COURT: Sure.

(Whereupon, the referred to portion of the record was read back by the Reporter.)

Q Now, wouldn't you go to Greenpoint to play soccer and for dancing?

MR. SHAPEY: Objection, Your Honor, there is no time frame.

THE COURT: As to form.

Q Okay.

Mr. Gajewski, since coming to the United States in 2014 through September of 2018, wouldn't you go to Greenpoint very

often to play soccer with your friends and to dance at Drakes, didn't you tell us that at your deposition?

MR. SHAPEY: Objection to the form of the question.

THE COURT: Sustained. We need to fragment it a little bit if it's going to be that long.

MR. KUTNER: Yes, absolutely, Judge.

THE COURT: All right.

Q Mr. Gajewski, do you recall appearing for a second deposition in this matter on March 28th, 2019?

A I don't recall.

Q Do you remember appearing twice for a deposition in this matter?

A I do not understand. You mean deposition twice? When and where? And if it was for left foot or for right foot?

Q Did you on two occasions meet with someone from your attorney's office, somebody from my office, and a court reporter was present and you answered questions like you are doing now?

A Yes.

Q And at the deposition you were sworn to tell the truth; correct?

A Yes.

Q And there was a -- and there was a Polish translator there to translate the questions from English to Polish and your answers from Polish to English; correct?

A Yes.

Q And I'll represent to you that we have a transcript from March 28th, 2019 which was your second deposition. And at that deposition --

A If you had it, then you had it.

Q Okay. I'm just trying to refresh your recollection as to the date. Judge, Mr. Shapey, we're on Page 172?

THE COURT: Okay, please remember the charge that I gave you concerning depositions. So the portions of this transcript of the examination before trial that you will hear are to be considered as if the Plaintiff were testifying from the witness stand. Okay?

MR. SHAPEY: I have an objection to where he is starting because there is no time frame.

THE COURT: Where are you?

MR. KUTNER: I'm on Page 172, line 5.

MR. SHAPEY: And, Your Honor, I'm going to suggest he start at 171, line twenty-five for context.

THE COURT: You will have an opportunity to read portions that you believe might clarify the portions that he's asking now. He can take into consideration your suggestion if that's what he wants to do.

MR. KUTNER: I will start there.

THE COURT: You'll have an opportunity to read whatever you like for future classification.

MR. SHAPEY: Okay.

MR. KUTNER: 171 line what?

MR. SHAPEY: Twenty-five.

MR. KUTNER: Okay.

Q Mr. Gajewski, do you recall being asked these series of questions and giving these answers?

"QUESTION: Prior to the March 10th, 2017 accident, what type of hobbies did you engage in?

ANSWER: A lot. There was a lot.

QUESTION: Can you list some of your hobbies?

ANSWER: Okay, very often we would play soccer with a bunch of friends in Greenpoint. It was just fun and very often we would go with a bunch of friends to the bay to fish on a boat."

A Yes.

Q The answer continues. I used to go to the beach on Coney Island.

A Yes.

Q And answer, yes, dancing?

A Yes.

Q "QUESTION: When you were playing soccer, were you playing on an official team with a schedule or just general playing with friends?

ANSWER: It was just a bunch of friends and we would have a game between a bunch of Polish guys and Mexican guys.

A Yes.

Q And dozens that refresh your recollection that you would go to Greenpoint often to play soccer?

A It was, you know, it was not that frequently. It was only when the Mexicans they have time because they also had their families and so it was sometimes.

Q Mr. Gajewski, didn't your response say very often we would play soccer with a bunch of friends in Greenpoint? Wasn't that what you said during your deposition?

A Yes.

Q And to get to Greenpoint from 249 Ocean Parkway you would take the G train; correct?

A I do not understand your question.

Q 2014 to 2018, you were living on 249 Ocean Parkway; correct?

A Yes.

Q And on September 2nd, 2018 when your incident happened you were on your way to the G train to go back to your home; correct?

A Yes to subway G, yes.

Q So you take the G train from Church Avenue to Manhattan Avenue in Greenpoint; correct?

A I'm sorry, but I do not understand your question.

Q I'm asking how you travel from Ocean Parkway to get to Greenpoint and you said you took the G train?

A Yes, subway. Yes.

MR. SHAPEY: Can I speak to Counsel for a second?

THE COURT: Sir, there is no question.

THE WITNESS: He wants a moment for himself.

Q So the subway G from from Church Avenue to Greenpoint Avenue is about eighteen stops; correct?

A I have to count the stations?

Q Do you know, approximately, how many?

A I can only tell you that it took me about thirty, forty minutes together.

Q And that's the way that you go back and forth to Greenpoint; correct?

A Yes.

Q Now, you told us that you were going to Greenpoint that day to draw money from the bank; correct?

A Yes.

Q And you went to market?

A Yes.

Q And your accident happened around ten to 8:00 correct, 7:50?

A Eight zero two in the afternoon.

THE INTERPRETER: In Polish we have different numbers, we don't have 7:00 p.m. we have fifteen, seven is the number to nineteen.

THE COURT: She is saying it is a twenty-four hour clock.

THE INTERPRETER: We have different measures. Same goes for schools, etcetera.

Q So your accident would have happened then just before twenty, the hour twenty?

A Yes.

Q And you were walking on Manhattan Avenue on your way to the G train stop; correct?

A I was going first to the stores. I did a small shopping in the store and after this shopping I was going towards subway G.

Q So you were walking on Manhattan Avenue in the direction of its intersection with Greenpoint Avenue where the subway stops are; correct?

A Yes, that's that was the direction I was walking in.

Q And the entrances to the G train, at that intersection Manhattan Avenue and Greenpoint Avenue are on both corners; correct?

A On the three corners.

Q And had you continued walking on the side of the street where you were walking before the accident happened. The next corner that you would have gotten to would have been Manhattan Avenue and Greenpoint; correct?

A Yes.

Q And you could have gotten to that corner and just made a right and gone down the stairs to the subway; correct?

A I was crossing the street in front of the church and that was, before that was before the intersection.

Q So you were crossing the street in the middle of the block; correct?

A Yes.

Q So you were stepping down from a curb to the street; correct?

A Yes.

Q You didn't walk to the corner to go down the pedestrian ramp that goes gradually down to the street; correct?

THE INTERPRETER: What was the second of your question?

(Whereupon, the referred to portion of the record was read back by the Reporter.)

A Yes.

Q Now, you fell in front of the Biedronka Market; is that correct?

A Yes.

Q And had you walked to the next corner you could have walked down the ramp and not have to step off the curb, an uneven surface from the sidewalk to the street; correct?

A Yes.

Q Now, do you recall what day of the week September 2nd, 2018 was?

A I do not recall.

Q If I told you it was the Sunday day of Labor Day weekend, would that refresh your recollection?

A I do not recall.

Q Had you gone to any type of barbecue that day before the accident?

A No.

Q Had you had anything of an alcoholic nature to drink that day before your accident?

A No.

Q Now, after the accident on September 2nd, 2018 you were admitted to Mount Sinai Hospital; is that correct?

A They brought me there, it's in Queens, yes.

Q And you were admitted for four days?

A Yes.

Q And you had to have a translator to communicate with the medical staff?

A No.

Q You didn't have a translator while you were hospitalized during the four days at Mount Sinai Hospital?

A Only after three days. Before my surgery I met a nurse who was of Polish background.

Q There wasn't a telephone service for translation so that you could speak to the doctors and medical staff during the time that you were in the hospital?

A No, no there was not.

Q So no translator explained to you what the doctor was saying?

A No.

Q No translator told you what the doctor said about the nature of your injury and what treatment you require?

A Only the day before surgery.

THE INTERPRETER: I have to clear something with him. On the day of surgery.

THE WITNESS: Before the surgery it is the doctor had the phone and he was, he was translating few words on it.

Q You gave your consent to have the surgery; correct?

A Yes.

Q And it was done by a Dr. Steven Johnston?

A In this hospital.

Q Yes.

THE INTERPRETER: I think he doesn't understand.

Q The name of the doctor that performed the surgery on your right ankle is Dr. Steven Johnson; correct?

A I do not recall.

Q The doctor that did the surgery, did he come in and tell you that the surgery was a success?

A There were two doctors who came.

Q And did they tell you that the procedure went well?

A They just were using the pencils to keep onto my toes

to check and if I'm feeling the pain. And they told me that I can, that I will be able to go home.

Q And when you were discharged, you had a rolling walker and you couldn't put weight on your right leg; correct?

THE INTERPRETER: Left or right?

Q Right.

A I will have to tell you that I had the difficulty to move both my feet.

Q You couldn't put any weight on your right leg when you were discharged from the hospital; correct?

A When they were discharging me, the nurse took me into this, into this rolling walker and she went with me downstairs with this rolling walker and she fold, she fold this rolling walker.

Q And you were told not to put any weight on your right leg; correct?

A They told me to not put the weight on both feet.

Q Mr. Gajewski, they gave you a rolling walker when you were discharged; correct?

A Yes.

Q And they told you not to put weight on your right leg; correct?

A I am telling you they told me to not put the weight on both feet.

Q They didn't give you a wheelchair; did they?

A They put me in a wheelchair to get me down in the hospital to the first floor. And then I got this rolling walker but I didn't kept the wheelchair, I didn't get the wheelchair.

Q When you left the hospital, they didn't give you a wheelchair to take home, correct, they gave you the rolling walker?

A Yes.

Q And you went back to Dr. Kaplan about six weeks later on October 9th, 2018?

A Yes.

Q You never went back to see the surgeon that did the actual procedure in Mount Sinai; correct?

A When I get back there they only took off the stitches and I did have no conversation with nobody.

Q Did you ever go back to see the surgeon that did the right ankle surgery after you were discharged from Mount Sinai Hospital?

A I told you I didn't have any visit with him. I just went there to take the stitches off.

Q And when you went to Dr. Kaplan six weeks after the incident, you didn't ask him to give you any pain medication; correct?

A No, I didn't.

Q The next visit Dr. Kaplan took X-rays of your right ankle; correct?

A Yes.

Q And the translator was there and he told you that the bones from the surgery were properly aligned; correct?

A The interpreter told me that the surgery went well.

Q Now, as we discussed earlier, the next time that Dr. Kaplan had prescribed any type of pain medication for you since July 17th, 2017 was on April 2nd, 2019; correct?

THE INTERPRETER: Can you repeat the question?

(Whereupon, the referred to portion of the record was read back by the Reporter.)

A Yes, that was an ointment.

Q Now, on November 6th, 2019, two and a half years after the fall from the ladder, you were sent to see Dr. Rauchwerger; correct?

A Yes.

Q And Dr. Rauchwerger has only been treating you for your left foot since that time; correct?

A Yes.

Q So between May 6th, 2017 when you started with Dr. Kaplan and November 6th, 2019, Dr. Kaplan never suggested that you consult with his partner Dr. Grim a pain management doctor?

A With a Dr. Grim?

MR. SHAPEY: He is asking a question.

THE COURT: What?

MR. SHAPEY: He is asking him a question I think.

THE COURT: Yes, he is asking him a question. Dr. Grim he said, yes he said, yes.

MR. SHAPEY: I don't think he knows who Dr. Grim is.

THE COURT: Well isn't that the point that's why he is asking the question; right?

Why don't you repeat your question. Go ahead.

Q Sure.

Between May 6th, 2017 when you started with Dr. Kaplan and November 6th, 2019 when you were sent to Dr. Rauchwerger --

THE INTERPRETER: When he was sent to Dr. Rauchwerger?

Q Dr. Rauchwerger. Dr. Kaplan never suggested that you see his pain management partner, Dr. Matthew Grim; is that correct?

A I do not recall.

Q Now, when you saw Dr. Rauchwerger on November 6th, 2019 he prescribed two medications; is that correct?

A Yes.

Q When you went back about a month later, you told him that you stopped taking one medication because it made you drowsy; correct?

A I didn't say that.

Q You never told Dr. Rauchwerger on December 14th, 2019 that you stopped taking the medication Amitriptyline because it

made you drowsy?

A There were two medications, one was taking every eight hours and the second one only for nighttime, at nighttime.

Q Did you tell Dr. Rauchwerger that you stopped taking one of the medications because it made you drowsy?

A I stopped, I stopped to take the medicine for nighttime and then I could sleep as usual.

Q Sir, on January 8th, 2020 you had a lumbar sympathetic block; is that correct?

THE INTERPRETER: I have to look up this term in my medical dictionary.

THE WITNESS: I do not understand.

Q Dr. Rauchwerger perform a procedure in New York Community Hospital on January 8th, 2020 where he put a needle in your back?

A I get three injections.

Q Those injections helped with your pain; correct?

A Yes, I would say eighty, eighty-five percent.

Q And that's what you told Dr. Rauchwerger when you went back after the first injection; is that correct?

A I told him only after the third injection that eighty, that I get better I would say eighty to eighty-five percent.

Q If I told you that Dr. Rauchwerger's records from January 15th, 2020 you told him that you experienced eighty percent relief after the first injection?

A No.

Q And if I told you that Dr. Rauchwerger's records from January 15th, 2020 indicate that you didn't feel the need for any further injections; would that be correct?

A No.

Q Now, on May 6th, 2020, Dr. Rauchwerger renewed your prescription for thirty days; is that correct?

A Yes.

Q And you had one refill, correct for another thirty days?

A Can you repeat, please.

Q Yes.

Dr. Rauchwerger renewed your prescriptions on May 6th, 2020 for thirty days?

A Yes.

Q And that prescription had one more refill for another thirty days; correct?

A I know that I got the medicine once and that was it, later I didn't get any.

Q On July 1st --

A But I can be mistaken also because I just do not recall.

Q On July 1st, 2020, you told Dr. Rauchwerger you didn't need another injection; correct? Let me withdraw that.

MR. SHAPEY: Judge, can I take a break for minute to

get some records with the jury here. I just want to reach and get something.

THE COURT: Sure.

MR. SHAPEY: Thank you.

THE COURT: All right, let's continue.

MR. KUTNER: Thank you, Judge.

Q On June 24th, 2020 you had a second injection?

THE INTERPRETER: June?

Q 24th, you had the second injection?

A Yes.

Q Okay. And when you went back to Dr. Rauchwerger for the next visit, you told him that you had seventy-five to eighty percent pain relief; correct?

THE INTERPRETER: Seventy-five to eighty?

Q Yes.

A Yes.

Q And then you saw Dr. Kaplan on July 21st, 2020?

THE COURT: Stop there to let her interpret.

Q And you told him that you didn't want the third back injection; is that correct?

A I don't, do not recall.

Q On October 20th, 2020 --

THE INTERPRETER: October?

Q 20th, 2020 you saw Dr. Kaplan and he offered you an injection for your foot and you told him that you didn't need

it; correct?

A First injection Dr. Kaplan he did it but you have to know why he did it. Why, I think that you the attorney know what happened.

Q Mr. Gajewski, I'm just trying to go through this in chronological order to get these simple questions out.

THE COURT: Just a second.

MR. KUTNER: Sorry Judge.

THE COURT: Mr. Gajewski you have to answer the questions that are being asked of you; okay? Okay?

THE WITNESS: Okay.

THE COURT: All right, ask your question.

Q Thank you.

On October 20th, 2020, Dr. Kaplan asked you if you wanted an injection to your foot and you said no; is that correct?

A Yes.

Q Now, between July 1st, 2020, the visit after the second injection --

THE COURT: Why don't you translate that?

THE INTERPRETER: For the second injection or after the second injection?

Q After the second injection. You didn't go back to see Dr. Rauchwerger again for nine months; is that correct?

A No.

Q If I told you Dr. Rauchwerger's records show that you saw him on July 1st, 2020 and then not again to March 31st, 2021 that would be correct?

A No.

Q On March 31st, 2021 you told Dr. Rauchwerger that you didn't need any pain medications; correct?

A I was holding the injection off. I was holding off the injection, I didn't want it at this time.

MR. SHAPEY: I didn't understand the answer.

THE COURT: She said, I was holding off on the injection.

Q You told him you didn't need pain medication the first time and then March 31st, 2021; correct?

THE INTERPRETER: When did he say?

MR. SHAPEY: Your Honor, I don't understand the question.

THE COURT: Counsel, I don't understand that question. Break it up.

Q Sure.

THE COURT: Go ahead.

Q Between July 1st, 2020 and March 31st, 2021, there's a period of nine months when you returned on March 31st, 2021 you told Dr. Rauchwerger according to his records that you didn't need any pain medication refilled; is that correct?

A Yes, because I still have it at home.

Q And you still had it at home from the prescription for thirty days from May 6th, 2020; is that correct?
A Yes. Yes.
Q And you saw Dr. Rauchwerger again on May 12th, 2021?
A The date?
Q May 12th, 2021 and June 9th, 2021?
THE INTERPRETER: June?
Q June 9th, and both told him you didn't need a refill of his medications; is that correct?
THE INTERPRETER: June 9th, 2021; right?
Q Yes.
A I do not recall.
Q If I told you that Dr. Rauchwerger's records from each of those dates, May 12th, 2021 and June 9th, 2021 both indicate that you told him that you did not need refills of his pain medication, would that refresh your recollection?
A Yes, because I had, I had it at home.
Q From May 6th, 2020; correct?
THE INTERPRETER: May 6th?
Q Yes.
THE INTERPRETER: May 6th, 2020?
Q Yes.
A Yes.
Q On October 13th, 2021, you had the third injection?
A Yes.

Q You went back to Dr. Rauchwerger a month later and told him you had seventy-five percent pain relieve; correct?

A Yes.

Q You told him that you didn't need any additional pain medications; correct?

A Yes.

Q I'm going to try to speed this up, Judge.

On December 5th, 2021 and January 12th, 2022 you told Dr. Rauchwerger that you had ninety percent pain relief, you didn't need another injection at that point, and you didn't need any prescription medications; correct?

A Yes.

Q And Dr. Rauchwerger's records reflect the same ninety percent relief, no need for additional pain medications on February 16th, 2022, March 16th, 2022 and April 16th, 2022 -- I'm sorry, April 13th--

THE INTERPRETER: So what is the question?

THE COURT: Can you read back the beginning of that?

(Whereupon, the referred to portion of the record was read back by the Reporter.)

Q Is that correct?

A Yes. Yes, because I was using the ointment cream Voltaren.

Q And that was the from the prescription hat Dr. Kaplan

had given you; correct?

A No, I was buying by myself at this time.

Q So you're getting it over the counter?

A Yes.

Q Now, on August 11th, 2022 you went back to Dr. Rauchwerger?

A Yes.

Q You still had eighty-five percent relief and told him you didn't need a refill from the prescription from two years three months earlier; is that correct?

A You mean after two years?

Q The last time Dr. Rauchwerger had written you a prescription was on May 6th, 2020.

THE INTERPRETER: May 6th, 2020?

MR. SHAPEY: Is that a question?

MR. KUTNER: I'll get to it. I'm a trying to allow the translator.

THE INTERPRETER: Can you repeat?

Q The last time prior to August 11th, 2022 that Dr. Rauchwerger wrote a prescription was May 6th, 2020?

MR. KUTNER: I have like two questions left, Judge.

THE COURT: Okay.

THE INTERPRETER: Can you read back the question? I got lost in the dates.

(Whereupon, the referred to portion of the

record was read back by the Reporter.)

THE WITNESS: No.

Q Okay. Now you went to see Dr. Rauchwerger on November 4th, 2022 a couple of weeks ago; correct?

A Yes.

Q And that was after we started picking a jury here; correct, if you know?

A No.

Q You told him now that your pain is now significantly increased again; correct?

A Yes.

Q And that you wanted to scheduled another injection; correct?

A Yes.

Q You didn't ask him for a new prescription of medication; correct?

A I didn't say anything I just said that I came for injection.

Q Correct, you didn't ask him to refill --

MR. SHAPEY: I'm sorry, I didn't hear the answer.

THE WITNESS: I came for injection.

MR. SHAPEY: I'm sorry I can't hear.

THE COURT: Can you read back the answer?

(Whereupon, the referred to portion of the record was read back by the Reporter.)

Q And he didn't give you an injection; correct?

A I am waiting for a date.

Q And on November 4th, 2022 you didn't ask him to refill your pain medications; correct?

A We didn't speak about it, we just talked about injection.

Q You told him your pain significantly increased and he didn't ask you if he needed prescriptions?

MR. SHAPEY: Objection asked and answered.

THE COURT: I'll allow it.

THE WITNESS: No, he didn't ask for it.

MR. KUTNER: Thank you, sir.

THE COURT: Do you have anything?

MR. SHAPEY: No questions.

THE COURT: Thank you, sir, you can step down.

(Whereupon the witness is excused.)

THE COURT: All right, it's now 1:00 o'clock and as you know we don't have testimony this afternoon, so we're not breaking for lunch, we're breaking for the day whether or not you have lunch is up to you. Okay, so be here tomorrow morning, please at 9:30 in the room on the eighth floor. Okay? Is it cold in that room on the eighth floor? Is your room cold or too hot, let the officer know and he'll let me know. If you are uncomfortable let me know. Sometimes the court rooms are cold and halls are hot and I

don't know what jury rooms are like. Just let me know, okay? Have a good day, we will see you tomorrow.

THE COURT OFFICER: All rise, jury exiting.

(Whereupon, the jury exits the courtroom.)

THE COURT: Anything else, Counsel, before we go?

MR. KUTNER: No.

THE COURT CLERK: Do we need the interpreter tomorrow?

THE COURT: We're done with the interpreter.

MR. SHAPEY: I believe so, yes.

* * * * * * * *

CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT OF THE ORIGINAL MINUTES TAKEN OF THIS PROCEEDING.

_____
CHRISTINA INGRAVALLO
Senior Court Reporter

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$1,500 [1] - 227:21
$1,547,719 [1] - 240:16
$100,000 [2] - 228:1, 253:18
$105,750 [1] - 245:8
$110,000 [1] - 245:11
$125 [1] - 227:19
$125,000 [1] - 245:21
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$13,333 [1] - 232:17
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$394,280 [1] - 243:5
$4,000 [1] - 236:15
$4,800 [3] - 236:23, 238:4, 239:1
$45,078 [1] - 233:5
$680 [2] - 242:2, 242:6
$800 [1] - 239:7
$900 [1] - 233:10

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'14 [1] - 242:24
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