TRIAL TRANSCRIPT OF MR. EDMOND ALAN PROVDER; 2013 Trial Trans. LEXIS 57

SUPREME COURT OF NEW JERSEY, ATLANTIC COUNTY, CIVIL COURTHOUSE

CASE NO. ATL-L-6966-10

January 28, 2013

Reporter
2013 Trial Trans. LEXIS 57 *

LINDA GROSS, Plaintiff, vs. JOHNSON & JOHNSON, Defendant.

Expert Name: Mr. ALAN PROVDER, C.R.C., C.L.C.P., Ph.D.

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Counsel

[*1] FOR PLAINTIFF : ADAM SLATER, ESQ., DAVID MAZIE, ESQ.

FOR DEFENDANT FOR JOHNSON & JOHNSON : CHRISTY JONES, ESQ., GAGE WILLIAM, ESQ.

Judges

BEFORE THE HONORABLE CAROL HIGBEE

Proceedings

This is unofficial transcript derived from video/audio recordings.

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[*2]

>> THE JUDGE: You can be seated, not much but a little bit. All right, we're going to continue and your -- your next witness, Counsel.

>> MR. MAZIE: Thank you, your Honor. At this point, plaintiffs call Edmon Provder.

>> COURT SECRETARY: Okay. Place your left hand on the bible, raise your right hand. Do you solemnly swear that the testimony you're about to give this court will be the truth, the whole truth and nothing but the truth?

>> Mr. PROVTER: I do.

>> COURT SECRETARY: Could you state your full name and spell your last name for the record.

>> Mr. PROVTER: Edmond, E-D-M-O-N-D, Provder P-R-O-V-D-E-R.

>> THE JUDGE: You may take your seat.

>> Mr. PROVTER: Thank you, INAUDIBLE.

>> THE JUDGE: You may proceed.

>> MR. MAZIE: Thank you, your Honor. Mr. Provder, can you tell the jury what you do for a living.

>> Mr. PROVTER: Yes, I'm a rehabilitation counselor.

>> MR. MAZIE: Now, what's a rehabilitation counselor?

>> Mr. PROVTER: A rehabilitation counselor is an educa --

a person **[*3]** who's been educated and trained to work with people that have a variety of different disabilities or handicaps. These could be physical disabilities, emotional disabilities, cognitive disabilities and what we do is we look at how these impairments impact on their ability work, and their ability to earn money. We also look at on a catastrophic case, the type of care and the cost of care

98: they going to require over their lifetime.
99:
100: >> MR. MAZIE: Can you give the jury the benefit of your
101: educational background.
102:
103: >> Mr. PROVTER: So I have a Bachelor's Degree in
104: Rehabilitation Counseling from the Pennsylvania State
105: University, Master's Degree in Rehabilitation Counseling
106: for the Pennsylvania State University. After receiving my
107: master's degree, I continued with my education at New York
108: University in the Department of Rehabilitation Counseling
109: taking courses towards my doctorate. Completed all the
110: course work INAUDIBLE university with my dissertation to
111: be completed.
112:
113: >> MR. MAZIE: And can you tell to the jury your work
114: history?
115:

116: >> Mr. PROVTER: Upon graduated **[*4]** from Penn State in 1973, I
117: became employed as a rehabilitation counselor at the
118: Federation of the Handicap in New York City. At the
119: federation, I was in -- involved in a program called "the
120: Higher Horizon's for the Homebound" which was a program
121: geared to working with people that had severe disabilities.
122: At the federation, I was involved in performing the four
123: basic functions of rehabilitation counselors, these are
124: individual group counseling, working with the clients to
125: assist them and adjusting into their disabilities as well
126: as counseling them as to the most feasible vocational
127: goals. Secondly, I was involved in vocational testing and
128: evaluation, evaluating the clients to find out what they
129: could or could not do, their aptitudes, their interests,
130: their dexterity, their achievements.
131:
132: Thirdly, I was involved in work adjustment services, which
133: spent that I prepared people for employment.
134:
135: And lastly, I was involved in job placement services which
136: means that I located jobs that the clients could do, given
137: their various capabilities. In addition, because this was

138: **[*5]** a program geared to homebound individuals, out of
139: population people, anywhere from 200 to 250 individuals

that I was responsible to do case management and what we call "life care planning," making sure they received the necessary services they required due to their advisabilities. I did that for about a year and a half and then became employ at Mt. Sinai Hospital, Department of the Rehabilitation Medicine in New York City.

At Mt. Sinai, I supervised their vocational facilities which consisted of a sheltered workshop program, and a vocational testing and evaluation unit. I supervised five professional staff members and was involved as the lays in counselor between the Mt. Sinai vocational rehabilitation program and a state vocational rehabilitation program. As a member of the Rehabilitation Medicine team, I was involved in providing case management services to people that were both inpatient and outpatient on hospital. And we worked with the population of people that had physical disabilities as well as people that had psychiatric

disabilities. I did that from 1974 **[*6]** through 1979 and again from 1980 to 1981. Since 1978, I've had my own rehabilitation company, called "Occupational Assessment Services" which provides vocational testing, evaluation, job placement, counseling services to people who have become injured. I also provide case management and life care planning services to people that are more catastrophically injured, differences of the date.

>> MR. MAZIE: And what's life care planning?

>> Mr. PROVTER: Well, a life care plan is a document that details the type of care and the cost of care that a individuals going to be required due to their severe injuries. Looks at such things as the type of physicians they have to see, the frequency of the physicians, their cost to their medications, any therapies they may require, any psychological counseling they may require, and any home-making services they may require. So the life care planner develops by interviewing the evaluee, the types of services they're going to require, what services their currently be getting, what services they may need into the

future, and **[*7]** what those cost of those services are going to be in their geographical area.

>> MR. MAZIE: Have you done any work for the federal government?

>> MR. PROVTER: Yes, sir. I served as a vocational expert toward the Social Security Administration which means that I was called by the "Federal US Ministry of Law Judges" to render opinions as to individuals who were seeking in Social Security disability benefits, and that capacity as served as an expert on over 2500 occasions as the government's witness.

>> MR. MAZIE: How many certifications of any sort?

>> Mr. PROVTER: Yes, I have three of them. I am what is known as "a certified rehabilitation counselor" which is a national certification of rehabilitation counselors. In order to be certified, you have to be a graduate of a master's level rehabilitation counseling program which Penn State is being one of the oldest programs in the country. You have to been supervised by a certified rehabilitation counselor, you have to have a number of professional references, and most importantly you have to successfully **[*8]** complete an examination which measures your knowledge in the field of rehabilitation counseling. I'm also a diplomat of the American Board of Vocational Experts which is an organization of people similar to myself with similar backgrounds who have done work for the government and do what we call "friends at work", and involves being - a diplomat involves a number of years of experience, completion of examination in peer review of your work product, as well as, maintain certification by continued education credits throughout the years.

And the last thing is I'm a certified life care planner, which means that I've taken a 120 plus course credits in life care planning and various areas dealing with life care planning and successfully completed an examination that measured my knowledge in the field of life care planning.

>> MR. MAZIE: And then finally, can you tell the jury the -- your professional affiliations.

224:
225: >> Mr. PROVTER: Yes, I'm a member of the most to the
226: organizations in my field particularly, the International
227: Association of Rehabilitation Professionals **[*9]** in the Private
228: Sector which is -- is involved both in vocational
229: rehabilitation, as well as, life care planning.
230:
231: >> MR. MAZIE: Your Honor, this time plaintiff's would
232: offer Mr. Provter, as an expert in rehabilitation
233: counseling, life care planning, and employability.
234:
235: >> THE JUDGE: Any voir dire?
236:
237: >> MS. CRAWFORD: No voir dire, your Honor.
238:
239: >> THE JUDGE: All right. The court finds if the witness
240: is qualified to testify as an expert in those fields and
241: render his opinions to the jury.
242:
243: >> MR. MAZIE: Okay. Thank you, your Honor. All right.
244: We're going to break down your -- your testimony to
245: groups. And the first one I ask you about is with regard
246: to the life care plan that you've prepared for Linda Gross,
247: okay?
248:
249: >> Mr. PROVTER: Okay.
250:
251: >> MR. MAZIE: All right. Did you perform a life care
252: plan for Linda Gross?
253:
254: >> Mr. PROVTER: I did.
255:
256: >> MR. MAZIE: Okay. And what was the purpose of -- you
257: already described what a life care plan is, what exactly
258: did you do to prepare it?
259:
260: >> Mr. PROVTER: Yes. In order **[*10]** to prepare a life care
261: plan, I did a number of different things. The first, is
262: that I interviewed her, I interviewed her over the phone,
263: gathering information regarding her current treatment, her
264: medication, any particular special devices that she had,
265: the frequency of her care. I then reviewed the medical

records and they were voluminous in this case and formulated a life care plan, detailing the cost of items that she was going to acquire, the types of items she required and the frequency of the - those particular items. Then I research the cost, meaning that I telephoned various providers of services in South Dakota and found out what the cost of each of the services were in her particular geographical area.

>> MR. MAZIE: Okay. And was there any -- are you aware of any physician who has looked at your life care plan?

>> Mr. PROVTER: Yes, there were three different physicians --

>> MS. CRAWFORD: Objection. Can we approached?

>> THE JUDGE: You can.

(Whereupon, a short break was taken.)

>> MR. MAZIE: Did you read the trial **[*11]** testimony of Dr. Likness --

>> Mr. PROVTER: I did.

>> MR. MAZIE: - who testified before this jury two weeks ago?

>> Mr. PROVTER: I did.

>> MR. MAZIE: Did Dr. Likness review your life care plan?

>> Mr. PROVTER: He did.

>> MR. MAZIE: Did he find it to be reasonable, necessary and appropriate?

>> Mr. PROVTER: That was his testimony.

>> MR. MAZIE: Okay. Now, you said, you interviewed

Linda over the phone --

>> Mr. PROVTER: Yes.

>> MR. MAZIE: -- that's a normal -- normally the way you do it?

>> Mr. PROVTER: No, not normally.

>> MR. MAZIE: Okay. Were you still able to perform your evaluation even though you did it by phone as suppose to meeting her in person?

>> Mr. PROVTER: Yes. Well, in the stane age, doing evaluations by phone or via Skype are things to be more of a trend. She had a permanent condition, her condition was upset severity that it wasn't necessary for her to see -- for me to see her while I was doing the evaluation, I was able to interact with **[*12]** her over the phone and gather the necessary information I needed to formulate her a life care plan, as well as, her vocational assessment.

>> MR. MAZIE: And can you just generally explain to the jury the -- what you learned from the medical records and what you exactly you reviewed?

>> Mr. PROVTER: Well, I reviewed records from the Prairie Health Systems, quite a number of procedures from that facility, emergency room treatments, I reviewed records from the Mayo Clinic, St. Joseph's Hospital records, Mayo Clinic records as recent as February 7th, 2012. I reviewed records from various treating physicians such as Dr. Likness, her treating doctor, Dr. Trebuco.PH, and Dr. Retterath, pain manager specialist.

>> MR. MAZIE: Okay. And after reviewing all the -- the medical records before your research, what did you learn about Linda's situation?

>> Mr. PROVTER: Yes. Well I interviewed her on April the 18th, 2012 for approximately two hours. She indicated that on July 13th, 2006, she had an implant of a Prolift pelvic

floor repair system. As consequences **[*13]** of that, have been chronic pain and its affected her urinary and bowel function. She stated that she was born April XXth, 1965 which makes her 47 years of age and she was born in South Dakota, she's married, resides in Watertown Cunnington County, South Dakota with her husband, she has three children who were older and out of the house. I then inquired as to her educational background, she stated that she was a high school graduate, while on high school she was involved in a multi-district health care nursing course for two years in high school and -- and she graduated in 1983. She continued with her education from 1992 to 1994 where she received an associate degree of nursing for the University of South Dakota and outreach nursing program and she was licensed as a registered nurse in the state of South Dakota in 1994.

I then inquired as to her physical complaints, she reported that she was experiencing constant pain in her pelvic area and rectum that she described her pain as sharp and shooting pain down the left inner thigh to her knee that increase on exertion **[*14]** such as walking more than 20 minutes. She stated that she had daily pain in her left buttocks area that she was easily tired, had difficulty sleeping, can sleep only four hours at a time well even with sleeping medication. She has weakness to the pelvic floor, swelling of the abdomen, at the end of the day, and she has pain in the left buttocks. On activity, when she tries to exert herself, she reports experiencing whole INAUDIBLE, experienced increase pain in the left buttocks area; and the rectum, swelling which results in her running to the bathroom during the day having increase frequency of bowel movements and she has to lay down to manage her systems. She also states that she has urinary problems which results in her catheterizing in herself four times a day and a treating doctor in his testimony described this. She has to cleanse herself with a self wipe if she overexerts herself, and they have to go to the bathroom as frequently as every 15 minutes. That was her physical complaints.

I then inquired as to her emotional complaints. She

reported that she **[*15]** had been seen by a social worker since 2008 and she'd also been treated by a psychologist at the Innovative Pain Clinic in her town. She states that her complaints were anxiety, depression, difficulty dealing with stressful situations. She reported being angry and frustrated regarding her pain and limitations and a restricted lifestyle.

I then inquired as to her functional capability or what she could do. She stated that she was capable of sitting for about 20 minutes at a time and then experienced increase pain in her left buttocks and abdomen pain and also that she felt clammy. She could stand one hour, experienced increased left buttocks, rectum and abdo - abdomen pain. She could walk 20 minutes, noted pain similar increased left buttocks, swelling, pain, abdomen pain. She's capable of climbing on flight of stairs, that she could and carry ten pounds, she's able to use her hands to grasp and manipulate objects, she states that she has difficulty that she's able to bend, she's right-handed, at diffic -- has difficulty squatting, kneeling, and stooping and she

[*16] experienced a point pain in her left buttocks when he - she attempts those activities.

She has a driver's license with the state of South Dakota, and she states she's limited to drive in approximately 60 minutes using a special donut seat cushion in her car due to the left buttocks pain that she experiences. I lastly inquired as to her activities of daily living. This is her abili -- ability to function in her own house and then take care of herself, she stated that she's independent and ability to wash, dress and bathe herself, she's spends most of her day in bed; her daily activities involved watching television, reading, and she notes that she has difficulty concentrating when she reads due to her pain. She does have a computer at home which she could use for email and Internet but states the limited to sitting at the computer for 20 minutes at a time no -- noted increased buttocks - buttocks pain and abdomen pain. She also reported sometimes difficulty concentrating while she work on the computer.

Lastly, I talked about her ability to do things around the

[*17] house, she stated that she could do light shopping but is limited to lifting and carrying no more than ten pounds, her -- she states that her children or her husband perform the heavier chores and the various activities which take them approximately four hours per day. She's able to do the light chores such as cooking, dishes, but the heavier once such as vacuuming, are performed by her husband. She states that when she tries to do various activities around the house, it increases her pain and her discomfort and she states that she spends most of her time in bed and is drowsy due to the pain medication that she takes. She's not involved in any sports, hobbies or special interests and she stated that private -- prior to this incident that happened to her, she used to be involved in camping, golfing, and fishing. And that was the history taken of her when I saw her in April of last year.

>> MR. MAZIE: Okay. And can you explain to the jury the life care plan that you created for Mrs. Gross.

>> Mr. PROVTER:: Yes, I created a series of charts that may help the jury **[*18]** to understand all this.

>> MR. MAZIE: Okay. So what do we bring up, A1. And your welcome to walk us through the charts if you want to stand --

>> Mr. PROVTER: Yes.

>> MR. MAZIE: -- you want to sit, you understand that I gave you the laser pointer for this is quickly, efficiently as possible. My laser pointer INAUDIBLE.

>> THE JUDGE: Please step, INAUDIBLE.

>> MR. MAZIE: INAUDIBLE.

>> Mr. PROVTER: Okay, I got it now, let me stand up here. Okay. What I did was when I formulated my life care plan to make everybody understand -- we have to understand that I put everything in the chart. So we have a various series of charts that explains what Ms. Gross' needs are. First

thing we have is the rehabilitation plan development, and that's basically the plan that we did here, that's the first one. The life care plan is a living document, it's basically a blue print that details all the care that she's going to require, so the life care plan can change. So every five years, it should be reviewed in it's totality,

could cost to $ 3,000 **[*19]** every five years or $ 600 per year. Then we have physical therapy evaluation, once a year, $ 110 to $ 400 per year and that would be just an evaluation. Next chart --

>> MR. MAZIE: Let me stop right there to go back for a second. Now these costs, how did you arrive with the costs?

>> Mr. PROVTER: Okay. Well, I did as I contacted various vendors of services that for each of these areas in the South Dakota area. I started with their treating sources and then work out into various other vendors of those services. So as you can see for physical therapy evaluation, the cost range is from $ 110 to $ 400, so some people charged for the same service 110, some people charged $ 400. So I provide you with the high and the low of each of those researches -- research that I did of the various vendors in their geographical area.

>> MR. MAZIE: And did -- did you also review the medical bills that Linda's has accumulated since the Prolift surgery?

>> Mr. PROVTER: I did.

>> MR. MAZIE: Okay. And those -- did you compare those with the -- your **[*20]** research?

>> Mr. PROVTER: I did.

>> MR. MAZIE: And did you find that the -- the bills the she's being charged up to this point were reasonable?

>> Mr. PROVTER: I did.

>> MR. MAZIE: Okay. All right, show the next slide.

>> Mr. PROVTER: Okay. The first item we have, this is projected therapeutic modalities, and the first item we have is a case manager of rehabilitation counselor, that would be somebody like myself. And what we do is -- is require four times a year, the cost is $ 400 to $ 720 per year and a rate of 100 to $ 180 per visit. The case manager is an indi - individual that works with Mrs. Gross to assist her and receiving the necessary services she requires due to her chronic pain and the conditions that she have. The services lays on between her and the treating doctors and in any other services she may require. Because she's a nurse, I could have already limited amount of case management services because she's very knowledgeable in medical information. So I was very conservative in putting four times a year. The next we

[*21] have this physical therapy which she receives, recommended for two years, caught three times a week for 48 weeks, the reason that you're going to see 48 weeks is this what we call "a clinical year." That means that evaluees or patients get sick, therapist go on vacation, there are sick days in South Dakota, they're probably snow days, so that people -- so to be very conservative, I used a 48 week here, so we have three times a week for 48 weeks cost is $ 7,200 to $ 25,632 at a rate from $ 50 to $ 178 per session. Now, the reason that we sometimes have such a large range is that the high numbers usually represents cost of services through a hospital. So for a local hospital has physical therapy, that number is usually the higher number. Then we have psychological or social work counseling, and she has been seen by an individual on a regular basis, this would be once a week for 48 weeks, the cost is $ 2,880 to $ 7,200 at a rate $ 60 to $ 150 per session.

>> MR. MAZIE: Next slide, please.

>> Mr. PROVTER: Okay. Now we had a INAUDIBLE medical care, and what I did **[*22]** basically as I took her treating doctors and the frequency she's continue seen her doctors and was basically adapted it; the only one I added was a psychiatrist, that's a doctor of physical medicine and

rehabilitation who is a specialist in working with people
that require therapy, as well as, chronic pain patients.
Once a year evaluation cost would be anywhere from $ 40 to
$ 300 per year; internist family practitioner, you heard
from that person already who --

>> MR. MAZIE: Dr. Likness?

>> Mr. PROVTER: -- Dr. Likness who have treated her
before and after the incident. To be very conservative, we
can say 18 times a year. Currently she reported to me, she
goes almost every week, so we've changed it to 18, the cost
is $ 1,260 to $ 5,760. OBGYN, four times a year, cost is
$ 284 to $ 2,700; OBGYN surgeon, once a year, cost $ 550 to
$ 2,000, pain --

>> MR. MAZIE: Why -- Why would she had to see her OBYGYN
surgeon once a year?

>> Mr. PROVTER: They evaluate her condition, she's had
numerous surgeries and may require further surgeries into
the **[*23]** future, and evaluate that necessity.

>> MR. MAZIE: Okay.

>> Mr. PROVTER: Pain management specialist, she basically
is a chronic pain patient, so pain management specialist is
very important; four times a year, initial is $ 79 then 143,
a total amount would be $ 316 to $ 572. This would indicate
to me that there's one pain management specialist in their
geographical area. It's been recommended that she go to
the inpatient program at the Mayo Pain Clinic for three
weeks, one time only, cost is $ 29,000 to $ 33,000 for that
three week period.

>> MR. MAZIE: And you understand that she is supposed to
be going in March?

>> Mr. PROVTER: That's my understanding, yes, sir.

>> MR. MAZIE: All right.

602: >> Mr. PROVTER: Next.
603:
604: >> MR. MAZIE: We don't need to go through every single
605: one, just explain what this chart is.
606:
607: >> Mr. PROVTER: Okay. These are her medication needs, I
608: may just point out a couple of them. We have Cymbalta 60
609: milligrams which she's taking for depression, cost is

610: $ 2,160 to $ 2,296; she also takes medication **[*24]** called "Colace"
611: which is a stool softener for her bowel program, cost is
612: $ 252 per year; and she's talking Vicodin for her -- her
613: pain, $ 84 to $ 93 a month, $ 1,008 to $ 1,016 per year.
614:
615: >> MR. MAZIE: And, again, where did you get these
616: medications from?
617:
618: >> Mr. PROVTER: The listed medications are from her that
619: she was taking at the time I saw her and the cost were
620: research I did in her geographical area, as well as, the
621: Internet.
622:
623: >> MR. MAZIE: And did you also see the medications
624: throughout the medical records, you knew the frequency and
625: the amounts?
626:
627: >> Mr. PROVTER: Yes.
628:
629: >> MR. MAZIE: Okay. Next slide, please.
630:
631: >> Mr. PROVTER: Okay. This are Nerveplex, frequency
632: varies for year, three to six per year, the cost range is
633: anywhere from $ 1,900 to $ 4,000 per block.
634:
635: >> MR. MAZIE: Okay, next slide, please. Okay.
636:
637: >> Mr. PROVTER: Okay. These are her bowel and bladder
638: supplies, she has to catheter herself -- catheterize
639: herself, the doctors explained this, she needs a 14 French

640: catheter, uses 120 per month, cost is **[*25]** 960 to 1,080. Uses
641: wipes, two boxes per month, cost is $ 72 to $ 144. The
642: gloves are necessary, four boxes a month, $ 192 to $ 216; and
643: she requires bed protectors which are called Chucks, one --

644: one per day, cost is $ 72 to $ 144 per year.
645:
646: >> MR. MAZIE: Okay. Next one, please. And you're going
647: to all relates to herself catheterizing three to four times
648: a day?
649:
650: >> Mr. PROVTER: Absolutely, correct.
651:
652: >> MR. MAZIE: Okay.
653:
654: >> Mr. PROVTER: These are aged ph.for independent living
655: versus a shower chair to be placed once every five years,
656: cost is $ 58 to $ 90 per cost. Then we have the shower hose,
657: and a hand towel shower hose we place once every three
658: years, cost $ 33 to $ 48; and grab bars for safety to be
659: placed once every ten years, $ 63 to $ 81.
660:
661: >> MR. MAZIE: Okay. Next one, please.
662:
663: >> Mr. PROVTER: Okay, we indicated that she needs a
664: special cushion once she drives in her car. This is the
665: special cushion, it's a donut seat cushion, just at it
666: says, it's a opening in a inside like a donut and it's a
667: foam cushion, the cost is $ 20 **[*26]** to $ 128 and place once every
668: two years.
669:
670: >> MR. MAZIE: Let me stop you there because this is in a
671: lot of money, why do you including things like this in --
672: in the life care plan? What's the purpose of that?
673:
674: >> Mr. PROVTER: Because these are special items required
675: due to her pain and for her to function.
676:
677: >> MR. MAZIE: All right. Next one. And finally, this is
678: your last one?
679:
680: >> Mr. PROVTER: It is.
681:
682: >> MR. MAZIE: Okay. And this is the -- the largest one,
683: this is a home care, explain to the jury what home care is.
684:
685: >> Mr. PROVTER: Yes. Home care is a individual coming in

as a home maker, comes in and assist Ms. Gross in her -- in
around her house in things that she cannot do, her --
currently her husband and her children are doing these
activities, and these were activities that she used to do
before. The - she indicated to me that is four hours a
day, seven days a week and there's only one nursing agency
that services her accounty, so we have one figure, $ 23 per
hour, total cost $ 33,580 per year.

>> MR. MAZIE: Now what **[*27]** types of things would this home
maker do for Linda at she ages?

>> Mr. PROVTER: Okay. Shopping, cooking, house cleaning
services --

>> MR. MAZIE: Okay.

>> Mr. PROVTER: - heavier type of activities.

>> MR. MAZIE: And have you taking in consideration how
Linda will be now, that she's 47, how she'll be in her
50's, or 60's, or 70's and how that would affect her need?

>> Mr. PROVTER: Yes. Well, this is based on her needs
right now, if she deteriorates and her condition gets
worse, this figure could increase.

>> MR. MAZIE: All right. So the jury felt that Linda's
condition would worsen as you consider increasing that
number?

>> Mr. PROVTER: Yes. It's not unusual for somebody who
require home maker services eight hours per day, seven days
a week if her condition worsens.

>> MR. MAZIE: Okay, and how this aging affect that?

>> Mr. PROVTER: Well, of course aging could've make it
more difficult to do various activities just as she ages
and her pain decrease - yeah, increases.

>> MR. MAZIE: Okay. I'm going **[*28]** to put these numbers, are

728: you done with the charts?
729:
730: >> Mr. PROVTER: Yes.
731:
732: >> MR. MAZIE: Okay. I'm going to show you what's been
733: marked as P-2004. And I just want to put the numbers you
734: have, put up there in perspective, what is this?
735:
736: >> Mr. PROVTER: Yes. These are the physicians billing
737: based on CPT coding for the services that Linda has
738: required and received since July 13, 2006 all the way
739: through October 9, 2012.
740:
741: >> MR. MAZIE: How much has been billed, to date?
742:
743: >> Mr. PROVTER: Has billed $ 544,877.
744:
745: >> MR. MAZIE: And those amounts that she has been billed
746: for five hundred and forty four thousand in dollars and
747: change, is that reasonable?
748:
749: >> Mr. PROVTER: Yes, compared to the re -- what I
750: prepared the research I did on the various doctor costs and
751: services, that would be reasonable, yes.
752:
753: >> MR. MAZIE: Okay. All right. So that is the -- the
754: life care plan that you created?
755:
756: >> Mr. PROVTER: Yes, sir.
757:
758: >> MR. MAZIE: And that's been provided then to the
759: INAUDIBLE to the jury is going to hear, testified **[*29]** early
760: this morning?
761:
762: >> Mr. PROVTER: Yes, sir.
763:
764: >> MR. MAZIE: Okay, so he'll draw that numbers down for
765: the jury.
766:
767: >> Mr. PROVTER: Yes, sir.
768:
769: >> MR. MAZIE: Okay. Did you do anything else besides

prepare of the life care plan?

>> Mr. PROVTER: Yes. I looked at the impact of Linda's condition on her ability to work and her ability to earn money.

>> MR. MAZIE: Okay. And to take her work history?

>> Mr. PROVTER: I did.

>> MR. MAZIE: Can you explain that to the jury what her work history was.

>> Mr. PROVTER: Yes. Well, as indicated she's a -- was a registered nurse, she was trained as a registered nurse, she had an extensive work history, she worked from 1994 through 1997 as a registered nurse at the Prairie Lakes Health Care Systems Hospital. She worked at various jobs during that time. From 1997 to 2005 she worked as a home care health nurse and registered nurse at the same facility. This involved going to the patient's home, examining and evaluating patients, administering medical

treatments, filling **[*30]** the medicine box, teaching the patients the various procedures on what they have to do, she worked with also a -- a hospice team if she had individuals that were terminal and she saw anywhere from 46 patients per day. From 2005 to July 13th 06, she was in the office in this capacity at home care in the hospital where she put together a tally work schedule, communicated with the patients and the nurses, she took physician call and orders, she assigned nurses to new patients, preparing office -- make sure that the office had the various medical supplies that were required, I collected information regarding new patients, and scope with the physicians and supervised the home nursing aides. I've prepared her a description of her job for that used by labor market specialists, vocational rehabilitation counselors and that's called the "Dictionary of Occupational Titles", it's published by the United States Department of Labor. And her job, as she described that is found page 61 of the dictionary and is given the code number, 075.364-010, are

the job required various physical demands. **[*31]** In this

instance her job would be classified as medium to very heavy work as at time she had to lift patients who were heavy and weighed over a hundred pounds and a work would be skilled work.

>> MR. MAZIE: Let me stop there, so she had a -- at times during her job, take up people who weighed over a hundred pounds?

>> Mr. PROVTER: Yes.

>> MR. MAZIE: Or help them that she --

>> Mr. PROVTER: Yes, the system?

>> MR. MAZIE: -- actually pick them up.

>> Mr. PROVTER: And so who's the heavy -- it could be anywhere from the medium to very heavy type of a job.

>> MR. MAZIE: Okay.

>> Mr. PROVTER: She walk eight to ten hours a day, four days a week, she returned to work three weeks after her initial procedure and after each of the procedures that she had, the surgical procedures, she missed up to six weeks. The hospital gave various accommodations to her allowing her to take off time and then allowing her at times to work part-time. In fact, the occupational therapy department

created a - a ergonomically correct work **[*32]** station where she was capable of working in a standing position at her particular job. She last worked in June 2009 and then attempted to work in August '09 but could not work due to the draining of the wound in her buttocks as it was not healing. She was terminated from her job in January 4th, 2010 and after she was terminated, she attempted to return to work again in the Ministry of Capacity at Assisted living facility working for five weeks around February 2011 doing a ministrate at work but she was unable to continue even with this job due to her pain and her impairments. And that was the work history given to me.

>> MR. MAZIE: And you said, that she was unable to work due to her pain and her impairments. What about the medications she's been taking? We saw that list of medications if we invite it in another drugs. How did that affect her or how did that affect her during her work?

>> Mr. PROVTER: Well, those medications could make her dri -- drowsy and impaired concentration ability and of course, would affect her ability to work.

>> MR. MAZIE: **[*33]** And did you determine what her past earnings were?

>> Mr. PROVTER: Yes, she reported to me -- I think that we had income tax records that her earnings were approximately $ 45,784 per year and that compared to the - unfavorably compared to the average earnings in South Dakota over registered nurse which was $ 55,710.

>> MR. MAZIE: Okay. And based in your evaluation, did you formulate - formulate - opinions with a reasonable degree of certainty as a rehabilitation counselor on life care planning and employability expert regarding Linda's employability and her earning capacity.

>> Mr. PROVTER: I did.

>> MR. MAZIE: What is that opinion?

>> Mr. PROVTER: Yes. Based on my evaluation of her, she had a number of limitations, those were limitations or her inability to sit, to stand, to walk, to bend, to lift and carry. She had reduced physical stamina and endurance as well as complaints of depression. Based on her that -- on my evaluation of her -- her education of two years of college, her education -- training background, bless you --

training **[*34]** background as a registered nurse - worked as a registered nurse was my opinion that she was unable to performed or pass work as a registered nurse, number one. Number two, that her past earnings, which I noted before was $ 45,784 per year best represented her pre-injury earning capacity, of what she could have earned if she

would not have been impaired. Three, that her particular skill -- skills as a registered nurse would not transferable due to her various limitations, meaning, that she could not use her knowledge or her education to perform so other type of work because her vocational capacity was so reduced. Fourth, it was my opinion that she could not perform any of the phys -- physical demand categories noted by the US Department of Labor, and these are sedentary work, light work, medium work, heavy work, or very heavy work and she couldn't perform any work activities on a sustained regular competitive basis, that means eight hours per day, five days per week at a rate that would be acceptable to an employer. So going to work one hour,

whenever she could do it is **[*35]** really -- is not considered consistent competitive at work or sustained competitive work. It has to be work that would be usually found in the economy and done on a regular basis and at the level that will be acceptable to her employer. So no make work type of job. Five, I found she's unemployable for any job existing in a competitive labor market, and that will be any full time or part time work.

>> MR. MAZIE: Why is that? Why can't Linda work in a full time or part time capacity?

>> Mr. PROVTER: Okay. Well, she is in severe pain, she has urinary problems, she is depressed, her pain is unremitting, and it affects her ability to concentrate. It would affect her ability to - not only perform the job but also go to the job and concentrate while she was working on the job. So based on those factors, that's my opinion as a vocation expert and I've been doing this for - March will be 40 years, that she is unemployable for -- for any job in the competitive labor market.

>> MR. MAZIE: And by the way, do you - she's got chronic

pain. Do you have clients **[*36]** that have chronic pain, like Linda?

>> THE WITNESS: Yes, about - I'd say about ten percent of my clients that I see in my practice have chronic pain.

>> MR. MAZIE: Okay. Somewhat to the types of problem she has?

>> Mr. PROVTER: Yes, I have individuals and I'm separating people that I see that have back injuries and neck injuries and they have pain. But I have probably about ten percent of my people that I see have what we call "chronic pain syndrome" or what it used to be called a "reflex sympathetic dystrophy", all people with unremitting constant pain.

>> MR. MAZIE: Okay. I'm sorry I - I interrupt, did you have something else?

>> Mr. PROVTER: No, that's it.

>> MR. MAZIE: Okay. All right. So based upon all of that, it's your opinion that she cannot work in a part time or full time or any job?

>> Mr. PROVTER: That's my opinion. Yes, sir.

>> MR. MAZIE: Okay, no further questions.

>> THE JUDGE: Cross examination?

>> MS. CRAWFORD: Good Morning, Mr. Provter.

>> Mr. PROVTER: Good Morning. **[*37]**

>> MS. CRAWFORD: Quite a couple of follow-ups with you based upon some of the chart and information that you testified about with Mr. Mazie. You were hired by the Mazie Law Firm to do a life care plan for Mrs. Gross, correct?

>> Mr. PROVTER: Yes, ma'am.

>> MS. CRAWFORD: Okay. And when you performed your plan, you were not concerned with the causation of any of her current injuries.

>> Mr. PROVTER: That's true.

981:
982: >> MS. CRAWFORD: You were focused solely on what you
983: believe she needs today and may need in the future.
984:
985: >> Mr. PROVTER: That's absolutely correct.
986:
987: >> MS. CRAWFORD: Okay. And it didn't matter to you, for
988: example, in doing your assessment, what type of pre-existing
989: medical conditions Ms. Gross may have had before she had
990: surgery with Prolift.
991:
992: >> Mr. PROVTER: That's true.
993:
994: >> MS. CRAWFORD: Okay. And your role was to assess
995: specifically the extent to which her claimed disabilities
996: demonstrate a need for either medical care or some other
997: type of therapeutic modality, correct?
998:
999: >> Mr. PROVTER: **[*38]** Yes, ma'am.
1000:
1001: >> MS. CRAWFORD: Okay. And as you stated on your direct
1002: examination, you did not see Ms. Gross in person.
1003:
1004: >> Mr. PROVTER: Correct.
1005:
1006: >> MS. CRAWFORD: And that is not something that's the
1007: usually way that you assess people while you're doing a
1008: vocation assessment or a life care assessment?
1009:
1010: >> Mr. PROVTER: That's true.
1011:
1012: >> MS. CRAWFORD: And you have Skype you said, you
1013: sometimes use?
1014:
1015: >> Mr. PROVTER: I do.
1016:
1017: >> MS. CRAWFORD: And that is, for the jury it is - it's
1018: watching somebody --
1019:
1020: >> Mr. PROVTER: Video Conferencing.
1021:
1022: >> MS. CRAWFORD: -- video conference, and you didn't used

that with Mrs. Gross?

>> Mr. PROVTER: I did not.

>> MS. CRAWFORD: Okay, so you just listen to her on the telephone.

>> Mr. PROVTER: Yes, ma'am.

>> MS. CRAWFORD: And so, you didn't do any type of testing that you normally do when you do a vocational type of assessment.

>> Mr. PROVTER: I wouldn't - I didn't do any testing but I would normally do testing **[*39]** on somebody who has a lot of skills like Ms. Gross as -- as a nurse.

>> MS. CRAWFORD: Okay, but you - you do - do that in your practice and you didn't do it in this instance?

>> Mr. PROVTER: I wouldn't of - if she came to me at my practice in New Jersey, I wouldn't have done any testing on her anyway because she has a merit of skills.

>> MS. CRAWFORD: Okay. But you -- you -- you did not do anything observationally or vasional -- visually with her or when you assessed her for this report?

>> Mr. PROVTER: That's true.

>> MS. CRAWFORD: Okay. And she didn't tell you anything specifically about her pre- existing condition?

>> Mr. PROVTER: She did not.

>> MS. CRAWFORD: Okay. So didn't tell you that she had pre-existing high blood pressure, for example?

>> Mr. PROVTER: She did not.

>> MS. CRAWFORD: Okay, or pre-existing high cholesterol?

>> Mr. PROVTER: She did not.

>> MS. CRAWFORD: Or prior surgeries?

>> Mr. PROVTER: She did not.

>> MS. CRAWFORD: Or anything **[*40]** of that nature?

>> Mr. PROVTER: No, ma'am.

>> MS. CRAWFORD: And she hadn't told you that she have had recommendations in the past for treatment of chronic pain?

>> Mr. PROVTER: She did not.

>> MS. CRAWFORD: Okay. And she didn't tell you that she had a family history of things like flushing. Even before she had surgery with prolapse -- Prolift?

>> Mr. PROVTER: She did not.

>> MS. CRAWFORD: Okay. And for all of the information that you based to your report on, you basically took it from your conversation with Ms. Gross and a review of some of the medical records.

>> Mr. PROVTER: Well, I think I reviewed a lot of medical records but those with the - where I got them by the information.

>> MS. CRAWFORD: But --

>> THE WITNESS: My interview with her and the records.

>> MS. CRAWFORD: And when you reviewed the medical records, you did not do a reconciliation to compare what Ms. Gross reported to you about the frequency of her doctor's visits, for example, with what the **[*41]** medical records actually said historically.

>> Mr. PROVTER: No, I did not.

>> THE JUDGE: We'll take a short break.

(Whereupon, a short break was taken.)

>> THE JUDGE: You could be seated.

>> MS. CRAWFORD: May we -- may we start?

>> THE JUDGE: Proceed, Counsel.

>> MS. CRAWFORD: Okay. Mr. Provter, I want to turn to some of the charts that you performed with your report. Do you have A1 available to you?

>> Mr. PROVTER: I do, ma'am

>> MS. CRAWFORD: Okay. That chart was when were you did some -- a cost assessments for evaluations, correct?

>> Mr. PROVTER: Yes, ma'am.

>> MS. CRAWFORD: And you assumed, for example, for the life care plan, that it would need to be done once every five years?

>> THE WITNESS: Yes. ma'am.

>> MS. CRAWFORD: All right. Each time that needed to be done, it would be $ 3,000?

>> Mr. PROVTER: Yes, ma'am.

>> MS. CRAWFORD: And you know that Mrs. Gross has been with the same providers generally for quite a long **[*42]** time, including Dr. Likness for over 30 years?

>> Mr. PROVTER: Yes, ma'am.

>> MS. CRAWFORD: And the physical therapist that she sees, Jackie Lake she has been seeing for six or seven years?

>> Mr. PROVTER: Yes, ma'am.

>> MS. CRAWFORD: And the counselor she sees, she has been seeing for many years as well?

>> Mr. PROVTER: Yes, ma'am.

>> MS. CRAWFORD: Okay. And so there's not a -- a likelihood in this case that there's going to be a switch of providers, correct?

>> Mr. PROVTER: We can't tell that.

>> MS. CRAWFORD: Okay. But you -- that type -- so it's possible that the jury may find that re-evaluating and spending $ 3,000 to re-assess the same circumstances every five years would be something that would not be realistic?

>> Mr. PROVTER: That's possible but it's the standard in the field to re-evaluate the person's care at a point in time and the point in time is once every five years.

>> MS. CRAWFORD: Okay. And they may find, even if they agree with you that re-evaluating **[*43]** at every five years at $ 3,000 might be an unrealistic cost, if for a circumstances had not significantly changed when they're doing that evaluation?

>> Mr. PROVTER: It's possible.

>> MS. CRAWFORD: Okay. And you also looked at PT evaluations, physical therapy evaluations --

>> THE WITNESS: Yes, ma'am.

>> MS. CRAWFORD: -- in this chart, correct?

>> Mr. PROVTER: Yes ma'am.

>> MS. CRAWFORD: And that is an evaluation that's done in addition to the physical therapy?

1191:
1192: >> Mr. PROVTER: Yes. This would be a period of time
1193: where the Therapist would evaluate the -- Ms. Gross to see
1194: if she needs more services, less services, and evaluate her
1195: current status.
1196:
1197: >> MS. CRAWFORD: And you've recommended that -- that
1198: happen about once a year?
1199:
1200: >> Mr. PROVTER: Once a year as the frequency.
1201:
1202: >> MS. CRAWFORD: Okay. And you did some of your own
1203: research to come up with the 110 and 400 dollar range of
1204: number, correct?
1205:
1206: >> Mr. PROVTER: Yes, ma'am.
1207:
1208: >> MS. CRAWFORD: You did **[*44]** not go and take the number out
1209: of her actual billing records for the physical therapy that
1210: she has been having over the last couple of years.
1211:
1212: >> Mr. PROVTER: That's true.
1213:
1214: >> MS. CRAWFORD: Okay. And if the billing records are
1215: whether reflects that she has on average paid $ 160 for a
1216: physical therapy sessions, the jury might find that to be
1217: more realistic than the range that you have included in
1218: your plan.
1219:
1220: >> Mr. PROVTER: I'm not sure what she's paying $ 160 for
1221: advance of the cost of her sessions, then when we go to the
1222: next chart, her cost of services are going to be greater,
1223: almost at the top of the range that I've researched.
1224:
1225: >> MS. CRAWFORD: Okay, we'll get to that point.
1226:
1227: >> Mr. PROVTER: Okay.
1228:
1229: >> MS. CRAWFORD: In the end, but do you need to see the
1230: records or would -- do you -- would you see the --
1231:
1232: >> Mr. PROVTER: No, I'll take your word for it.

>> MS. CRAWFORD: Okay. And so the annual cost on this chart, the jury might find at the end might be a little bit less than what you have, correct? **[*45]**

>> Mr. PROVTER: Possible.

>> MS. CRAWFORD: Okay. And you also did chart A2, that is therapeutic mortalities?

>> Mr. PROVTER: Yes, ma'am.

>> MS. CRAWFORD: Okay. And you included not a case manager rehabilitation counselor?

>> Mr. PROVTER: Yes, ma'am.

>> MS. CRAWFORD: And that is somebody who is post to INAUDIBLE I think you said with the providers?

>> Mr. PROVTER: May INAUDIBLE.

>> MS. CRAWFORD: Okay. And you indicated that you agreed that Ms. Gross is a nurse --

>> THE WITNESS: Yes.

>> MS. CRAWFORD: -- and she is well educated and she has been managing her own medical care today..

>> Mr. PROVTER: I don't know whether she's been managing her own medical care but she certainly has a basic knowledge of -- from her nursing background to do some case management.

>> MS. CRAWFORD: And then the jury might find that the need for somebody else to interact and release between her and her health care providers that's something that might not be realistic **[*46]** in this case?

>> Mr. PROVTER: Possible.

>> MS. CRAWFORD: Okay. And so that might be a figure where the jury might decide that it's a zero instead of the range of numbers that you have provided.

>> Mr. PROVTER: That's up to the jury.

>> MS. CRAWFORD: Okay.

>> Mr. PROVTER: These are my recommendations.

>> MS. CRAWFORD: And you also looked at physical therapy?

>> Mr. PROVTER: Yes, ma'am.

>> MS. CRAWFORD: Correct? And you have recommended that -- that to be done three times a week.

>> Mr. PROVTER: Yes, ma'am.

>> MS. CRAWFORD: And that is based upon your discussing the therapy sessions that Ms. Gross has had?

>> Mr. PROVTER: Yes, ma'am.

>> MS. CRAWFORD: And you did not go back and look at her medical records to a certain how many times in the past six years per week she hasn't back on physical therapy.

>> Mr. PROVTER: Correct.

>> MS. CRAWFORD: Okay. And so if the records suggested that it was closer to once every other week or once a week,

[*47] it might not be realistic to provide an allocation for three times of week -- a week of physical therapy.

>> Mr. PROVTER: Not necessarily, for treating doctor reviewed my life care plan, testified in court, I believed several weeks ago. And he felt the life care plan was reasonable and necessary.

>> MS. CRAWFORD: Okay. I -- I understand that's your position that over six years historically and Ms. Gross

has not gone physical therapy more than once a week or once every other week. In fact, is what the records are reflect the jury may find that she is not likely to go three times a week in the future.

>> Mr. PROVTER: Well, that could be, but I have it for a limited period of time of two years so you're talking about several hundred sessions of physical therapy over her life time if your going to use that methodology.

>> MS. CRAWFORD: Okay. And would you agree with me that - that might be something that the jury does not think is a reasonable realistic going forward assessment that she would be going three times a week?

[*48]

>> Mr. PROVTER: That's a conclusion that they can make.

>> MS. CRAWFORD: Right. And then they might that there's numbers should be reduced?

>> Mr. PROVTER: Possible.

>> MS. CRAWFORD: Okay. And you also did an assessment of her providers, correct? That's your chart A3?

>> Mr. PROVTER: Yes.

>> MS. CRAWFORD: For her medical care providers?

>> Mr. PROVTER: Yes, ma'am.

>> MS. CRAWFORD: Okay. And if we take a look at that chart, and Jamie, that would be ten, sorry. These are a range of numbers, correct?

>> Mr. PROVTER: Yes, ma'am.

>> MS. CRAWFORD: And somebody who is looking at this might decide rather than use the higher end of the range or the lower end of the range the medium of $ 95 of the actual on going treatment of 40 to 150 would be a more reasonable number, correct?

>> Mr. PROVTER: I'm not sure I understand your question.

>> MS. CRAWFORD: The question is that the cost, the jury could very well find that $ 95 which is a mid range between

the on going treatment **[*49]** - let's back up. Your initial assessment on the top is 125 to 300, right?

>> Mr. PROVTER: Yes, ma'am.

>> MS. CRAWFORD: And that's the cost that happens the first time you see a doctor?

>> Mr. PROVTER: It's called "initial" but because most of the clients that I see or evaluees that I see have such a bad conditions. Their conditions are severe or catastrophic, sometimes they need the initial evaluation represents their usual evaluation because it takes that much more time to care for them and to treat them, so that's why I include it in the entire range.

>> MS. CRAWFORD: Okay. And this is a range based upon things that you ran out and assessed in the geographic area?

>> Mr. PROVTER: Yes, ma'am.

>> MS. CRAWFORD: But it's not based upon what she - her actual providers have been billing her over the past couple of years for these type of assessments.

>> Mr. PROVTER: I already indicated -- well, first, she had not seen a psychiatrist, so I didn't have any provider

to compare this figure too. And **[*50]** I did not review -- As I've testified already, I did not review the actual -- up until recently, review the actual bills from each of these providers.

>> MS. CRAWFORD: Okay. The services similar to these have been provided by Dr. Likness, for example, and Dr. Retterath, for example. And they have --

>> Mr. PROVTER: Well, Retterath would be the pain

management doctor and we have a - we have range for him
or for that particular specialist.

>> MS. CRAWFORD: Okay. So, let's look at Dr. Likness, for example, that's the next one on the chart. You did your own research and you got these information from calling his office?

>> Mr. PROVTER: Yes.

>> MS. CRAWFORD: But you didn't get the numbers from her actual billing records?

>> Mr. PROVTER: True.

>> MS. CRAWFORD: So if the billing records indicated that the weekly visits or the once every 18-year visit are actually have a specific value, the jury could use those figure instead of the range that you've provided in your chart, correct?

[*51]

>> Mr. PROVTER: Well, first it's, I think you've misspoken, it's 18 visits a year, okay.

>> MS. CRAWFORD: I'm sorry.

>> Mr. PROVTER: And these are the range of cost for these providers in her geographical area.

>> MS. CRAWFORD: Right. And my question to you is if Dr. Likness' records indicate that for a visit, he charges $ 74 then that would be a more realistic dollar figure to you because that's what she's actually seen?

>> Mr. PROVTER: That would be one point on the continual, yes.

>> MS. CRAWFORD: Okay. And for OBGYN, you have some numbers in there and, again, you got those from doing a range in the area?

>> Mr. PROVTER: Yes.

>> MS. CRAWFORD: And the numbers did not come from for example, Dr. Trebucko's billing records who is the OBGYN she's currently seeing.

>> Mr. PROVTER: True.

>> MS. CRAWFORD: Okay. And if you actually look at the information that you did in your research for Dr. Trebucko, the average that he had in your back up document sheet was about $ **[*52]** 223 per visit.

>> Mr. PROVTER: Okay.

>> MS. CRAWFORD: And that would be something that would be realistic because that's in fact the treater she's actually seen.

>> Mr. PROVTER: Yes. And that would put - put her pretty much into the range, mid- range of what I have down there.

>> MS. CRAWFORD: Right. And that's exactly the point I'm trying to make in. And for pain management, Dr. Retterath, for example, Dr. Likness has been doing some of that pain management treatment for her over the past, correct?

>> Mr. PROVTER: Yes.

>> MS. CRAWFORD: Okay. And so the jury might find that having a separate pain management specialist above and beyond the treatment that she's already receiving is something that wouldn't be realistic.

>> Mr. PROVTER: I'm sorry, I lost you. Could you just --

>> MS. CRAWFORD: If your already getting pain management treatment from Dr. Likness in terms of nerve blocks and things of that nature, they may find that the cause when addition of specialist add an additional charge **[*53]** is something that's not realistic?

>> Mr. PROVTER: That's possible but this is a chronic

pain patient and should be seen by a pain management
specialist, not a family practitioner.

>> MS. CRAWFORD: Okay. And were going to cross over the
pain management clinic as a one time expense that you've
understand she's schedule to have in month, correct?

>> Mr. PROVTER: Yes, ma'am.

>> MS. CRAWFORD: Okay. Let's skip over medications for a
moment and go to your A5 chart. This is of expense that you
have suggested would be necessary for nerve blocks?

>> Mr. PROVTER: Yes, ma'am.

>> MS. CRAWFORD: Okay. And you obtained the information
for the cost from calling Dr. Retterath's office.

>> THE WITNESS: Yes.

>> MS. CRAWFORD: And Dr. Retterath is the doctor who has
been giving her pain treatments in the past?

>> Mr. PROVTER: Yes, ma'am.

>> MS. CRAWFORD: And when you called, did you confirm
with Dr. Retterath that his current plan would be to

performed three to six injections annually for **[*54]** Ms. Gross?

>> Mr. PROVTER: No.

>> MS. CRAWFORD: Okay. And did you compare the informa -
- I think you've said in your back up data, you spoke with
somebody from her - the office, who gave you the range?

>> Mr. PROVTER: Yes.

>> MS. CRAWFORD: Did you - and you didn't compare that
range with the actual cost of the injections that Dr.
Retterath had charged Ms. Gross historically?

>> Mr. PROVTER: No, ma'am.

1529:
1530: >> MS. CRAWFORD: Okay. And if the billing records
1531: indicate that the range of costs has a specific figure that
1532: might be more realistic for the jury that utilize than the
1533: range that is not specifically attached to Mrs. Gross.
1534:
1535: >> Mr. PROVTER: It could be.
1536:
1537: >> MS. CRAWFORD: Okay. And if the billing records, for
1538: example, demonstrate a range of 650 to 1473 per injection.
1539: That would be something that will be reasonable cost if she
1540: were in fact to require injections going forward?
1541:
1542: >> Mr. PROVTER: Again, that would be up to the jury.
1543:
1544: >> MS. CRAWFORD: Okay. And you didn't review any of the
1545: **[*55]** testimony from Dr. Retterath, in this case, about whether
1546: or not he thought injections would be a good thing on a
1547: going forward basis?
1548:
1549: >> Mr. PROVTER: I did not.
1550:
1551: >> MS. CRAWFORD: Okay. Let's turn to -- I'm going to
1552: skip your charts, A6, 7 and 8 which are your bowel/bladder
1553: supplies, independent living and her buttocks and go to the
1554: life care plan and home care. Your assumption for this
1555: chart is that -- not 16 Jamie, Ms. Gross would require a
1556: four hours a day of home care services every single day?
1557:
1558: >> Mr. PROVTER: Yes, ma'am.
1559:
1560: >> MS. CRAWFORD: Okay. And that's based upon her letting
1561: you know that her husband and her children are spending
1562: four hours a day doing things that she says that she used
1563: to do?
1564:
1565: >> Mr. PROVTER: Yes, ma'am.
1566:
1567: >> MS. CRAWFORD: Okay. And did she in fact tell you when
1568: she was working full-time as a nurse, that she was spending
1569: four hours a day doing her home care services?
1570:

>> Mr. PROVTER: I didn't take any of such history.

>> MS. CRAWFORD: Okay. And the jury may find that it

[*56] wouldn't be realistic that if you're replacing something that she used to do, if she didn't actually do that in the past that might not be a realistic cost to assess?

>> Mr. PROVTER: That's possible.

>> MS. CRAWFORD: Okay. And so, for example, they may find that 12 or 16 hours a week rather than of full 28 would be a more reasonable health assessment.

>> Mr. PROVTER: That would be up to the jury.

>> MS. CRAWFORD: Okay. And if in fact they did that the numbers would be significantly less, correct?

>> Mr. PROVTER: Well, you have a zero, I'm not sure if zero is the figure. How about --

>> MS. CRAWFORD: Well, they may find that it's not reasonable to have somebody coming along because she testified that she's able to do something, is that possible?

>> Mr. PROVTER: Well, you have 12 to 16 hours that would give you a different total than zero, so I'm -- I understand what you're saying, I just don't understand the chart.

>> MS. CRAWFORD: If you had 16 hours a week, it would be

approximately **[*57]** 16,000 instead of the 33,000 that you have in your chart?

>> Mr. PROVTER: That's fine.

>> MS. CRAWFORD: And if you're doing that every year for the rest of Ms. Gross' life, that would be a very significant difference in dollars?

>> Mr. PROVTER: If that's all she needed, that will be

1613: correct.
1614:
1615: >> MS. CRAWFORD: Okay. And then Mr. Mazie asked you some
1616: questions about assessing pain going forward or abilities
1617: going down forward, you would agree with me that as
1618: everybody ages regardless of whether they are in chronic
1619: pain or not, they do less and have less activities
1620: sometimes as they get older?
1621:
1622: >> Mr. PROVTER: Yes. But people that have chronic pain
1623: and they aged it becomes more significant and in fact --
1624: impacts they're ability to function greater. they just
1625: aging.
1626:
1627: >> MS. CRAWFORD: Okay. But it's still would be
1628: reasonable that it might not necessary to have 28 full
1629: hours a week of home care services and the jury might think
1630: that's excessive.
1631:
1632: >> Mr. PROVTER: I'm not sure I understand your **[*58]** question,
1633: I'm sorry.
1634:
1635: >> MS. CRAWFORD: All right. We'll then move on, let's go
1636: on to your medication's chart of pure review which is A4.
1637: And we'll go based on one of these relatively speculate.
1638: These are all medications that Ms. Gross told you that she
1639: was taking and you did some independent research to
1640: ascertain what the costs would be based upon how frequently
1641: she uses these medications, correct?
1642:
1643: >> Mr. PROVTER: Yes, ma'am.
1644:
1645: >> MS. CRAWFORD: And you mentioned several times that --
1646: this morning that you've tried to be conservative in the
1647: numbers that you've put in your life care plan report.
1648:
1649: >> Mr. PROVTER: Yes.
1650:
1651: >> MS. CRAWFORD: So if in fact these medications that
1652: you have scanned for cost could be found some place for
1653: less money then that would be a more conservative approach,
1654: correct?

1655:
1656: >> Mr. PROVTER: Sure
1657:
1658: >> MS. CRAWFORD: And the jury might find that if in fact
1659: there are locations where you could get those medications
1660: less expensively will be more realistic to use the less
1661: expensive? **[*59]**
1662:
1663: >> Mr. PROVTER: As long as the less expensive situation
1664: or place was you know they were going to be in business
1665: until she needs those services and for the rest of her
1666: life.
1667:
1668: >> MS. CRAWFORD: Okay. Well, fair enough. Let's take a
1669: look at the -- the Anbien, for example, this is a
1670: medication that she indicated that she was taking?
1671:
1672: >> Mr. PROVTER: Yes.
1673:
1674: >> MS. CRAWFORD: And you allocated in your report for
1675: that to be taken on a daily basis?
1676:
1677: >> Mr. PROVTER: Yes.
1678:
1679: >> MS. CRAWFORD: And did you read her deposition
1680: testimony where she indicated that she does not take that
1681: medication on a daily basis?
1682:
1683: >> Mr. PROVTER: I don't recall.
1684:
1685: >> MS. CRAWFORD: Okay. She indicated that she takes it
1686: possibly four times a week. Would you dispute that if
1687: that's what her des -- deposition --
1688:
1689: >> Mr. PROVTER: Again, I don't recall.
1690:
1691: >> MS. CRAWFORD: And then, not to be that worse, but if
1692: you're not taking it everyday, that will be fewer pills
1693: you need every year, correct?
1694:
1695: >> Mr. **[*60]** PROVTER: That will be correct.
1696:

>> MS. CRAWFORD: All right, and if you could get those pills out of place like healthworkhouse.com, which is -- Jaime, 22.75. And that was in business and available and you could get --

>> MR. MAZIE: Objection, Judge. INAUDIBLE in this case.

>> MS. CRAWFORD: Let me approach?

>> THE JUDGE: NAUDIBLE.

(Whereupon, a short break was taken.)

>> MS. CRAWFORD: I think we are on slide A. The Medication Slide. Are you familiar with the generics brands of Ambien?

>> Mr. PROVTER: Yes.

>> MS. CRAWFORD: Okay. And you haven't seen anything in medical records or been told any contrary in this case that the generics would not be sufficient substitute for Ms. Gross?

>> Mr. PROVTER: That will be up to the doctor prescribing the medication, not me.

>> MS. CRAWFORD: Okay. And if so in fact generics such as the generics for Ambien were available on a website like when we looked at previously for -- less money then it would be a fair and conservative **[*61]** approach to try and obtain those medications at a less expensive cost, correct?

>> Mr. PROVTER: That would be one way, yes.

>> MS. CRAWFORD: Okay. And if we could just flip through those quickly so, for example, if you could get it for $ 70 rather than your numbers and if we move down to stool softeners, for example, Colace is a stool softener?

>> Mr. PROVTER: Yes.

>> MS. CRAWFORD: If there's an equivalent of generic available and the doctor hasn't indicated that the brand name is required but is generally less expensive, correct?

>> Mr. PROVTER: That would be a generalization, yes.

>> MS. CRAWFORD: Okay, and so, for example Tylenol is on your list.

>> Mr. PROVTER: Yes.

>> MS. CRAWFORD: And acetaminophen is the general generic brand for Tylenol?

>> Mr. PROVTER: Yes.

>> MS. CRAWFORD: And you could obtain that in lots of places that might be less expensive, correct?

>> Mr. PROVTER: Less expensive that five dollars a month?

>> MS. CRAWFORD: Yeah --

[*62] >> Mr. PROVTER: That's pretty inexpensive.

>> MS. CRAWFORD: But you could.

>> Mr. PROVTER: If you say so, I -- I don't know.

>> MS. CRAWFORD: And some of these medications, for example, you take Tylenol, Ms. Gross had a history of headaches even before she had issues relating to this case, correct?

>> Mr. PROVTER: That's what my understanding, yes.

>> MS. CRAWFORD: And in fact you had previously had some medications in you report that she have been taking such as blood pressure and anti-acids that you removed from your report recently because she did have those conditions before hand.

1781:
1782: >> Mr. PROVTER: Yes ma'am.
1783:
1784: >> MS. CRAWFORD: Okay, so those were taken out because
1785: there's an acknowledgement that there are certain things
1786: that she may require going forward but have nothing to do
1787: with this case?
1788:
1789: >> Mr. PROVTER: True.
1790:
1791: >> MS. CRAWFORD: Okay. And if we can just flip through to
1792: the end, Jaime, the last slide, so the point on making
1793: simply for the jury is that if you were able to get
1794: **[*63]** medications on line for prices that will less expensive and
1795: generic brands, then the numbers would change significantly
1796: in that report?
1797:
1798: >> Mr. PROVTER: I -- I would -- I agree with that.
1799:
1800: >> MS. CRAWFORD: Okay. And before we move on I just
1801: wanna look at a couple of things on - on here. You have at
1802: the bottom Levaquin and Diflucan?
1803:
1804: >> Mr. PROVTER: Yes.
1805:
1806: >> MS. CRAWFORD: Levaquin is an antibiotic?
1807:
1808: >> Mr. PROVTER: Yes.
1809:
1810: >> MS. CRAWFORD: And the assumption in your report is
1811: that Ms. Gross is going to be taking that medication every
1812: single day?
1813:
1814: >> Mr. PROVTER: That was my assumption.
1815:
1816: >> MS. CRAWFORD: Okay, and what is the condition that
1817: Levaquin is addressing?
1818:
1819: >> Mr. PROVTER: Well, she has an infections.
1820:
1821: >> MS. CRAWFORD: Urinary Track Infection?
1822:

>> Mr. PROVTER: Yes.

>> MS. CRAWFORD: Okay, and it's to your understanding that she needs to take that medication every single day for the rest of her life INAUDIBLE?

>> Mr. PROVTER: Yes, that was my impression. **[*64]**

>> MS. CRAWFORD: Okay. And if in fact that's not the case since she only has them periodically, if you recall is less cost less need?

>> Mr. PROVTER: True.

>> MS. CRAWFORD: During the course -- and the same thing with Diflucan, what is that used to treat?

>> Mr. PROVTER: That's a -- another infections.

>> MS. CRAWFORD: Okay, used in infection, antimicrobial?

>> Mr. PROVTER: Yes.

>> MS. CRAWFORD: All right. And it said the assumption in your report that will be taking that every single day?

>> Mr. PROVTER: Yes.

>> MS. CRAWFORD: All right. And if in fact that's only a periodic medication then those costs will be significantly less, correct?

>> Mr. PROVTER: True.

>> MS. CRAWFORD: Okay. All right. And just to wrap up on the medications, the assumption for this plan is that each one of these is going to be taken as des -- prescribed every year for the rest of Ms. Gross' life, correct?

>> Mr. PROVTER: True.

>> MS. CRAWFORD: And -- your understanding **[*65]** is that there

will be testimony later that will indicate what that would
cost over the course of her lifetime?

>> Mr. PROVTER: True.

>> MS. CRAWFORD: So if the input going into that
analysis is significantly less than what's in your report
then the output of that future analysis will be less as
well, would you agree with me?

>> Mr. PROVTER: Yes.

>> MS. CRAWFORD: Okay. And just to conclude to be clear,
in your report in your roll on this case, you were asked to
look at a global picture of what you believe Ms. Gross'
needs are, right?

>> Mr. PROVTER: Her specific needs.

>> MS. CRAWFORD: Her specific needs now and going in to
the future?

>> Mr. PROVTER: Yes.

>> MS. CRAWFORD: And you are not providing the jury with
any opinions at all whatsoever that any single one of these
items that's in your life care report is cost via require
by some actions of the defendants?

>> Mr. PROVTER: Well, I'm not a causality witness.

>> MS. CRAWFORD: Right. That's not your roll that's

[*66] nothing back what's in your report?

>> Mr. PROVTER: True.

>> MS. CRAWFORD: Okay. And -- and just to wrap up a
little bit about your backgrounds. Mr. Provter, I think
you indicated that you had done some work visit towards
your PhD but you didn't actually obtained the degree, is
that correct?

>> Mr. PROVTER: I completed the course work but not the dissertation.

>> MS. CRAWFORD: Okay, so it's -- it's, I haven't been mistaken in calling you Mr. Provter instead of doctor?

>> Mr. PROVTER: You've been absolutely correct.

>> MS. CRAWFORD: Okay. Thank you, I don't have any other questions, thank you.

>> THE JUDGE: Any follow up questions?

>> MR. MAZIE: Yes I have, INAUDIBLE. This is your slide, you were asked a bunch of questions about whether Linda Gross go in the Internet and shop for medications to save Ethicon money. Remember those questions?

>> Mr. PROVTER: Yes.

>> MR. MAZIE: Okay. When you prepared your life care plan, it -- was it your goal to save Ethicon money or was **[*67]** it your goal to just have fair price on what the range of this prices are?

>> Mr. PROVTER: My goal is to provide the range of prices, and in order to provide the range as you can see it from the bottom part of my -- this exhibit, I included pharmacies that actually where in her geographical area because it's been my experience that some individuals don't like to shop over the Internet. They like to go to the local INAUDIBLE place drugstore and buy their med -- and get their medications. So I included actual INAUDIBLE prices, as well as, prices in the Internet.

>> MR. MAZIE: At the end of the day, did you seen Mr. -- Dr. Tinari report in this case in the your hands?

>> Mr. PROVTER: Oh, yes I did, rihgt.

>> MR. MAZIE: Okay. He didn't take the high numbers, did he?

1949:
1950: >> Mr. PROVTER: No.
1951:
1952: >> MR. MAZIE: He took a middle range, did he not?
1953:
1954: >> Mr. PROVTER: Yes.
1955:
1956: >> MR. MAZIE: What was the purpose of doing the low to
1957: the high?
1958:
1959: >> Mr. PROVTER: Well, the purpose of going to that low to
1960: **[*68]** the high is to do a survey for each of the items, to see
1961: what the cost are because we don't know if the low vendor
1962: is going to be in business when Ms. Gross needs that
1963: service or whether the high cost vendor is going to be in
1964: business if she need that service. So the middle point
1965: really reflects the cost. And that's what Dr. Tinari did.
1966:
1967: >> MR. MAZIE: Okay. And so at the end of the day it's
1968: not your -- it was not your goal to go out and have Linda
1969: for the rest of her life, shop for the cheapest drugs,
1970: cheapest medical supplies, cheapest physicians was it?
1971:
1972: >> Mr. PROVTER: No.
1973:
1974: >> MR. MAZIE: What was your goal?
1975:
1976: >> Mr. PROVTER: My goal was to provide to -- in a
1977: document what her cost will going to be due to her various
1978: conditions. And the cost of those items in her
1979: geographical area.
1980:
1981: >> MR. MAZIE: And with the range is from low to high?
1982:
1983: >> Mr. PROVTER: Correct.
1984:
1985: >> MR. MAZIE: And in mid-point was then taken by Dr.
1986: Tinari?
1987:
1988: >> Mr. PROVTER: Yes, sir.
1989:
1990: >> MR. MAZIE: And then for the jury's **[*69]** evaluation?

>> Mr. PROVTER: Yes, sir.

>> MR. MAZIE: Okay. And then finally with regards to the home care you were asked questions about the -- whether or not Linda needed the four hours in a few years right after the Prolift surgery?

>> Mr. PROVTER: Yes, sir.

>> MR. MAZIE: Okay. When you prepare your life care plan on the home care services, did you look at those to yours - - did you look at where Linda has been or Linda is going to be over the next 35 years of her life?

>> Mr. PROVTER: No. My role is to see what services she requires now and into the future for the rest of her life.

>> MR. MAZIE: Okay. And you were asked about the fact that people, whether or not people age and if -- just because she ages, that doesn't mean that she needs the home care services, right?

>> Mr. PROVTER: That's correct.

>> MR. MAZIE: Okay. And I think you got the answer, I don't think you explained your answer. If somebody has chronic pain and you say that ten percent of your people that you deal with, **[*70]** have chronic pain and as they aged, how does someone with chronic pain has had affect their aging and their needs?

>> Mr. PROVTER: Well, their ability -- their aging becomes much more frequent and their ability to do things becomes -- begins to deteriorate, quicker than the average aging individual.

>> MR. MAZIE: Okay. So the jury obviously is free accept or reject your recommendation of four hours, correct?

>> Mr. PROVTER: Yes.

>> MR. MAZIE: And if they felt that it was appropriate at some age they could actually increase that to eight hours or more, correct?

>> Mr. PROVTER: Yes, sir.

>> MR. MAZIE: That will be completely within their discretion

>> Mr. PROVTER: Yes, sir.

>> MR. MAZIE: Okay. No further questions.

>> THE JUDGE: Eunice.

>> MS. CRAWFORD: I don't have anymore question.

>> THE JUDGE: Okay. All right. You can step down, if the jury can go out for a minute, if they have any questions, they can write them down.

>> SPEAKER 2: All right. **[*71]**

(Whereupon, a short break was taken.)

>> THE JUDGE: Okay, You can be seated. There was a question from one juror about the -- the role of insurance in playing, covering cost, that's a matter of law that I'll explain to you at the end of the case. So when I give you the instructions at the end of the case, I'll explain it to you how that play into any decision you would make. All right, so at this point we will proceed with your next witness.

>> MR. MAZIE: Thank you, your Honor. At this point, plaintiff's called Dr. Frank Tinari.

>> COURT SECRETARY: Do you solemnly swear that the testimony you about to give to this court to be the truth, the whole truth and nothing but the truth?

>> DR. TINARI: So help me God, I do.

2076: >> COURT SECRETARY: Will you state your full name, spell
2077: you name for the record.
2078:
2079: >> DR. TINARI: Thank you, my name is Frank, middle
2080: initial D, Tinari, T-I-N-A-R-I.
2081:
2082: >> THE JUDGE: You can be seated.
2083:
2084: >> DR. TINARI: Thank you.
2085:

2086: >> THE JUDGE: You can proceed, **[*72]** Counsel.
2087:
2088: >> MR. MAZIE: Thank you, you Honor. Good morning, Dr.
2089: Tinari.
2090:
2091: >> DR. TINARI: Good morning.
2092:
2093: >> MR. MAZIE: And what do you do for a living?
2094:
2095: >> DR. TINARI: I'm an Economist. I've been an Economist
2096: to all my professional career. Basically, I have one, two
2097: hats. I've been a -- and continue to be a professor of
2098: Economics at INAUDIBLE University. I was actively teaching
2099: for 31 years on a full time faculty. I am now professor on
2100: INAUDIBLE meaning retired from teaching but I still all

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