SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS : CIVIL TERM : PART 65

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LUIS ALMONTE,

Plaintiff,

-against-

PEARSON CAPITAL PARTNERS, LLC and CONGRESS BUILDERS, LLC,

Defendants.

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Index # 5382/13 **TRIAL**

360 Adams Street
Brooklyn, N.Y. 11201

July 2, 2018

B E F O R E :

HONORABLE KATHY KING,
Justice, and a jury.

(Appearances same as previously noted.)

VANESSA DEL VALLE
OFFICIAL COURT REPORTER

*** * * ***

THE COURT: Okay. We resolved the issue of the juror number five?

MR. VARGAS: Yes, Your Honor.

MR. VAN ETTEN: Yes, Your Honor.

THE COURT: Okay. Good. Good.

I don't know if Mr. Carr mentioned to you, but she called chambers at about 4 o'clock on Saturday. We just happened to be in chambers working.

MR. VARGAS: Wow. That's too bad for you.

(Whereupon, there was laughter in the courtroom.)

THE COURT: See what we spend our Saturdays around here.

(Whereupon, there was laughter in the courtroom.)

THE COURT: But I just found that to be interesting.

MR. VARGAS: She was injured she said or...

LAW SECRETARY: No. She indicated that both of her feet are swollen and she was having some severe pain walking and so forth. So she wanted, she scheduled her appointment with her doctor for tomorrow. And she said based on her doctor's recommendation, that will determine her availability for the remainder of the trial.

MR. VAN ETTEN: That would explain the constant moving of the feet that was annoying juror number three.

THE COURT: See that.

MR. VAN ETTEN: We thought that was juror number four. Poor woman.

THE COURT: Okay. So this as a continued trial of Luis Almonte versus Pearson Capital Partners, LLC, L and M Development Partners, Inc. and Congress Builders, LLC.

Want to just state your appearance, please.

MR. VARGAS: For the plaintiff, Chris Vargas for Gorayeb and Associates, 100 William Street, suite 19, New York.

MR. VAN ETTEN: Jeffrey Van Etten for the defendants, Perry, Van Etten, Rozanski and Primavera, 60 Broad Street, New York, New York, suite 3600 A. I am forgetting the zip. I keep always forgetting it.

THE COURT: Okay. And just to confirm, this morning we're taking the testimony of Dr. Kolb. This afternoon, Dr. Goldman.

MR. VARGAS: Correct, Your Honor.

THE COURT: Okay.

MR. VARGAS: Maybe we can fit plaintiff's cross somewhere in there. I don't know. The rest of plaintiff's cross. I don't know. We'll see.

THE COURT: Yeah. Because Mr. Van Etten had indicated he has about four hours of cross.

(Whereupon, there was laughter in the courtroom.)

THE COURT: Oh, that was -- okay.

MR. VARGAS: No. He probably does.

MR. VAN ETTEN: He said I had four hours of cross.

THE COURT: Okay.

MR. VAN ETTEN: He said I had four hours. I

don't know if I have four hours of cross.

MR. VARGAS: Three and a half.

THE COURT: Okay.

(Whereupon, there was laughter in the courtroom.)

COURT OFFICER: Ready, Judge?

THE COURT: Yes.

COURT OFFICER: All rise. Jurors entering.

(Whereupon, the jury entered the courtroom.)

COURT OFFICER: Okay. Please be seated. Come to order.

THE COURT: Please be seated.

Okay. Good morning, ladies and gentlemen.

THE JURY: Good morning.

THE COURT: Okay. We're going to begin this morning with continuation of plaintiff's case.

It's a little warm up here. We have been promised by maintenance that the air is going to get better as the morning progresses. So, we'll do our best. We are going to do our best to stay cool. If you need a break, just advise the Court. Okay.

That being said, Mr. Vargas.

MR. VARGAS: Thank you, Your Honor.

I recall Dr. Kolb to the stand.

D R. T H O M A S K O L B,

recalled as a witness, having been previously sworn by the clerk of the Court, resumed the witness stand and testified further as follows:

MR. VAN ETTEN: Sworn. Is my cross continuing?

THE COURT: Yes.

You're reminded that you are still under oath, doctor.

THE WITNESS: Yes, ma'am.

THE COURT: Okay.

MR. VAN ETTEN: Thank you, Your Honor.

THE COURT: Cross examination.

CROSS EXAMINATION (CONT'D)

BY MR. VAN ETTEN:

Q Thank you for coming back, Dr. Kolb. I wanted to follow up from where we left off a week from Friday.

Your principle specialty in radiology is with mammographies and breast screening, correct?

A Incorrect.

Q All of your publications say one, and all of your lectures are on breast cancer issues, correct?

A Yes. But your first statement was incorrect, but that is correct.

Q You're not a neuroradiologist, correct?

A That's correct.

Q You are not a member of the American Society of

Neuroradiology, correct?

A Correct.

Q And you don't have a subspecialty in neuroradiology, correct?

A Correct.

Q And neuroradiology is the medical subspecialty that deals with the diagnosis, treatment of brain, spinal cord, head and neck issues based on diagnostic testing, correct?

A Correct.

Q So is that why a week ago Friday when I asked you about extrusion, you didn't know what an extrusion is?

A I didn't use the term as a radiologist.

Been a radiologist for 25 years. Read hundreds of thousands of scans. I don't use that term. Not everybody uses that term. And that's why I asked you what you meant by that term.

Q I asked if you are familiar with the term. You didn't even know what the term was.

A No. I asked you to please define it for me.

Q I'm just a lawyer. You're the radiologist, right?

A So --

Q You have never used the term or heard --

A That's right.

Q You just said you never used the term.

You never heard the term extrusion in regards to

herniated discs?

A I heard the term. I have not heard a definitive definition of what it means. I don't use it precisely in my reports. I stick only to the terms herniation and bulge for exactly the reasons that I explained earlier.

I am happy to discuss extrusion. I just need to know exactly what you mean when you say it.

Q Are you familiar with the Spine Journal?

A No. I do not read the Spine Journal.

Q You familiar with North American Spine Society?

A I do not belong to the society.

Q You familiar with the American Society of Spine Radiology?

A I do know they exist. I do not belong to their society.

Q Do you belong to the American Society of Neuroradiology?

A No. I do not belong to that society.

Q So, when those types of organizations publish articles on the nomenclature used within neuroradiology, you don't follow up on their literature.

Would that be fair?

A No. I use the terms herniation and bulge because it's very straightforward and defined.

Again, if you -- anybody wants to use the term

extrusion, including neuroradiologists, as long as the term is defined so we all know exactly what we mean. I am happy to discuss it.

Q My question was to you last, a week ago Friday, was whether or not you saw any evidence of extrusion, okay?

A May I answer --

Q You did not know what the term extrusion was?

A I didn't say that. I asked to please define what you mean for extrusion for me to answer that question.

Q Well in the context that you have seen it in radiology, what is your understanding of what extrusion means?

A I don't use the word extrusion specifically for the reasons I just gave you. And I'm happy to discuss it if you tell me exactly what you mean by the word extrusion.

MR. VARGAS: Your Honor, we seem to be going in circles here.

MR. VAN ETTEN: Move off for a second.

THE COURT: Okay.

Q Have you ever used the term protrusion?

A I use the word protrusion only if it's a surgery that fixed the discs. Because since there's no ligament anymore, the surgeon has been in there, so a disc can push out or protrude beyond the margin. And again, a very specific definition beyond the margin of the bone. That's

the only instance that I use the word protrusion.

Q Your practice or in your knowledge, are you familiar with the classification of discs as protrusion and extrusion?

A I do not use that classification because it does not explain anything more than what I explain in my reports.

Q So, when you look at a disc and you're trying to determine, as you did in your opinion question on being causally related to trauma, you don't look at the type of disc involved?

A I look if there's a disc herniation and we put it together with the clinical information with the patient. We don't look only at the MRI and say exactly it happened at a certain date, at a certain time by only looking at the MRI.

Q Since you do not use the term extrusion or extruded disc, you would not agree that that can be an indicator of a traumatically arising herniation?

A I can't answer that question since I don't use that term.

Q Okay. Fair enough.

You also indicated that the herniations were permanent --

A Yes.

Q -- in Mr. Almonte, correct?

A Yes.

Q Isn't it true that not all herniations get worse?

A Not -- that is absolutely true. Not all herniations get worse. Yes.

Q Sometimes the herniations stay the same?

A Sometimes they stay the same.

Q Sometimes they even get smaller, correct?

A Well that only happens in rare, rare instances if the blood supply to the herniation is interrupted because of a trauma or because of whatever caused the herniation where it appears that way.

But my answer to your question when you asked me is it permanent, or someone asked if it's permanent, since the definition is a tear of the ligament and a disc pushing through the ligament, it is permanent. The ligament will not heal on its own.

Q Well let's go back to that terminology, ligament, that you used. Because it seemed to me when you told this jury a week ago Friday about ligaments, you were discussing ligament being, what was encasing the disc, is that correct, with your description?

A I talked about two ligaments. One surrounding the disc called the annulus, and one coming down the spine called the posterior longitudinal ligament.

Q Isn't it the fact the annulus is not a ligament, that's fibrocartilage?

A You can use that term. You don't have to call it a

ligament. That's fine. It is fibrocartilage.

Q But you called it a ligament, correct?

A I called it a structure that holds the disc in place.

Q I think you used the term ligament about 12 times in describing it.

A So, I do not -- as I said multiple times, I do not want to burden the jury with medical terms, but I am here to tell you there are two structures holds the disc in place. One goes around the disc and it's called the annulus.

If you don't want to call it a ligament, that's fine. Call it fibrocartilage. I'm okay with the second one called the posterior longitudinal ligament. That goes from the head, down the spine, the entire spine. Both ligaments are torn, both structures. Let's call them structures so we're not confused.

Both structures are torn in order for a disc herniation for the disc material to push through. So let's call them structures.

Q The PLL was not torn, though, was it?

A I don't know that. To me it was torn. I don't know that's how you can say that's true. The PLL, the posterior longitudinal ligament is torn because the disc material goes through it.

Q When you saw the follow-up films afterwards, and you

showed the films after the herniation had been removed, and you showed the ligament in alignment without any tears, did it --

A I did not show a ligament in alignment.

By definition, when the surgeon goes in and takes the disc out, the surgeon goes through the ligament. I am not sure where you get that there.

Q Definitionally, though, as I can say the word now, posterior longitudinal ligament, that's the only ligament in the spine, correct? (Indicating).

A That is the only ligament. The other one is called the annulus. So there are two structures.

Q When you use the description of ligament in describing annulus, that was improper medical terminology, correct?

A No. I think it was reasonable to talk to a jury about it. I think that I said that there was also structure that went around. We can read exactly what I said. I still hold to exactly what I said.

Q By the way, going back now again with the permanency issue with the herniations when we just talked about sometimes they stay the same, sometimes they get worse, sometimes smaller, though you said it was rare, but isn't that one of the reasons that surgeons wait to see what conservative care and treatment does before they operate?

A No. Surgeons wait because they operate on patients, not on MRIs. So if the patient needs surgery, they make that decision no matter what the MRI shows. And because the patient -- the doctor treats the patient, not the MRI.

Q And in this particular case, though, once you had the removal of the degenerated disc from L5-S1, there was no more herniation, correct?

A Right.

Q Okay. And, in fact, you looked at the films that were taken in 2016 and you showed a -- you saw a stable fusion without complication?

A That is correct.

Q And as it applied to the L4-L5 disc space above, there wasn't any segmental arthritis developing, correct?

A Not that I remember offhand. No.

Q That could be a potential problem after a surgery, correct?

A Yes. It could be. It could still happen. Yes. That's correct. You're correct.

Q And the March 31 MRI films showed, I believe you mentioned this, that the disc bulges and other herniations were unchanged, correct?

A Yes. I believe that is correct.

One second, please.

(Whereupon, there was a pause in the

proceedings.)

A In March 31, 2016 I believe that the bulge at L4-5 got larger. It's pushing on the neuroforamen as compared to 2013. Yes. So there is a change at L4-5 on 2016 after the surgery. Yes.

Q In which report of yours are you referring to?

A March 31, 2016 MRI of the lumbar spine.

(Whereupon, there was a pause in the proceedings.)

Q Your report on those films -- sorry. That's the CAT scan films. The wrong one.

(Whereupon, there was a pause in the proceedings.)

Q You saw disc bulge in the original films from March -- excuse me. Yes. March of 2013 at L4-L5, correct?

A Yes.

Q And your report on the 2016 films recorded disc bulge at L4-L5, correct?

A Pushing on the sac and narrowing the neuroforamen. Correct.

Q And the discs at L2-L3, L3-L4 you stated unchanged, correct?

A Correct.

Q L1-L2 unchanged?

A Correct.

Q No evidence of recurrent or residual disc herniation at L5-S1, correct?

A Correct.

Q And then the CAT scan, I think it's the CAT scan, where you comment on the CAT scans taken this same day that showed no evidence of the pseudoarthrosis, correct?

A Correct.

Q So at that point, and assume that Dr. Brisson testified that it was his belief that he had had a successful surgery, your review just of the reports would concur with that, correct?

A Yes.

Q Now, you also just indicated when you said you look at the films, you said you had to look at the patients as well?

A You asked me if the patient could delay surgery based on the MRI. And I had said the doctor, the surgeon, in conjunction with the patient, decides when to have surgery. Not based on the MRI.

Q No. I was talking about in the causally connection before. Sorry. Talking about the causation issue, not just looking at films.

You said you had to also take in the history of the patient, correct?

A Correct.

Q Okay. Now, when you make your reports and fill out your reports, you have no records about the history, correct?

A Yes. That's correct.

Q So in when --

A For the most part. Yes.

Q You are a radiologist looking at films. You are looking at the films to give you the picture, correct?

A You are looking at the films, see exactly what is wrong with the patient on the date you are looking at the films. In other words, the date that the films were taken. Yes.

Q And when you are causally connecting the trauma, you say all of the multiple herniations in the back would have been causally related, that was based on the assumed history that Mr. Vargas had given you, correct?

A Yes. That's given appropriate clinical correlation. That is correct.

Q That's based on what Mr. Vargas told you, not about your review of any records, correct?

A Yes. That's right. I did not review the records. Correct.

Q But for multiple herniations, all to have been traumatically induced, wouldn't you expect from the lower back upwards to the mid back where the lumbar vertebrae start that there would be some evidence of significant -- wouldn't

there have been required a significant amount of force for all of those levels to have been damaged?

A So first of all, just to clarify, there are two herniations. When you say all the herniations, I am not sure what you mean.

Q Herniations are the bulges you said --

A Hold on. You said herniations. With all the herniations, just to clarify, two herniations. As I see it. And there were bulges at other levels.

So, to answer -- now to answer your question, there could be a lot of trauma -- force to cause that, that there could be a little force that cause that. In other words, everyone is different. I can't quantify how much force it takes.

All you can say is that there are herniations on this date, and whether the patient did or did not complain of pain related to that herniations at a particular time. That's all you can really say.

Q You're going back to the history and the complaints of the patient, which you have no knowledge of.

My question is, to you, looking at the films, is there any evidence of any type of trauma seen in those films, soft tissue swelling, bleeds? Anything of that nature which would be symptomatic of trauma?

A No. There isn't. Typically wouldn't see that even

if there was a trauma. But in this particular case there wasn't.

Q And you also didn't see any fractures within the spine, correct?

A Correct.

Q And fractures would be evidence of trauma, correct?

A Correct.

Q And you saw no evidence of dislocation in the spine, which would also be evidence of trauma, correct?

A Correct.

Q Okay.

A Different word, but go ahead.

Q There is no fractures, dislocations to the bones. And you saw no evidence of any soft tissue damage in the spine other than the herniations and bulges, correct?

A Correct. That's typical. Yes. Absolutely.

Q Let's go back to that history now that you are talking about where you are gonna say that this trauma of March 5, 2013 caused these herniations.

And since you asked for history, are you aware that when Mr. Almonte went to the emergency room on March 5, 2013, he had no bruising, ecchymosis, laceration or any other soft tissue injuries to his back?

A Okay. I accept that.

Q That means no evidence of any trauma to the back

then, correct?

A Nothing visible from the outside.

Q Nothing visible from the outside.

And when he saw Dr. Grimm the 13th of March, there was no evidence of any bruising, ecchymosis, lacerations or other soft tissue injury to the back?

A Okay.

Q Are you aware of that?

A I will accept that if you're telling me that. Sure.

Q Now you are talking about a traumatic event that supposedly, per your opinion, caused herniations L5-S1 up to the L1. I think it's right around there (indicating), L2.

But you have no evidence of any injury to that area of the back, correct?

A Two things. First of all, again --

Q Is that correct?

MR. VARGAS: Objection.

Q Is that correct? Yes or no?

MR. VARGAS: Objection to the form. He has not testified there's herniations from L5 to S1.

Q If I said herniations again, I meant herniations and bulges. I apologize. I have said this before. Herniations and bulges. I am not trying to mischaracterize.

But you are saying in your causal relationship, the bulges and the herniations you said a week ago Friday, they

were caused by a traumatic event, but based that in part of the prior history, but the history from the day of the incident and the week after when initial medicals were involved showed no evidence of any physical trauma to the back from L5-S1, you have to L1-L2; is that correct?

A Right. I have no problem with your statement. That's exactly typically what happens with traumatic discs herniations. You don't have the findings that you are talking about. So I agree with you.

Q So don't you also have herniations that arise through degeneration as we discussed last week?

A You asked me that already. I agree with you there could be herniations from degeneration.

Q And you have no evidence from the actual films that you reviewed that showed recent trauma to the back?

A Right.

Q Correct?

A You have asked me that five times. I am agreeing with you. We need to have clinical correlation.

Q Everything on your opinion was based on the history given to you by Mr. Vargas?

A No. And the MRI films. It's not only on what was told to me by Mr. Vargas. You need both. I said this multiple times. You need both.

Q And if the history is inaccurate as to the lack of

any prior complaints of back injuries or symptomatic backs, then that opinion that you gave would not have foundation for it, correct?

A You are asking hypothetically if someone didn't tell me the truth?

Q Yes.

A Of course. Someone didn't tell me the truth, they didn't tell me the truth.

Q You never spoke to Mr. Almonte and asked him about any prior problems he may or may not have had with his back, correct?

A No.

Q Okay. So the films alone show us a person with degenerative, I guess they don't like to use disease anymore if I'm correct in the literature, but shows us a degenerative disc from L5-S1 actually all the way up to the cervical spine, correct?

That's what this film show?

A There are degenerative discs throughout the entire spine. I don't agree with that characterization. And there are degenerative changes concordant with this patient's age in the spine. I agree with that.

Q Okay. So that's what the films show you?

A No. They show me other things. Don't just show me. That's one thing the films show me.

Q Now, let's move quickly to the hip for a second.

You also told the jury that the labrum is what separates the femur and acetabulum. Hopefully I said it right. That's the cartilage you said between the two?

A The acetabulum. That is correct.

Q That's acetabulum. That's what you told me you said just like a knee, correct?

A Yes.

Q Isn't it true there is cartilage that surrounds the ball of the femur?

A Yes.

Q In that socket area?

A Yes. Just like the meniscus. Also same as the knee.

Q The labrum is actually an extra rim of fibrocartilage that encompasses about 270 degrees of that area?

A So I am going to answer your question. Just like the knee.

Q No.

The question was, isn't that what it is, it an extra rim is my question.

A It is. It is just like the knee.

Q Okay.

A Exactly.

Q And isn't it also true the majority of those tears in that extra rim are caused through degenerative changes?

A Unless you have a trauma to your hip. Of course.

Q So unless you have a trauma to your hip, you would agree with the statement that majority of the changes are degenerative?

A Yes. If you don't have a trauma to your hip, then the majority of tears is due, are due to degeneration. In fact, almost all of them would be due to degeneration.

Q Now you looked at two sets of films for the hip. One was before the arthroscopic surgery, one was after the arthroscopic surgery, correct?

A Yes.

Q You are aware that Dr. McCollough -- withdraw that.

Are you aware that Dr. McCollough, the surgeon who performed the arthroscopic surgery, looked at the films from Alpha MRI for the post surgery?

A You'll have to tell me what he -- I have --

Q That's why I asked you if you are aware first.

A No. I have not spoken to Dr. McCollough.

Q You haven't read any of the transcripts of what's happened so far?

A Absolutely not.

Q Are you aware of the original reports from Alpha were from Dr. Carl Hausmann, I believe?

A I don't know who wrote it. I will accept what you say.

Q Assume now that Dr. McCollough testified that he reviewed those films, and consistent with Dr. Hausmann, the radiologist who took the films and interpreted them, that they showed in the second set of films after the surgery, that the labrum had been restored.

A I am not disagreeing.

Q And neither -- okay.

You don't disagree with that?

A It's possible.

Q Neither the report of Dr. Hausmann or Dr. McCollough said that there had been a retear of the labrum.

Assume that.

A Okay. I am going to assume that.

Q You said there was a retear, correct?

A No, I didn't say that. You didn't read my report correctly.

Q I read your testimony, not your report. Okay.

MR. VAN ETTEN: And this -- page 67 and line 19.

Q And this is where the patient had surgery and the patient has re-torn the superolateral labrum?

A If that was my only statement about that, then I want to be very clear that it either be a retear or changes

from the surgery, which is exactly what it says in my report that was attributed to anyone --

Q I understand that.

A I just want to finish my statement.

So if I didn't say it could be postsurgical, I should have said it could be postsurgical. Let me be clear. That's exactly what I put in the report.

Q But I understand what you put in your report, doctor.

But when you talk to this jury and you were asked questions by Mr. Vargas, you didn't tell them that second part. You only told them it had been re-torn. That's what you said to them.

A No. I am --

Q That's why I asked --

MR. VARGAS: Objection. What was the question?

THE COURT: Let counsel finish, please.

THE WITNESS: Mmm-hmm.

THE COURT: Overruled.

Q That's why I asked you if you disagreed with what the other said and were aware of it, because you had said it has been re-torn, yet the operating surgeon and the person did the original radiology said it hadn't been, correct?

A So I --

Q Is that correct?

A I have to tell you an answer. I can't say correct or not. I have to tell you what I am thinking.

Q Let me go back then.

Did you a week ago Friday tell this jury that the second set of right hip films showed both a re-tear and surgical changes?

Did you tell them that a week ago Friday?

A The way for me to answer your question to --

Q Yes or no?

A I don't know. I need to read my testimony. If you want to please give me my testimony now to read so I can accurately answer your question that it could either be a tear or surgical changes, I will be more than happy to do so. But I can't say that you are correct just by you telling me one line of my testimony.

Q Are you being compensated $8500 again for appearing today?

A I am.

Q Thank you very much.

THE COURT: Okay. Any redirect?

MR. VARGAS: Just a couple, Your Honor.

THE COURT: Okay.

REDIRECT EXAMINATION

BY MR. VARGAS:

Q If Mr. Almonte had this spinal fusion, as you've

seen in your films, and the herniation is removed at L5-S1, does that mean the symptoms go away? The patient is a hundred percent?

MR. VAN ETTEN: Objection. Beyond the scope.

MR. VARGAS: No, it's not.

MR. VAN ETTEN: He is also not a treating doctor.

MR. VARGAS: He asked about this specifically about removing the herniation, Your Honor, on his cross.

MR. VAN ETTEN: I didn't ask any of the symptomology.

THE COURT: Sustained.

Q Doctor, by removing the herniation at L5-S1, would there be any residual problems with the patient?

MR. VAN ETTEN: Objection.

THE COURT: As to form.

Q Doctor, after removing a herniation at L5-S1 and doing a spinal fusion, what would be your prognosis for the patient?

MR. VAN ETTEN: Objection.

(Whereupon, there was a pause in the proceedings.)

THE COURT: Okay. Yeah. Could you step up, please.

(Whereupon, there was a discussion held at the

bench off the record.)

Q Doctor, if you remove a herniation at L5 and S1, could you explain to the jury how that vertebrae would function going forward?

A Well the level that used to be able to move as we move our bodies is now fused and fixed, so it wouldn't function as a mobile joint anymore. It would be fused.

Q And compared to the other discs, how would it function?

A It wouldn't. In other words, it's the metal rods around the surgical hardware that just holds it in place, whereas the other discs are able to move free.

Q Would it be considered a normal disc after that?

A Well the disc was removed in some, at least large portion of it was removed, so it can't be a normal disc. There's a stabilizer there. So can't be a normal disc. No.

Q And could it cause pain?

MR. VAN ETTEN: Objection.

THE COURT: Sustained.

MR. VARGAS: No further questions.

MR. VAN ETTEN: None, Your Honor.

THE COURT: You can step down.

THE WITNESS: Thank you.

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

THE COURT: Step up, please, counsels.

(Whereupon, there was a discussion held at the bench off the record.)

THE COURT: Continued cross examination of the plaintiff, Mr. Almonte.

L U I S A L M O N T E,

recalled as a witness, having been previously sworn by the clerk of the Court, resumed the witness stand and testified further as follows:

MR. VARGAS: If we could get a glass of water for him, too.

THE COURT: Yes.

Sir, you're reminded that you are still under oath.

THE WITNESS: Thank you.

THE COURT: Cross examination.

MR. VAN ETTEN: Thank you, Your Honor.

CROSS EXAMINATION

BY MR. VAN ETTEN:

Q Mr. Almonte, I'll just read from your testimony from where we ended up on Friday just so we can get back to where we were.

MR. VARGAS: Which one are you on? Which deposition -- oh, from his testimony. Got it.

MR. VAN ETTEN: The last question.

So that was, you don't have to go back and find it, page 436 line 9.

So, you called lawyers on the phone who you had never met with before and they told you to go to a doctor. And you thought that was better than going to Beth Israel Hospital, the hospital you trusted, correct?

"ANSWER: Yes.

Q Okay. That's where we left off on Friday.

Do you remember that?

A Yes.

Q Okay. Now, couple of things from when you were there on Friday.

I think you said also that you did not call down to your foreman or boss Ivan because you had left the phone in the pantry.

Is that what you said?

A No. I say that I left in the locker because they don't want to make employee to make a phone call.

Q Now, again, I had read from you on Friday, the Judge had instructed the jury about the prior deposition and your March 24, 2014 deposition when you were asked questions about your cell phone. And you were asked about complaining about the loose ladder. You said --

MR. VARGAS: Page.

MR. VAN ETTEN: Page 79. Where we left off the

last time. Line 6.

Did you try to call Ivan on your cell phone and tell him you had a loose ladder on the day of your accident?

Line 9.

"ANSWER: Yes.

"QUESTION: Then yes again -- 10 -- was there anything that prevented you from doing so?

"ANSWER: The company don't give me no minutes to pay for.

Q Do you recall that that was your testimony in 2014 why you wouldn't use your cell phone on the job, because you weren't getting paid to use it?

A It's like I say, I don't have phone this day. I leave it in the locker.

Q Well in 2014, which we talked about last Friday where you said your memory would have been probably a little bit better because that was closer in time. You didn't once say you had it with you. You said you didn't use it because you weren't going to get paid for the minutes.

Isn't that what you testified in 2014?

A That's what I told you. I leave in the locker.

Q Now I may jump a little, and I apologize.

Before you got your surgery with Dr. Brisson, did you ever get a second opinion?

A No.

Q Did you go to your orthopedic surgeon?

A No.

Q Okay. Before you got your surgery with Dr. McCollough on your hip, you didn't get a second opinion, correct?

A No.

Q And you have been here when Dr. McCollough and Dr. Brisson had testified. And neither one has said that you need another surgery right now, correct?

A Yes.

Q And so, when the two doctors that operated on you said you don't need another surgery, you then went and got a second opinion from Dr. Merola, correct?

A Yes.

Q And did you do that for this litigation?

A What you talking about?

Q Did you get a second opinion because your two treating doctors said you don't need any more surgery?

Did you get a second opinion from Dr. Merola so somebody can say you need another surgery?

A No.

Q Did you ever get a second opinion from any of the doctors at Beth Israel Hospital, the hospital that you trusted?

A I don't have insurance.
Q See, you said this before about insurance.
You've had prior on-the-job accidents before, right?
A Um, yeah.
Q Your hand (indicating)?
A Huh?
Q Your hand (indicating)?
A Yeah (indicating).
Q Because of that what -- you knew that when you have a prior on-the-job accident, you get covered for your medical, correct?
A Yeah.
Q So, if you were hurt on the job, you knew you would be covered at Beth Israel. It's not about insurance, correct?
A I didn't know that.
Q Well, sir --
A I didn't know. After that I have that accident, I didn't know that they gonna pay. I didn't know if they gonna pay on both of them.
Q You've been treating with Beth Israel Hospital before March 5, 2013 and since then, correct?
A Yeah. Because I got evaluation that I, why I there.
Q You went for the psyche evaluations. You went for

chest palpitations.

You have gone for a lot of things, right?

A Yes.

Q You didn't worry about insurance for those things?

A I had to go because I feel bad.

Q And Beth Israel, as we said last Friday, told you if you have any more problems, come back to us, correct?

A Yes.

Q But you didn't go to Beth Israel to see their orthopedists, correct?

A No.

Q Okay. In fact, the first doctor you went to after going to Beth Israel was a pain management specialist, correct?

A Yes. Because I had the pain.

Q But you never went to an orthopedist, right?

A Orthopedic, no.

Q And you never went to a neurologist, correct?

A No.

Q Never even went to a chiropractor, right?

A No.

Q You went straight to the pain management doctor that your attorneys referred you to, correct?

A He don't refer me. I ask him. He came, told me a doctor to go there to go. He give me the name of the doctor.

Q Well isn't that referring you? He gave you the name of the doctor.

A Well you could say so.

Q You've been coming to court each day by car service, right?

A What?

Q You have been coming to court each day by car service, correct?

A Yes.

Q Okay. That's being paid by your attorneys, correct?

A No.

Q You're paying that?

A No.

Q When you --

A I am sorry. You say a car service? Car service I pay my, me. I paid it.

Q Who is ordering it for you every day?

A Huh?

Q Who is ordering it? Who is calling the cars for you every day?

A Every day the office, my lawyer.

Q And when you got your surgery in New Jersey and you had to take car service there, your lawyers paid for that?

A No. They provide. They, the hospital provided.

Q The hospital paid for your car service?

A They provide for the patient.

Q Even though you thought you were, you weren't getting any insurance coverage, they provided you transportation to go get surgery in New Jersey when you got surgery from McCollough.

Is that what you are testifying?

A Could you repeat that question?

Q Sure.

When you went to go get surgery in New Jersey, you took car service to go get your surgery in New Jersey.

Wasn't that paid by your attorneys?

A No. The hospital. I told you, the hospital send me a van to go to get the surgery.

Q Now if you are paying for the car service now, do you have the receipts?

A No. I don't have receipt.

Q You charging it on a credit card?

A No.

Q Now, not only have you gone to Beth Israel for your chest pains and for the anxiety and the depression, you have a regular doctor there, too, right?

A I got a long time I don't see the regular doctor.

Q Didn't you used to go there for regular physicals every year?

A Yeah. About two years I used to go. Yes.

Q So before March 5, 2013 you went there with a regular doctor. And after you went there with a regular doctor 'til two years ago. Is that fair?

A Yeah.

Q Okay. And you also had gone to those doctors for problems with your stomach before, correct?

A No.

Q You didn't have abdominal pain before?

A Abdominal pain? Well I don't remember.

Q Didn't you get diagnosed with gastroesophageal reflex disease, GERD?

A I don't remember. Serious. I don't remember.

Q Weren't they giving you medicine for your GERD before you had --

A Yes. They gave me, I don't remember, because when I go over there for acid reflux they gave me medicine for that.

Q Right.

You were taking medicine for acid reflux before March 5, 2013, correct? That's in your records from Beth Israel.

A I don't remember that. It's so long.

Q Now, in 2010 you went to Beth Israel a bunch of times for chest pains, correct?

A Yeah.

Q And at those times when you went there for the chest

pains and you went there in 2011 for the anxiety and depression, you told them about not working, correct?

A Yes.

Q Okay. And in 2010 and 2011 you said you had not been working for at least a year, correct?

A Yes.

Q And I think on Friday you said the last job before Roselle was with a company whose name you didn't remember, and that ended in 2009, correct?

A Yeah.

Q And so you didn't work at Roselle until 2012?

A I work in the side.

Q You didn't work at Roselle until 2012?

A I work without, without the book.

Q Oh. But you are unemployed, right?

A Huh?

Q You got unemployment, right?

A Did I got unemployment?

Q Yes.

A Yes.

Q You got unemployment, but you were working on the side?

A Yes. Couple of things that I do extra money because unemployment just gave you, they give no money to support my family.

Q But again, that's why I thought you were in there, for the anxiety and depression, 'cause you couldn't find any employment. Now you are telling us you were actually working.

A I didn't -- I didn't work it by the book. I just work in the side. People call me to do this and then I do it.

Q So, when you went to the psychiatrists at Beth Israel Hospital in 2011 and 2012 and told them you were anxious and depressed because you had been unable to work for a year and a half or more, you were actually working on the side; is that correct?

A I didn't work eight hours a day. I didn't work eight hours a day. You just work an hour and maybe an hour maybe to put some pipe broken and down there the sink. That's what I did. That's what I do. Get charging $30 for it. What, how I gonna support?

Q But my --

A Just told me that.

Q Appreciate that, sir. I understand that you have to try to support your family. I think everybody does.

But the fact is, you were working but you were telling the doctors at the hospital something different, correct?

A I told you it's not work eight hours a day is

working.

Q And didn't you in 2012 try to go out on disability?

A Yes, because I was depressed. I don't, I wasn't working. The unemployment gonna finish and everything. You know.

Q So, you weren't working a regular job but you were working on the side. You are not telling your doctors that. You are telling them you are not working. And when unemployment was gonna come to an end, you decide to try to get disability instead of having to go back, work someplace else, correct?

A I can't find a job.

Q It's hard --

A I was, I was with anxiety and depression because I can't find a job.

Q It's very difficult in the field you were in to find a job once you reach the age you were at, 55, 56, correct?

A Not even in my area it's not difficult.

Q Then why had you not been working from 2009 until 2012 with Roselle?

A You --

Q Three years. Why didn't you work for three years?

A You don't remember the depression that was in 2010? And 2011? You don't remember that?

Q So that's the only reason you weren't working? Had

nothing to do with the chest pains that you kept going to the hospital for and your admissions for chest pains?

A I couldn't find a job, sir.

Q But again, just to be clear, when you were reporting to people that were giving you medication for your anxiety and depression, you were telling them that I haven't worked. I can't work and I'm depressed.

But you were actually doing some part-time jobs. Is that true?

A Yeah. I told you.

Q Okay.

A One hour or so.

Q But you didn't --

A I had to support my family. No matter what.

Q Don't want to interrupt you.

But you didn't give your doctors a full and complete history, correct?

A Correct.

Q Okay. In fact, when you went to Dr. Grimm on March 13, 2013, he asked if you had any prior back or neck injuries, correct?

A Yes.

Q And you said no?

A No. I don't have it.

Q You didn't tell him that you had actually treated a

year before for your back at Beth Israel Hospital, correct?

A Well one moment I was doing on the ground and putting the first pipe on the building this gonna be, and the pipe is six inch. Normal pipe six pipe, 150 pound pipe. I tried to move it and my muscle, my muscle went. It was on the bottom. It wasn't top.

Q You bent down to pick up 150 pound pipe?

A Yeah.

Q Correct?

And you couldn't pick it up and your back went out in spasm?

A What?

Q Did your back go out in spasm? Did it spasm? Your back?

A Yes. Yes.

Q Did your back pop?

A No.

Q You didn't --

A Never popped.

Q You didn't tell the doctors at Beth Israel that it popped?

A I didn't told the doctor that. They lied.

Q The doctors lied?

A Yes.

Q The doctors at the hospital lied?

A They lied. I don't see why they put in that --

MR. VARGAS: Objection.

THE COURT: Overruled.

A I don't see it.

THE COURT: Okay. Please. One person at a time talking.

THE WITNESS: All right.

THE COURT: Okay. Counsel, one person at a time talking.

MR. VAN ETTEN: Apologize, Your Honor.

THE COURT: Thank you.

Q And when you saw Dr. Brisson and he asked you if you had ever hurt your back before, you told him no, correct?

A Because I, no, I just had a spasm.

Q You didn't give Dr. Brisson a full and complete history, correct?

A What about?

Q You didn't tell him about the episode in 2012 where you hurt your back?

A Because I didn't think that was important.

Q And you --

A Because just had a spasm.

Q You didn't tell Dr. Brisson that fact either, correct?

A No.

Q How many other times did you have problems with your back?

A I have no more problem now.

Q How many other times did you have problems with your neck?

A No, I don't have it. That I remember.

Q Didn't you go to Beth Israel Hospital about three weeks after that visit in February of 2012 and have problems with your neck and your back where they diagnosed you with sprains?

A I don't remember that. Serious.

MR. VAN ETTEN: One second.

(Whereupon, there was a pause in the proceedings.)

Q From your Beth Israel Hospital records, February 29, 2012, three weeks, a little more than three weeks after the February 5, one with the back spasms up here (indicating), complains left upper back pain today. Denies injuries. Works as a mechanic. Does a lot of lifting. Also complained left neck shoulder numbness.

Did you go to Beth Israel Hospital on February 29, 2012 and make those complaints?

A Well three -- was three weeks that I was going pain, the same pain that I have in the back maybe then, but I don't have no problem.

Q I thought that on February 5, 2012 it was done. You didn't have any more pain again until March 5, 2013. That's what all the doctors were asked to assume.

You were here when they were asked to assume that fact, right?

(Whereupon, there was a pause in the proceedings.)

Q So you did have more pain to your back and your neck after February 5, 2012, correct?

A No.

Q No?

But you went to the hospital and complained about it?

A I don't have those pain, that kind of pain that I have now, sir.

Q And the assessment given at that time, neck sprain and strain.

And with the backache it says, please educate stretching exercises.

Did they give you stretching exercises at Beth Israel, tell you to move and stretch your back so you don't have these problems continuing?

A Yes. Something.

Q So you do remember going there February 29, 2012 and getting instructions for your back?

A Well every time the doctor give me instructions I do it.

Q They gave you the same instructions for your neck, too, right?

A Sir. Sir, I be in the Beth Israel Hospital, I been for 20 years going there. I got a lot of problems.

Q And didn't you also have problems with your back in 2010?

A 2000 -- no.

Q From your examination before trial of March 24, 2010, page 104.

MR. VARGAS: Which one are we at?

MR. VAN ETTEN: First deposition. Page 104 line 1. Let me know when you get there.

MR. VARGAS: Okay.

"QUESTION: Did you ever go to Beth Israel for your back before this accident?

"ANSWER: For my back, no. One time I have minor pain like spasm in my back, yes. I went there one time. I think '82, but it was spasm that I got. That's it.

"QUESTION: Did you say '82?

"ANSWER: No --

MR. VAN ETTEN: I am sorry.

"ANSWER: No. Sorry. I don't know when. It

was about three, four years ago. Like that.

"QUESTION: Three, four years ago from now?

"ANSWER: Yeah.

"QUESTION: Like 2010, 2011?

"ANSWER: Yes. Something like that. 2010.

Q Do you remember giving that testimony that you had also treated in 2010 for your back?

A I was the same problem that I got. It's the spasm that I went over there.

Q So, unlike what your doctors were asked about never having any prior problems other than that one time in February of 2012, we now know of 2010 problems and 10, another one in 2012, correct? More than one problem?

A The same one that I have that I went to the hospital for.

Q The same problem that you had before March 5, 2013. And you had multiple time before, correct?

A Yes. I just got the, a spasm in the back lifted a pipe. I was working. I lifted a pipe and I, when I was home already taking off my clothes, I feel a little pain in my back and I went over there.

Q And are there also times when you had problems with pain in your back and spasms where you didn't go to the hospital?

A Yes.

Q Because -- withdrawn.

How many times have you had pain in your back when you haven't gone to the hospital?

A Not since that day no more.

Q Since 2010 no more or since prior --

A No. They gave -- I was working, without working one day. One day I was without working.

Q 2010, when your job in 2009 had ended and you weren't working from 2009 to 2012 except for occasional one hour jobs, right?

A Yes, sir.

Q Okay. So, let's go back before 2010.

You were working regularly. You'd get pain in your back while you are lifting all these pipes as a plumber, correct?

A Yeah.

Q For how many years had you been having pain in your back while lifting pipe as a plumber?

A Yes. Occasional spasm. You know, I working hard. The plumbing work hard. You know what I mean. The plumbing work hard.

Q It wears you down, right?

A Huh?

Q It wears you down, plumbing?

A Yes. Sometimes.

Q Yes?

A Sometimes I get into my home, I get into my home without... you know.

(Whereupon, there was a pause in the proceedings.)

Q You talked about your motorcycle accident where you injured your left ankle on Friday, correct?

A You gonna read that?

Q I just -- I didn't bring it up. You guys brought it up.

But you said you had a motorcycle accident where you injured your left --

A I was 22, 24 years old.

Q I understand that.

You were in the hospital for a month I think you said?

A Huh?

Q You were in the hospital for a month?

A 32 days.

Q 32 days?

A Yes.

Q They put plates and screws in your ankle?

A Yes.

Q I take it because of that injury, there was a period of time it was difficult for you to walk because you were

limping because you had plates and screws --

A It was my left foot.

Q I understand that.

So you had to favor your left foot by walking on your right side, right? Right?

A Oh, my goodness.

Q Is that correct?

A No.

Q No?

You were able to, as soon as you got out of the hospital, walk normally without any favoring of your left foot?

A I work with stretches. Then he give me therapy and that's it.

Q Okay. Because one of the things that was discuss -- said before by Dr. McCollough was that your left hip's bothering you now and you are treating for your left hip now with Dr. Grimm because you are favoring your right side, correct?

A Yes.

Q Okay.

A You could say that.

Q So you're saying, though, when you broke your ankle and had plates and screws put in that, you never had to favor the left side where it would hurt your right side, right?

Never happened?

A No. I walking fine with my left foot. I don't have no problem. I don't have nothing.

Q And as it stands now, you can't walk more than a block or two, correct?

A Yes. Right now, yes.

Q Okay. And before your last deposition you had been shown surveillance films of you, correct?

A What --

Q You were shown a DVD or CD that had films of you?

A Yes. When I get into the car I went to the other side to start the car, get in to get the start the car for my daughter and I went to the right side to get in.

Q Did you see --

A That's the video that you have.

Q That was from 2016, correct?

A Yes.

Q Did you see the films from 2017 or 2018?

A It wasn't me.

Q That wasn't you?

A No.

Q No --

A I see the films. I see the face. It wasn't me. You can put it right now.

Q So the man walking with a cane --

A Huh?

Q -- with your daughter and your grandson in 2017 and 2018 is not you?

A What you talking about?

Because the only film that you have is the one that I went at the, went to start the car and go back to get into, to the right side of the car. That's the only video you have. That is me. You don't have no more.

Q You did not see a film with you going into a perfume shop and coming out with a bag of perfume and then give it to your daughter?

A No. That isn't me.

Q That wasn't you?

A No.

Q Okay. And in the other one where you went into a, I think it might have been a sneaker store, something, and bent over, that wasn't you?

A No. That wasn't me.

Q Okay. So, if we have films of you walking more than a block, they're not you, correct?

A Well let me see the film.

Q Okay.

A And I tell you. Let me see it.

Q And right now you can't lift a gallon of milk, correct?

A Well one gallon of milk I can't go buy cornflake. One gallon milk I can left. It's about 7 pounds. Something like that.

Q Didn't you say previously that you can't lift even a gallon of milk? Didn't you testify to that?

A Well that wasn't in those times. Three years, four years to go, sir.

Q So you are getting stronger. You are now able to lift a gallon of milk?

A No. Wear me down, the pain.

Q Well if you couldn't do it three, four years ago, now you can do you it. Now the pain could be less?

A No.

Q You said the pain is still nine out of ten, right?

A Nine out of ten.

Q Ten out of ten some days?

A No.

Q No. That's why you --

A Seven, eight.

Q When you go to Dr. Grimm, do you tell him it's seven or eight or do you tell him it's nine?

A Yes. Some day I have it nine, when it's raining. When it's raining and when it's the weather it's so cold, I can't get out of my home.

Q But you still go to Dr. Grimm and you complain of

pain and get medicines, correct?

A Yeah.

Q You see him what, every six weeks or every three months? What is it now?

A I go over there every six weeks.

Q Do you recall when Dr. Brisson testified that after your surgery and first and the second visit when you came back in that you said that you told him that you had been doing much better. The therapy was helping. And you were only having to take pain medicine as needed.

Do you recall that?

A With my hip, yes. I feeling 50 percent better.

Q I am not talking about the hip. I am talking about after the back surgery. Before you started to complain about the hip.

A Uh-huh.

Q Do you remember? If you don't remember, I will ask an assumption.

But I don't remember when Dr. Brisson was testifying, and you were right there, that he said that you started to say that the pain was less and therapy was helping, and you only had to take pain medicine as needed.

Do you remember him testifying to that?

A I don't remember, sir.

Q Did you ever tell Dr. Brisson that?

A I don't remember.

Q Well when you were seeing Dr. Brisson, you were still seeing Dr. Grimm, correct?

A Yes, sir.

Q And when you were seeing Dr. Brisson and he said you were complaining of less pain, you were still telling Dr. Grimm that your pain was nine out of ten, correct?

A Nine out of ten. Yes. I got a day like that.

Q So you could get the pain medicine, correct?

A I had a day like that. You know, it's pain is unbearable.

Q You've also seen a pain management doctor at Beth Israel Hospital, haven't you?

A One, no.

Q No?

A No.

Q Didn't you on August 29, 2016 go in for stomach problems, nausea and vomiting, and tell the doctors at Beth Israel that you were in "following with pain management and taking Percocet and he abruptly stopped taking them approximately three weeks ago."

Did you not go in there with stomach problems?

A With the cold now, because the cold the, go over there now don't give to you for no pain. Period of time don't give Percocet because the, you know, the lot of people

using it.

Q I understand that.

A That's what they do now. So Dr. Grimm give me Tramadol.

Q Well Dr. Grimm testified to this jury, told them that he stopped giving you Percocet on June 11, 2015 during that visit.

A Yes. He said that time --

Q Okay. A year before you had been taken off Percocet by Dr. Grimm, correct?

A He gave me Tramadol instead.

Q Right.

So when you went in in 2016, in August of 2016 to Beth Israel and said you were just coming off Percocet, you had gotten the Percocet from pain management at Beth Israel, correct?

A What year was that?

Q 2016, August.

A I went one time because I can't bear the pain and I have no, I don't have no more medication. And I went over there to the, they gave me something because the pain was unbearable.

Q And did you tell Dr. Grimm that you got Percocets from Beth Israel so that he could take and give you less Tramadol?

A Yes.

Q You did? Did Dr...

A That's what I went for.

Q Do you recall when Dr. Grimm testified that he gave you stronger medicines just before your hip surgery, and then Dr. McCollough testified that he also gave you pain medicines for your hip surgery, but Dr. Grimm never told him that he had given them, and you never told Dr. McCollough that Dr. Grimm gave you Percocet, right?

A You know the cold now. You can go to any pharmacy, any pharmacy you go now, in all the medication there, all the doctor give it to you. They all, it's in the computer. So I can't, I can't, they don't, no matter what they prescribing, they don't gonna give in pharmacy to me.

Q That was in 2015. Not now.

In 2015 you got a prescription from Dr. Grimm, according to Dr. Grimm, and you got prescription from Dr. McCollough, according to him --

A Well I got --

Q -- at the time of your hip surgery, correct?

A No, sir. No, sir. Mmm-mmm. No, sir.

Q Were you taking twice as much medicine at that time?

A What?

Q Were you taking twice as much medicine at that time?

A No.

Q Were you taking the extra pills and selling them?

MR. VARGAS: Objection, Your Honor.

A What?

THE COURT: Sustained. Sustained.

Q You had to take drug tests with Dr. Grimm, didn't you?

A Yes, sir.

Q And are you aware on some of your drug tests that it came back that you had no Percocet or no pain medicines in your system?

A You know, I don't know 'cause I don't, I don't sell my pills, nobody.

Q Well you've been --

THE COURT: Move on.

Q You've been taking pain medicines constantly since your accident, correct? You have been taking Percocet, Oxycodone or Tramadol since the day of the accident, correct?

A Yes. Yes, sir.

Q Okay. So, any time you got drug tested by Dr. Grimm it should show that you have those medicines in your system, because you've been complaining of pain of nine out of ten every day since this accident, correct?

A That day they take the, that day was finished my medication, because every six month sometimes my pain is too much that I have to take more.

Q Well you've self-medicated yourself on other occasions, correct?

A What?

Q Have you self-medicated yourself on other occasions?

A What medicate myself?

Q Have you taken some of your daughter's medicines on some occasions?

A Yeah.

Q Okay. You took her Klonopin, didn't you?

A Klonopin?

Q Yeah.

A I don't know.

Q For sleeping?

A I don't know. I don't remember that time.

Q Do you remember going to Beth Israel on September 9, 2011 and telling them you wanted a prescription for Klonopin because you've been taking your daughter's prescription? It was helping you sleep.

A I don't remember that thing, sir. I don't know why you talking about.

Q You think the doctor you were meeting with, the psychiatrist, would write down something inaccurate in your records?

A I don't know, sir.

Q But do you remember the psychiatrist telling you

can't take Klonopin because you were on Methadone and that could be very dangerous to you?

A I don't remember that, sir.

Q You don't remember that?

THE COURT: Okay. I believe this is a good time to take a break.

MR. VAN ETTEN: Sure, Your Honor.

THE COURT: Going to take a ten minute break and resume at 12:10 or 12:05.

COURT OFFICER: All rise.

(Whereupon, the jury left the courtroom.)

THE COURT: Okay. Break for ten minutes. Thank you.

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

(Whereupon, there was a break in the proceedings and then resumed shortly thereafter.)

THE COURT: Mr. Almonte.

THE WITNESS: Yes.

THE COURT: Please retake the stand. Thank you.

L U I S A L M O N T E,

recalled as a witness, having been previously sworn by the clerk of the Court, resumed the witness stand and testified further as follows:

MR. VAN ETTEN: I'll be finished before lunch, Judge.

THE COURT: Okay. Excellent.

(Whereupon, there was a pause in the proceedings.)

COURT OFFICER: All rise. Jurors entering.

(Whereupon, the jury entered the courtroom.)

COURT OFFICER: Okay. Please be seated. Come to order.

THE COURT: Mr. Van Etten, continue cross examination.

MR. VAN ETTEN: Thank you.

BY MR. VAN ETTEN:

Q Mr. Almonte, when you went to Beth Israel on March 5, 2013, that was two, three hours after your accident, right?

A Yes, sir.

Q Okay. And you never took any photographs of any bruises, any cuts, any scrapes or abrasions on your back or your hip, correct?

A No, sir.

Q Okay. And the hospital records tell us that you had no bruises, scrapes, abrasions or cuts to your back, your hip, your neck, correct?

A That's what I told you right now.

Q Sorry?

A That's what I told you right now.

Q Okay. And when you saw Dr. Grimm eight days later, there was no bruises, abrasions, lacerations, correct?

A No. But I was a lot of pain. Told you a lot of pain.

Q Now on Friday you testified that when you started to work with Roselle, you would work overtime like every other Saturday; one Saturday on, one Saturday off. Correct?

A No. No. In those time I don't remember too much, but yes, I work overtime over there. Over there.

Q Well your testimony on Friday, page 394 line 10.

How often would you work overtime?

"ANSWER: Maybe one Saturday, maybe one on, one off, you know. I work it one Saturday. The other Saturday, no. Like this. You know, one Saturday, one not.

Q Do you remember just saying that on Friday?

A Yes.

Q You said you worked eight hours when you would work Saturdays, right?

A Yes.

MR. VAN ETTEN: Your Honor, can I approach and get something from the evidence and give it to the witness?

THE COURT: Yes.

MR. VAN ETTEN: Thank you.

Q I show you what's been marked as Defendant's C for identification, the earnings detail history records from Roselle Plumbing.

A They never pay me. They never paid me by check.

THE COURT: Sir.

THE WITNESS: Overtime.

THE COURT: Sir.

THE WITNESS: Yeah.

THE COURT: Counsel didn't ask you a question.

THE WITNESS: Oh, I am sorry.

THE COURT: He just handed to you the earnings record.

Q And looking at the earning records from when you worked with Roselle, I see that on only one week during the 21 weeks you worked for them that you worked more than 40 hours; is that correct?

A I think so. Yeah.

Q So, it wasn't every other Saturday that you worked overtime, true?

A I tell you that I pay cash and the most of the time.

Q And the one week it was only four hours, as per the work records, correct?

A Yes.

Q If they are gonna record that you worked overtime, why would they pay you in cash?

A When it's -- no, they don't give me no check. That's the check. That's the thing in check. That's, yeah. That's the thing in check that they pay in overtime cash.

Q By the way, in all those records, of the 21 weeks that you worked, there is only eight weeks that you ever actually worked 40 hours, correct?

A No. I don't remember.

Q In fact, some weeks you worked 16 hours. About four weeks you only worked 16 hours, correct?

A Yes, sir.

Q And you got no benefits from Roselle, correct? But you did have expenses when you worked for them, right? You had to pay to go to work every day, right? I am assuming a subway to get to work.

A Yeah.

Q Okay. So you had those expenses.

Did you also have to get meals for yourself when you would go to work?

A Yes.

Q So how much was it costing you to work every week when you worked for Roselle?

A Um, the pay, when the train I work in Manhattan or work in Queens, I work in Long Island City, the train it's

Manhattan is the expensive and Queens, too. So, I don't know the level how much I spend.

Q Would it be $20 a week? $30? $50 a week for your meals and your transportation?

A It is about with the train, it's about the train was how much? 2.50 in those times.

Q Okay.

A And the lunch was a regular about $7.

Q Okay. So, if it's 2.50, that's $5 a day, and 7, $12 a day, correct?

A Yeah.

Q So if you worked five days, that would be $60 a week. And if you worked less, it would be less. Fair?

A Yes.

Q Okay. Now, you also said on Friday that after your back surgery you started to have sharp pain; is that correct?

A Yeah.

MR. VAN ETTEN: Page 175. I believe this is the second deposition of January 9, 2015.

MR. VARGAS: Sorry. What page?

MR. VAN ETTEN: Page 175. Line, I will start from 2 for background. You got it?

MR. VARGAS: Yeah.

MR. VAN ETTEN: Okay. Line 2.

How many times have you seen Dr. Brisson from

the surgery up until today?

"ANSWER: Every six weeks.

"QUESTION: How many times have you seen Dr. Grimm from the surgery?

"ANSWER: Every month.

"QUESTION: Since the surgery have you felt better?

"ANSWER: The pain, the sharp pain goes. Yes. It goes away. But I still have pain.

Q Correct?

Isn't -- is that what you testified in 2015, that the sharp pain had gone away but you still had other pain?

A Yeah. I have a lot of pain in my back and my lower back.

Q But on Friday you said the pain, it wasn't the same I had before, it was now I have, like, a sharp pain?

A Yeah.

Q So, Friday you said you started to have sharp pain after surgery. And in 2015 you said the sharp pain had gone away?

A It came when I, less than one week or two week and come back, sir.

Q Did you tell Dr. Brisson the sharp pain in your back came back?

A Did I told Dr. Brisson?

Q Yes.
A No. Dr. Brisson, I don't tell him that.
Q Now, the apartment you're living in now is different than the apartment you were living at in 2013, 2014, correct?
A Yes, sir.
Q And in 2011 you had lived at a different apartment, too, correct?
A 2011?
Q Right?
A Yes, sir.
Q Okay. So, you had moved sometime before the accident. And then you had the accident. You stayed in that apartment. You stayed in that apartment 'til after your surgery on your back and then you moved again, correct?
A Yes. They sell the house. I had to move.
Q Well when you moved before the accident to 233 Cooper, was that a ground floor apartment that you had been living in before?
A Yes, sir.
Q So you have been in a ground floor to a ground floor. And then after your back surgery you went to a second floor apartment, correct?
A Well that --
Q Is that correct?
A That's the only apartment I can find in those times.

That's the only apartment. The other one it was too expensive. And then that's the much cheaper I can find.

Q Now you mentioned on Friday also that you can't drive anymore, correct?

A I say I drive. I change the car to side to side. Sometimes I go wash the car.

Q You were asked is there any activities you can't do, and you said I can't drive anymore. I used to drive my whole life.

A Yes. I can't drive no more long distance. I can't drive anymore.

Q Isn't it true you haven't had a driver's license in over 20 years?

A Yeah. But I drive.

Q You drive anyway?

A Yeah.

Q Without a license?

A Yes. Sometimes change the car. To change the car. That's what I do.

Q And you even did that in that one video with your grandchild in the car, correct?

A Well my daughter was driving that day.

(Whereupon, there was a pause in the proceedings.)

Q Let me ask you, and I'm still a little confused.

Going back kind of where we started until now. 'Cause of course if I find it.

I had asked you at the beginning when I first started questioning you Friday if you had gone to the lawyer. First you said no. But then you said you interviewed him on the phone.

That's what you said on Friday, right?

A Mmm-hmm.

Q Is that yes?

A Yes.

Q Okay.

MR. VAN ETTEN: Page 148.

MR. VARGAS: Second deposition? Yes.

MR. VAN ETTEN: Yes. That's the start of the second deposition.

MR. VARGAS: Okay.

MR. VAN ETTEN: Line 4.

From Thursday, what day did you go to the lawyer?

"ANSWER: I don't remember that date. I think it was Friday, I think. I don't remember too good. It was that week. I don't remember the day, to tell you the truth.

"QUESTION: -- line 10 -- up until you go to see a lawyer, the only medical people that you talk to

are at Beth Israel?

"ANSWER: Yes.

MR. VAN ETTEN: Line 14.

"QUESTION: You went to see a lawyer on whatever day it was, and after seeing the lawyer, did you then seek medical care?

"ANSWER: Well I ask my lawyer if he knows someone they refer me to, because I don't have nobody. He referred me to, he knows someone that I can go to make medical care.

Q Do you recall giving those answers?

A Yes.

Q So you did go to a lawyer before you went to see Dr. Grimm, didn't you?

A No. That day I talk to them by the phone, they told me to go to Dr. Grimm. Then two days later or I see the lawyer.

Q But that testimony that you gave under oath in 2015, you were asked three different ways about going to the lawyer, and you said you went to the lawyer, then went to the doctor.

So that's, that was untrue?

A I don't remember, sir. It's a long time ago. I can't remember.

Q But that was closer in time to the incident, wasn't

it?

A I can't remember, sir. Sometime -- I don't remember all of the, I say in 2013 or 2015.

Q But either way, you do remember that the first person you went to see after going to the emergency room was the doctor that, it said right there, your lawyer referred you to, correct?

A First of all, I went to, I worked after the accident. I worked about three hours. I told Ivan I can't bear the pain no more. So I went to take the train to Beth Israel. It's about 50 minutes from there I was, and I, and I went over there to emergency room.

Q In fact --

A Then I went to the doctor.

Q You also said on Friday when I asked you about that, why you went to Beth Israel, you said it was only two stops, right? That's what you said.

A Yeah. Something like that. Yeah.

Q Isn't it eight stops from the E train to get to 14th Street in Manhattan?

A It's, yeah. I went to the E train.

Q Right.

So the first station, which is the last station in Queens, is 23rd Street Court Square, and then you have to go to Lexington Avenue, 5th Avenue and 53rd, 7th and 53rd, 50th

Street and 8th, 42nd Street Port Authority --

MR. VARGAS: Your Honor.

Q -- 34th Street?

MR. VARGAS: Your Honor. Your Honor, is this a question?

THE COURT: Overruled.

MR. VARGAS: What is the question?

THE COURT: Well you have to let him finish.

MR. VAN ETTEN: Thank you.

Q Isn't that eight stops, not two stops?

A I don't remember that day. I don't take the train that often.

Q Then you had to go from the L train, however many stops from 14th Street, to 1st Avenue, correct?

A Yes. It is one stop.

Q You might have been just exaggerating a little about how many stops it was?

A I don't exaggerate, sir. I just told you what I do in those time.

Q Well, sir, you understand we are trying to find out accurately the things that you do. You understand that? That we want --

A Repeat the question, sir.

Q We want to find out accurately what happened to you. That's fair for us to ask you questions. You can be as

accurate as possible.

A Yes, sir.

Q So two times when it's eight, just not counting all the stops on the L, is not even close to being accurate, correct?

A Do you think when a pain that I have in my back that day I gonna count the stop?

Q I didn't ask you how many stops on Friday. You volunteered it. So, that's why I am asking you if you are giving accurate testimony to this jury.

A What you mean, accurate testimony?

Q Is it --

A About the stops. It wasn't related to my accident.

THE COURT: One moment. One moment.

Sir, you are not to ask counsel questions. Counsel poses the question to you. You are not to make a, have an opinion as to whether the question is relevant or not. That's your attorney's job. If he feels that counsel's questions, his adversary's questions are inappropriate, he will make an appropriate objection and the Court will rule on it. It's not for you to do.

THE WITNESS: All right.

THE COURT: It's only for you to answer the question.

THE WITNESS: Okay.

MR. VAN ETTEN: Thank you, Your Honor.

Q Is it two stops or more than two stops to get from where you were to Beth Israel?

A I don't count the stops. I told you. I don't count the stops. It is more than -- you say it's more, it's more.

Q Okay. See, sometimes those things are important, sir.

So, is it also important to have told your doctors that you had hurt your back before March 5, 2013 not once, not twice, but lots of times that you had prior back pain?

Wouldn't that have been important to be accurate with the doctors that were treating you?

A I don't understand the question at all.

Q When you go to your doctors, they ask you questions about how you were hurt, how you were feeling when you had your anxiety and depression, what's making you anxious.

Isn't it important to tell the doctors what is the accurate information so they can treat you?

A Yes, sir.

Q But you didn't tell accurate information to Dr. Grimm, correct?

A Why?

Q You didn't tell him about any of your prior back pains, right?

A Dr. Grimm, I went over there. I told him that I had

a lot of pain in my back.

Q But you, when he asked you if you had hurt your back and had any prior back pain, you said no. Correct?

A Well I have a spasm in my back. Yes.

Q Okay. But you never told him that, right?

A No. I didn't tell -- I think it wasn't relevant.

Q And you never told that to Dr. Brisson, correct?

A No.

Q Okay. Thank you, sir.

THE COURT: I am sorry, sir.

THE WITNESS: I am sorry.

THE COURT: Do you have any other questions?

MR. VARGAS: Your Honor, just a couple.

REDIRECT EXAMINATION

BY MR. VARGAS:

Q When you testified at the deposition that counsel cited to that you had had back spasms in 2010 or 2011, were you confusing it with 2012?

A Yes.

Q Okay. You didn't remember the exact year, correct?

A Exactly.

Q And you mentioned you were paid sometimes in cash from your employer?

A Yes, sir.

Q How often were you paid in cash?

A Every time that we work overtime.

Q And so, did they not always keep accurate records as to how many hours you were working?

MR. VAN ETTEN: Note my objection. Foundation.

Q When they paid you in cash, did they record the hours?

A No.

MR. VAN ETTEN: Objection.

A No.

THE COURT: Overruled.

Q Go ahead.

A They just give me an envelope that say overtime. That's it.

Q Inside the envelope was?

A The money.

Q Cash?

A Cash.

Q Why were they paying you in cash?

MR. VAN ETTEN: Objection.

A I don't know.

THE COURT: Yes. Sustained.

MR. VARGAS: No further questions.

MR. VAN ETTEN: Just one, Your Honor.

RECROSS EXAMINATION

BY MR. VAN ETTEN:

Q When you gave your testimony back in 2014, 2015, the booklets were sent to your attorneys, who sent them to you, and you had the opportunity to review them and make any corrections that you felt were necessary if the information was wrong, correct?

MR. VARGAS: Objection.

A Yes.

MR. VARGAS: What booklets we talking about?

MR. VAN ETTEN: Deposition transcripts.

THE COURT: Sustained as to form.

Q After your deposition, didn't you get a chance to look at your transcripts from when you were deposed to see what you had said?

A I read it.

Q Right.

And you were given the opportunity to make corrections. And you never corrected 2010 testimony about when you had been to Beth Israel Hospital before, correct?

A Um, yes.

Q Thank you.

THE COURT: Okay. Counsels, step up, please.

(Whereupon, there was a discussion held at the bench off the record.)

THE COURT: Ladies and gentlemen, at this time we, the testimony of the plaintiff is concluded and we're

going to recess for lunch. The next witness is scheduled for 2:30. So, you have until that time to enjoy lunch and refortify yourself.

JUROR: Thank you.

COURT OFFICER: All rise. Jurors leaving.

(Whereupon, the jury left the courtroom.)

THE COURT: Okay. Please step down, Mr. Almonte.

THE WITNESS: Okay. Thank you.

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

THE COURT: Recess until 2:30.

MR. VARGAS: Thank you, Your Honor.

MR. VAN ETTEN: Thank you, Your Honor.

(Whereupon, luncheon recess is taken, after which the proceedings continued as follows:)

* * * * * * *

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

* * * * * * *

THE COURT: Are there any issues which counsel would like to address with the Court before we begin?

MR. VAN ETTEN: Yes, Your Honor.

THE COURT: Yes.

MR. VAN ETTEN: Before Dr. Goldman goes on the stand, I think some of the issues that are going to be

addressed by him on the future care costs are those related to the cervical spine. All right. Dr. -- obviously Dr. McCollough, nothing. Dr. Brisson, nothing.

Dr. Grimm in his testimony said the neck had become injured. It's doing well now. It could progress. He was asked for potential costs. He may require neck injections as well as down the line at the same.

He is not treating for the neck. He hasn't treated for the neck. They're saying it was injured and they're going to be putting in all these costs for treatments that are not recommended. He said he was asked for potentials. But he is not treating. So I think that none of the neck claims should be in.

I believe also it was reaching on the others --

THE COURT: Let me ask you this.

Did you speak with your adversary before speaking with the Court?

MR. VAN ETTEN: Yes. I told him that was one of the issues I had.

THE COURT: What is your issue with this?

MR. VARGAS: He has treated with his neck. He has. There were range of motion tests that were abnormal that Dr. Grimm testified to. This is Dr. Grimm's recommendation for the epidurals, not anyone else's.

He was given, he was asked to give

recommendations for future medical costs. And Dr. Grimm is the one who came up with this recommendation. And if counsel wants to cross examine him on it, he will have a chance.

MR. VAN ETTEN: I will. But it says it could progress. I was asked to provide potential costs. That's not any definitive, I'm recommending. He's not treating it right now.

MR. VARGAS: That's every injury could progress.

MR. VAN ETTEN: So every injury's hypothetical, I agree with that in this case. But I was only limiting it to the cervical. It's been actually nothing on the cervical here, including from the plaintiff himself.

In fact, going to the MRIs for the cervical, on page 318 Dr. Grimm stated, at this point the neck is not bothering him too much. In the future should it deteriorate, there is a potential for MRIs for the cervical spine.

Should it deteriorate. Right now that means there is no need for it now. Or in the future. But if it deteriorates, sure. But if we get hit by a bus tomorrow, we are going to need to be treated. That's the point with this. Everything here is if it happens. There is a potential should it happen. Not that it is

medically necessary. There was no testimony to that effect.

MR. VARGAS: And he did testify that he did do range of motion on the neck. There was abnormal findings there was part --

THE COURT: Where is that? Because 318 is basically is constitutes conjecture. What would happen if. So, what do you have to direct the Court's attention to?

MR. VARGAS: I don't have his transcript in front of me. It's only brought up to me today. And Dr. Grimm's still testifying subject to connection. If at the end there is enough and the Court feels that they should, those numbers shouldn't be, then they can be stricken.

Again, this is Dr. Grimm, his treating physician, making a recommendation for future medical care.

(Whereupon, there was a pause in the proceedings.)

THE COURT: So, your objection, Mr. Van Etten, is as to Dr. Goldman testifying as to what?

MR. VAN ETTEN: I don't believe there's any foundation for the neck injury claims to put before this jury what the potential costs may be in the event that

this neck injury deteriorates.

THE COURT: Okay. Proceed.

MR. VAN ETTEN: As I said, I don't believe that there's a foundation that has been led to allow Dr. Goldman to testify to the neck injuries based on the potentials for if something deteriorates into the future that he will need these.

At this point in time he doesn't and there was no testimony that he does. So you are going to be allowing speculation by, one, to go put in projections on costs that are speculative in, and weren't even brought out definitively by Dr. Grimm on his direct exam.

THE COURT: Okay.

MR. VARGAS: Any injuries to the neck have been in the bill of particulars from the very start of this.

THE COURT: Okay. I'm going to allow this. We will be able to revisit it at the charge conference. Okay. When he have a chance to more closely examine this testimony. Okay.

MR. VAN ETTEN: Thank you, Your Honor.

THE COURT: I'll revisit it. Okay. So, the objection is subject to renewal.

MR. VAN ETTEN: Thank you.

THE COURT: Okay.

MR. VARGAS: I marked two boards into I.D.,

Your Honor, just so you're aware of it for the next witness.

THE COURT: Okay.

MR. VARGAS: 14 and 14 A.

COURT OFFICER: Judge, ready for the jury?

THE COURT: Yes.

COURT OFFICER: All rise. Jurors entering.

(Whereupon, the jury entered the courtroom.)

COURT OFFICER: Okay. Please be seated.

THE COURT: Thank you. Okay, Mr. Vargas, you can continue --

MR. VARGAS: Thank you, Your Honor.

THE COURT: -- with your direct case.

MR. VARGAS: I call Dr. Fred Goldman to the stand.

And if we could get a glass of water for Dr. Goldman.

COURT OFFICER: Yes.

THE COURT: Yes. We're, like minds think alike.

COURT OFFICER: Please remain standing and raise your right hand.

THE WITNESS: Sure.

D R. F R E D G O L D M A N,

called as a witness, having been first duly sworn by the clerk of the court, was examined and testified as follows:

THE WITNESS: Yes.

COURT OFFICER: Please state your name and your business address for the record.

THE WITNESS: Sure. My name's Fred, F-R-E-D, Goldman, G-O-L-D-M-A-N. 10 West 66th Street, New York, New York 10023.

COURT OFFICER: Please be seated.

THE COURT: You may inquire.

MR. VARGAS: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. VARGAS:

Q Good afternoon, doctor.

A Good afternoon.

Q Could we start off, can you tell the jury your profession?

A Sure. I'm an economist.

Q Okay. What is an economist? What do they do?

A All right. Economics is really a subset of psychology. When you engage in behaviors, when you go to get a job. When you take the money that you spend from the job. When you purchase a product and decide to purchase one rather than another. You're going through areas of behaviors.

And as an economist, what we do is we take those

behaviors and we study particular variables of interest to us.

For example, we study how individuals will respond to a change in their wage rate. We study how a company responds to a price in the change of a raw material that we use.

We study the impact of various -- well I will give you an example of one of my studies. The impact of environmental issues on child health where I looked at how particulate matter and sulphur dioxide had the, an impact upon the death rate of newborns.

So we are looking at how the outcomes of behaviors, whether it's in the form of pollution, whether it's in the form of jobs or unemployment or income, how those behaviors lead to the outcomes.

And that's the way I've always viewed the economics. And then it's just the matter of we sometimes study it at a very small level, the individual. Sometimes at a slightly larger grouping, the family. Sometimes we look within something we call the firm or the company. And then you can make it a big political area like a state or a country and look at international trade and so forth.

So, it's the behaviors. And then the context in which they're taken place and then the grouping that you want to study.

Q Doctor, could you tell the jury your educational background?

A Sure.

I have a bachelor's degree in economics which I received from Queens College of the City University of New York. I have a master's degree, a master's in economics from Brown University, and I have a doctoral degree in economics from the graduate school of the City University of New York.

The only other education that I've had is I did a postdoctoral fellowship in philosophy and economics for the National Endowment of Humanities. I was in residence at an institute called the Hastings Center.

Q Doctor, have you published any articles?

A I have.

Q And what have you published?

A Oh, when I do my research, usually the outcome of the research is carved up into areas of interest which gets sent off to various journals.

For example, I published in the Journal of Political Economy. An economics journal which I published an article on price indexes called Hedonic Price Indexes, where I looked at child health and the use of pediatricians. Tried to answer the question how would the price of a doctor treating children be affected by, whether the physician was

board certified, whether the physician had certain experiences, privileges in various hospitals.

And then looked within two areas of New York City in the Bronx, Westchester Square and Mott Haven, a rich area and a poor area. Looked to see how people use the medical care and what kind of an impact it had on the prices.

So that's one example.

I published in the Journal of Health Economics, the Journal of Urban Economics, the National Tax Journal where I published on studies of capital financing that I did and so forth.

So, that gives you an idea.

Q Doctor, do you have your own private practice?

A Yes. It's what I am doing now. Yes.

Q And are you being compensated today for coming here to court for your time?

A Yeah. I certainly hope so.

Q How much are you being compensated?

A I bill $3,500 for a day in court.

Q And at some point my firm retained you to evaluate Mr. Luis Almonte, correct?

A Evaluate the economic issues, yes. That's correct.

Q And when were you retained by our firm?

A Oh, goodness.

Q If you have your file there?

A Well I -- yeah. I would -- I can give you an estimate. It would be most likely sometime in 2016, perhaps the spring. Spring of 2016.

Q And for your economic evaluation, what goes into that? What methodology do you use?

A Okay. Well the issue that I was asked to address is the extent to which Mr. Almonte may have had a loss of earnings due to an accident that he had. And a second issue is what would be the costs of what's called the life care plan or a treatment plan for the medical services that he would now need going forward over his lifetime.

And the methodology for each of those is, the general methodology is very similar. You have a starting annual amount. In the case of earnings, the starting annual amount is in the absence of the accident. How much would he have been earning at the time, say, on an annual basis?

In the case of a life care plan, a treatment plan, it's, well what is the current annual cost needed for, say, pain management physicians? Okay.

So, the methodology starts out with, what is an annual amount?

Now we use annual. It could be monthly. We could do a daily, we do it weekly, but the convention is annual. Okay.

The next thing, how would he change over time? Would the earnings go up over time? Would they decline over time? Would the medical care costs go up? Would they go down?

So what we look for is a growth rate. How will something change over time?

And the last piece is how long will it all go on?

In the case of earnings, we look at the term that's called work life. How long is someone such as Mr. Almonte, based on his gender, based on what was occurring at the time was he in the labor force, how about the labor force based on his education and age. We look to see what is a reasonable expectation of the remaining work life that he had.

In the case of medical care over a lifetime, well, the proxy for lifetime is life expectancy. And there we look at life expectancy tables.

So in each case, whether it's the earnings component or it's the medical component, we need a starting annual amount. We need a growth rate or some change over time. And we need a number of years that this will all go on.

Then the rest of it is simple math with a computer. Take the annual amount, increase it or decrease it, depending on whether something's going up or going down, and

do that year after year after year after year 'til you get to the end. Then just add it all up. Which is what is required in New York. And you get your answer.

Q And, doctor, prior to testifying today did you review any documents?

A I did.

Q What documents did you review?

A Well.

(Whereupon, there was a pause in the proceedings.)

A As to the earnings issue, I received a tax return for Mr. Almonte for the year 2013. And just recently today, I received what appears to be an earnings record, a payroll record for Mr. Almonte from a Roselle Plumbing and Heating Incorporated.

You want the final materials now I am going to rely on.

I reviewed a report by a Dr. Grimm, physician, report dated January 10 of 2018. And I also reviewed a transcript for Dr. Grimm, trial testimony that Dr. Grimm gave on June 26 of 2018.

I reviewed the report of a life care planner Miss Jodi Gelfand. Dated, or prepared at least, February 26 of 2018. And I reviewed the transcript of, trial transcript of Miss Gelfand. And I'm afraid it doesn't have a date on

it, but it's recent.

Q And if we could -- sorry. Is there more?

A Oh, yes.

Q Go ahead. I am sorry.

A If you want me to go through it all.

I received a report of a Dr. Richard Schuster. And it was based on an evaluation that was done July 12 of 2016. And I reviewed the trial transcript of Dr. Schuster, which is dated June 25 of 2018.

I reviewed three deposition transcripts of Mr. Almonte. One January 21, 2016, another March 24 of 2014, and a third one January 9 of 2015.

I am almost done.

(Whereupon, there was laughter in the courtroom.)

A I reviewed a disclosure for an expert Dr. Stein. And I reviewed a report by Dr. Stein dated April 20, 2017. And the disclosure is dated June 15 of 2018. And I reviewed a report of Dr. Leonard Freidfelder dated January 11 of 2018.

And that's what happened.

Q Okay. So, if we could start out with, since you mentioned there's two components, loss of earnings and the medical costs, could we start with the loss of earnings?

A Sure.

Q You start out by saying in your evaluation or your

methodology you start out with what the rate is, correct?

A The annual amount. Yes.

Q Right.

And for Mr. Almonte, what's the annual amount?

A Well Mr. Almonte testified in one of his depositions, I have my notes, I have pages if we need to, that he was, had been working for several months prior to his accident. He began in 2012. And that he was earning $15 per hour. And that what I had as work that he was doing at the time of his accident and his hourly wage rate.

Then I received his tax return for the year 2013. And the tax return for the year 2013... indicated that he had earned $5,265 up until the time of the accident.

He, actually following the accident, according to his deposition, following the accident he then took off for the next three days and didn't return to work. Then he came back and worked the first two days and then ceased working altogether.

So, the amount 5,265 was earned during 71 days in the year 2013. And I annualized that amount to say what it would be on an annual basis.

Now, I kept in mind that he said he was earning $15 an hour. What I see now from the payroll records, he was earning $15 an hour. And had he worked 40 hours a week, 50 weeks a year. He also testified that he didn't get a paid

vacation. So assuming he took two vacation weeks, then he would be making $30,000 per year.

When I annualized it, it wasn't quite $30,000. The annualized amount as of the time of his accident was $27,067 per year.

So, again, you put things in context. When you are working in economics, it's influenced by where we are in a business cycle. What's happening in the economy? 2012 and '13 when he was working was not a very good time in the economy.

In fact, the year 2011, for the first time the Social Security Administration even reduced the amount of money they took out of workers' paychecks. Instead of taking for every dollar you earned 6.25 percent, they took, they reduced it to 4. So, it wasn't a good time.

So I thought this was a fairly conservative amount, the $27,067.

I then deducted ten percent of that. Why?

Because he would have had what we call unreimbursed job expenses. I imagine to go to work he gets on a subway, train or get a bus, then he has to return.

So if you took this amount, what the carfare alone would be, and the fact a plumber, he would have work clothes and so forth, I thought ten percent was reduction that needed to be made. So, I eventually wound up with a

starting annual amount of $24,360 per year. That's the first element. The first component.

Now the question is, how would it change over time? There I looked at two particular sets of data. One is what is called the employment cost index.

And the United States Bureau of Labor Statistics does surveys in an ongoing fashion. And it publishes how wages and salaries change for workers in various types of occupations. There's an occupation that would apply to Mr. Almonte. And that occupation is, just a lot of pieces. Sorry. I have it all. It's gonna be orderly for a while, then I'll get lost.

The employment cost historical listing, published April of 2018, has a category that's called installation maintenance and repair, where you would find the wages and salaries of plumbers. And I looked within a category of private industry.

And if you looked at what took place from roughly 2013 through 2017, it was changing at roughly 2.2 to 2.3 percent per year. But as we'll see, he would be working beyond 2017, 2018. Because of his work life.

And so, for future potential increases I used what was called -- well it's a publication from the Congressional Budget Office. And the Congressional Budget Office makes projections. They make ten year projections and they make

30 year projections on various economic variables. Change over time.

They're doing it because they are studying the impact of changes in the U.S. budget changes in what happens in our military or in our healthcare or some other program. But in doing that, making the long-term projections, they need to make projections how they think unemployment will take place; productivity. Inflation. Among their variabilities is their expectation how wages will change.

And based on their expectation which has wages changing at 3.3 percent per year, just trying to get it through, using their 3.3, and the fact we were looking at roughly 2.3, 2.4, my estimate of an average go over his remaining work life annual increases of 2.8 percent, that's what I used.

Now we have a starting annual amount, the amount of $24,360. We have a growth rate. I am going to use 2.8 percent a year.

Q Doctor, the growth rate, is that similar to inflation?

A It's wage inflation. Yes.

Q Okay. And what is the theory of inflation?

A Well there a few pieces to it. I like to give you the short version, if I could.

Q Sure.

A Okay. Now basically workers going to work, and if the price of their bread and milk and coffee and housing, everything else goes up. If they don't get increases in their wages, their standard of living begins to decline and so forth.

What's generally takes place is that wages are linked to how productive you are and what's happening as far as inflation in the economy. And when we get inflation and the prices are going up, wages tend to be, they're what we call colinear. Some things move together.

And so, as inflation goes up, wages tend to go up. Doesn't happen day after day after day. And there are times when they go in the opposite direction. But for the most part, they're colinear in the sense they move together. So as productivity increases, people get rewarded for increased productivity.

The reward is higher wages. As inflation goes up, the reward is higher wages. If inflation begins to fall, then the increase year after year in wages begins to fall. If productivity declines, then it's decline will lead to a slowing of increases in wages.

So in other words, they tend to move together, which is used in making the projections. So when the Congressional Budget Office, and Congressional Budget Office looks to make projections on how they feel wages will change

over the next 30 years, they're looking at what do they expect to see in the labor force. How many children are going to be born? How many will go into work? How many will graduate with a high school diploma versus a college degree?

They will be looking at a series of variables that they're going to use to predict how they expect wages to change over time.

And that's what I am doing here. I am simply saying I could do that. But they're so much better than me. They have more resources. They have excellent, well-trained individuals doing the work with statistics, economists, political sciences. So when they publish, as they did about a week ago, their 30 year estimate for 2018 after 2048, I tend to rely on it.

They have a ten year estimate that they published in April. 2018 to 2028. I tend to rely on that, rather than spend six months trying to do what they do in a few days.

Q And on the loss of earnings, the third component, the work life expectancy?

A Yes. Okay. Now, that, let's see.

Here's perhaps an easy way to understand it. It's what we call an expected value.

Suppose I tell you I'm going to flip a coin, and if

it comes down heads, everybody gets $10. If it comes down tails, everybody gets $5. Okay.

I flip the coin, it comes down heads, everybody gets $10. Flip it, a tail, everyone gets 5. I just flipped the coin and it's in the air. It's not gonna come down for maybe ten years. What's the value of the coin when it's in the air? Hasn't come down heads. Hasn't come down tails. We know what that will be.

When it's in the air, meaning it's in the future, how long will he work in the future? When it's in the air, there's a 50 percent chance it will be heads. 50 percent of $10 is $5. The tail is $5. 50 percent of $5 is $2.50.

So while it's in the air, the expected value of the coin is $7.50. It will eventually be a 5 or 10, but that's the future.

And what I'm doing with work life is I'm estimating how many more years Mr. Almonte is likely to have worked in the absence of his accident using a series of statistics economists put together what are called work life tables. Which look at the probability year by year by year that individuals of a particular gender, age, education, labor force participate in, out, unemployed. What's the likelihood that they will be working?

And based on work life tables that have been published and I cited in my report, I brought the tables

with me that I used, Mr. Almonte had approximately eight and a half remaining years of work life at the time of this accident.

So, having a starting annual report, I have a growth rate and of a number of years, eight and a half, I take the starting annual amount, I increase it by the growth rate, then I do it another year, and another year, for eight and a half years.

And then the only piece I have to do, I get the total is if I am writing a report, I say how much of it should I put into the past while I am writing my report in 2016. Well then it's from 2013 at the accident up until I'm writing my report, that's the past. And the future is what remains before I came to court today. I separated out what the past and the future would be as of July 2. And those are the numbers that I have.

Q And, doctor, when you looked up the numbers again and did the figures again and reviewed the trial transcripts, did any of your numbers change?

A No. Not at all.

Q Okay. And going on to the medical loss part of your analysis again, you start out with a rate, correct?

A That's correct.

Q And when we are talking future medical and/or medical loss, what are those rates?

A Well again, there are three components. The component on the annual amounts I can't get. I rely on a different expert. So I relied on the testimony of Dr. Grimm and the testimony of Miss Gelfand in order to get the annual amounts for the various items.

So I have the trial transcripts. Before I had the trial transcripts, I had reports. So I used the reports. And used the reports to make my initial calculations. Once I received the trial transcript, as I've learned over time, sometimes they, those numbers change or something is not allowed or another thing is allowed, then I have to make changes.

So I based everything on the trial transcripts that I received and what I knew from the reports that were written. So they tell me the annual amount.

Q And then the next part is the growth rate?

A Well then there is the growth rate. That's me. I handle the growth rate for the various items. And then there's how will it all go on? Since it's over a lifetime, I go to the U.S. Life Tables. And currently --

Q These life tables are different than the work ones; is that correct?

A Oh, yes. These are life expectancy tables, as opposed to work life expectancy tables.

Q And what's the difference?

A Well the life expectancy tables look at the likelihood that you'll survive year by year by surviving. If you survive, you are alive. The life expectancy tables are an estimate. On average, what a person of a given age. And they break it out. They have it by age and they have it by gender and they have it by ethnicity. They have various ways of doing it.

I looked at the life tables, life expectancy tables for a male. And the last ones that were published, and they're published, by the way, by the, they're the National Vital Statistics Reports published by the National Health Center for Health Statistics.

Saying a lot of things too fast.

(Whereupon, there was laughter in the courtroom.)

A I am trying to get it out. Okay.

And the latest ones that were published were published in August of 2017.

And so based on Mr. Almonte's current age, which is just recently, the age of 62, the remaining life expectancy was, that I used was 20.17 years.

Now when I originally did my report, my first report in 2016, he had a longer life expectancy, but then that was back in 2016, and there were more years to go.

Then I did a second report in February of 2018.

And that at that point it was 20 and a half years of life expectancy. And now as we're in court today it's 20.17 years of remaining life expectancy. So that's that, that period for the, which the items are needed.

Q For the growth rate, how do you decide on a growth rate?

A All right. That's a different story. Okay.

The United States Bureau of Labor Statistics turns out what's called the Consumer Price Index, and it's a measure of what people think of as inflation. It's a composite of how the prices of eggs and housing and movie tickets and all the various things we would buy, how those prices changes. It's one great big composite. Within that Consumer Price Indexes, there's subindexes. There's one just for food. Within food, there's one just for poultry. Within poultry, there's one just for chicken.

Well there is a medical care component. Within the medical care component there are subcomponents. There's a component, for example, for services such as those of dentists and physicians and physical therapists.

And then there's one for commodities such as prescription medications and non-prescription medications and equipment. Within those indexes there's a series of subindexes.

So, if Dr. Grimm says we need to see a pain

management specialist, it's a physician. There's an index just for physicians. So I can look at the physician index and use that in conjunction, in conjunction with what I know from the Congressional Budget Office.

I will explain in conjunction in a second, in order to make an estimate of how I think the prices of physicians services will change over the period of time Mr. Almonte will need physician services, okay.

There's an index just for prescription drugs.

Well Dr. Grimm has indicated the prescription drugs and their cost. So I can go to the prescription drug index.

And then in conjunction with the future estimates for inflation, make an estimate of what I think will happen to the prices of prescription drugs.

And I do that for each of the items that came from Dr. Grimm and from Miss Gelfand.

Now, last piece. I am giving the abridged version here.

The indexes on consumer inflation on the Consumer Price Index are historical. Meaning they happened. They're telling you what happened last year, and the year before that, and ten years ago and 20 years ago. That's history. But I'm trying to forecast the future.

So, if I were to look simply at the past and say, well how did it, these prices of physician services change

the last ten years or 20 years? That would be the way it was then, but what is likely to happen over the next 20 years?

So, there, remember the term colinear? They're what we know is that medical care prices tend again to be fairly, move fairly well along with consumer prices.

Now, there's one mechanical reason, purely statistical reason they move that way. That's because the Consumer Price Index has the medical care component in it. But that is roughly about six percent of the Consumer Price Index. So the index itself as it's projected over time is used, I use along with historically, what I know has taken place in order to make projections.

So, concrete example. Over the last 20 years the prices of physician services have gone up by 2.7 percent per year over the last 20 years. Over the last ten years they've gone up even less than that. My projection for physician services is 2.9 percent over the next 20 years. Why?

Because during the past 20 years we had a fairly intense recession. Prices declined, in virtually all categories. And the projections by the Congressional Budget Office for the Consumer Price Index rose from roughly the 2.1 percent that inflation was over the past 20 years, to 2.4 percent for the next 20.

So inflation, which had been going down, is now projected to go up. And with it, we are likely to see increases in those items that track with the Consumer Price Index.

So, just kind of put closure on it, my estimate for physician services 2.9 percent, based on historically what happened in the past for an item called physician services over 20 years and ten years. And the expectation for inflation in the future. I do that with each of the items. As new data come out, I incorporate the new data.

If another roughly six months Congressional Budget Office will have a new ten year estimate, I may very well wind up changing my view on what will take place.

In the case of Mr. Almonte we are looking at 20 years for a life care plan. If I had a case that involves somebody in which the medicine was only needed for five years, I deal with it differently based on the projections for the next five years.

Q Okay. And, doctor, do you, based on the transcripts, the reports, tax returns, have an opinion, with a reasonable degree of economic certainty, as to what the future loss will be for Mr. Almonte for the injuries he has received on March 5, 2013?

A Two losses that I have an opinion on the earnings --

Q Do you have an opinion?

A Yes.
Q Yes, you do an opinion?
A Yes, I do have an opinion.
Q Okay.
MR. VARGAS: Your Honor, with your permission, if he could step down for the board.
THE COURT: So moved.
THE WITNESS: Yes?
THE COURT: Yes.
Q Do you need a marker?
A You know what, let's see. They haven't dried up, I have 'em.
MR. VAN ETTEN: If I may take my usual spot, Your Honor.
THE COURT: Please.
Q We will try to keep this quick since it's nice and toasty in here.
(Whereupon, there was laughter in the courtroom.)
MR. VARGAS: This is Plaintiff's 14 for I.D.
Q Need a marker?
A No. I'm good. I just need to get the page I need to write with. Okay.
MR. VARGAS: You want us to move the board, Your Honor?

THE COURT: Oh, thanks.

(Whereupon, there was laughter in the courtroom.)

MR. VARGAS: Sorry. I thought you were just going to leave for a second. How about this?

THE COURT: Yes. That's better. Thank you.

MR. VARGAS: (Indicating) everyone can see?

A Okay. I can't see.

All right. Well save the earnings for last.

Q Okay.

A Oh, of course you have a life care plan up here. Okay.

Q So those, this board, Dr. Goldman, would represent the medical portion of your evaluation, correct?

A Yes. These are the items that are in the testimony Dr. Grimm and Miss Gelfand, and the amounts which I found in their testimony. And we've said all the other parts.

Q Correct.

A Okay. So, pain management visits.

The pain management visits annual amount is $3,000 per year, based on the testimony. So, I'll put up 3,000.

Q Yes.

A Performance anxiety here.

Okay. It's a little high for me.

Q Yeah.

A Yeah. Nah. You know what, I can do it a scroll, but you'll get it.

Okay. We said the physicians 2.9 percent growth rate and the future costs of $3,000 going on for 20.17 years at 2.9 percent is $80,700.

Next is orthopedic surgeon visits. There it was twice a year at $250 a visit. That's $500 for the year. Again, it will be the same growth rate.

While we are at it, orthopedic spine surgeon visits as well, two visits a year at $250, that's as well will be $500. And both are 2.9 percent per year. So, 500. And the total is $13,450.

(Whereupon, there was a pause in the proceedings.)

A So, over the life expectancy of 20.17 years, orthopedic surgeon visits will be a total of $13,450. And the orthopedic spine surgeon visits will be a total of $13,450.

The next item was cervical epidural steroid injections. There there's a physician component and there's also a facility component. Dr. Grimm indicated that they are done under fluoroscopy and they're done with a facility fee.

Now, that means I need to get a growth rate for the facility. The growth rate that I have used is 5.6 percent.

And that's based on the Consumer Price Index medical care component for outpatient services, which by definition includes outpatient services in a hospital, or outpatient services as a freestanding facility, such as an imaging facility, an MRI facility, or an urgent care center and so forth.

So, the total physician fee was $3,600, at 2.9 percent. The facility fee was $2,250. And the growth rate for the facility fee is 5.6 percent. And now over 20.17 years, the physician component is $96,839. And the facility component is $80,433.

The next item is a lumbar epidural steroid injection. And it again has, it has an annual amount of $3,600 and it has a facility fee of $2,250. And so, it will be identical in cost to the cervical epidural steroid injections.

Now, well let me just put it in.

(Whereupon, there was a pause in the proceedings.)

A So, as with the cervical epidural steroid injections, since they are the same annual amount, same facility fees, same growth rates, 2.9 percent for physicians, and 5.6 percent for the facility fee, their totals are identical.

The physician total for the lumbar epidural steroid

injections, as with the cervical epidural steroid injection physician fee $96,839 over the life expectancy. And the facility fee costs is $80,433 over the life expectancy.

Q And the next category.

A Yes. The next one is, the next one is steroid injections to the right hip.

Now, there I have to, this was prepared in advance of what I saw in the transcript that there was also proposed by Dr. Grimm. Steroid injections to the left hip as well. And the steroid injections to the left hip were identical to the ones to the right hip in terms of their cost.

So, the total cost for both right hip and left hip, now I am going to write in the word left and hip. The total cost for the two combined, right hip and left hip, is $12,000. And now this growth rate's gonna take some, just a brief explanation.

Q Sure.

A Dr. Grimm testified that in order to do those injections, they needed to be done under fluoroscopy. And, in fact, he also mentioned along with x-rays, so they had to be done in a facility, just as the epidurals.

But in the transcript he did not break out how much of the cost was going to be in a facility and how much was gonna be physician cost. His transcript only told me that it was going to be for each one, $6,000, which totals

12,000. But I don't know how to take the $6,000 and break it into physicians and outpatient department or facility fee. I chose to just use 2.9 percent.

Q The conservative growth rate?

A As the physician fee. Although perhaps he'll clear it up and you can, based on the other numbers, you see for facility fee you will be able to calculate it without me. But I'm only gonna use 2.9 percent.

And the total for both right hip and left hip is $322,798.

Okay. Then we have trigger point injections. And those are for the year $1,200. And the total is $32,280.

And then there's physical therapy. Okay. Now, physical therapy is $2,100. But we need a growth rate.

One of the indexes in the Consumer Price Index in the medical care component is called services by other medical professionals. And then they have an explanation of that. Where they say such as, chiropractors, psychologists, nurses, in and out of the office and said and physical therapists. So, that's the index I want to use.

Based on it's past history, it was introduced, I think, in December of 1985 the first time. Based on its past history, based on Congressional Budget Office estimates of inflation, I am using 2.3 percent as the future growth rate. And the total for physical therapy is $53,139.

Okay. And now orthotic and ambulatory aids. That has a total of $741.

Okay. And there, there again a new item. Well there is an item of medical equipment and supplies. Medical equipment and supplies was an index for a long time until where it was called nonprescription medical equipment and supplies. Then in 2009 they scrapped that index, but for the most part kept it at same, only changed name to medical equipment and supplies.

So it's two indexes that I could look over, actually, over a very long period of time. It's increased at less than one percent a year. And the new index that came out in 2009 and has been going on since has actually barely moved. It's, in fact, it's even at times declined a tiny bit. I am using a growth rate of one percent for that. Why?

Because over long periods of time, and now we were looking at another 20 years if, as wages go up, as the price of raw materials goes up, it's reasonable to expect those items, while we benefited from the production of them technologically, eventually those items are going to increase in cost. How much?

Based on my experience, based on what I see, I'm using one percent as my estimate of future increases.

And so the total amount for the orthopedics and

ambulatory aids is $16,466.

And that includes items such as a cane, and a roller walker and the cane tips. And all those other various items. Now, which I've simply added together into one item rather than give a very long list.

Q All right.

A Then we have medications.

Now the medications that were proposed by Dr. Grimm, there were four of them. And I checked to make sure that they were all prescription medications. And, in fact, I was kind of surprised in what he called it Ibuprofen. And I think of that as walking into the drugstore, pulling it off the stand. Until I saw he gave the names of two particular Ibuprofen that he had been using. Both of those were prescription. And so, these are prescription drugs.

Total for the prescription medications was $6,372. And again, it's a, now another medical care component. The Consumer Price Indexes, prescription medications and the growth rate that I am using is 3.7 percent per year.

And just parenthetically, pain prescription medications come off patents and they become generic. That's already in this index. The Consumer Price Index already incorporates generic drugs in its prescription whenever they come off patent. That's a process they have

where they do their sampling at the pharmacies.

And the grand total for medications is $186,187.

All right. Then we have MRIs. The MRIs have an annual cost since they're $1300 finance, an MRI over a five year period of time, an annualized, that's a total of $260 a year. And there are outpatient department. The MRIs are done either in a free-stand facility outpatient department at the hospital, or done in a center that would house the MRIs. And based on this CPI index, it's 5.6 percent a year.

So I have three of them. They're all $260 per year. And the total cost of each is $9,294.

X-rays and of the cervical or lumbar spine are a total of $800. Again, done in facility or outpatient department at 5.6 percent. And the total for the x-rays of the cervical or lumbar spine are $28,598.

The EMGs and NCBs are both upper and lower tests. They also are $800, again at 5.6 percent a year. And that results in $28,598.

And then there's health and strength maintenance. That Miss Gelfand had TheraBands and various items. And they were a total of $435. The index there is growth rate is 1 percent. And it has a total cost of $9,663.

We're getting close.

Okay. There is a rental apartment. Miss Gelfand had indicated that Mr. Almonte would need a different

apartment. She gave an estimate for the apartments that she found, and then she indicated in the transcript that it's up to the economist, that's me, to reduce it by the rent that he was paying. He was living with another family, as well as part of his family, and each was contributing half of $1900 per month rent. His half was half of that, $950.

So I deducted his share of the monthly rent from the rent of the apartment that Miss Gelfand had priced out. And the total after that, is $27,846 per year.

And then there's the matter of rent.

Well again, the Consumer Price Index has an entry for what's called rent of primary residence. And based on the past 20 years, the past ten years, and the projections, for example, over the last 20 years, the rent of a primary residence -- oh, bless you.

JUROR: Thank you.

A Is 3.1 percent. Not a rate to make a long story, which I sometimes make too long, shorter, I am using 3 percent.

Q Is that nationwide?

A That's, yes. That's correct.

And again, it's influenced by inflation. And, you know, various different geographic areas. Sometimes there's overbuilding and rents come down. Sometimes there's shortages and rents go up, and it changes.

And there are other indexes. In fact, you can get a local index. The local index for New York housing is actually higher than this.

Q This is the more conservative rate?

A Well it's the rate I think is appropriate.

Q Okay.

A It turns out to be conservative but I think appropriate. Okay.

And so, at 3 percent it's $756,782.

And again I am just reminding everybody, that is after I've deducted the share that Mr. Almonte was paying. And I can't account for what the other party will do, whether they move to another state or whether they -- what they're gonna do. I am just interested in Mr. Almonte.

Then only two more things to go.

We have to, the orthopedic mattress. The orthopedic mattress, I guess the operational word there is orthopedic, so it would be under the general area of medical equipment and supplies as an orthopedic mattress. And it's $474. 474. At 1 percent I am getting --

Q Now it's --

A -- at the end of my, it's $10,531. Okay.

And finally a home attendant. The home attendant based on, well based on the testimony of Miss Gelfand, has an annual amount of $17,155 a year.

There there's actually a new index that was introduced into the Consumer Price Index, medical care component, called care of invalids and elderly at home. And it's fairly new and it was introduced just about the time of the recession. So it's been fairly low running at oh, approximately 1.5, 6, 7 percent. Prior to that, it was incorporated in with the services of other medical professionals.

At any rate, the rate that I am using for that, is 2.2 percent. So it's 17,155.

Now I will say, now, that may be a little on the low side for the following reason. New York State has minimum wage laws that have been put into effect. And the minimum wage laws have effect, for example, to the minimum wage of workers going to $15 an hour in New York beginning January 1 of 2019. And since home health aides in the New York area on average receive paychecks that are roughly in the neighborhood of about $11 an hour, sometimes 12, sometimes 10 and change.

When the minimum wage goes up, you expect these costs are gonna go up because this is the cost out of a home healthcare agency. What we see from Miss Gelfand was 23 to $24 an hour, which is the agency price. Then the agency pays the workers. But when the agency finds the workers are going to get wage increases by New York State law, the

likely outcome is going to be an increase in the price that people have to pay to get the services.

Nevertheless, that's beyond my forecasting ability. I am using 2 percent.

Q Okay.

A The total is $429,731. And if you have been adding them all up along with me.

(Whereupon, there was laughter in the courtroom.)

A The total you would have come up with is $2,364,799.

Q The last one's a tough one, right?

(Whereupon, there was laughter in the courtroom.)

A Woo. All I need to give you is the earnings.

Q Right. I was gonna switch boards.

A Oh.

Q Now you'll have to reach higher again.

A Okay. I am not going through what I did to get it. I am just going to tell you the results.

(Whereupon, there was laughter in the courtroom.)

A The past earnings are $137,319 up to today. The future earnings are $92,958. And the grand total when -- oh, that's right. The life care plan we said was $2,364,076. And the total, when all three are added together, is

$2,595,076.

Is that correct?

(Whereupon, there was a pause in the proceedings.)

A 364,799.

MR. VAN ETTEN: That's 799.

A So the life care plan was $2,364,799. And the grand total when added together is $2,595,076. Okay.

Q Yes. Thank you. You may take the stand.

A Okay.

Q Doctor, did any of your figures for the future medical costs change at all based on the testimony that you read from Dr. Grimm, Gelfand and Schuster?

A Well --

Q From what your prior report said?

A Oh, yeah. Yeah. Yeah.

In my initial report I, in the following report I lowered some growth rates. Because between 2016 and 2018, the latest data I had, some growth rates had changed. I mean I could look at each of those reports and tell you the changes.

The other thing that it changed obviously, we had mentioned before, is life expectancy had changed. The earning components stayed the same. The only thing that happened with the earning, the past became longer, which

made it a bigger number. And the future became shorter. Because it was the, still the same eight and a half years. It's just that it was distributed differently between past and future. But otherwise there really wasn't anything of a very significant nature that I saw that changed.

MR. VARGAS: No further questions.

THE COURT: Mr. Van Etten.

MR. VAN ETTEN: Sure.

CROSS EXAMINATION

BY MR. VAN ETTEN:

Q Didn't your medical costs double from your earlier report to the present?

(Whereupon, there was a pause in the proceedings.)

A Let me get my...

My future costs in the report that I wrote, August 30 of 2016, was 2 million 560 --

Q I apologize. My bad.

Medicine costs. I said medical costs. Medicine costs. I apologize.

A Medicine. Oh, prescription medications. Yes.

Q Yes.

A Yes. Yes. Sure. Let me get those for you.

Q I apologize.

A Of course. Of course.

Where did I put my glasses?

Q You've done today.

(Whereupon, there was laughter in the courtroom.)

A Okay. The prescription medications. Okay.

In the -- yeah. Okay. Prescription medications in the first report had an annual amount of $2,652. The growth rate was lower. It was 3.6 percent. And the total was $81,153, as opposed to the new report where the medications were $6,368 based on the four items that Dr. Grimm provided in his testimony. And the growth rate was 3.7 percent. And the total is $190,403.

Q Actually, that's more than doubled?

A Yes. Yeah.

Q Okay. So what was the difference in the medications from two years ago to today when he's treating less?

A Well I mean that's a terrific question for Dr. Grimm. I can't answer that.

Q In fact, you can't answer with any of these numbers that you have just written down as to whether any of these will actually be incurred in the future, correct? That's not your province?

A That's, of course, not. I can't tell you that.

Q And you already said you read Dr. Grimm 's testimony, Miss Gelfand's testimony, and Dr. Schuster's, but

you did not read Dr. McCollough's testimony or Dr. Brisson's testimony, the spine surgeon and the orthopedic surgeon, correct?

A That's correct as well.

Q Okay. So, you put out projections, just so we can get started, that the orthopedic surgeon visits would be two times per year for each of them, correct?

A That's correct as well.

Q And in the past two years they haven't seen him because they have now put him on an as needed basis.

Were you given that information before you made your calculations?

A No. Wouldn't matter to my calculations. My calculations are what Dr. Grimm has put into his report what -- oh, I am sorry, to his testimony, and what Miss Gelfand --

Q Dr. Grimm and Miss Gelfand made projections themselves, but the actual people that are treating him for the ailments, the orthopedic surgeon and the spine surgeon, are saying he only has to come in as needed, correct?

A I am sure you will ask Dr. Grimm. I can't tell you that.

Q I understand that.

Just so I am saying, by the way, the projections of two times per year if the spine surgeon tells Dr. Grimm, I

don't need to see him two times per year, those numbers are off, correct?

A Well I don't know if they're off. I mean it may be that Dr. Grimm is correct then and he feels that based on what he sees he should be seen. I can't provide an opinion on any of that.

Q Actually, the cost that Dr. Grimm gave you as well are on a cash basis, correct?

A I am sorry?

Q Are on a cash basis.

A Cash basis. I am not sure what you are --

Q Dr. Grimm said the charges are 250 per visit are based on what they charge a patient that comes in that pays in cash.

Did you read that in his testimony?

A Yes. It wouldn't -- they can -- they could pay it in pennies. They could pay it in check or credit card.

Q If they are getting rated for -- by the way, do you know how much has been charging Mr. Almonte in the past for his visit?

A Why would that matter? Do I -- I -- you are far beyond anything I'm supposed to do. My only -- all I can do, really, I can do nothing more than take a life care plan from Miss Gelfand, Dr. Grimm's treatment plan, and tell a jury what it would cost to fund those plans. I can't tell you

anything further about it.

Q So you just take the numbers that Dr. Grimm projected, some of which he said involved cervical injuries with, since you read his testimony, you saw that he said the cervical spine is fine now, but it might deteriorate in the future, right? That's what he said.

Based on that, you thought that was enough to put in all these projections for cervical care, correct? Because it said it might deteriorate in the future?

A No. I have what Dr. Grimm said and I have indicate what it would cost to fund it. You will have Dr. Grimm to decide the answer to those questions. And then there's a jury that will choose the difference between people. I can't. I am not a juror. I can't make a decision about what goes in and what comes out.

Q I understand --

A All I do is provide you with -- it's really straight forward. And I'm grateful --

Q I understand.

But I would like to explain this to the jury these numbers, these millions of dollars that you have just written down are based only on numbers that Dr. Grimm said might occur or could possibly occur, correct?

A Well you will ask him about them and make a -- and someone else will make a decision. I can't make the

decision.

Q I am not asking you to make the decision. I am just asking you when you made it on this --

A Yes.

Q -- these are statements he said potentially could occur or might occur. Is that, is that not what you read?

A That's exactly what I read.

Q Right. Might occur or potentially occur.

We do know for a fact Mr. Almonte lives with his family, correct?

A That's what I understand.

Q And he had been living with his family before this incident, correct?

A I believe so. Yes.

Q And they have been sharing expenses before this incident, correct?

A My understanding from what I read. Yes.

Q And they need a three bedroom apartment because the family lives together, correct?

A Well I don't know if that's the reason, but let's assume that that's the case.

Q Husband, wife, daughter, son-in-law, three other kids. That's why they have a three bedroom apartment, right?

A Well Miss Gelfand went through measurements of how big it was. Felt that the space was inadequate.

Q She went through the measurements because of the finamily -- finamily is not a word, Jeff -- because of the family dynamic, correct?

A Well I don't know if that's the case. I didn't read it that way. I read it as she felt appropriate for Mr. Almonte that his needs were such that this was the price of an apartment that would --

Q On a ground floor, right?

A Wherever she placed him.

Q That's what they're saying.

Again, if you read her transcript, not just the numbers, if you read the entirety of the transcript that you were given, it was to put him back on a ground floor, correct?

A I read the entirety. And yes, it's to put him on a ground floor.

But again, for my purposes, whether it's on a ground floor with an elevator, without, my purpose is really straightforward. What did she say the cost would be that she's recommending? What is the growth rate? How many years is it for?

Q Right.

A Someone else will decide.

Q Here's the point, sir.

When you sat there and you did your reduction for

the rental apartment, you only took his share out of the rental. You didn't take his daughter's share and son-in-law's share out of the rental, even though they're splitting the apartment up 50/50. And the only reason they need a three bedroom apartment is because the daughter and son-in-law and three kids require to have that much.

The numbers for this great big apartment that they need at these astronomical amounts, because of the family dynamic, correct?

A I didn't see it that way in the transcript myself. But as I said, she has indicated the rent that she felt was appropriate. I was to remove the portion that Mr. Almonte was paying.

Whether or not I am supposed to remove someone else's rent, I don't know how long they will be together. I don't know where they will be. She gave me the cost of an apartment.

Q So you're saying these two people need a three bedroom apartment?

A You're asking me? As an economist, what size apartment somebody should have? I don't -- perhaps he needs equipment in his apartment. Perhaps at some point -- I am far beyond my expertise in that.

Q Good point, though.

You said about the equipment in the apartment. And

you put in for health -- no. Not health and maintenance. I think it's the orthopedic and there is no roll aider as Miss Gelfand testified to. So you still put in cost for that projected amount into the future, even though they're not being used, right?

A No. That, what you just said is incorrect. The fact that you don't see a roll aider doesn't mean one would be necessary.

Once again, I don't want to sit here and try and reason what might be necessary or what the thinking of Miss Gelfand is. That was a question for Miss Gelfand.

On the fact that one's not in there, doesn't mean there shouldn't be one in there, or will be one in there.

Q You did --

A I take her price --

Q You saw where Miss Gelfand was asked by the physical therapy and she already talked about how she has reduced the number because of the change of Dr. Grimm saying the number of times, and then it was brought to her attention that Mr. Almonte is not going to physical therapy because it causes him pain. And she acknowledged that there was no way of knowing in the future if he ever would go to physical therapy.

You saw that, correct?

A I read completely the transcript. Yes.

Q But despite the fact that she said that, you don't even know he will ever go, you still put down physical therapy costs of $53,139 into the future, right?

A No. You know, no. What you are saying is incorrect, because I can't on my own decide to take out, take out of a life care plan what somebody has put. I am an economist. What you are suggesting is you put this in, even though I took Miss Gelfand's life care plan --

Q But you did do that.

A -- and I told the jury what the future cost would be of funding Miss Gelfand's items. I can't be the person to decide whether an item belongs in or belongs out. That goes for Dr. Grimm. That goes for Miss Gelfand.

Q You did do that, because with the family you chose to take out the part that the daughter and son-in-law pays.

A No. What I did is I, what I did was I took out of what her proposed rents were, the amount of money that Mr. Almonte was paying toward rent. That's what I did.

She said this is the rent that's appropriate. She also said that adjusting it for what's being paid by Mr. Almonte is the role of the economist. I took out what he's paying.

Q But that's my point, sir. The whole family is paying for the apartment they live in. And if, let's say they have to switch, let's assume that she's correct. Okay.

Let's give her the benefit of the doubt for our argument right now.

Let's assume that's correct and the whole family's gonna move into this new three bedroom. They're still going to split the rent in half with the family as they are doing now. So you should have discounted the other share, but you didn't, so the projection is twice as high?

A Well first of all, that's hypothetical if they do it. Exactly again, that would have been really appropriate for Miss Gelfand, but not for me.

Q So, if they do it you agree is a hypothetical. And when Dr. Grimm says if they are needed, you didn't care?

A No.

Q Well you did. You just put all the numbers down that he said and projected them.

A No.

What I am, what I am explaining to you is that I'm faced with a series of costs for items that are provided by Miss Gelfand and by Dr. Grimm. And I can't make any decisions. I can't say you know what, I don't think he should have trigger point injections. You know what, I don't think they should have this much space in their apartment. You know what, I don't like this whole idea of Ibuprofen.

I can't take their testimony and act like I'm

sitting with the jury deciding I don't like it. I'm gonna take it out.

All I did, pretty straightforward, I took what they put in and proposed. Told you what the growth rates are. Told you what the life expectancy is. And then I did the math and told you what the numbers are. I'm not a physician and I'm not a life care planner.

Q You are not the juror. If the juror chooses to discard all of those assumptions for what you projected the numbers, those numbers have no meaning, correct?

A No. Well numbers always have meaning, but you wouldn't say no meaning.

Q By the way, let's go switch to something else here. Growth rates. You said you looked at Dr. Freidfelder's report?

A That's correct.

Q You guys had different growth rates?

A In some cases we did. Yes.

Q I'd say 80 percent of the time you were a little bit higher, not a lot. A couple times he might have been higher than you?

A No.

Q Okay.

A First of all, I don't -- I could take a look, see if it's 80 percent. I doubt it. However, however, the issue is

we differed in methodology. As far as he was concerned, he looked what the past 20 years was for everything. So he is gonna build in. He is gonna build in the past 20 years. Everything is taken to 20 years. He is going to build in the last 20 years as the way everything will proceed in the future. Without regard what took place in the last 20 years and what's being projected by the future by significant government agency. Not just Congressional Budget Office, Social Security Administration also makes projections. We have the Bureau of Economic Analysis.

So, he and I had, for the most part, a different methodology. When I said that physicians over the last 20 years was 2.7 percent, I didn't use 2.7, he did. He used 2.9. Why? Because I had an understanding of what's being projected for the future. He stops the clock. December 31, 2017. Period.

Q When you are looking at economics --

A Yes.

Q -- okay. And this study that you told the jury about at the beginning, which you are looking at for rent and how things interact, correct? You look to the past, correct?

A There's no study. You mean the statistics.

Q Statistics. Right.

A Yes.

Q Statistics. You look into the past?

A Yes. That's correct.

Q That's where you get your foundation, correct? To the past. You look at what the prior growth rates were, what the prior inflation rates. Those are the types of things you look at. Those are the statistics you use as part of your methodology?

A That's not entirely correct. I look at the past. And I said, I also look at projections from agencies that are well recognized for what they're doing. I look at the past. He also looked at the past. He and I looked at identical statistics, but then I also incorporate what I know about, A, the economy, we had our recession. B, what I know about the economy. There are projections being made by excellent, just excellent agencies that have produced these statistics for the Congress of the United States. And I incorporate it. Why should I throw it away?

Q When you look at the projections, you gave projections of a future life expectancy 20.17.

A Yes.

Q And you've testified before in court, correct?

A Of course.

Q Many times?

A I don't know what many is. But I testified depend --

Q Hundreds of times?

A What?

Q Hundreds of times? Tens of times? Twenties of times? I don't know. Tell me.

A Over what, by year or by --

Q Yeah. In your life.

A In my life?

Q Yeah.

A I have no idea in how many times a year to give.

Q Projections and reports, 'cause that's your business now, right?

A Yes. I give the projections when I'm asked.

I say that I probably do it, I am going to give a guess, but I would say at least 20 times a year. Perhaps 30 times a year.

Q You testified in court before, so you are familiar with the Pattern Jury Instructions, correct?

A That's correct.

Q Okay. So you are also aware when you gave your life expectancy numbers that there's, there is a Pattern Jury Instruction that the Courts commonly will tell the jury for future life expectancy.

And that would be about 16.1 years for Mr. Almonte, correct?

A No. What I am aware of --

Q Are you not aware of that?

A What I am aware of is that the Pattern Jury Instructions are based on a very old life expectancy table. And I'm coming in to say what the cost would be to fund him not based on the way statistics were years ago, but how long he's expected to live based on current data.

So yes, there may be instruction using old data, but you shouldn't use old data. I am an economist and I know what the new data says. He has a current life expectancy of 20.17 years. They based on the most current life expectancy table. Whatever document that is that's old, I'm not interested in.

MR. VAN ETTEN: Your Honor, with your permission, this is only the first time I have done it, can I please have the court reporter read back that question I asked? I could have sworn it was a yes or no question and not an explanation question. I just asked if he was aware that there's a Pattern Jury Instruction.

THE COURT: Madam court reporter.

MR. VAN ETTEN: Thank you. I am sorry.

(Whereupon, a portion of the record was read.)

Q That was the question I asked before we got your answer, which I didn't object to you giving, but the question asked, you were aware of the Pattern Jury Instruction. And it's about 16.1 years for Mr. Almonte, correct?

Are you aware of it?

A Not the way you just said it. I don't know if, about the 16.1 'cause I didn't look.

Q Okay.

A I am aware there is a life expectancy table. I agree.

THE COURT: Okay.

Q Okay.

A Period.

Q So, in your research on to that issue on life expectancy, even though you knew you were coming to court to tell the jury, and you've testified in court before, and you are aware that the Court gives charges based on the Pattern Jury Instruction, you didn't look at the Pattern Jury Instruction as any part of your research, correct?

A No. No. That's misleading. No.

Q Did you look at it?

A No. Because the Judge gives --

Q No.

THE WITNESS: Can I answer it?

THE COURT: No. You said no.

MR. VAN ETTEN: Thank you.

Q Now you also just got today the Roselle Plumbing data for the earnings detail history of Mr. Almonte, correct?

A Yes. That is correct.

Q And when you made your projections, you didn't

change those based on the history of the total time that Mr. Almonte had worked from Roselle until he stopped working for them, correct?

A I based it on 2013.

Q Right.

But he had also worked for a period of time in 2012 prior to that, correct?

A That's correct.

Q And if you were to get a full picture of what he was actually earning from Roselle, it would have been for those extra few months, about nine -- about 11 extra weeks, correct? 'Cause then you could get from when he's started to when he ended, and you would get a full picture of the total amount.

Fair?

A No.

Q Not fair. Okay.

Because if you had taken the totality of the number of hours and how much he had earned, you would have come up with less than the $27,000, correct?

A No. That's probably not correct.

Q Well 665 hours, which is on that sheet, okay, by 21 weeks, which was the number of weeks, equals 31.667, which comes out to about $475 per week times by the 50 that you said, taking the two would come to $23,750. As an average

sample versus the one you came up with only using 2013.

Fair?

A Well I have no idea how you did your numbers, but.

Q Just explain this.

A It's not something that I would do. And I had the opportunity to do it and chose not to.

Q Because you didn't have all of the information?

A No. Ones I had that in my hand.

Q Why didn't you compute it while you were waiting to testify?

A Because I did compute what I thought was the right number to be using.

First of all, you are picking the very first, the very first days he started working there, and I don't know how much opportunity he would have had, how much time he would first be instructed about what they do and where they go. I have -- we generally do, we try to throw away what we tend to call outliers, periods of time that may not be representative of the way things will move forward.

So number one, I didn't know anything about the way he began his work.

Number two, I also knew that the economy was very poor and slowly but surely improving. And I wasn't going to penalize him. Because had he begun his work there, on the day the economy collapsed, I would say he is gonna be a

very, very poor man.

Q While I look for a document, are you aware he hadn't worked for, at least officially, for three years prior to this date of accident?

A I was aware that he hadn't been working. Yes.

Q Okay. Let me hand you Exhibit C.

A Yes.

Q With those hours, and you talk about outliers, if you go through and look in 2012.

(Whereupon, there was a pause in the proceedings.)

Q There are five occasions where he had full weeks or even actually the one time that he worked overtime, right?

A Mmm-hmm.

Q Is that correct?

A Yeah. He did have one --

Q One day that he worked overtime and five other times?

A Yeah. He worked overtime for four hours at a straight time wage. I see that.

Q And sorry, only one, two, three times in 2013 that he worked the full 40 hour week where $600 for 40 hours?

A Yes.

Q Actually the outliers are, in fact, that if you had gone back to 2012, you might have found he was working a

little bit more regularly in 2012, right?

A My numbers are too low. We should be increasing.

Q Why don't you factor all of them, then you will see that your numbers were too high, not too low.

A Okay. Now, first of all, my numbers that's, can we call that your opinion? I based it on how he was working in the year 2013 based on how he worked during the months of the year up until his accident. I also took into account that I indicated in my report that if he were to be working at 50 weeks per year, at 2,000 hours, then he would be making $30,000 a year. And I didn't use that.

If you want to pin them down to a particular point in time had these months taken place during the height of the recession, you would want me to tell the jury that he would be making $10,000 a year.

Q No. I want you to tell the jury what the documentation that exists for Mr. Almonte says. Not go back and make hypotheticals to what would have happened in the recession or what might happen in the future.

I wanted you to look at the documentation that you actually had and see if you compute the whole thing out if it's consistent with the numbers you said you projected, which you said you did not do before you came in.

So the question that I have for you is, with this $15 job, it's not a union job or guaranteed work, correct?

He is an employee at will?

A That's correct.

Q Is that correct?

A Yes.

Q Okay. And that's why he would have different hours each week that he works. When there's work available, he works. When there's not work available, he doesn't work, correct?

That's what you see from his records?

A That's correct.

Q Okay. And in the three years before there was no work available. He didn't work, correct?

A I don't know how much work he did in the years before. But --

Q Did you get any tax return documents from 2012, '11, or '10?

A I only received 2013. It's the only document I received.

Q Right.

Let's just assume that Mr. Almonte just testified that the last job he had regularly was in 2009 and then he started with Roselle in 2012. So that might be an explanation as to why you didn't get any other tax returns. Fair?

A No. I don't know why I didn't get tax returns.

Q I said assume that's what he testified.

A Even if he testified to that, I don't know if there will be tax returns filed for different reasons. I don't know.

Q Now when you took off the standard expenses of ten percent -- by the way, I think I questioned the witness on this right before, so we were pretty close on ten percent, but you also look at that tax return that he had deductions of $12,200 on this tax return you had, right?

A Sorry?

Q On the tax return you looked at, took out deductions of $12,200, correct?

A No. I don't think so. But let's get that tax return and take a look at it. Here it is.

Q Page two.

A Page two. That deduction is because he's married and filing jointly. You are permitted to take 12,200 off for standard deduction.

Q Married and filing jointly you said?

A This says married filing jointly or qualify widow itemized deductions or the standard deduction.

Q Was there any income you saw attributed to Mrs. Almonte if they're filing jointly?

A I don't know whether or not Mrs. Almonte had income. All I'm telling you is that the line that you said about

deductions has absolutely nothing, zero, to do with his work.

Q But that's a deduction he took for his spouse.

But if she was employed on this 2013 document, you would have had her W9's and her earnings as part of this tax return, correct?

A Well I don't know if that's the case. I don't know if she is employed. People file tax returns with a spouse who doesn't work.

Q I understand that.

And if the spouse doesn't work, that would mean that they would be at home. Would be able to assist somebody, rather than a home attendant, right?

A That doesn't make any sense to me. It's a non sequitur. The fact that she's, the fact that she's not filing with income on a tax return means that she's to be home? Being a home attendant?

Q No. I don't know, sir.

Because we have been told, assume we have been told Mr. Almonte, that his wife did work and had to come home and do certain things afterwards. I would assume she was working as a home health aide or home attendant, that she would have been filing since she's -- he is taking a deduction for filing jointly and she would have had income reported on this tax return. Wouldn't she have?

A Well I am afraid these are questions for other

people, not me. I can't tell you about the family or what their family does and how their family files taxes. All I know, the 12,200 you just told everybody should be a deduction, is not a deduction from anything that he does with his work.

Q Okay. It's the standard deduction?

A That's precisely what it says.

Q Okay. Now let me just go back real quick to the forms, then I will get rid of these things.

Where you talked about the left hip, you didn't even have anything about the left hip. And there was one mentioned by Dr. Grimm about the left hip, correct?

A Yes. That's correct.

Q All right. And you're aware that Mr. Almonte never reported an injury to his left hip. And for at least five years or so there was never any claim of the left hip. He only started treating recently for a left hip?

A Those are wonderful questions for Dr. Grimm, not me.

Q So you just added them in at the last second because of what Dr. Grimm said? If the left hip has nothing to do with this case, we can take out 50 percent of all those numbers; right hip, left hip, right?

A So --

Q If they're not related to this case, the left hip?

A No. No. I -- I can't determine what's related or

what's not. All I can tell you is Dr. Grimm put it into his testimony, and Fred Goldman can't decide, hey, I don't like it.

Q So it all depends on what Dr. Grimm tells you to what projections you give this jury, other than the income. Fair?

A Would you suggest I make something up?

Q No. Absolutely. I hope not. I nope not.

A Would you suggest I rely on Dr. Grimm? I would hope so.

THE COURT: Sir.

Q No. You don't want me to answer that question.

THE COURT: Sir. Sir. Inappropriate colloquy.

MR. VAN ETTEN: Sorry, Your Honor.

(Whereupon, there was a pause in the proceedings.)

Q Is the Consumer Price Index a proper resource for when you are talking about growth rates? Consumer Price Index, is that a proper resource when you are talking about these growth rates?

A Yeah. Sure.

Q Did you use those?

A Consumer Price Index?

Q Yeah.

A Yes. Those were the -- I discussed the medical care

component of the Consumer Price Index, and then I discussed the projections of the Consumer Price Index.

Q I thought I had one. Or one for you. Excuse me.

(Whereupon, there was a pause in the proceedings.)

Q Oh. When you are checking out the income for the future lost earnings -- or even let's forget the future lost earnings for a second. I apologize.

When you are checking out the income for the past lost earnings, assuming that Mr. Almonte would have had an available job, and it was still with Roselle, did you inquire with Roselle what they're paying mechanic plumbers from the date of the incident to the present?

A No.

Q Okay. So you, that's why you made the projection of the growth rate, even though a simple phone call to his employer could tell everybody what they were actually earning, correct?

A That has nothing to do with the growth rate.

Q But you made extra projections from the date of loss with a growth rate to increase the amounts of money you put down on your projection, correct?

A That's right.

Q Okay. So you didn't look to see whether Roselle still paying $15 an hour. You just assumed that the growth

rate would have increased that number each year by 2.2 percent?

A 2.8.

Q 2.8. I'm sorry. 2.8 percent, correct? That's what you did?

A That's correct.

Q Okay. So, 2.8 compounding from 15, how much would that make it at present?

If you go back to 2013 when this happened, if you compound $15 an hour annually at 2.8 percent? How much is that per hour?

A Right now... now we are talking my statistics.

(Whereupon, there was laughter in the courtroom.)

A Okay.

THE COURT: Using a calculator.

THE WITNESS: Yes.

THE COURT: Let the record reflect the witness is using a calculator.

THE WITNESS: I can't do it in my head.

A Okay. You want... what period of time?

Q Five years.

A 2013 to '18.

Q March of 2013. We are now June -- July, actually.

A Yes. It would come from $15 to $17.22.

Q You did nothing to check that's the actual rate at this time. Fair?

A I did absolutely nothing.

MR. VAN ETTEN: Thank you very much.

MR. VARGAS: Just a couple, Your Honor. I will be quick.

THE COURT: Five minutes.

REDIRECT EXAMINATION

BY MR. VARGAS:

Q All right. Doctor, have you ever been hired by Mr. Van Etten's firm?

A Yes, I have.

Q How many times?

A Well I found four different attorneys who I've worked with when he was in the iteration of Clerkin. Yes. And I actually, I wrote their names down. Mr. Verras, another Bellard, Mr. Bellard, and currently your, one of your named partners, Douglas Perry. He and I have a case now. There's enough.

Yes. I've been hired by him.

Q When you are hired, you are hired as an economist for their firm?

A Yes. That's correct.

Q You perform the same kinds of evaluations as you are hired to do in this case?

A Exactly the same way.

Q Do you use any different numbers for them?

A Absolutely -- if you -- I'm sure by now he would have found the transcript if I did anything differently. I do everything the same way. I support it the same way. I am competent the very same way that I'm being reliable as I can be as an economist.

MR. VARGAS: No further questions, Your Honor.

THE COURT: Okay.

MR. VAN ETTEN: No questions.

THE COURT: Okay. Counsels, step up, please.

(Whereupon, there was a discussion held at the bench off the record.)

THE COURT: Okay. Ladies and gentlemen, we are going to adjourn today. It's been a long afternoon. A little warm in here. But we are going to adjourn at this time. And tomorrow, good news, we have a half day. We will be starting in the morning and we will be completing tomorrow's proceedings on or before 1 o'clock. So, giving you a head start on July 4.

Okay. Please don't talk about the case.

COURT OFFICER: All rise. Jurors leaving. All rise.

(Whereupon, the jury left the courtroom.)

THE COURT: Okay. Matter's adjourned to

tomorrow at 10.

MR. VARGAS: Thank you, Your Honor.

MR. VAN ETTEN: Thank you, Your Honor.

THE COURT: You are excused, doctor.

THE WITNESS: Yes. Thanks.

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

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(Whereupon, the proceedings were adjourned to July 3, 2018.)

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It is hereby certified that the foregoing is a true and accurate transcript of the proceedings.

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VANESSA DEL VALLE
Senior Court Reporter