UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------x

GERGELY CSIKOS,

Plaintiff,

v.

230 PARK SOUTH APARTMENTS, INC.,

Defendant.

----------x

New York, N.Y.

18 Civ. 9598 (VEC)

October 19, 2022
9:15 a.m.

Before:

HON. VALERIE E. CAPRONI,

U.S. District Judge
and a Jury

APPEARANCES

RONAI & RONAI LLP
Attorneys for Plaintiff
BY: JOHN F. DELLA JACONO

PERRY, VAN ETTEN, ROZANSKI & KUTNER LLP
Attorneys for Defendant
BY: JEFFREY K. VAN ETTEN

ALSO PRESENT: AGNES NIEMETZ, Hungarian Interpreter

(Case called)

(Jury not present)

THE DEPUTY CLERK: Counsel please state your appearances for the record.

MR. DELLA JACONO: John Della Jacono for the plaintiff, Gergely Csikos.

THE COURT: Good morning, Mr. Della Jacono.

MR. DELLA JACONO: Good morning, your Honor.

MR. VAN ETTEN: Jeffrey Van Etten for 230 Park South Apartments. Good morning, your Honor.

THE COURT: Good morning, Mr. Van Etten.

Where is the plaintiff?

MR. DELLA JACONO: He's in the room.

THE COURT: Let's get him out.

Anything we need to talk about before we bring the jury in?

MR. DELLA JACONO: No.

MR. VAN ETTEN: No.

THE COURT: Let's go.

MR. DELLA JACONO: My first doctor should be here between 9:30 and 10:00. I told him to come early.

THE COURT: Good morning, Mr. Csikos.

About how much longer are you going to be, Mr. Van Etten?

MR. VAN ETTEN: I will try to get it done within a

half hour, Judge.

(Continued on next page)

(Jury present)

THE COURT: Good morning, everybody. Please be seated.

We moved out some chairs so you guys have a little bit more room in the jury box.

Mr. Van Etten.

MR. VAN ETTEN: Thank you, your Honor.

GERGELY CSIKOS, resumed.

CONTINUED CROSS-EXAMINATION

BY MR. VAN ETTEN:

Q. I have on the screen the photograph we left off on yesterday. And my first question is, while standing on the first step of the ladder, you could reach the ceiling that was required to be pulled down; is that correct?

A. Yes, probably, yes.

Q. So at that level, you would be one foot off the ground; correct?

A. Yes.

Q. But you're claiming you were at 4 feet above the floor to take out the ceiling; is that correct?

A. Yes.

Q. And didn't you in fact, sir, testify that you needed to be 4 feet up to be able to reach the ceiling?

A. No. What I said was that from the fourth step of the ladder, I was able to see what's above the ceiling.

Q. Sir, you have testified on two prior occasions in this lawsuit; correct?
A. Yes.
Q. And the first time you testified was on July 11, 2019, and you were represented by the law firm of Ronai & Ronai; is that correct?
A. Yes.
Q. Now, I'm going to read from your deposition from July 11th, 2019, starting on page 16, line 14 through 22. I'll allow both counsel and the Court the opportunity to get there.

At that time, on line 14, were you asked the following question and did you give the following answer:

Question: So tell me what happened that led to the incident.

Answer: I started removing large pieces from the ceiling. When I got to the second large piece to be removed, I placed and secured a ladder. I was standing on the fourth step in order to reach the ceiling. And as I removed the second large piece from the ceiling, I fell off the ladder on my back.

A. Yes --

MR. DELLA JACONO: Objection, your Honor. There's no question.

A. Yes, that's what I said.
Q. So at that time, three plus years ago, about a year after the accident, you said that in order to reach the ceiling, you

had to be on the fourth step of the ladder; correct?
A. Yes, that's what I said. Maybe my wording was not clear.
Q. So in fact, though, as we just established from the photograph and your testimony a couple of minutes ago, you only had to be on the first step, 12 inches off the ground to reach the ceiling; true?
A. Yes, that's correct. But if I want to see what's above the sheetrock, above the ceiling, I had to remove -- I had to go up to the fourth floor -- fourth step of the ladder.
Q. But sir, isn't it true that you told the ambulance attendants that came to your assistance after this incident that you missed the bottom step of the ladder and fell off of it?
A. I don't think I had that kind of discussion with the paramedics.
MR. VAN ETTEN: Your Honor, at this time, I have on the screen Defendant's F in evidence, the FDNY pre-hospital care report. And I'm exhibiting it to the witness and the jury, as it's already been marked into evidence.
THE COURT: There was no objection to this; correct?
MR. DELLA JACONO: No. The medical records were all in.
THE COURT: So F is admitted.
(Defendant's Exhibit F received in evidence)
BY MR. DELLA JACONO:

Q. By the way, you can read English; correct?
A. Yes.
Q. So you see here it says pre-hospital care report?
A. Yes.
Q. And you said the accident happened after lunch; true?
A. Yes.
Q. And down there on the right-hand side, it says, call received at 12:54:46, which would be after lunch; true?
A. Yes.
Q. And at approximately 1:21 or 1321 military time, it says that first contact with the ambulance attendants was with you, so about 26 minutes later. Is that how you remember --
A. Yeah, something like that.
Q. I'm going to show you now the narrative history part of that report, where the ambulance attendant states -- and can you read along with me -- patient states he missed the bottom step of the ladder and fell off of it.

Does that refresh your recollection that that's what you told the ambulance attendants when they asked you what happened to you?
A. No.
Q. Well, it also states that you landed on your back and hurt it. Is that what you told the ambulance attendants?
A. That's correct.
Q. So you remember telling them about your hurting your back,

but you don't remember telling them how you fell; is that true?
A. All I remember is that I was lying on the floor, I am in pain and I couldn't move.
Q. But they did ask you questions about how the accident happened; correct?
A. Yes, they put up questions. But people were talking around me, so I don't know.
Q. And then I'll just go down a couple lines below. And yesterday you said that you thought you lost consciousness, but the ambulance attendants put negative LOC, which stands for loss of consciousness. Does that refresh your recollection whether or not you told them that you didn't lose consciousness?
A. The thing is that I don't remember what I told the paramedics. All I remember is they kept saying that you'll be better, you'll be better.
MR. VAN ETTEN: Move to strike what the paramedics said to him.
THE COURT: Disregard what the paramedics said to him.
BY MR. VAN ETTEN:
Q. Right below that, it says, sir, patient states besides his back hurting him, he has no further complaints; is that true?
A. Well, that's what they wrote. I don't know.
Q. Well, did you tell them that any other part of your body was hurting besides your back?

A. Yes. My head.
Q. The ambulance took you to Bellevue Hospital; correct?
A. Yes.
Q. And you were seen at Bellevue Hospital and you talked to doctors there; correct?
A. Yes.
Q. Now, you told the jury yesterday that you had already climbed 4 feet up and you were inside the drop ceiling when you had your accident; correct?
MR. DELLA JACONO: Objection, your Honor. That wasn't the testimony.
THE COURT: Rephrase the question.
BY MR. VAN ETTEN:
Q. Sir, when you had your accident, you were on the fourth rung of the ladder; correct?
A. Yes.
Q. Had you stopped climbing the ladder at the time you had your accident?
THE INTERPRETER: Would you repeat that for the interpreter.
Q. Had you stopped climbing the ladder when you had your accident?
A. No.
Q. Were you planning on going up another step higher?
A. No.

Q. So when you hit the fourth step, you had stopped going up; is that fair?
A. Yes.
Q. And in Bellevue Hospital, Dr. Wall, the doctor that was examining you took a history from you that, "states he was climbing up ladder when he fell and landed on his back." Did you tell the doctor that you were actually climbing up the ladder?
A. I don't remember. My English is not very good. It may have been misunderstood.
Q. Well, sir, I know you are using an interpreter today, but when you saw your doctors, Dr. Lattuga, Dr. Ford, Dr. Hannah, you didn't have interpreters when you would see your doctors; right?
A. Yes.
Q. And they offer you an opportunity and they put in your medical records that you speak English; true?
A. I speak this language a little bit, yes.
Q. So from the records from the day of the accident, where the initial people, the ambulance attendants, say that you missed a step on the bottom, and this doctor saying you were going up the ladder, isn't it true you were stepping onto the ladder, missed a step and fell?
MR. DELLA JACONO: Objection, your Honor.
THE COURT: Overruled.

A. I don't remember. It's as simple was that.
Q. Well, at 3:00 o'clock, as you can see from the record that I put up in front of you, it states there that you fell from the third step of the ladder. Do you remember telling the nurse that?
A. I don't know. I -- I really don't know. They kept asking how the accident happened, and I tried to reconstruct the events. All I know is that I fell off the ladder.
Q. Well, two days after the accident, didn't you prepare an accident report as part of your claims?
THE COURT: Is this still F?
MR. VAN ETTEN: Sorry, no. This is now Defendant's Exhibit X. I apologize.
THE COURT: Any objection to X?
MR. DELLA JACONO: It's not an accident report.
THE COURT: Is there any objection to entering it into evidence?
MR. DELLA JACONO: No. It's part of the workers' compensation file.
(Defendant's Exhibit X received in evidence)
BY MR. VAN ETTEN:
Q. Sir, as you see there, is that your signature on that page down at the bottom?
A. Yes.
Q. And it's dated June 27th, 2018?

A. Yes, on the 27th.
Q. And at that time, it's also signed by your attorney that was representing you?
A. Yes.
Q. And it then states that you are affirming the statements to be true to the best of your knowledge; correct?
A. Yes.
Q. And going up a little bit, it says for how the accident happened, "while pulling down the sheetrock, I fell off the ladder from the third step to the ground." Is that what you thought happened when you filled out that form two days after the accident?
A. Yes, that's what I said, that's what I wrote four years ago. I don't remember.
Q. Sir, we now have the ambulance attendants having you at only missing on step, the hospital having you at 3 feet and ascending, and you saying under oath in 2019 that you were 4 feet and you told this jury you were 4 feet in the air. That's five versions of what happened.
MR. DELLA JACONO: Objection, your Honor, a little argumentative, here.
THE COURT: Overruled.
Q. Which one is the one that actually happened?
A. On the fourth.
Q. So even though two days after the accident you said 3 feet,

you told the hospital 3 feet and that's closer in time, you think your memory was better a year later and now; is that your testimony?

THE INTERPRETER: Would you mind repeating the question for him. He asked me to repeat it. I don't think that would be fair so he's asking you to repeat it.

MR. VAN ETTEN: I don't know if I could. If I could ask the court reporter to repeat my question, I would appreciate it.

THE COURT: Why don't you try and shorten the question. When you are going through an interpreter, a long, convoluted question, it's more difficult than a short, direct question.

BY MR. VAN ETTEN:

Q. Sir, you are now saying you were at 4 feet even though on the day of the incident in the hospital it says that you were at 3 feet and two days after you did a form saying you were 3 feet. Are you saying your memory today is better than it was immediately after the accident?

A. Maybe my memory is not better than it was then, but there's a possibility the things are coming together more clearly in my head.

Q. Now, when you came to the United States, you said you started working here in various restaurants; correct?

A. Yes.

Q. Do you have any records which verify how much money you earned while you worked at those restaurants?
A. No, I don't have that.
Q. And then next you worked for Luxury Tile and Painting; correct?
A. Yes.
Q. And you worked for them for about two, two and a half years; true?
A. Yes, approximately.
Q. Do you have any records from Luxury painting, who you worked for for two, two and a half years, showing how much money you made working for them?
A. No. They give me checks, and I deposit them in the bank. That's all.
Q. Do you have your bank account records to verify that?
A. Yes.
Q. Did you give them to your attorney?
A. No.
Q. Did you file tax returns?
A. Luxury painting made arrangements for the tax-related issues, but I personally did not make taxes.
Q. If they made arrangements, they would have issued you a W-2 or 1099 or some type of statement confirming they paid taxes; true?
A. They gave me those forms.

Q. And do you have those forms to show to the jury how much money you were earning?
A. No. I moved many times during the past years. I don't know I have the related paperwork.
Q. Did you ever give those papers to your attorneys?
A. No, because I couldn't.
Q. And do you have any records for your work with Remodel Art that shows how much money you were earning from them?
A. No. They gave me checks.
Q. And they gave you checks that were written by Alin Vadanuta, correct, not Remodel Art?
A. That's correct.
Q. So there were no taxes taken out of those checks; correct?
A. Probably not.
Q. And you didn't file any tax returns when you worked for Remodel and Mr. Vadanuta, did you?
A. No.
Q. Is that because of your status in the United States at that time?
A. Yes.
Q. Now, you worked at a number of jobs in Hungary, and I'll go through them quickly because I promised the judge I would get done quickly, you did AC installations for one company and you had worked in construction for another company; correct?
A. That's correct.

Q. And you worked as an administrative caseworker for a car dealership; correct?

A. Yes.

Q. And then you worked in two factories; one was an oven factory and I forget what the other one was. Is that correct?

A. Yes, we work with them together. AC compressors.

Q. And all of those jobs lasted no more than six months to a year; correct?

A. That's incorrect. My first job lasted for seven months. And then I looked for enrollment to the military. And then I tried other jobs we talked about. And then I went back to construction. And after that, I worked in factories.

(Continued on next page)

BY MR. VAN ETTEN: (Continuing)

Q. So, when you came to the United States the job you worked the longest, that was at Luxury Tile; correct?

A. Correct.

Q. And you quit that job because there was too much work for you to do; correct?

A. Yes; seven days per week for a month.

Q. Well, sir, you worked at that job for two, two and a half years; correct?

A. Yes.

Q. You were painting apartments?

A. Yes.

Q. And you had painted approximately 75 apartments in those two and a half years, correct?

A. More.

Q. Well, sir, at your deposition on July 11, 2019 page 28 to 29, starting on line 25 --

THE COURT: I'm sorry. Page what?

MR. VAN ETTEN: 28, carrying on to 29, starting on line 25, question, on line 25:

"Q How about this. During the entire two and a half year period, did you paint more than 20 apartments?

"A Yes."

Do you remember giving that answer?

A. Yes.

Q. Then the next question on page 29, line 5:
"Q More than 50?
"A I think, yes."
Do you remember giving that answer?
A. Yes.
Q. Question, line 7:
"Q More than 75?
"A I don't want to make statement it is. I don't know."
Did you give that answer?
A. What I meant is that I didn't want to make a false statement. We paint two or three apartments per day.
THE COURT: You painted two apartments a day? Is that what you said?
THE WITNESS: Two or three apartments per day.
BY MR. VAN ETTEN:
Q. OK. Two or three apartments per day, 365 days a year, that would be 730 to 900 per year; correct?
A. That's why I didn't want to say something back then something stupid.
Q. Well, sir, again, if it was two or three and it was two and a half years you worked there, we are talking thousands of apartments you painted in two and a half years. Is that what you did?
A. Probably, yes. We painted so many apartments in so many buildings I don't know.

Q. OK. By the way, your degree, you said something about your degree you got after high school in Hungary. Wasn't that in informational technology?
A. Professional training was part of the one-year language proficiency studies and I chose IT.
Q. Right, so computer work; correct?
A. Yes.
Q. OK. So, have you done any training on computers since your incident?
A. No.
Q. Have you applied for any jobs working computers where you could work at a desk?
A. No, I didn't look for a job like that. In Hungary there were no opportunities.
Q. I'm talking now since your accident. After your accident have you looked for any computer jobs?
A. No, I did not.
Q. Now, after your first surgery with Dr. Lattuga your neck got better but not like it was before. Is that a fair statement?
A. Correct. It wasn't like before.
Q. And after -- by the way, the neck and back surgery, with the neck surgery that was a much longer procedure, correct?
A. The second surgery was shorter.
Q. The second surgery you were in and out the same day;

correct?
A. If I remember correctly; yes.
Q. And after that second surgery your back pain got better, correct?
A. Somewhat better, yes.
Q. At that time it was your understanding that your pain would get better by about 75 percent after the low back surgery, and then in two to five years the pain would go away from what your doctors told you; correct?
A. Probably I said that, I don't remember; yes.
Q. Since you said you probably said it we will go with that.
And we are not five years past the surgery, correct?
A. No. No, it hasn't passed.
Q. You haven't seen any psychologists, correct?
A. No.
Q. You haven't seen any psychiatrists, correct?
A. No.
Q. Do you do home exercises and home therapy?
A. In the morning and at night I do stretching exercises for about 10 minutes.
Q. And that's what the physical therapist told you to do, correct?
A. Dr. Mikelis recommended it.
Q. Dr. Mikelis works for New York Spine with Dr. Lattuga, correct?

A. Yes.
Q. And you do things around your apartment with your partner to help out, don't you?
A. The only thing -- the things I can do are cooking and washing of the floor.
Q. Yesterday you said you could do nothing around the apartment but now today you are saying you do cooking; correct?
A. I apologize. I may have expressed myself in the wrong way.
Q. Fair enough.

And you also split some of the duties for cleaning the apartment, true?
A. Well, yeah; that washing of the floor, yeah, that we share.
Q. And also, when you do the laundry you have to go to a laundromat; correct?
A. There is a laundry in the house.
Q. Oh, OK.

Are you living in a new house different from when you were on November 19, 2020 when I questioned you over Zoom?
A. Yes. We moved to another apartment.
Q. So, back in 2020 you would go to the laundromat, now you can do it in your building; is that fair?
A. There is a laundry room in the building now.
Q. And you help your partner with that by folding laundry and doing things like that, correct?
A. No.

Q. OK, and I will read from November 19, 2020, the second deposition, page 11, line 5 -- sorry, line 3:

"Q Do you do the laundry?

"A We go together.

"Q Do you help her with the laundry?

"A Folding at the end."

Do you recall giving that testimony back on November 19, 2020?

A. Yes. Back then I did help her.

Q. Now, sir, the photograph that we marked or had in evidence, Defendant's V-1A that showed you on the ground the day of the incident, I'm going to just bring this up to you and ask you to take a look at this, right, and point out the section of the ceiling that had been removed. OK?

THE COURT: Mr. Van Etten, if you stand back and hold it up the jury can see it, otherwise they'll be in the dark. Can you point out to them what you pointed him to?

MR. VAN ETTEN: The second section.

MR. DELLA JACONO: Your Honor, I missed the question. Is there a question?

THE COURT: He hadn't asked the question yet.

MR. DELLA JACONO: I was trying to figure out what's going on. That's all.

THE COURT: He is just showing them what he showed the witness.

BY MR. VAN ETTEN:
Q. That section of removed ceiling, would that be approximately the five feet out from the wall that you took down in two sections?
A. I think yes.
Q. So, if you had taken out those two sections at approximately five feet and then changed the ladder, when you then went to step up the ladder to start the next section of the work, isn't that when you missed the step and fell?
A. No. No, it didn't. But I don't know what you are up to with this question.
Q. I'm not up to anything, sir. What I am up to is asking is where is the section of three foot by five shoot section of sheetrock that fell on your chest, where is that missing from the ceiling? Can you tell me where it is missing?
THE COURT: Do you understand the question?
INTERPRETER: I am asking you to repeat the question for the interpreter, please.
BY MR. VAN ETTEN:
Q. Sure.
If this section of the ceiling --
THE COURT: Again, if the jury wants to see what you are pointing to, if you stand in front there, he can see it and they can see it.
BY MR. VAN ETTEN:

Q. What I will also do --

THE COURT: You might ask -- is that your paralegal back there? Maybe she can come and be a human easel.

MR. VAN ETTEN: I don't have a paralegal with me.

THE COURT: Sorry.

BY MR. VAN ETTEN:

Q. Sir, what I am asking you is this section of ceiling that is missing was the section you took out, the two sections that stands out five feet, and I am saying, sir, that where is the three foot by five foot section of sheetrock that fell on you? Where is that cutout from the ceiling?

A. As I said, I am from Europe, I am not very good with measurements, but where Tibor is standing in this photo, above him in the ceiling, it's -- that's the area where I grabbed the sheetrock.

Q. Well, sir, where you see Tibor you can see the width of his body, you can see the wall, we can see your head close to the wall, we see even an apartment door and the section of sheetrock only extends a little bit past Tibor. That's about the five feet you said that you first removed, correct?

A. Possibly, yes.

Q. And so, that at that point, once you had removed that section, that's when you changed the position of the ladder and when you changed the position of the ladder, that's when you had your accident; correct?

A. I turned the ladder around, that's how I removed it.
Q. And when you turned the ladder around and consistent with what you told the ambulance attendants, it is that first step going on to the ladder that you missed, that's when you fell. Isn't that true?
A. No.
MR. VAN ETTEN: Thank you, sir.
THE COURT: Any redirect?
MR. DELLA JACONO: I have a couple questions, if I could.
THE COURT: When you are talking to each other, the court reporter doesn't know whether she is taking down the record or not. When you have to consult on this stuff, if you will whisper to him, then there is no question.
MR. VAN ETTEN: Just so we can make a clear record, Judge, the second photo is the one for some reason doesn't have that TD 000, so it is TD 00002.
MR. SO: It is on the side.
THE COURT: So this is V-2?
MR. VAN ETTEN: V-2.
MR. DELLA JACONO: Your Honor, this is V-2, Defendant's Exhibit V-2, this has already been agreed upon and put into evidence.
THE COURT: Correct.
REDIRECT EXAMINATION

BY MR. DELLA JACONO:

Q. Mr. Csikos, do you have a photo on your screen that you can view?

A. Yes.

Q. That's similar to the other photo that you just saw; is that correct?

A. Yes.

Q. Do you see in the forefront at the bottom of the photograph there is a fan there? Do you see the fan?

A. Yes.

Q. Did you place that fan there before you started your work on that day?

A. No.

Q. Did you know why that fan is there?

A. No. We never used fans for demolition.

Q. Do you know who placed that fan there?

A. No.

Q. Do you know who took this photograph?

A. No.

Q. Do you know who took the other photographs that you have taken a look at before?

A. No.

Q. You have testified on both direct, from me, and on cross-examination from Mr. Van Etten, that you removed two pieces of sheetrock and you put it by the wall. Do you see

those two pieces of sheetrock that you removed from the ceiling by the wall there?
A. No.
Q. Do you know what happened to those two pieces of sheetrock that you took down before you fell?
A. I don't know.
Q. Did you take them anywhere from the hallway before you fell?
A. No.
Q. You said that when you -- you testified that when you fell the sheetrock came down on your chest and the ladder fell next to you. Do you remember testifying to that, sir?
A. Yes. I fell down by holding the piece of sheetrock.
Q. And you said that the ladder fell as well?
MR. VAN ETTEN: Objection, your Honor.
THE COURT: Overruled. It is up to the jury, their recollection controls.
MR. VAN ETTEN: Beyond the scope. I didn't ask him about the ladder.
MR. DELLA JACONO: He asked a lot about a ladder --
MR. VAN ETTEN: Sorry.
THE COURT: Overruled.
BY MR. DELLA JACONO:
Q. Do you see the ladder in this photograph?
A. No.

Q. Do you know what happened to your ladder?
A. No.
MR. DELLA JACONO: Would you be so kind as to bring up his other photo, V-5, the one with the gentleman? Yeah, that's it.
Q. This is defendant's V-5 which was shown to the witness before. Sir, do you have that photo in front of you?
A. Yes.
Q. And that's Cataline who is on the ladder?
A. Yes.
Q. Is that the ladder you were using?
A. No.
Q. You were using a different ladder?
A. Yes, a six feet one.
Q. Do you know where that ladder went after your accident?
A. No.
Q. Do you know why there were no photographs taken of that ladder?
A. No.
MR. DELLA JACONO: Thank you, your Honor. I should have asked.
Q. My next question is you said you had some training in Hungary for some IT work; correct?
A. Yes.
Q. How long was that training for?

INTERPRETER: How?

Q. How long. I'm sorry.

A. One year only.

Q. And what did they teach you in that one year? Just a quick synopsis.

A. It was -- back then it was called multi-media and we designed web pages and logos.

MR. DELLA JACONO: Thank you. I have no further questions.

THE COURT: Any recross?

MR. VAN ETTEN: No, your Honor.

THE COURT: Thank you, Mr. Csikos. You can step down.

Call your next witness.

MR. DELLA JACONO: Can I just check and see if he is in the hallway?

THE COURT: Yes.

MR. DELLA JACONO: Thank you.

(witness excused)

MR. DELLA JACONO: Your Honor, we call Dr. Sebastian Lattuga.

THE COURT: This is Sebastian Lattuga?

MR. DELLA JACONO: Yes, this is Lattuga.

SEBASTIAN LATTUGA,

called as a witness by the Plaintiff,

having been duly sworn, testified as follows:

MR. DELLA JACONO: May I inquire?

THE COURT: Please.

MR. DELLA JACONO: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. DELLA JACONO:

Q. Good morning, Doctor.

A. Good morning.

Q. Are you licensed to practice medicine in the State of New York?

A. Yes.

Q. And what medical school did you go to, sir?

A. I went to SUNY Stonybrook School of medicine.

Q. What year did you graduate?

A. 1989.

Q. And you postgraduate course of study?

A. I went on to our orthopedic residency at Stonybrook as well, I graduated in 1995. I then proceeded to do what is called a fellowship in spinal surgery at the University of Miami Jackson Memorial Medical Center. Then I returned back to the New York metropolitan area where I went into private practice. Currently, I am assistant clinical professor of spinal surgery at the Weill-Cornell Medical School and I am attending surgeon at New York Presbyterian Hospital.

Q. Sir, are you board certified?

A. Board certified in orthopedic spinal surgery, yes.

Q. You talked about teaching positions. Any other experience that you have dealing with treating injuries such as those that are involved with spinal injuries or anything like that?
A. This is my field of practice. Essentially, I just see patients with traumatic spinal injuries and that's what my training was in, for the last 27 years.
Q. Have you been qualified as an expert in the area of spinal surgery before in the State of New York?
A. Yes.
Q. Can you give us approximately how many times?
A. More than 20 times.
Q. And have you testified on numerous cases, at depositions and at trials, with respect to your specific area of expertise in spinal surgery?
A. Yes.
Q. Sir, are you being compensated for your time here today?
A. Yes.
MR. DELLA JACONO: Your Honor, at this time I would ask that Dr. Lattuga be qualified as an expert in the area of spinal surgery.
THE COURT: Any objection?
MR. VAN ETTEN: No objections.
THE COURT: He is received as an expert.
MR. DELLA JACONO: Thank you.
BY MR. DELLA JACONO:

Q. Now, Doctor, did you have an opportunity -- I see you have your folder here with you today.
A. Yes.
Q. Is that the folder of Gergely Csikos?
A. Yes.
MR. DELLA JACONO: Your Honor, would it be possible if the Doctor could, at points in time, refresh his recollection if he needs to with respect to his file?
THE COURT: Of course. He just needs to tell us when he is going to do it.
MR. DELLA JACONO: Thank you. I appreciate that, your Honor.
BY MR. DELLA JACONO:
Q. Did you have an opportunity, at some point, to see Mr. Csikos back in 2018?
A. Yes.
Q. Do you remember first time that you had an opportunity to see him?
A. I'm going to refer to my records, your Honor, if that's OK.
THE COURT: Sure.
A. 2/4/19.
Q. I have him also did you see him in '18, back in August of 2018 as well?
A. Yes, he was seen in my practice by other physicians in my practice group.

THE COURT: You both need to slow down. Speak a little slower, that's all. Play like you are in the south, OK? Talk a little bit slower.

MR. VAN ETTEN: Your Honor, at some point leading I would ask to be -- once we get past the background information.

THE COURT: Correct.

MR. VAN ETTEN: Thank you.

MR. DELLA JACONO: OK?

THE COURT: Go ahead.

MR. DELLA JACONO: I apologize.

THE COURT: That's OK.

Just so we don't lose the thread, he first saw the patient in February of 2019, other doctors in his practice saw him in 2018.

BY MR. DELLA JACONO:

Q. When you first saw him in 2019, can you tell us what you did, what your findings were, your examination and the like?

A. Sure.

So, he was referred to me for spine surgical evaluation. The history that he gave was that he was involved in a -- fell off a ladder June of '18. He was 27, he worked as a painter's assistant. Evidently he was climbing a ladder and he fell, and in his fall he injured his neck and back. He had been treated conservatively by other physicians prior, physical therapy, interventional pain management, and then came to my

office with complaints of neck and back pain with radiation into upper and lower extremities, numbness and tingling. He described the pain as 10 out of 10, both in the neck and low back, with limitations with his abilities to perform his daily activities. That is the history that he gave me.

I then proceeded to do a physical examination and I took him through standard orthopedic spinal examination which would include a range of motion of the cervical spine, which is the neck, and a range of motion of the lumbar spine, which is the low back, and then associated with that exam, we do a neurological exam as well of the upper and lower extremities. In that exam on that date I found that there was a substantial limitation of motion both of the neck and all the planes and I will describe them to the jury, flexion is bending, extension, and lateral rotation there was limitations. Similarly, in the low back there was limitations in flexion, bending forward, leaning back, and twisting from side to side.

On neurological exam there was also objective findings. For example, there was weakness of his deltoid muscle and loss of sensation -- altered sensation in parts of the arm designated C5, C6 and C7 -- and for the jury's sake that's different dermatomes, areas on the arms that are specifically delegated that notation. And the same thing -- so that was an abnormality. Also abnormal were some numbness in the lower extremities and in the right L4 distribution.

I reviewed the MRI films and the report with the patient and I made notation of herniated discs in the neck and herniated disk in the low back.

So that's -- I reviewed all of the objective studies. The next part was then I formed a diagnosis. My diagnosis was a cervical and lumbar -- neck and back -- cervical lumbar herniated disc, and the record is radiculopathy which is the doctor word for how we describe dysfunction of a nerve so he had nerve symptoms, for the jury's sake. That was the diagnosis, cervical and lumbar radiculopathy.

So, that was my evaluation. And then we went into a conversation, it is my custom and practice, and I made the notation that I did discuss different options including surgery because of the amount of time that had elapsed and the fact that he had failed other invasive treatments like injections in his spine. He opted to -- he consented to want to proceed with surgery. I recommended cervical discectomy fusion which is a standard operation for herniated discs in the neck when we talk about the neck. And that was the summary of the first visit with me.

Q. Did there come a point in time where you performed the surgery on his neck?

A. Yes.

Q. And were you the surgeon that actually did the surgery?

A. Yes.

Q. And when was that surgery done?
A. 3/26/19.
Q. Now, prior to the surgery you had mentioned some interventional treatment. Can you tell me what some of that interventional treatment was before he came to you and then afterwards with respect to your treatment of him?
A. So, he underwent, most notably, what is called a cervical lumbar epidural steroid injection. Those are therapeutic interventions provided by a different type of physician called an interventional pain management doctor, whereby using x-ray technology they're able to inject medicine into the spine, into the area where the patient is exhibiting signs of irritation, nerve damage. Remember the word radiculopathy, so that's a symptom of nerve irritation. So, the patient underwent more than one injection in the neck and low back because of the severity of his symptoms. Unfortunately they didn't help him.
Q. Did he also continue to participate in physical therapy?
A. Yes.
Q. And is that something -- that is another course of treatment that patients, who have these type of injuries, continue with even after the surgery?
A. Yes.
Q. So, can you tell us a little bit about the surgery when you actually did the surgery, what did you see, did it conform to what you had seen on x-rays, MRIs, CAT scans and the reports of

the like? If you would give the jury a little bit about that?
A. So it is a surgery done at the hospital. The patient is brought into the OR by the nursing staff and the anesthesia team and they put the patient to sleep under general anesthesia. Once the patient is asleep, then we take over -- the surgeons -- and position the patient and we prepare and drape the patient just like you see in the movies. Then I proceeded to surgery, I make an incision over the neck and, with careful deception, I go down to the area of the spine, I localize the area of the spine using intraoperative x-rays, and then I proceed to perform what is called a discectomy, I remove segments of the disc that I feel are creating that inflammation on the nerve. I also make observations about what is called stability. And so it gets a little long to discuss, I will keep it brief, but if you injure a disc in your spine not only does it, can it pinch the nerve but it can also create localized instability. Vertebrae separated by this disc move too much. As a consequence, the patient can have nerve pain and neck pain. And so, I made those observations that the patient did have instability and I am able to assess more than just one disc in that approach, I am able to see more than one level, I make my assessment of the areas, and I proceed to do the discectomy which is the microscopic technique. I go down all the way to the spinal cord, I look at the spinal cord, look at the nerves, make sure there is no continued compression on

those areas, and then once the disc is removed -- and it was damaged, it was not a normal disc that I was removing -- I rebuild the spine using titanium implants and bone substrate.

That's the procedure. And then, the patient is closed and transferred to recovery room, they stay in the hospital overnight, and they go home the next day.

Q. In your history that you took of Mr. Csikos, was there any indication that he had ever injured his neck or had any problems with his neck prior to this accident?

A. There is no history or records and I have asked them to be shown to me if they were available of prior injury or treatment to his neck.

Q. What about his lower back? Was there any history with respect to his lower back prior to this accident?

A. Similarly there was no -- I have no records or were made aware in any way that the patient had a prior injury to his low back.

Q. It's being claimed by the defendant's doctors that this surgery was not necessary in the sense that there were no significant impingement or problem with the discs when you went into and did the surgery into Mr. Csikos' spine. Is that something that you found, that there was no impingement? Or, what did you find?

MR. VAN ETTEN: Objection.

THE COURT: Rephrase the question.

MR. DELLA JACONO: OK.

BY MR. DELLA JACONO:

Q. Defense doctors are saying surgery wasn't necessary. Can you comment on that?

A. Yes.

So, you know, the patient -- I disagree, I would say. I mean, the patient had a history of a significant injury. He had MRI findings that I felt were consistent with an injury to that level. The patient did undergo invasive procedures like an injection interspine by other doctors prior to visiting me, and underwent extensive therapy, and the patient subjectively had 10 out of 10 pain. That's when the client is claiming, saying I'm in agony. That's actually intractable pain. And, he had failed all of the other treatments. That's when he arrived to me. Objectively, I made no notations. As I described to you that the patient had objective -- clinically objective -- objective means the patient can't fake it -- findings in his neck and upper extremities, consistent with a separate objective test which is an MRI which showed herniations in the spine.

So, that's the history, that's what made us have a conversation about surgery in the first place because what else was the patient to do? They're in agony and nothing had worked and there were findings that were objective consistent with a cervical injury.

So, during surgery and it is recorded to make this op note contemporaneous with the surgery, I did find it, and it is listed in there, that there were findings of herniations with impingement on the spinal cord. And so, for the jury's sake the MRIs really are the gold standard and they do tell us a lot about patients and we can rely on them very heavily but the MRI is taken at one point in time and with the patient laying down, not moving, right? So, as they move through space the body moves, right? So, during surgery I recorded -- recognized and documented that there was a herniated disc with impingement.

In addition, I have also made a record of what is called instability which is the thing I mentioned to you that the vertebrae are moving too much. And so, instability is a big part of why patients have neck and arm pain.

So, I believe that the patient had a history that was sufficient for indication for surgery. The patient had objective, out of my control findings, both on MRI, and then I made the intraoperative observations that were consistent with the history, consistent with the MRI, and someone knew, some things were not necessarily on the MRI so -- which is typically what you find from surgery, you have to make your own observation, not just regurgitate something you saw on a report somewhere.

So, I made those notations and that was essentially why the surgery and how it played out.

BY MR. DELLA JACONO:

Q. After the surgery, what was his prognosis?

A. The prognosis after surgery like this is fair to good. I mean, most patients do get good relief of their initial symptoms. They do feel better. But it's -- I don't return the patient to the state of being normal, right.

So the patient had an injury to the disc, that disc was damaged, they existed with a damaged disc for several months, you know. And then the surgery doesn't put a brand new -- it doesn't put a brand new disc in there, right. It fuses the segment, which is the appropriate treatment, where we just clip the bone so they stop moving and take the pressure off the nerve. That's not normal to be in the -- yes, that rectifies the symptoms, the patient's complaints. But he's not left like he was before the accident. So that's why it's a fair prognosis, not an excellent prognosis.

Q. His limitations after a surgery such as this, with the -- as you said, to cure the instability, the titanium that you put in his neck, what are his limitations?

A. Well, I mean, from a structural standpoint, from a medical standpoint, I usually encourage my patients to go back and try to live their life as best as possible, given the context they don't have a normal spine, right. The patient now is in a safe position, once he has the surgery, he doesn't have to be worried about moving and hurting himself further. But again,

it's not a normal spine, so he is limited in his ability to turn forever. He is limited in the context of the pre-surgery nerve damage, in terms of his upper extremity. Those provide limitations in his day-to-day activities. And then, again, I do encourage patients to go back to their life as best as possible, but it's not going to be the same as it was before.

Q. Now, Mr. Csikos was a construction worker. To a reasonable degree of medical certainty, is that something he could go back to do after having spinal fusion surgery on his neck?

A. Well, it's a difficult question to answer yes or no, because it really -- a lot of people can go back to work, but they work in a more sedentary role, where they become a supervisor, for example. Actual physical labor, climbing ladders and scaffolding, considering his neck and back were injured, it's problematic.

Q. And you would leave that to the patient to decide if there's a possibility to do that work again?

A. Absolutely. Because there's a risk involved, right. So if the patient feels unsteady on his feet as a result of the nerve damage or his upper extremities aren't as strong, I may feel that the patient has the possibility. He's up on the ladder. If he knows he's not strong enough and he's going to fall again, I'm going to -- it's a conversation. Generally speaking, my recommendations are not to return to aggressive manual labor once you have procedures like this, because you

are at more risk than the person who didn't have an injury.
Q. I'd like to focus on the lower back now, if I could. We have gone through the neck a little bit. I want to focus on the lower back.
You performed that surgery on Mr. Csikos sometime after the neck surgery; is that correct?
A. Yes.
Q. Do you remember when you performed that surgery?
A. It was 8/6/20.
Q. Now, again, defense doctors are saying that this surgery was not necessary because there was no herniation and there was some degenerative changes in his back. Can you tell us, when you performed the surgery, what did you find when you went in there?
MR. VAN ETTEN: Objection, form.
THE COURT: Overruled.
A. Well, you know, I -- first of all, there was no evidence on any MRI findings from my review -- and that's part of my board certification to look at the actual MRI -- of what they call degenerative changes, which, in ordinary conversation, degenerative changes really means age-related changes. Usually, on men -- he had the MRI of a young man, essentially, so that's the first thing.
The second thing, although I was optimistic that he wouldn't need surgery originally on his low back, to be candid,

because we thought he was responding to the injections, ultimately, he didn't. He had persistent symptoms, with severe pain. So I opted to do what's called a lumbar discectomy, which is a procedure where I go in and remove a portion of the disc and then repair the cover of the disc. So it's -- for the patients -- for the jury, for me, like with an arthroscopy, where you look into the knee or the shoulder, the doctor does a repair, removes part of the damaged tissue, doesn't do a complete reconstruction like I did on the neck. That's what we did on the low back.

His initial MRIs showed some bulges. And that's, again, why I was optimistic. But we repeated the MRI, which showed a herniated disc at L5-S1. Given that his symptoms persisted for so long, then we opted -- based on the review of that MRI and his subjective complaints and my objective findings, I felt he would benefit from the discectomy.

Q. When you did the discectomy, what were your findings when you actually went into that disc, with respect to was there some type of impingement, was there damage to the disc, what type of repair did you do? That's what I'm looking for, doctor.

A. So the procedure is fairly straightforward. I go in -- we go in and we put a probe into the disc. And then through the probe and then using x-ray, we're able to see the disc indirectly, really, through the x-ray. And then I'm able to do

two things; remove disc material, which is part of the herniation, right. The herniation is damaged, the disc or part of the material has moved from one part out into where the nerve is. I was able to do that. And then I did what's called an annuloplasty. It's an attempt to repair defect so the disc doesn't migrate further out. And at the surgery, my findings were consistent with a herniated disc, based on the procedure. He tolerated it well. And then he was discharged that day.

Q. I neglected to ask you these two questions -- I'm going to ask them now -- how many discectomies have you performed in your career?

A. I've been doing this -- I only do spinal surgery two to three days a week for 27 years. Thousands of surgeries.

Q. And what about fusions?

A. Similar, the same.

Q. Basically, it's not your first rodeo?

A. That's why I went to medical school and that's why I became an orthopedic surgeon and why I became a spine surgeon so I would be available to help people if they needed spine surgery, that's my job.

Q. Can you tell us what the prognosis is with respect to his low back?

A. Again, similarly, it's fair. Even though I'm doing -- trying to do a repair of the disc, it's not the same as it was before the accident. I'm removing a portion of the disc. I'm

using a high energy heat probe to sear the disc. It's kind of like a procedure where you burn part of the disc so it shrinks, so it's toughened up again, so to speak. It has a fair prognosis. People do return to a fair level of function, they're able to enjoy their life.

Because we're not reconstructing that space and the patient is walking around with what was a damaged disc, I do make recommendations; don't shovel snow, don't clean out the garage, you don't have a normal back. You might feel better, but it's not normal. So avoid those type of activities. Certainly, carrying heavy buckets of spackle up a scaffold, that would be something that would potentially reinjure his back.

Q. Doctor, do you have an opinion to a reasonable degree of medical certainty as to whether the accident, as described to you by Mr. Csikos, was a substantial factor in bringing about his injuries, including the bulging and the herniated discs in both his neck and his back requiring fusion surgery and a discectomy, whether those related to the accident?

A. Well, I have no --

MR. VAN ETTEN: Objection.

THE COURT: Rephrase the question.

BY MR. DELLA JACONO:

Q. Do you have an opinion to a reasonable degree of medical certainty as to whether the accident was a substantial factor

in bringing about Mr. Csikos' injuries to his neck and his back?

A. Yes. I believe it was. He had no other history of an injury like that, nor was he being treated by any physicians for any neck or back problem prior to that accident.

Q. Do you also have an opinion to a reasonable degree of medical certainty as to whether or not the accident described by Mr. Csikos was a competent producing cause of pain in his neck and low back?

A. Yes, I do believe so.

Q. Do you have an opinion to a reasonable degree of medical certainty as to whether or not these injuries to his neck and his low back will continue to cause him pain in the future?

A. I believe that his injuries and surgery will continue to cause him disability and need for treatment going forward.

Q. When you say continued need for treatment going forward, can you describe for the jury what could be the possibilities of that?

MR. VAN ETTEN: Objection.

THE COURT: Overruled.

A. I mean, it's not unusual that patients, if they have an injury to their spine, will from time to time repeat their MRI down the line, have symptoms that require treatment, like continued neck pain. And this patient did have some symptoms after surgery. Not all of his symptoms were gone, right.

Overall, he was better, but he still had symptoms. Those symptoms could exacerbate. We might do more physical therapy. We might do more injections, that would be the first attempt for alleviating his -- palliating his symptoms, and it's not uncommon. More likely than not, that's what happens.

Q. Do you have an opinion to a reasonable degree of medical certainty about whether or not Mr. Csikos will continue to have physical limitations to his neck and low back in the future?

A. I believe he will.

Q. To a reasonable degree of medical certainty, the injuries and his residual pain at this point, are they permanent?

A. Yes.

Q. Now, you talked about physical care in the future, other than the PT, which you just mentioned, physical therapy and the injections, may there be a likelihood of a future surgery?

A. So patients who have spine injuries, those injuries can evolve over time. Although they may not, as you saw, even in his low back, for example, where initially perhaps it wasn't severe enough for surgery, but as time went on, the pain and the symptoms were severe enough for surgery. So the answer is yes.

And there's a possibility, for example, in the low back that he may need a reconstructive procedure like a fusion I don't have a crystal ball, right. But you can say, more likely than not, he's likely to have another procedure on the

spine at some point in his life.

Q. But at this point in time, there's no necessity for that?

A. I've made no recommendation of such, no.

MR. DELLA JACONO: I have nothing further, your Honor. Thank you.

THE COURT: Mr. Van Etten, about how long is your cross going to be?

MR. VAN ETTEN: It's going to be about 45 minutes to an hour. I would like to, if we could take a break now, look at his records.

THE COURT: We are going to take a break now.

It's a little after 11:00. I'm going to bring you back out at 11:15. Enjoy your break. Please don't discuss the case. Leave your books on your chair.

(Continued on next page)

(Jury not present)

THE COURT: Everybody be back in place at 11:15.

MR. DELLA JACONO: Judge, my next witness, he's here, so whenever we're done.

THE COURT: Good. That's what I like to hear.

(Recess)

(Continued on next page)

(Jury present)

CROSS-EXAMINATION

BY MR. VAN ETTEN:

Q. Good morning, Dr. Lattuga.

A. Good morning.

Q. Nice to meet you.

A. You too, sir.

Q. I'm going to go through a couple things. I'll jump around. I'll also try to make sure you and I don't step on each other because we both seem to talk fast. Is that fair?

A. Yes, sir.

Q. First question I have for you, counsel mentioned your compensation. I have your Rule 26 response, but I don't see what the compensation was. What are you being compensated for today?

A. $600 an hour.

Q. That encompasses travel time, appearance time, prep time?

A. Yes, sir.

Q. How much do you think -- estimate -- you have done this, you said, at least 20 times you have qualified, so at least 20 times you have testified.

A. Depends on how it goes; five to ten hours, I would say.

Q. A couple things I pulled out real quick before I get to it -- I think I left it. Let me make sure. Of course, I left the wrong one on top. I apologize.

I'll start right here.

A. Yes, sir.

Q. When Dr. Mikos first saw Mr. Csikos as part of the New York Spine practice, Mr. Csikos filled out a sheet, an information sheet; right?

A. Yes, sir.

Q. And you brought that in.

On that sheet, does he state that his primary language is English?

A. That's what it says, sir.

Q. Originally -- we'll jump here -- when he came to the practice, he started seeing Dr. Mikelis, and at times he saw Dr. Ford. Dr. Ford is the pain management guy who gave him the epidurals?

A. Yes, sir.

Q. Are there such a thing as trigger point injections?

A. Yes, sir.

Q. And trigger points are not the same as epidurals?

A. No.

Q. Epidural is a little more serious procedure. In the old days, they used to even put you under anesthesia. Now, they don't put you under anesthesia; right?

A. It's a more invasive procedure.

Q. Correct. But a trigger point is not?

A. It's still a therapeutic intervention. That's how I would

characterize it.

Q. Understood.

But he didn't have 20 epidurals; correct?

A. I didn't say that he had 20 epidurals.

Q. I understand that. I am just asking.

You have the records. He didn't have 20 epidurals; right?

A. No.

Q. You can only get three epidurals per area per year; right?

A. In general, that is correct.

Q. The reason is, I want you to assume there was testimony from Mr. Csikos that he had over 20 injections, okay. That wouldn't be epidurals, that would be trigger point, epidurals combined; fair?

A. I mean, from the patient's perspective -- in the patient's perspective, they are just getting needles stuck in their spine, so -- but my records do not show 20 epidurals.

Q. That's fair. Thank you.

When you say needles getting stuck in your spine, you are familiar with EMGs; correct?

A. Yes.

Q. What is an EMG?

A. An EMG is a diagnostic study that measures for that word radiculopathy, looks for evidence of nerve irritation or damage.

Q. Frequently, you refer patients to neurologists or maybe perhaps one of the people in your practice will refer them to a neurologist to get an EMG to see if the patient has radiculopathy; correct?
A. Correct.
Q. In this instance, there was no referral for Mr. Csikos to go get an EMG or a nerve conduction test; true?
A. Correct, I don't see an EMG here.
Q. There are things when you see a patient -- and I think you said the pain ten out of ten -- that's a subjective complaint by the patient; correct?
A. Yes.
Q. And there are certain things that are objective, you as a doctor; correct?
A. Yes.
Q. An EMG would be an objective test; correct?
A. Yes.
Q. An objective test would be an MRI?
A. Yes, sir.
Q. An x-ray?
A. Yes, sir.
Q. A CAT scan would be an objective test?
A. Yes, sir.
Q. In this instance, an EMG can be used to detect radiculopathy, and he was never sent by anyone in your practice

to get an EMG; correct statement?
A. To the best of my knowledge.
Q. I think the notes I put up there were Dr. Giangrasso. Is he the new Billy Ford?
A. Yes, sir.
Q. So he's the new pain management guy in your practice?
A. He is a pain management person in my practice, yes.
Q. So I'm looking at the May 17, 2022 report of Giangrasso; do you have that there?
A. 5/17/22, yes, sir.
Q. So in that report, as he starts to discuss the pain on the second paragraph, I believe he states that the pain on the neck is one out of ten; is that correct?
A. That's what it says, sir.
Q. And then the next report, which I think he had another report after that, it's the same thing for the neck, the pain is one out of ten as of this year?
A. Yes, sir.
Q. So if the patient came into you with complaints of ten out of ten and you did your surgery on him and he's now, three years later, with a pain one out of ten, you had a successful surgery; true?
A. I think we both would be happy with that result, the patient and I.
Q. Because that was the purpose, to help eliminate the pain;

correct?
A. Yes, sir.
Q. And in fact, when you are talking about radiculopathy and radicular pain, that's caused by the irritation on the nerves and the disc, when it goes on to the spinal canal; correct?
A. Yes, sir.
Q. And you want to rid the patient of that radicular pain by doing that surgery?
A. Yes, sir.
Q. And apparently, with the pain at one out of ten, you did your job; right?
A. As is recorded, sir.
Q. Okay. The back, though -- boy, I'm really jumping -- the back surgery that you did, is there a name for it, the surgery you did? I know you said discectomy, but is there a different name; is that a percutaneous discectomy?
A. It's a minimally invasive discectomy, correct.
Q. I think you referred to like an arthroscopic surgery --
A. Right.
Q. -- when somebody goes in and in arthroscopic surgery, you get the one, two, three little pinholes, so you get the camera in and everything else like that. This, you only do the one?
A. One cannula, yes.
Q. So you go to the one in there, you go in and do the x-ray, it directs you, you go to the area where you think there's

herniation, and you just cut it out? I think you burned it out, I think you said.

A. Retrieved it with the forceps. Same as in an open procedure, you are removing disc material. But you are doing it through the cannula, like you do lots of procedures now. Then through that same cannula, you can deploy the heat probe to do the annuloplasty.

Q. I think in this circumstance -- the way I saw it in the report, and I wasn't sure -- he didn't have to go under general anesthesia for it; correct? It was just local?

A. It's just --

Q. You sedate him, but not under general anesthesia?

THE COURT: Please don't talk on top of each other.

Was he sedated?

THE WITNESS: Yes, ma'am.

THE COURT: Was he under general anesthesia?

THE WITNESS: No. But it's the same. It's very deep sedation like colonoscopies. The patient is completely out and they have to be monitored the same way. It's still anesthesia.

BY MR. VAN ETTEN:

Q. But it's not the general anesthesia that he had for the neck procedure; right?

A. Correct.

Q. In fact, the procedure itself took about 48 minutes, according to the operative report?

A. Seems correct, sir.
Q. So the back surgery was a 48-minute surgery; fair?
A. Yes, sir.
Q. And it was not invasive?
A. No, it was minimally invasive.
Q. Sorry. Thank you. Minimally invasive, okay.
And the reason you were able to do that is because the back was, in your mind, less severe than the neck; fair?
A. It was my opinion it didn't need a full reconstruction, rather we could palliate the patient's pain with a less invasive procedure.
Q. In fact, I think you said on your direct, originally, you were optimistic at first that he wouldn't even need a surgery?
A. Yes.
Q. Isn't it true that the initial diagnostic film studies that you saw made no reference at the L5-S1 disc, and it was an L1-L2 herniation that was seen when Mr. Csikos first presented to you?
A. Yes, sir.
Q. And you didn't operate on the L1-L2 disc, did you?
A. No.
Q. And the L1-L2 disc had degenerative disease shown; correct?
A. I would disagree with that, sir.
Q. Did he have a Schmorl's node?
A. Yes.

Q. And what is a Schmorl's node?
A. A Schmorl's node is -- it can occur for nontraumatic reasons. It's a defect in the endplate. And so it's something you see on an x-ray or on an MRI. It just means that the herniated -- that the disc has -- drops below the level of the top of the vertebral body.

And there's a lot of theories. No one knows exactly whether it's a developmental issue -- and that's why I said, it's not necessarily degenerative -- or it's the result of some trauma, like we don't really know. And so -- but if you have Schmorl's nodes, that is not the definition of degenerative disc disease, no.
Q. Did you look at the Bellevue Hospital CAT scans for Mr. Csikos?
A. I don't recall seeing it, no.
Q. Are you aware that he had CAT scans when he first presented to Bellevue Hospital on the date of the incident?
A. I'm aware he was evaluated there, yes.
Q. And if the CAT scans showed degenerative disc disease, would that be something that you should be aware of as a consultant looking at this patient for a potential surgery?
A. I would say, not necessarily. I mean, we have an MRI, which is really considered the gold standard. So if you have a CAT scan and the MRI together, the MRI gives you a lot more detailed information that the CAT scan. CAT scans are helpful

for bony anatomy and surgical planning sometimes. But you don't necessarily get a CAT scan before doing spine surgery if you have a good MRI.

Q. You are aware, though, when you did the surgery and you took out the disc material from the neck that that was a degenerated disc; correct?

A. So I can't answer that yes or no.

Q. Well, then let me go to the next question. And sir, if you can't answer yes or no, please tell me, and then I'll follow up.

So you do your operation, and then you take pathology slides of the disc; correct?

A. We send them to pathology, yes.

Q. And in the hospital record, which is Exhibit H in evidence, Plaintiff's Exhibit H -- sorry -- Plaintiff's 11 in evidence.

The pathology slide was done by New York Presbyterian Hospital where you did surgery?

A. Yes.

Q. And did you review that pathology slide?

A. Yes.

Q. So the diagnosis from the pathologist was bone and disc C5-C7 excision, bone and degenerative fibrocartilage.

Does that refresh your recollection that there was degenerative disc in the herniation you removed?

A. Again, I can't answer yes or no because the way you are

characterizing the reading.

So if the question is did I see degenerative findings during surgery, the answer is no. If the question is, did the pathologist create a diagnosis of degenerative fibrocartilage, yes, that's a diagnosis. But that's a pathological diagnosis. That's different than a radiographic diagnosis, it's different than a clinical diagnosis.

So even on young, healthy people, when we pull out a disc, you very, very often see that characterization as degenerative fibrocartilage. It's just the way they use those words to describe these little fragments of material that they receive. That's just how they do it, and we recognize that. But that's not the clinical diagnosis.

Q. You are board certified in orthopedic surgery; correct?

A. Yes, sir.

Q. You are not a pathologist; correct?

A. No, sir. No.

Q. So the pathologist, their job at the hospital is to review the slides that they get, the materials that they get?

A. Yes.

Q. And that's what they do as professionals; correct?

A. Yes, sir.

Q. By the same token, you have done thousands of surgeries, you get MRIs and x-rays from radiologists; correct?

A. Yes.

Q. And you are not board certified in radiology?
A. No, I'm not. But reading MRIs and x-rays is part of the board certification process for becoming an orthopedic spinal surgeon.
Q. I understand that. That's good practice for you, before you do a surgery, to look at the actual MRIs, not just an MRI report; right?
A. Yes.
Q. But again, you are not a radiologist; radiologists are reviewing hundreds and thousands of films a week, a month; correct?
A. I'm not a radiologist, but I review thousands of x-rays and MRIs every week. That's what I do.
Q. Your initial report of February, I think it's, 2nd of 2019 or whatever --
A. Yup.
Q. It would be helpful if I could find it.

Turning to your second page where you say diagnostic imaging. And it says, MRI C-spine, a 7/19/2018 report, HNP, which is herniated nucleus pulposus --
A. Yes.
Q. -- C5/6-7 diffuse annular bulges, C2-5, MRI lumbar spine 8/13/2018 report, HNP L1-2; correct?
A. Yes.
Q. Does that say in your report that your actually reviewed

the films?
A. It doesn't say in the report, no.
Q. So when you did that report, you had not yet reviewed the films; correct?
A. No, just the way it was notated. It's my custom and practice to review the MRI as well. How I documented it depends on the moment, I would say. But I did review the films when I examined the patient and prior to surgery.
Q. Do you have to have the patient bring those films in?
A. It depends. I would say, in the old days, yes. Now, a lot of it is available online through various portals. You can access it through a portal.
Q. Do you have anything in your chart records that you brought with you that shows that you had received from one of the diagnostic testing facilities that they had emailed you those reports, those films?
A. Again, I don't have -- there's no notation about -- it's not my custom and practice to document whether the MRIs were delivered or presented by the patient. Rather, I merely document what my interpretation is.
Q. So after that one visit that you had with him, surgery was then scheduled six weeks later?
A. Yes.
Q. And in the first visit that Mr. Csikos had with Dr. Mikelis on August 17, 2018 that's in the report, at that time, which

was almost two months after the accident, the only medicines he was taking according to Dr. Mikelis was ibuprofen; correct?
A. I believe that to be true, sir.
Q. And that's an over-the-counter medication?
A. Yes.
Q. And so when you are talking about the failure of conservative care leading to the surgery, as of two months post incident, there was no indication of him receiving any anti-inflammatories; would that be true? Other than ibuprofen --
A. With all due respect, ibuprofen and Advil is a very powerful anti-inflammatory. In light of all the addiction issues that we have seen in medicine, we do not prescribe narcotics. So patients come with even severe pain, we don't give them -- unless they have had surgery, obviously -- we don't give them narcotics. Ibuprofen, really, which is a powerful anti-inflammatory and/or a muscle relaxer, which we didn't prescribe. Really the basis of any medicines that we would consider to be appropriate for somebody who has chronic pain. And that's just our position in our practice.
Q. But when I'm talking anti-inflammatories -- and I appreciate you correcting me because I was wrong on the ibuprofen, because that is an anti-inflammatory -- but there are things such as Naprosyn; correct?
A. Yes.

Q. Do you prescribe Naprosyn?
A. I mean, I have. But it's not more effective than Advil or ibuprofen. They're all equivalent in their efficacy for reducing inflammations. We could have this debate a day, and it's something you could debate about. In our experience, we don't rattle through different drugs for patients. We find that has a more deleterious outcome, our patients get addicted much quicker if they think they have to take a pill every time they feel a pain. I recommend you go for an injection right away because it has a higher efficacy and we get better feedback. But some people feel differently than me.
Q. Well, taking away from being addicted to possible prescriptive pills, have you ever prescribed a Medrol Pak, steroids?
A. Yes.
Q. What's a Medrol Pak?
A. It's an oral steroid, given in sort of a bolus. It's very high dose for a very short period of time.
Q. You take like six pills the first day and then you wean yourself down to one?
A. Yes.
Q. Purpose being you don't want people to be addicted; correct?
A. I would say yes. There's a lot more to the response.
Q. That's something that you do, if somebody has active

symptomology, which in this case is inflammation; correct?
A. Mm-hmm.
Q. That's what's causing that pain; correct?
A. Mm-hmm.
THE COURT: You have to answer out loud.
THE WITNESS: I apologize, your Honor. I thought there was more to the question.
BY MR. VAN ETTEN:
Q. When you have a herniated disc that is impinging, what happens is, to get that chronic pain you talked about, there's inflammation in the spine?
A. Yes.
Q. You want to get rid of that inflammation if you can; true?
A. Yes.
Q. And to do that, there are many ways to do it; fair?
A. Yes.
Q. In this instance, though, rather than simply giving anti-inflammatory medications, your copractitioners, Mikelis and Ford, simply went straight to the epidural; correct?
A. Yes.
Q. And the epidural, you said on direct, he had one or two initially and they didn't have effect?
A. Yes, sir.
Q. And that's why you did the surgery; correct?
A. Failure to respond to those other treatments.

Q. Yet even though they didn't have any effect, they continued to give him more epidurals; right?
A. Well, I mean, I believe he had a limited series of -- I think he had two in the neck, two in the low back -- I could be mistaken, there's a lot in the records -- that was not -- that's not inappropriate care. But also, oftentimes, patients, even though it's not completely making them better, it's better than nothing, right. So remember the context. If a patient is coming in saying they're in agony every day, we don't -- there's a degree of patient/physician responsibility, compassion to this patient screaming in pain. Injection is the most reasonable, most powerful steroid. It's much more effective than a Medrol Dosepak, the Medrol Dosepaks are generally given way earlier, like right after the accident because you can only take it for a few days, right. Where the Advil is much more effective, you can be on Advil -- not that Advil has no complicated risks profile -- for months. That's why you see a patient like that on it. In my opinion, it's better treated with anti-inflammatories like Advil because their pain is chronic, they're not going to get addicted with anything. If you really want to hit them with a steroid -- to say it that way -- then we inject it right at the level of the nerve root. Then we're more likely to get a positive response, get the patient to say they feel better. It's a reasonably safe procedure. Unfortunately, it doesn't always work. And

that's why we ended up with the circumstance.
Q. Two months after the incident, when he first came to your practice with Dr. Mikelis, would you be saying the pain is chronic at two months post incident?
A. Yeah, I would.
Q. So that means in two months you can tell it's never going away?
A. Chronic doesn't mean it's never going away.
Q. Okay.
A. When most people have pain, they'll have pain for a couple of days; they take two days off of work, then they go back. Nobody is in pain for 30 consecutive days and we should expect not to have to intervene in that circumstance.

I felt the patient was being truthful in their pain. I have a responsibility as a physician. I mean, the other doctors did all this before I even saw him. They all had responsibilities to try to treat the pain. When he came to me, it was all those months later, he wasn't better. That's why I offered him the option of surgery.
Q. When he comes to you, you are there as the orthopedic spine surgeon for the consult, you are making the decision yay or nay on surgery?
A. I wouldn't say it that way, but yes, sir.
Q. Well, yay or nay on surgery and Mr. Csikos has to, of course, approve?

A. It's a conversation you have.
Q. Now, you also talked a little bit on your direct about the nerve damage, the permanent nerve damage?
A. Yes.
Q. You got to this patient and had surgery on this patient within nine months from the incident; right?
A. Yes.
Q. And whether they're bulges, whether they're herniations -- as counsel said, there may be some dispute from the defense experts -- the size and severity of these are not the worst you have ever seen; fair?
A. That's correct.
Q. And usually, when you have nerve damage that is permanent, it's usually a more longstanding time that the nerve has been inflamed or there's been impingement upon cord and canal; correct?
A. I mean, not necessarily is the answer for that.
Q. And in fact, though, as we just noted, the initial MRI that you saw only addressed the L1-L2 level and not the L5-S1 level; correct?
A. That is correct, sir.
Q. So at some point, from when the initial MRIs were done until about two years later, now there was an L5-S1 either bulge or herniation; fair statement?
A. Yes.

Q. And was there any interim trauma?
A. No history, and I specifically inquired whether there was any subsequent injury or trauma, and I've asked for records. There's been no evidence whatsoever. So my answer is to be no.
Q. Who have you asked for records from?
A. Attorneys. I asked for all the records related to this patient's care, including obviously prior history, subsequent history. If he had some other accident, I need to know about that, right.
Q. That's a good point, though.
A. I just don't know.
Q. You have asked for all of the records of his care, and yet, you just said you do not have the Bellevue treatment records from the day of the incident.
A. Perhaps I didn't make myself understood. I was answering that question about -- you asked me about subsequent, and I said, I've seen no evidence of subsequent.
Q. And that's only because you asked attorneys who are prosecuting this case in litigation?
A. Well, if you have a document you'd like me to review, I would be more than happy to do it for you about a subsequent injury. But I can't make an opinion about something I haven't seen.
Q. Sir, would you agree that, in most instances, herniated discs are not caused by trauma, but are caused by degenerative

means?
A. That's a good question. Many people that were not involved in accidents have herniated discs, that's true. And as people get older, they are likely to have a herniated disc, whether they can remember a trauma or not, they have a herniated disc, and that's a fact.
Q. In fact, with all of these surgeries that you do, not every one of your patients are because they were involved in a traumatic accident?
A. That's correct.
Q. So those herniated discs from nonaccidents are because of the degenerative process; correct?
A. I mean, I would disagree with how you characterize it. I mean, it could be a life microtrauma, for example, a cleaning woman bending over over and over and over. That could be -- there's lots of different mechanisms for developing it. But my answer is yes to your question, meaning you do not need to be involved in an accident to get a herniated disc.
Q. Again, when you say the cleaning woman example, that's a thing where it's a type of repetitive stress --
A. Correct.
Q. -- on the back --
A. Correct.
Q. -- that causes the herniation?
A. Correct. And I wouldn't call that degenerative.

Q. I understand.

But if a person has degenerative conditions in their back and has a job such as a cleaning lady where they are bending over a lot, that could cause exacerbation that leads to a herniation?

A. Yes, sir.

Q. And a construction worker, who has degenerative conditions in their back, that is bending, lifting and doing things like that, that repetitive work can cause a herniation; correct?

A. It could, yes, sir.

Q. How about boxing, a person is a boxer and is getting punched in the face and their head is getting knocked back all the time, is that a repetitive type of event that could cause a herniation?

A. Yes.

Q. Were you aware Mr. Csikos was a boxer?

A. Not specifically, no.

Q. Well, not specifically, is it anywhere in your records that he boxed?

A. No.

Q. And he said that he did it -- you should assume he said he did it and that's how he worked out, and he did amateur boxing. So it wasn't that he just did it, he did boxing. So boxing could cause a herniation; correct?

A. Obviously, if you are getting hit and struck and knocked

down, that's a mechanism for injury. Anything is possible.
Q. You have seen boxers, boxers get punched in the face and they get knocked down; right?
A. I agree, if that's what you're --
Q. And nowhere in your record did you record that he was a boxer and may have been sustaining trauma to his neck from punches; fair?
A. I don't have any history of him as a boxer having received any injury to his neck or his back, no, sir.
Q. When the patient first comes in, the first thing you do is you get that history from him; correct?
A. Yes.
Q. And you are then relying on the patient as the historian to be accurate?
A. Yes, sir.
Q. And that accuracy requires all the information, that would be something like boxing and that would be if he had prior accidents; correct?
A. Yes.
Q. Here, we now know that you don't know that he was a boxer; fair?
A. I don't have an independent recollection, and I don't see it recorded in my note; that's probably the most important part.
Q. Now, we were talking about MRIs and things of that nature.

You gave an opinion previously to Mr. Della Jacono's questions that you felt that the incident was the cause of the injuries; correct?

A. Yes.

Q. When you're looking at a person who has been involved in an accident, are there objective materials that you can look at to see if there was trauma?

Poorly worded question. If you don't understand it --

THE COURT: It's a poorly worded question.

MR. VAN ETTEN: Thank you. I agree. They have seen me two days; they know I do this.

BY MR. VAN ETTEN:

Q. Person is in an accident, they go and get x-rays, that would be an objective test to see if there is some type of significant injury; fair?

A. Yes, sir.

Q. Since you didn't look at them, I'll ask you to assume -- because the records are in evidence -- that x-rays and CAT scans were all present and showed no fractures, no subluxations or anything of that nature.

A. Yes.

Q. MRIs, which you said before are better, they can also assist you in determining if a traumatic event caused the herniation or bulge; fair?

A. Not in a yes-and-no manner, but they do give you lots of

insight as to what the injury pattern is.
Q. These MRIs were taken in July and August, within the first two months of the incident; correct?
A. Yes.
Q. And when you look at an MRI, you can determine -- there are certain factors that can determine if trauma was involved to cause a herniation, is there not?
A. There could be.
Q. Can you give us examples?
A. Certainly. So in certain circumstances, if you have severe herniations, a fracture, a dislocation, you -- let's narrow it down to herniations for the point of this conversation. If it's a significantly traumatic disc herniation, you can get rupture of the ligaments in front of and behind. This is a much more serious degree of herniation than you ordinarily see in the general population. This is -- it can happen from falling off a ladder -- but you will see rupture of the ligaments and bleeding, you can see that on the actual MRI. That wasn't present on this MRI. I think that's where he's going with this. That's more likely to be associated with -- on a CAT scan, you can see evidence of a fracture, dislocation. Then on the MRI, you will see similarly evidence of ligamentous disruption, bleeding, and you will see all that on the MRI. We don't generally see that on a lesser degree of herniation, we don't see that kind of pathology.

Q. So instability of the ligamentum, is that what you are talking about? That's one of the things in there --
A. You'll see blood, you'll see blood in the ligament.
Q. And you'll see edema?
A. Edema, correct.
Q. And then you have the other tests, which you will see a fracture or something like that if there was a significant trauma; fair?
A. Fair.
Q. That's why you asked the patient about the mechanism of accident; correct?
A. Correct.
Q. Because before you give that opinion, you have to know what the mechanism of the accident was as well; correct?
A. Yes.
Q. Did you get the ambulance call report?
A. I don't recall seeing that.
Q. I'll read to you what has been in evidence as Defendant's F. Patient states he missed the bottom step of the ladder and fell off it.

Did you get that history as the mechanism of injury from Mr. Csikos?
A. The history he gave was he --
Q. My question is -- can you answer yes or no -- did you get that history?

A. No.
Q. Missing the bottom step of a ladder and falling backwards, would that cause significant trauma for a herniation?
A. I mean, it could. I mean, it could.
Q. It could.
Would that cause significant trauma for herniations in the neck and the back?
A. Sure. If he fell, it's possible.
Q. One foot?
A. Yes. If you fall a foot, if a human being falls a foot, they can injure themselves, break -- didn't do it in this case -- but they can break something. A foot is the whole body weight times the distance.
Q. We don't have any fractures, we don't have any subluxations, we don't have any breaks. So if you step on a curb and you fall backwards while stepping off on a curb, it's the same distance, you're saying that's going to cause herniations in the neck and back?
MR. DELLA JACONO: Objection as to the form of that question.
THE COURT: Sustained as to the form.
BY MR. VAN ETTEN:
Q. Have you had patients that have fallen from the distance of one foot and sustained multiple level herniations?
A. So in my entire clinical experience as an orthopedic

surgeon, have I seen people fall, slip and fall, not even from a height -- but included from a height -- and sustained significant injuries to their spine and extremities, yes. That's my answer.

THE COURT: Is that different from neck and lower spine?

THE WITNESS: It's all the same.

THE COURT: Because you sort of talked about extremities. I'm trying to make sure that you are saying yes, in a slip and fall, a fall from a foot, a person could injure both their neck and their lower spine.

THE WITNESS: Yes, ma'am.

THE COURT: Okay.

BY MR. VAN ETTEN:

Q. And you say could. But in this instance, you didn't get that history, so how do you give an opinion on causation, if this it something that could happen?

A. Well, the history that I got is that he fell -- my history is fell from the ladder. And when he fell, he injured his neck and back, to simplify it as much as possible. So that was the mechanism that made him end up going to the hospital and ultimately getting the treatments.

Q. In fact on --

THE COURT: You have to let him finish.

MR. VAN ETTEN: I apologize.

THE WITNESS: I was rambling a little at the end too.
THE COURT: That's true too.
THE WITNESS: Sorry.
BY MR. VAN ETTEN:
Q. Are you done? All right. I'll ramble now.
So in fact, on your initial report from February 4, in fact, you only state that he fell off a ladder, you didn't mention the distance?
A. Yes, that's correct.
Q. So when you gave the opinion on causation, you didn't need to know the distance, you didn't need to know the precise mechanism on how he fell, whether he twisted, whether he reached out, whether he came into contact with a wall, whether he came into contact with the instrumentality of the ladder he was working on, you didn't need that to make your opinion; fair?
A. For the most part, you don't.
Q. And you didn't need the CAT scan films or the x-rays from the day of the incident to show you what the condition of his back was to see if it supported your opinion; fair?
A. Well, I mean, I was knowledgeable that the -- in preparation of trial, I was knowledgeable that the studies were done. They just didn't help me in my -- I didn't use them, so -- in my assessment for the patient. So that's why I didn't really focus on that in my preparation. That's all.

Q. Well, but you brought your records in and you don't have those Bellevue records there; correct?
A. These are just my office. That's all I brought today.
Q. So you were given other records?
A. I don't have an independent recollection. But usually, I ask for all the records and I do review them prior. I just don't have that record with me today.
Q. I think you mentioned something about instability of the vertebrae when you were doing your surgery. The Bellevue Hospital records state from the lumbar spine films that were taken, there was no traumatic malalignment. Would that be something significant to show to you that there was no significant amount of trauma?
A. Well, I would agree with that assessment that there was no -- because those CAT scans and x-rays, they're looking for fractures, dislocations, which are much more serious degrees of injury. So the fact that it wasn't present doesn't change how I take care of the patient.

Obviously, if I was involved early on and he did have a fracture, dislocation, that would require emergency surgery. But that's not -- that's a different circumstance. So it doesn't really help me in caring for the patient. Obviously, I know he didn't sustain a fracture, dislocation when he walks in the door, so that's all gone. So that information doesn't really carry into caring for the patient.

Q. And I should have done this before, when you had Dr. Giangrasso's records in front of you. We talked about the neck pain being only one currently, and the back pain, I think it was down to five or six; correct?
A. Yes.
Q. So again, we are having improvement; fair?
A. Yes.
Q. And Mr. Csikos was asked about when he did the back surgery, and I think what we got out was -- I want you to assume this -- when you spoke to him about the back, you said he would feel some improvement in the pain, possibly up to 75 percent, and then within two to five years, the pain in the back should go away; would that be a fair statement? Would back condition that you operated on for what you hope would have occurred?
A. I didn't understand the first part. Are you saying that --
Q. This is what he testified to --
A. Oh, what his testimony was?
Q. Yes.
A. If you can repeat the question.
Q. You testified to when you were talking about the back surgery, he would get immediate improvement of pain, maybe as much as 75 percent, and within two to five years, the back pain should go away after the back surgery?
A. I mean, that's an exaggerated paraphrase, I would say. But

generally, I tell patients, they could take several months to a year to improve from a procedure like this. Not to expect a hundred percent improvement from any operation like this. But very often, people do go back to their ability to enjoy their lives in one capacity or another.

(Continued on next page)

BY MR. VAN ETTEN:
Q. I guess because we did the boxing issue and stuff like this I have to ask you, when you have a fusion surgery such as Mr. Csikos on the neck --
A. Yes, sir.
Q. -- OK, and I know that it is not apples to oranges but we know in this world, football players like Peyton Manning have surgeries and go back and play football. And we know that they're professional athletes and they train differently, but they're able to go back and have the trauma of football and play football after a fusion surgery, correct?
A. Yes.
Q. And I think that you said that Mr. Csikos, if he felt safe enough, could go back to work. Fair?
A. Yes, given certain limitations, obviously. No scaffold climbing, no lifting, no carrying, no bending.
Q. Mr. Csikos just testified right before you took the stand actually one of the last questions asked by his attorney, was about some of the training he got in computers and doing web design. So, would he be able to get a job doing web design?
A. I say he has the ability to perform sedentary work given the framework of his disability. So, there is disability and then you have to accommodate for that disability. His would be he can't be forced to sit in a chair for four hours, right, he would need a special chair. There is accommodations that need

to be made for his injury.
Q. Fairly common this day and age, we have all of us crazy lawyers are sitting at a computer, and then you get these desks that you push the button and it goes up or you just do the roll and your computer goes up and you can stand and work at a computer, fair?
A. I think I answered your question.
Q. But that's the type of accommodation?
A. For someone who has disability, something to accommodate and not create further injury.
Q. What is disc desiccation?
A. Disc desiccation is what radiologists will frequently report when they look at an MRI and they see that there is a change in the signal intensity of the disc. And so, for the jury, like a normal, a healthy young disc is very bright because it has a lot of water. Water on a specific sequence shows very bright. If you start to see -- sometimes you will start to see as a result of an injury or trauma, or age, or some phenomena where the disc is no longer as white as it once was and now starts to get darker and darker and eventually turns black. That's -- there is less water on the MRI so they use the word desiccation as a verbal or written description of what they're seeing at the disc, that the disc is no longer white and is now turning darker over time.
Q. Drying out of a disc is a more simplistic way of saying it?

A. Sure.
Q. And that is something commonly seen with degenerative conditions?
A. Yes.
Q. And are bone spurs degenerative conditions?
A. Yes.
THE COURT: What is a bone spur?
MR. VAN ETTEN: I'm going to get to that.
THE COURT: Oh, you are going to get to it?
MR. VAN ETTEN: I'm going to get to it.
THE COURT: OK. As long as you get to it because I am confident everybody wants to know what a bone spur is.
BY MR. VAN ETTEN:
Q. We heard about osteophytes. What are osteophytes?
A. Similar to a bone spur, doctor word for bone spur.
Q. Can you tell the jury what bone spurs and osteophytes are?
A. So, the bone has a certain shape, right? But all bones in the body are a certain shape, there are very odd shapes, right? When we are talking about spine bones or foot bones we commonly have bone spurs, we have bone spurs all over. So, it could be -- and there is multiple different reasons so it is not necessarily an accident, it is not necessarily old age, but you can start to -- it could just be an inflammatory condition that people have where the ligaments that attach the bones -- the ligaments themselves which are not bone, begin to get ossified,

the bone deposits in this ligament. So, where on an x-ray of an 18-year-old, you look at the spine, you see nice clean healthy bones, if there is an inflammatory process or traumatic process you will start to see bone sticking out in very odd places that isn't part of the natural bone. What it is, it is actually growing in the ligaments around the bone.

So, what happens, what you hear, that's why you hear it, you go to the doctor, you say my heel hurts or my back hurts or my shoulder. He puts an x-ray up and goes, oh look, there's the bone spur, that is what your problem is. It is a way for doctors to communicate with their patient. It is really way more complicated than that.

I know I spoke too much about that topic.

Q. Dumb it down for me. Would it be a bony growth?

A. Yes, it is a deposition of bone in an abnormal spot.

Q. And frequently osteophytes and bone spurs, they develop degeneratively?

A. They could, yes.

Q. And in your operative report for the neck surgery, did you not do a complete removal of all the posterior osteophytes were present within the neck?

A. Yes.

Q. And that was a degenerative condition in the neck that you found intra-operatively, true?

A. No.

Q. In fact, the Wellness MRI films that you looked at and are in your records and all the reports in your records, show desiccation of all of the levels of Mr. Csikos' neck; true?
A. True.
Q. So, this is two months after the incident, two months -- actually, the neck -- withdraw that.
The neck was in July so it is less than two months after the incident. Disc desiccation would not have occurred in one month, true?
A. That's true.
Q. So we have disc desiccation in the neck which is pre-existing to the accident and you have osteophyte formation in the neck, true?
A. So the osteophyte I did record, I reported that in my operative record. The desiccation is a matter of opinion and it is not necessarily I find something that I find, something that I found.
Q. Desiccation, osteophytes would all have existed before this accident, true?
A. Not necessarily.
Q. When you made your opinion on causation did you consider the presence of the osteophyte and the reports from wellness diagnostic of the desiccation?
A. Yes.
MR. VAN ETTEN: I apologize for the delay, your Honor,

but I went off script here and I think I might have covered everything.

THE COURT: OK.

MR. VAN ETTEN: Which is good news for everybody.

BY MR. VAN ETTEN:

Q. At any point in your operative reports did you make any reference to the degenerative conditions in the neck or lumbar spine?

A. No.

Q. And is the reason that you did not -- withdraw that.

Now, when you do your surgery and you are removing the disc material that is abutting onto the spinal canal, that was for, as I think we discussed, to get rid of the pain, correct?

A. Yes, sir.

Q. When you remove the damaged disc, though, that doesn't stop degenerative processes from continuing; correct?

A. That's correct.

Q. So, if degenerative process was in place with Mr. Csikos before that incident, that would continue as he grows older; true?

A. Your compound question is confusing me sir, I'm sorry.

THE COURT: Break it into pieces.

Q. OK. Degenerative changes will not get better from a surgery to remove a damaged disc, correct?

A. I would say that's correct and it is pure --

Q. OK. And if a person has --

THE COURT: I'm sorry. Hang on.

THE WITNESS: I was going to say in its purest form of the question because, really, if you step out of it, it is not correct so just to --

MR. VAN ETTEN: He gets to do redirect.

THE WITNESS: OK.

MR. VAN ETTEN: We will get there.

THE WITNESS: OK. Fine.

BY MR. VAN ETTEN:

Q. If a patient has a degenerative disc disease in his spine, that degenerative disc disease will continue to progress in the future, correct?

A. It can.

Q. Isn't that what we were talking about earlier when people get older and that's how they develop herniations when they get older because they have underlying degenerative disc disease and the lady that bends over aggravates it?

A. It can, but they don't all go to surgery.

Q. I'm not talking about surgery. I am just talking about that that degenerative condition continues. Like arthritis. If you see arthritis in a patient, it is there at one point and two years, five years you will see greater arthritis, correct?

A. It can progress, sir.

Q. And you have seen Mr. Csikos since your surgeries, true?

A. Yes.
Q. And you have taken some x-rays after the fact?
A. Yes.
Q. And you have seen that the fusion was proper and stable?
A. Yes.
Q. And you have taken x-rays of the back and have seen no further complications since then?
A. Correct.
Q. There has been no evidence of any recurring herniations, correct?
A. At this point, no.
Q. And again, when you were asked about the possibility of future surgeries and you talked about it being more likely than not, a recurring herniation would be something that might then require a future surgery?
A. Yes.
Q. And at this point there is no evidence of that, true?
A. We haven't made any notation of such, sir.
Q. And, in fact, with cervical spine fusions, the literature is that future surgeries such as revisions are -- it is only 10 or 12 percent of the patients ever have them, true?
MR. DELLA JACONO: Objection as to form.
THE COURT: Overruled.
THE WITNESS: I won't corroborate your statistic but it is certainly that patients that have a surgery, a fusion,

can go on to need further surgeries.

THE COURT: I think what he is asking you is he is pushing on the you said "more likely than not." You said for a surgical fusion, is it more likely than not that the patient is going to need another surgery.

THE WITNESS: That's generally been my opinion, your Honor.

THE COURT: Is it based on anything other than just your experience your patients need a second one.

THE WITNESS: There is no -- we don't find, in general, in spine one source to be authoritative on that. There is differences of -- depending on the studies and the research -- it is all quite controversial. It is my experience that -- and that's the best answer I can give.

BY MR. VAN ETTEN:

Q. Are there studies out there that maybe other studies refute that say that, in general, only 10 to 12 percent of patients with cervical fusions end up requiring a future surgery?

A. I prefer not to answer yes or no because I don't know the study you are referring to, sir. I don't want to corroborate that without knowing.

Q. At this time I think you said you have not recommended any future surgeries, correct?

A. There is no current recommendation for any surgery, sir.

Q. Now, the one, the last area I want to ask you about, we

talked a little bit about subjective and objective and you were talking about the complaints of pain of the 10 out of 10 that you were getting initially, right? That's the backdrop. Do you remember that?

A. Yes, sir.

Q. Are you familiar with the term secondary gain?

A. Yes.

Q. What is secondary gain?

A. Secondary gain is when they -- when there is a suggestion from someone -- I don't feel this way in this particular case -- that the patient would be -- would not be truthful, right, say things to the doctor, have him record information, basically tell a false narrative so that, you know, it might enhance his status financially one way or the other. I have no evidence of such -- of him -- the patient ever conflated or exaggerated his for the sake of this. So, that's not my opinion.

MR. VAN ETTEN: I move to strike. I just asked him what secondary gain was, I didn't ask him as to this patient.

THE COURT: Yes. Disregard his view on this particular patient.

BY MR. VAN ETTEN:

Q. Is secondary gain a phenomenon that you are familiar with where sometimes a person may exaggerate their symptoms for the potential gaining a financial benefit?

A. Yes.
Q. And that frequently occurs in lawsuits?
THE COURT: Frequently occurs in what?
MR. VAN ETTEN: Lawsuits.
THE COURT: Oh.
THE WITNESS: I mean, it happens. I don't say the word, I haven't seen it frequently myself.
BY MR. VAN ETTEN:
Q. Fair.
Are you familiar with symptom amplification?
A. Yes.
Q. What is symptom amplification, definitionally?
A. Along the same lines. "It's killing me" as opposed to "it hurts me a little." That's what he is saying.
Q. And so there are instances that you are aware of as a physician where a secondary gain or symptom amplification that a person engaged in litigation may exaggerate their symptoms?
MR. DELLA JACONO: Objection as to form.
THE COURT: Overruled.
A. It could happen, yes.
MR. VAN ETTEN: Thank you.
THE COURT: Mr. Della Jacono?
MR. DELLA JACONO: I have to go through a few. Sorry.
THE COURT: That's all right. Normal.
REDIRECT EXAMINATION

BY MR. DELLA JACONO:
Q. He just asked you two questions about symptom amplification and secondary gain. Do you see any of that in this case?
A. No, sir.
Q. He would have to start out wanting a surgery in order to have secondary gain and follow on that afterwards. Is that part of the process here?
A. No one wants to have spinal surgery.
Q. Exactly. That's what we are indicating here from the beginning and the onset, and then it goes further after that and he has a lawsuit. Is that what he is trying to get at here?
MR. VAN ETTEN: Objection.
THE COURT: Yes. Sustained as to the form of the question.
BY MR. DELLA JACONO:
Q. OK. The other question he had that I didn't want to ask --
THE COURT: No, no, no, no.
MR. VAN ETTEN: Objection.
THE COURT: No, don't do that. Don't do that.
MR. DELLA JACONO: OK. I apologize.
BY MR. DELLA JACONO:
Q. He asked you whether or not degenerative changes will get better over time and you had a secondary part to your answer. Can you please comment on whether degenerative changes in

someone's back, low back or neck, can get better over time and what are the causes, please?

A. Yeah, it's a -- just to be -- not to be overbroad in my response, I think it just, you know, people can have degenerative changes and have zero symptoms. That's pretty common, actually. In other circumstances they can have a traumatic injury and have minor degeneration, it does progress over time and it is really case by case, right? You can't say if you have degeneration you are going to need surgery. That's not the case. This is a 27-year-old patient, those MRIs did not show any evidence of disc degeneration. The word disc desiccation does not mean degenerative disc disease. That is not -- and if you put those two together, you are really misdiagnosing all the patients. Right? You would say that 99 percent of people who only have desiccation do not have surgery. So, just putting them all together just confuses everybody. I would just say that some people have degenerative changes, it's not progressive; some people have degenerative changes which does progress and sometimes need surgery, but most often it does not.

Q. The term asymptomatic, what does that mean?

A. Asymptomatic means it doesn't have any symptoms.

Q. If someone is asymptomatic is surgery something that is a possibility?

A. No. If there are no symptoms we don't operate.

Q. And they could have degenerative changes?
A. And I say that is very, very common. Many people have changes that it is not severe enough to warrant surgery or warrant treatment.
Q. And they could have disc dessication?
A. And they also have disc dessication and they don't require treatment.
Q. They could have osteophytes?
A. Could have osteophytes and don't require treatment.
Q. They could have bone spurs?
A. Bone spurs are osteophytes.
Q. I am trying to use all the words that we use before just to avoid confusion with the jury and myself.

So, there was a question that was asked to you about osteophytes that were involved in the surgery. Can you explain that to us and what that meant to you when you were performing your surgeries?
A. So, in this particular case, OK, patients, when you have herniation, the body responds by creating this inflammatory response. We talked about inflammation. So, what inflammation means at the level of the disc and the ligament is it calcifies or ossifies the ligament, it means it puts the stone in there -- the bone stone if you want to use that expression for the patient. It is calcification or ossification which then appears on a x-ray or an MRI, but also it is a direct sign of a

herniation, a traumatization. And that's why I make mention in the OR, because I do see those changes at the ligament, and when you do the surgery you need to remove those because that calcification will keep growing and re-impinge nerves. You need to document that you remove that, otherwise the process will continue after the surgery. That's why I put that word in the operative record.

Q. And that's traumatically induced?

A. Correct. It is not meant to suggest there is a degenerative process in place, the osteophyte, rather I am addressing the pathology -- is the broad word -- of the herniation in this particular case.

MR. DELLA JACONO: Thank you. I have nothing else.

THE COURT: Mr. Van Etten?

While he is pondering that --

MR. VAN ETTEN: I was just going to say thank you to the witness and I'm done.

THE COURT: I will ask my question anyway.

I thought you just said in response to the plaintiff's lawyer that if there are these osteophytes, that that tells you it is a traumatic herniation, but I thought when you did the original little tutorial on bone spurs that you said it could be either degenerative process or trauma.

THE WITNESS: It can.

THE COURT: OK. That's all.

THE WITNESS: Yes, ma'am.

THE COURT: Thank you.

MR. VAN ETTEN: Then I do have a question based on that follow-up.

THE COURT: Oh. I'm sorry.

RECROSS EXAMINATION

BY MR. VAN ETTEN:

Q. Just so we are clear on this because we are talking about osteophytes, in the Nova Medical Diagnostic films for the first lumbar spine there was L1-L2 N plate changes, correct?

A. Yes.

Q. That's the type of things where the vertebrae are shifting and you create bone spurs and osteophytes, correct?

A. I mean, it could be.

MR. VAN ETTEN: Thank you.

THE COURT: Thank you. You can step down.

(witness excused)

THE COURT: Call your next witness.

MR. DELLA JACONO: I will check to see if he is outside.

THE COURT: I thought you said he was here.

MR. DELLA JACONO: He is here.

JOSEPH CARFI,

called as a witness by the Plaintiff,

having been duly sworn, testified as follows:

MR. DELLA JACONO: May I inquire?

THE COURT: Yes, please.

DIRECT EXAMINATION

BY MR. DELLA JACONO:

Q. Good afternoon, Dr. Carfi.

A. Good afternoon.

Q. Are you licensed to practice in New York?

A. I am.

Q. And what is your speciality, sir?

A. My speciality is physical medicine and rehabilitation.

Q. And can you please explain to this jury what is physical medicine and rehabilitation?

A. Sure.

So, the physical medicine part of what I do is related to pain. You hurt your back, you sprain your ankle, I can diagnose, treat, and help you to get better. Sometimes I would deal with chronic pain as well. The rehabilitation side is taking care of people with more permanent types of impairments, disabilities; it could be a spinal cord injury, they're paralyzed from the waist down, multiple sclerosis, amputation. So, various disabling conditions.

What makes my training different than most is that we are trained to take care of a person that has that disabling condition so not only the medical or the surgical issues that may come from that particular disability but this person, many

times, has a psychological reaction to being disabled, they have vocational problems, they have social problems and need special equipment. So, it is more of a holistic approach to somebody that has an ongoing disabling issue.

Q. And I didn't get your original background information. Where did you go to medical school?

A. That would be Mount Sinai School of Medicine here on Manhattan.

Q. When did you graduate, sir?

A. That was 1981.

Q. And any professional -- give us a little background about your profession, fellowships, all of that, internships.

A. So, I did my residency at the Rusk Institute for Rehabilitation Medicine, New York University, the building doesn't actually exist anymore. I didn't do any fellowships. There were -- basically, spinal cord injury was the only fellowship back in my day, I chose not to pursue that.

So, that's my medical education.

Q. Sir, did you perform a life care plan on Gergely Csikos in this case?

A. I did.

Q. And did you prepare a report?

A. I did.

MR. DELLA JACONO: Your Honor, I would just ask that if the doctor needs to refresh his recollection, he has his

report in front of him, and if he is going to, obviously he will let the Court and jury know that.

THE COURT: Of course.

MR. DELLA JACONO: Thank you.

BY MR. DELLA JACONO:

Q. Can you tell this jury, have you treated patients in your career?

A. Yes, I have.

Q. Can you tell this jury what is a life care plan?

A. So, a life care plan is a document that details the medically necessary treatments, equipment, medication, therapies that someone requires because they have been seriously or catastrophically injured in some way.

Q. And what is your experience with the life care plans?

A. Well, I have developed around 4,500 life care plans in the 30 years I have been doing this starting in 1991 or 1992, and essentially it was taking my training, knowledge, and experience in caring for these people and translating it into a spreadsheet that you can look at very easily and see what the care is and applying a cost to that care.

MR. DELLA JACONO: At this time, your Honor, I would offer Dr. Joseph Carfi as an expert witness in the area of rehabilitation and physical medicine.

THE COURT: Any objection?

MR. VAN ETTEN: No, your Honor.

THE COURT: He is accepted for that purpose.

BY MR. DELLA JACONO:

Q. Dr. Carfi, are you being compensated for your time here today?

A. I am, yes.

Q. Can you tell the jury what you are being compensated with?

A. Sure. It is $5,400 to be here.

THE COURT: That's a flat rate?

THE WITNESS: Yes, ma'am, your Honor.

BY MR. DELLA JACONO:

Q. Now, did you perform an examination of Mr. Csikos?

A. I did.

Q. And can you tell us when you performed that examination?

A. Sure. That was on January 21st, 2020.

Q. Now, after that examination Mr. Csikos had an additional surgery on his lower back, that's been the testimony that's been given today. Would that change your opinion in any way, shape, or form from the one that you are about to give here today?

A. It would not, no.

Q. Thank you.

Before you did an examination of -- well, I tell you what. Why don't you take us through your examination and what you did with Mr. Csikos.

A. Sure.

So, the first thing I did is I took a history from him and he -- at the time I saw him was 28 years old and he had some residual complaints and issues related to his work accident of June 25, 2018. So, he complained to me of constant neck pain. The neck pain was localized, didn't travel, radiate, it just stayed in the neck area, and he typically indicated the more active he was the more intense that pain would get. He had a general sense of stiffness and decreased mobility. He found that lifting or carrying would cause more pain. In the morning when he got up, his neck was particularly stiff and painful; that would usually work out after a while. So, he had surgery to the neck which he felt was helpful and two reasons; one is previously he had numbness and tingling in his arms, that resolved from the surgery, and he felt that the pain was a little less.

Then, in the lower back he also had constant pain, again, aching and sharp. The back pain, however, radiated into the right leg intermittently although he had episodic episodes throughout the day. The pain was sharp and tingling in nature and would go as far as the back of his knee. He also, when he would be active, that would cause more intense pain. He found cold and rainy weather made his back hurt more. And again, when he got up in the morning, his back was kind of stiff and painful which would loosen up after a little while. He had difficulty getting out of low seats because of the back pain,

and usually in most of our homes the lowest seat in the house is the toilet, so he would have to use his arms to help himself get up and down from there.

So, he took various medicines to help himself, we will talk about those in a bit; he used a heating pad, a TENS unit which is a little electrical stimulation box. You hook it on your belt, put electrodes on your back or neck or whatever hurts you, and help moderate your pain. And, physical therapy he had found helpful in the past.

He talked about his sleeping. No trouble falling asleep really because there were medicines, but three or four times a week he would wake up 1:00 or 2:00 in the morning and not able to continue to sleep.

We talked about his emotional state related to his accident. He said he was depressed, that it was hard for him to get out of bed at times and his girlfriend would have to insist but there were days he would lay in bed all day because of his mood. He said that he felt lost and to quote, he said, "lost from the world." Those were his words. He described himself as a hard-working guy, like a man, but he didn't -- he felt much less like a man when I evaluated him. He can't support his girlfriend, he can't support himself, very disturbing to him. Irritable, got angry easily, mostly at himself but he would argue with his girlfriend as well and so we talked about counseling as something which he would do if it

was affordable and available.

Working/occupational history, he had been working construction when he was hurt and he had been working in construction for about five years. A high school graduate, had not worked since the accident. He lived in a second floor walkup with his girlfriend. He could take care of himself, personal things that we all do for ourselves every day, painfully, but he could get it done. And he had a drivers license and a vehicle available.

Talked about activities. He previously liked to box for fitness. Can't do that anymore. He indicated that in terms of intimate life, that had decreased in frequency because of pain, positioning issues, and his libido kind of waned quite a bit as well. And, before his injury, he was happy in that department.

We talked about his sitting tolerance. About an hour and then he has to get up and move. If he is standing quietly, about an hour and a half, as long as he can move around a little bit. And walking, 30 minutes he needs to sit down.

And that was the history.

Q. Did you come to an opinion based on your history and -- withdrawn.

Did you review any records?

A. I did.

Q. What records did you review?

A. So, I reviewed records from the FDNY pre-hospital care report Bellevue Hospital Center, New York Presbyterian Lower Manhattan, records from Drs. Hanna, Ford, and Lattuga; records from New York Spine Specialists, Wellness Diagnostic Imaging, and Nova Medical Diagnostics. So, those were the records.

Q. Did you develop a life care plan for him, sir?

A. I did.

Q. Is that part of your report?

A. It is.

MR. DELLA JACONO: Your Honor, what I would like to do, for demonstrative purposes only, is to show that portion of the life care plan that has the numbers, to the jury. We will -- counsel and I had discussed it but if we could do that now?

THE COURT: Is there any objection, Mr. Van Etten?

MR. VAN ETTEN: Yes, I object to it.

THE COURT: You object to this exhibit?

MR. VAN ETTEN: Yes, because it is not in evidence and will not be in evidence.

THE COURT: Come up.

(Continued next page)

(At side bar)

THE COURT: OK.

MR. VAN ETTEN: OK. We had discussed this issue and I said he could do this the old fashioned way.

THE COURT: He could do it the old fashioned way. He could what.

MR. VAN ETTEN: What he is going to be testifying to, this is not going to be into evidence and it's only demonstrative, at best.

MR. DELLA JACONO: Fine.

THE COURT: It is demonstrative. That's exactly what it is.

MR. DELLA JACONO: That's all I said.

THE COURT: He could have written it on a whiteboard.

MR. VAN ETTEN: I apologize. I will withdraw the objection. I apologize.

MR. DELLA JACONO: Your Honor, just so we don't have the problem, Ms. Kucsma is going to do the same thing with her particular things. It is jus purely for demonstrative. I am not handing this to the jury, they can take notes.

THE COURT: Correct. They can do that without that, but that's fine.

MR. VAN ETTEN: Thank you.

(In open court)

MR. VAN ETTEN: As indicated, your Honor, I withdraw my objection.

THE COURT: OK.

MR. DELLA JACONO: Thank you, your Honor. And as we have discussed, it is only for demonstrative purposes only, not being admitted as an exhibit.

THE COURT: Correct.

BY MR. DELLA JACONO:

Q. Doctor, do you have that document up on your screen?

A. I do.

Q. Does the jury have it as well? Doctor, what are we looking at here?

A. So, this is my life care plan. It is an Excel spreadsheet in case anybody recognizes that, and all the pages are organized the way you see it. The headers might be a little different but this first sheet, for example, is Medicare, what are the components, the purpose, the frequency, cost per visit or cost per item or whatever the page is, we will get to some of that. The next column, the resource column, you will see a series of numbers as we go through the pages. This refers to the very last page, page 7 of 7, that has the resource material from which I obtained the cost. Now, I am aware of what things cost generally, I do do research, and so this way you can see where Dr. Carfi got the costs from and, no, I didn't pull them

out of thin air, it came from a source. And then annualized costs are calculated in the last row which can be multiplication or division depending on the frequency, and you get the analyzed cost for that item. And, this would be in 2020 dollars.

Would you like me to go through it?

Q. Yes, please.

A. Sure. All right.

So, first page, medical care is rehabilitation specialist, somebody like myself, to monitor therapy which we will get to later, see what those are. Twice a year, that costs $237.30 a visit, $474.60 analyzed. Now you want the orthopedist to monitor the spine once a year or so, that's the same fee $237.30. Pain management, the same, four times over a year is sufficient, not taking any controlled substances so four times a year, $160.10 per visit times 4 is $640.40. And then the psychotherapy for the counseling, for his depression, irritability, anger, things of that nature, coping skills, that's $136.67 per treatment visit, once a week, is $7,106.84.

And now to go to the next page.

Q. Just one second, let me go through this quickly so we can move this along. You are just talking about an analyzed cost, meaning the cost for one year?

A. That's what the last column is for each line item, is the analyzed cost; correct.

Q. And this is your recommendation for a life care plan for Mr. Csikos?
A. It is, yes.
Q. And if Mr. Csikos chose not to do this, that's up to Mr. Csikos?
A. Yes, it would be.
Q. If he didn't want to go, say for argument's sake he doesn't want to go for any psychotherapy treatment, that's up to Mr. Csikos?
A. Correct.
Q. But this is what your recommendation is for his life care going forward?
A. It is. It is based upon our history and physical.
Q. And you did not get involved with respect to his life expectancy or his work expectancy or any of those numbers, this is just on an annual basis?
A. Correct.
Q. Thank you. If we can go to page 2?
A. So next we have the medication sheet, organized as we discussed earlier. The first medicine he was taking when I saw him, Gabapentin 300 milligrams that's to treat his pain twice a day. With this frequency, the cost $46.63 for 180 capsules. So, doing the math across the row gives an annual cost of the Gabapentin of $189.11.
Q. Just to cut you off -- I am not looking to stop any of

this, I don't want to drag this out if I don't have to -- but that would be for all the medications the same way?

A. Yes.

Q. And the multiplication would be the same way and you have got down the resource?

A. That's correct.

Q. At the end we do have a final number and do you lay out the total cost?

A. In the summary sheet, yes.

Q. So, just so we don't have to go through each one of them, I am just trying to save some time and effort on everybody's part here, I appreciate that.

Let's go to page 3.

A. You bet.

Q. What are we looking at here?

A. These are the imaging studies. The two injuries he had, lumbar and cervical, that's the back and neck, and so the cost for the lumbar MRI, you can see is $1,534.95, cervical is more because he had surgery so you have to do it without contrast which is more expensive. And then you see the analyzed cost in the right column for those.

Q. This would be only for one year, just to reiterate?

A. Correct.

Q. Thank you.

Can we go to the next page? So what are we looking at

here?

A. Here is the first page of medical supplies, heating pad, TENS unit; as I told you he is using those things. Reacher to assist him in getting things high or low so you don't have to bend or climb. And a dressing stick and shoe horn at the end to help make dressing less painful and easier for him. So, you can see the base cost is what the cost of the item is and then simply doing a calculation across the row, in this case mostly dividing because a heating pad will last five years so you divide by 5 to get the annual cost. That's why it is $11.24, one fifth of what buying it costs.

Q. Let's go to page 5, thank you.

A. Page 5 is the last page of equipment. This is more home adaptations and I just want to explain one thing on this. A shower chair -- because you will remember that Dr. Carfi said he could stand for an hour and a half quietly, why is there a chair for him to take a shower? It is really very simple. Showering is not standing quietly; you are bending, twisting, reaching. That's going to cause him pain. The other issue is if you slip and fall in a shower or tub, there is no place soft to land, you will get hurt, so it is a safety issue as well. So that's my explanation for the shower chair. And this is all, again, bathroom equipment just to make his functioning and doing things for himself easier and safe.

Q. Can we go to the next page, please?

A. So this is the last page with numbers. This is physical therapy. I want to point out you will see under physical therapy it says maintenance. OK? It does not say restorative. Now, it is an important distinction because, typically, if you go for physical therapy, the hope is to restore you back to your pain-free state, full functioning or whatever. His condition is not going to be restored. However, you want to maintain what he has, you don't want him to lose strength, to los range of motion, so this is designed to be maintenance therapy. That's why this is there. That's twice a week and so the analyzed cost for that is the $21,205.60.

Q. If we can go to the last page?

A. So, this is the resource page I mentioned, this is where all of those numbers come from that are referenced in the plan.

Q. And I think there is one more page.

MR. SO: This is the last page I have.

A. There is one more page, this is the life care plan summary, and what I have done on that page, which hopefully --

Q. Hold on one second.

THE COURT: You can't talk over him.

Q. I didn't ask you a question.

A. I'm sorry. I thought you did.

MR. DELLA JACONO: You can use the ELMO.

THE COURT: If you break my equipment I'm going to charge you.

MR. DELLA JACONO: I have got my check book, I know.

THE COURT: Can you help him, Angela?

THE DEPUTY CLERK: Yes.

MR. VAN ETTEN: You think he needs his check book, your Honor, when it banged on the way in that's what it is.

MR. SO: I found it.

MR. DELLA JACONO: He found it, we can do without. We don't need it.

THE COURT: I am pretty sure this is a user error problem.

MR. DELLA JACONO: Definitely. There we go.

MR. SO: Is that it?

MR. DELLA JACONO: That's it. Thank you.

BY MR. DELLA JACONO:

Q. So we are not using the ELMO, Doctor. Do you have that up on your screen?

A. I see it.

Q. Please tell us what this page talks about.

A. So this is the summary. All it does is compresses all of the specific line item of each category into one overall number so that's what you are looking at here. Medical care totals $8,459.14. All the medications that he is taking $1,851.50. Diagnostic studies total 813.87. The equipment $198.88, and therapies, $21,205.60. And the total analyzed cost in 2020 dollars is $32,528.99.

Q. Did you also give an opinion with respect to Mr. Csikos, Doctor?

A. I did.

Q. Can you please tell us what your opinion was?

A. My opinion was due to that work fall on June 25, 2018, he suffered injuries to his neck and back, the cervical and lumbar spine. The cervical required surgery but he remains with a chronic cervical derangement with constant pain and reduced range of motion.

In a similar way, the lumbar spine has an ongoing internal derangement with constant pain, reduced mobility, as well as radicular complaints meaning complaints of pain traveling down the leg.

Q. That opinion you just gave, was that to a reasonable degree of physical medicine and rehabilitation?

A. Yes.

Q. Thank you.

Sir, to a reasonable degree of physical medicine and rehabilitation, are his conditions permanent?

A. They are permanent, yes.

Q. And also to a reasonable degree of physical medicine and rehabilitation, is he unable to engage in aggressive physical work?

A. He cannot.

MR. DELLA JACONO: I have nothing further. Thank you.

THE COURT: How long is your cross going to be, Mr. Van Etten?

MR. VAN ETTEN: Half hour to 40 minutes.

THE COURT: Why don't we break then. Maybe with a little more organization it will be shorter.

MR. VAN ETTEN: I am going to try and I will need ELMO to work.

THE COURT: ELMO is on strike.

Ladies and gentlemen, we are going to break for lunch for an hour so please be back at 10 until 2:00. Enjoy your lunch, don't discuss the case, leave your books on your chair.

(Continued on next page)

(Jury not present)

THE COURT: OK, everybody. Enjoy your lunch, be back and ready to go at 10 till 2:00, and if you don't know how to ELMO learn to do it now.

MR. VAN ETTEN: You see me right here, Judge. Thank you.

THE COURT: OK.

(luncheon recess)

(Continued on next page)

AFTERNOON SESSION

1:50 p.m.

(In open court; jury not present)

THE COURT: I have heard that we have a witness with COVID.

MR. VAN ETTEN: Yes, your Honor. Dr. Greenfield, my radiologist, who I have scheduled for Friday morning. We just were contact. I guess he had been in Hawaii, he's back, and I guess he has COVID.

THE COURT: Let's talk about what to do with it at the end of the day. Let's go ahead and get the jury out and keep working.

Where is Carfi?

MR. DELLA JACONO: Carfi is out in the hall.

THE COURT: Let's bring him in. When we break and we come back, your witness should be at least available. They don't have to be on the stand, but they should be in the courtroom. If we're talking about things that they don't need to hear, we'll throw them out at that point.

MR. DELLA JACONO: You got it.

And my last witness is here. She's outside, so we're good.

THE COURT: Good.

(Continued on next page)

(Jury present)

THE COURT: Mr. Van Etten.

MR. VAN ETTEN: Thank you, your Honor.

Your Honor, I'm leaving the Elmo on since we got it working over the lunch break. I don't want to take the chance to your turn it off until we're ready, so we'll go and hopefully not mess it up.

CROSS-EXAMINATION

BY MR. VAN ETTEN:

Q. Good afternoon, Dr. Carfi.

A. Good afternoon, sir.

Q. I want to follow up with some additional questions. This is the first time we have met?

A. You look familiar, but perhaps it is the first time.

Q. When did you meet Mr. Csikos for the first time?

A. Would have been my office, 2001 Marcus Avenue.

Q. And when you met him at that time, that was not for the purposes of treating him; correct?

A. That is accurate, yes.

Q. In fact, you were hired by his attorneys to provide a life care plan?

A. In part, yes.

Q. Well, that's why they sent him to you?

A. Well, I provided a narrative report and an examination, but yes, the life care plan as well.

Q. And the narrative report was for the purposes of supporting your life care plan; right?
A. It outlines the basis of my life care plan, yes.
Q. And in fact, when you wrote that report, that report was directed to the law firms of Ronai & Ronai?
A. Correct.
Q. And you did not direct that report to any governmental groups that would provide assistance to an injured worker; correct?
A. That is accurate.
Q. And you did not provide that report to his treating doctors?
A. Correct.
Q. Now, I am going to jump a little here. One of the things you talked about in the medical needs, you were making recommended medical needs; correct?
A. In part, yes.
Q. In part, in one of those medical needs that you discussed was psychotherapy; correct?
A. Yes.
Q. And you made a recommendation for that, and you put a projection that you put together in your report for treatments for psychotherapy?
A. Correct.
Q. Has Mr. Csikos undergone any psychotherapy since June 25,

2018 when he was injured?
A. I'm not aware that he has.
Q. And in the two years since you wrote your report in 2020 -- actually, two and a half years -- are you aware of any psychotherapy treatments being undertaken by Mr. Csikos?
A. I am not, sir.
Q. And are you aware of any of his treating doctors making recommendations for psychological treatments?
A. I am not.
Q. I'm going to show you right now and I'm going to talk to you -- and I think it's on everybody's screen -- this is the report of June 17, 2022 from Dr. Daniel Giangrasso, one of the New York Spine doctors.

Are you familiar with New York Spine?

A. I am, yes.
Q. Dr. Giangrasso -- and I don't know if you had the opportunity to know this -- is now the doctor that is providing pain management instead of Billy Ford. I think Dr. Ford's records you may have seen when you did your review?
A. Correct.
Q. So this is the current pain management. And I also ask you to assume that right before you, Dr. Lattuga testified.

Can you assume that?

A. Yes, sir.
Q. And Dr. Lattuga identified this report from Dr. Giangrasso.

And I want you to look down at a section of the review of systems. And to make it easier and quicker, I did highlight and put a little red thing around it so you would be able to see it. It's the bottom one.

Do you see that?

A. I see it.

Q. On his review of systems, Dr. Giangrasso, who is treating Mr. Csikos indicates that there were no psychological complaints by Mr. Csikos.

Do you see that?

A. I do.

Q. And is that inconsistent with your report?

A. It is inconsistent, correct.

Q. But this is the most current medical record we have for Mr. Csikos; fair?

A. It's far more recent than the records I had available to me at the time, yes.

Q. So at this point now -- almost four and a half -- four plus years since the incident, with no psychological treatments and no psychological complaints being made to his treating physicians back in May, wouldn't your projected cost for future psychological treatments not be medically necessary?

A. As you have stated the facts, that would be correct. If he has no psychological complaints, then he would not require the psychotherapy. Of course, that makes sense.

Q. So when we had those little projections and you wrote down the numbers from that, we can eliminate future psychological care and treatments because he is not currently treating and he is not making complaints; fair?
A. Well, I would have to concede that, as of the time of this record, yes, of course.
Q. And you can't project into the future that he's going to need them; correct?
A. All I can say is, at the time I saw him, he clearly was in need. I certainly can't project into the future that that will change.
Q. So that was over $7,000 per year in projected costs; correct?
A. Correct.
Q. So that would take your $32,000 and knock that down to about $25,000, give or take?
A. Around, yes.
Q. You talked about medicines, and you gave, if I recall correctly -- if I'm wrong, please correct me -- Baclofen, Gabapentin, acetaminophen, which is Tylenol, and lidocaine patches; correct?
A. You got them all.
Q. I got them all, okay.
Let's go right back to Dr. Giangrasso's note, and it says medications. Can you see what medications that Mr. Csikos

is taking as of May 17th, 2022?
A. It's under past medical history. It says Tylenol. I don't see what he's currently taking, unless I'm missing that somewhere.
Q. Well, I would like you to assume that Mr. Csikos already testified in this litigation, in this trial, Dr. Lattuga, the treating orthopedic spine surgeon has already testified, and at this point neither Dr. Lattuga nor Mr. Csikos testified to any medicine usage by plaintiff at this time.

Can you make that assumption?
A. Sure, yes.
Q. So this record from May of 2022 states that Tylenol is the only medicine now being used.

With that assumption, gabapentin, baclofen, no longer needed?
A. Well, if that assumption is correct that Tylenol is the only medication that he's currently taking, then that would be correct.
Q. And you have no records available to you to show you that he's taking any medications at this time; correct?
A. I don't have current records, correct.
Q. And you have received no medical records from the time you examined him in 2020, in January, until now, indicating that he is currently taking those medicines; correct?
A. That is correct.

Q. So if that's the case, then, you cannot project that he would require any gabapentin, baclofen; correct?
A. Based upon the assumptions that you gave me, that would be correct, yes.
Q. Lidocaine patches -- I know it's only a minor issue -- there are over-the-counter pain medication patches, are there not?
A. Yes.
Q. Icy Hot, Biofreeze, all types of things you can use; correct?
A. Yes.
Q. And they provide pain relief; correct?
A. They do, if they work, yes.
Q. Are you aware of any pain -- withdraw that.

Are you aware of plaintiff being prescribed at this time lidocaine patches by Dr. Giangrasso, the pain management doctor?
A. Well, I'm not aware at this time. I don't know.
Q. So at this time, you don't know if Mr. Csikos requires lidocaine patches anymore, do you?
A. As I sit here, I do not know that.
Q. So you cannot project that he will be requiring lidocaine patches in the future; correct?
A. That is correct. I only documented what he was using at the time I saw him.

Q. Now, you talk about a rehab specialist two times per year in your report; correct?
A. I did.
Q. And has Mr. Csikos seen a rehab specialist at any time in the four and a half years since his accident?
A. I don't know. He should, but I don't know if he has.
Q. Well, when you say he should, he has treating doctors with whom he's been treating for four and a half years; correct?
A. Yes, sir.
Q. And none of them have referred him to a rehab specialist; correct?
A. I don't know that one way or the other.
Q. Well, you made the plan in 2020 with recommendations. Are you aware since 2020 that he's actually gone to see a rehab specialist?
A. I'm not aware.
Q. So you can send him to a rehab specialist but it's not a medical necessity; correct?
A. I disagree. Doctors in my field have a certain set of skills that other physicians simply don't engage in.
Q. Doctors in your field. You're a physical medicine and rehab specialist; correct?
A. Yes, sir.
Q. But you're not affiliated with any hospitals; correct?
A. Mount Sinai Hospital here in New York City.

Q. Do you have admitting privileges for them?
A. I do not.
Q. So if you treat somebody, you can't admit them to a hospital because you don't have privileges; true?
A. That is correct.
Q. But you still recommend that he see a rehab specialist?
A. Yes. For ongoing outpatient management, yes.
Q. Are you aware that with the neck pain that you had described as chronic and it was the basis for some of your projections that the neck pain of Mr. Csikos, as recorded by Dr. Giangrasso and as testified to by Dr. Lattuga this morning, is now only one on a scale of one to ten?
A. I was not aware of that.
Q. Would that be marked improvement from when you saw him in January of 2020?
A. It would seem so, yes.
Q. So that would be one less possible requirement for future treatment because of the improvement he is having; correct?
A. He would still have to be monitored. But in essence, less intensive monitoring, yes.
Q. Did you take that into consideration with the projections that you gave to the jury this morning and currently?
A. No, sir.
Q. Among the doctors that you also talked about is pain management, which we know that he's doing, and the orthopedist.

I think you said one time per year for that?
A. Yes, sir.
Q. And at some point in time -- and you are familiar with this in your practice -- that once a patient reaches a certain level of recovery after an orthopedic spine surgery, they no longer have to see the doctor unless it becomes medically necessary?
A. I'm a big believer in maintenance, so I don't agree with that.
Q. I want you to assume that Dr. Lattuga came in here and he did not make any recommendations that he would need to see him for the one time per year that you are recommending.

Would Dr. Lattuga, the orthopedic spine surgeon, be better suited to know whether he needs orthopedic spine follow-ups?

MR. DELLA JACONO: Objection as to form, your Honor, mischaracterization.

THE COURT: Rephrase the question.

MR. DELLA JACONO: Thank you.

MR. VAN ETTEN: Sure.

BY MR. VAN ETTEN:
Q. You're here as a physical medicine and rehab specialist. But Dr. Lattuga is treating his patient for the orthopedic injuries; right?
A. Yes, sir.
Q. And it would be Dr. Lattuga who should be the person to

make the recommendations of what type of orthopedic treatments his patient should have; correct?

A. His own opinion and his own factors, yes.

Q. Because he's the actual treating physician; correct?

A. Yes.

Q. You also discussed MRIs, and I think you say one time every five years. I take it, this is another one of this is a maintenance issue?

A. Yes, as to monitor the condition of the spine. Once every five years doesn't mean you set the clock for January 15th every five years. It's an approximate range.

Q. I want you to assume that the treating orthopedic surgeon, Dr. Lattuga, came in and testified prior to you, and he told this jury that, from time to time, Mr. Csikos may need MRIs if his symptoms present for him.

Would you agree that that would be the proper way to address future MRIs?

A. He's not incorrect in that it's based upon symptoms and presentation. The issue here is, approximately every five years or so, he will need an MRI because of a complaint or a change or something of that nature.

Q. So you are anticipating that he's going to make complaints in the future; correct?

A. Yes, sir.

Q. If he continues to recover such as he has done with the

neck where he had pains of ten out of ten down to one out of ten, how do you make that prediction?
A. Well, this note is a moment in time. I would lov to see the entire trail of notes. But handpicking this out, it's very difficult to evaluate the whole picture with a single note, sir.
Q. Did you review this note before testifying?
A. No. I have not seen his current records.
Q. Did you review any of the notes for the past two years?
A. No, sir.
Q. So basically, then, your report and opinion is outdated; correct?
A. In terms of time, yes. Given his conditions are permanent, I would anticipate these needs to continue.
Q. Well, you said they were permanent and you said the chronic pain in the neck is permanent. As we can see, it's decreased. You haven't taken into consideration when you did your report any potential for improvement; true?
A. That is not entirely correct. His pain has decreased, one out of ten, at this particular visit, is still having some neck pain.
Q. I want you to assume that Dr. Lattuga testified earlier and that the most recent visit, which I believe was a few months after that -- I can't for the life of me remember, I'll let the jury do that -- he said that the follow-up visit about three to

five months later, the pain in the neck was still at one. Will you assume that, and does that give you more pause to show you that he is actually improving and doesn't need the type and extent of care you are projecting?

A. Well, it shows his pain is the same, hasn't improved anymore. But yes, it is at a low level at this time.

Q. And when did Mr. Csikos start using a reacher?

A. I don't know that he has. It was simply a rehabilitation recommendation.

Q. Has anybody made a recommendation for him, other than you, as part of this litigation, that he get a reacher?

A. Well, likely, if he had an appropriate rehabilitation physician taking care of the whole person, he would have. But surgeons don't think of things like that. Pain management doctors don't think along those functional lines.

Q. Well, he has been treating with other doctors too, hasn't he?

A. I'm not aware of who he has been treating with since I saw him last.

Q. And a dressing stick and a shoe horn, same thing, do you know if he's using one now?

A. I do not know.

Q. So we're sitting here now, and two years later, after you made your initial recommendations, as far as you know, he hasn't gone forward and taken the reachers, the shoe horns, the

things of that nature; fair?
A. As far as I know.
Q. So you have no way of being able to say whether he'll ever use those; correct?
A. Well, it will make things easier for him, but I have no way to say that he will.
Q. In fact, I think on direct examination, when counsel asked you about the psychotherapy, if he doesn't want to do it, he won't do it; right?
A. Yes, I recall that question.
Q. Same thing now with the shower chair, where you said that it might help him to be safer while he is in the shower. Has he gotten a shower chair since you examined him two years ago?
A. I don't know.
Q. He may never get one; true?
A. That's certainly possible.
Q. And the same thing with the extensions for the bath reachers or whatever they were?
A. That is true. He needs to comply with the recommendations, yes.
Q. Physical therapy, two times per week, over $21,000 per year in costs.

How often is he going for physical therapy now?

A. I don't know.
Q. I want you to assume that plaintiff testified on his first

day of testimony that, following his neck surgery, he started physical therapy and it did not help him much. You said your physical therapy is for maintenance.

If physical therapy is not providing any benefit, is there any reason for him to do it?

A. Well, I carefully explained the difference between maintenance and restorative earlier. So the maintenance therapy, the benefit is to maintain what he has so he doesn't lose range of motion, strength, et cetera.

Q. Are you aware he does home exercises?

A. I hope that he does, but I'm not aware one way or the other.

Q. Shouldn't you be aware of that if you are making recommendations for maintenance, if he's doing home exercises for those purposes?

A. Well, it's not clearly under clinical supervision. He should be doing home exercises. The purpose of the therapy is under a trained, watchful eye, reviewing his technique, et cetera.

Q. That's understood, doctor, that would make sense. And that's why, in most instances, for a life care plan, you have a person possibly come in once a month or so to check up, to make sure he's doing his exercises right; correct?

A. That's one of several things that a therapist does.

Q. But two times per week for maintenance, that's not

maintenance. That's to try to get him better, which he has already said it's not working; true?
A. Well, no, not entirely. He has the neck and he has the back. Those are two different areas that need two different types of treatment. He would go once a week for each, each of those.
Q. And if the neck is down to symptomatically one out of ten, you still think he's going to need it two times per week?
A. Not for the neck. He would need one for the neck and one for the back.
Q. So other than maintenance, is physical therapy medically necessary for Mr. Csikos?
A. In my opinion, it is, yes.
Q. And medically necessary, that is to improve his condition and make his pain go away?
A. No, it is to maintain his condition so he doesn't lose ground and have to get restorative therapy to get him back to where he was.
Q. Now, having looked at these other issues here on your plan, are you aware if any of the items that you made recommendations for back in January of 2020 -- other than seeing the orthopedic surgeon or the pain management specialist that he is still seeing -- are you aware of any of those recommendations having been undertaken by Mr. Csikos?
A. I am not aware. I generally am not.

Q. And as counsel asked you before, it ultimately becomes up to Mr. Csikos if he follows up on any future type of treatment, procurement of devices or testing; fair statement?

A. That is fair.

MR. VAN ETTEN: Thank you, sir.

THE COURT: Any redirect?

MR. DELLA JACONO: No redirect.

THE COURT: Thank you, Dr. Carfi. You can step down.

Call your next witness.

MR. DELLA JACONO: Kristin Kucsma.

KRISTIN KUCSMA,

called as a witness by the Plaintiff,

having been duly sworn, testified as follows:

MR. DELLA JACONO: May I inquire.

THE COURT: You may.

DIRECT EXAMINATION

BY MR. DELLA JACONO:

Q. Good afternoon.

A. Good afternoon.

Q. Can you tell everyone what you do.

A. I am an economist. And I am presently the managing director and chief economist of the Sobel Tinari Economics Group.

Q. Can you explain to the jury what specifically you do.

A. At the present time, most of the work I do as an economist

involves working with attorneys, both plaintiff's attorneys and defense attorneys to evaluate economic damages in a wide variety of litigated matters, including matters of personal injury.

Q. Can you give us some of your qualifications. I won't go in depth, here, but if you can give us an overview, that would be great.

A. Sure. I have a bachelor of arts degree in economics, which I received from Seton Hall University, where I was graduated with highest honors. I have a master of arts degree in economics that I received from Rutgers University. And in addition to my master of arts degree in economics, I had completed all of my coursework in the Ph.D. program in economics at Rutgers, I had also passed my qualifying examination, but I did not have a chance to complete my dissertation.

I began what I like to refer to as my first career, which was as a college professor. I was a member of the full-time facility at Seton Hall University and Drew University and I was an adjunct professor at Rutgers University and what was at the time St. Peter's College, now St. Peter's University. I taught primarily in the department of economics at the graduate and undergraduate levels. On occasion, I taught finance and statistics. And I did that, I taught at the university level for about 14 years.

I then spent about a year doing some consulting work.

I joined the Sobel Tinari Economics Group on January 2nd of 2008, and I've been with them ever since.

Q. Thank you.

Have you ever been qualified as an expert in an appraisal of economic loss in the state of New York before?

A. Yes, I have, many times.

Q. Besides the state of New York, have you qualified in other states as well?

A. Yes. I regularly testify in New Jersey. I've also testified in Pennsylvania, Connecticut, Louisiana, Florida, probably several other states, Puerto Rico at one point.

Q. Approximately, if you can give us an estimate, how many times have you testified as an expert?

A. I have testified in federal and state courts around the country over 300 times.

MR. DELLA JACONO: Your Honor, at this time, I offer Ms. Kristin Kucsma as an expert in the field of economics and economics appraisal of loss resulting from injury.

THE COURT: Any objection?

MR. VAN ETTEN: I have no objection to her testifying as an economic expert, your Honor.

THE COURT: She's received as an expert.

BY MR. DELLA JACONO:

Q. Are you being compensated for your time here today?

A. My firm has been compensated for the work we have done in this case, as well as my appearance here today.

Q. Thank you.

And have you prepared an economic appraisal report, an appraisal of economic loss report for Gergely Csikos in this case?

A. Yes.

Q. You have that report with you?

A. I do.

MR. DELLA JACONO: Your Honor, I ask that if Ms. Kucsma needs to refer to that report that she be allowed to do so to refresh her recollection.

THE COURT: Of course.

MR. DELLA JACONO: Thank you.

BY MR. DELLA JACONO:

Q. Can you tell us what went into the report, what you had to do to get that report. Give us the lay of the land, if you can.

A. Sure. The first thing I did in this case was review some basic information that had been provided to me. And that information included a copy of the complaint, it included some basic information about the plaintiff. I reviewed the deposition testimony of the plaintiff. I also had reviewed some of the deposition testimony of Alin Vadanuta. I received a copy of a check. I also had reviewed some other information,

again, about the date of birth of the plaintiff, his highest level of education and so on. And I also reviewed a narrative report prepared by Dr. Carfi.

Q. In your report, can you explain to us a little bit about what you had to do in order to come up with this economic appraisal -- first, do you need to see your slides now or can we wait on those?

A. It probably would be helpful to show the slides now.

MR. DELLA JACONO: Your Honor, if it would be okay, for demonstrative purposes only.

MR. VAN ETTEN: I have no problems for demonstrative purposes. I'd like to know the reason for what we're demonstrating.

THE COURT: Gentlemen, let's not do that. Would you like to come up?

MR. VAN ETTEN: I'm fine with it, Judge. I apologize. Let it go.

THE COURT: Go ahead.

MR. DELLA JACONO: Thank you.

Put it up.

BY MR. DELLA JACONO:

Q. Do you have a slide in front of you yet?

A. I do, but that's not the first slide. The first slide is some basic background information about the plaintiff; his date of birth, his level of education and so on.

There we go.

Q. Go ahead.

A. Great.

As I said, the first thing I did was reviewed some documents and information that had been provided to me about the claims in this case and about the plaintiff. Once I reviewed those documents, I was able to identify the elements of economic damages that I would be calculating and you see those indicated at the bottom of this slide. Based on my review of all of the information provided to me, I determined that I would be calculating two elements of economic damages; one, what I called here the adjusted earnings. So the first part of my analysis involved an evaluation of what the plaintiff's earnings would have been, had he not been injured, so had he not been injured and continued his employment, how much would he have earned over his working lifetime.

And the second element of economic damages involved a calculation of the total amount of money necessary to cover the cost of all of the elements of care that Dr. Carfi had indicated in his narrative report that the plaintiff will need over his remaining life expectancy.

Once I identified those two general elements of economic damages, I then had to conduct some basic economic research. And what you see at the top of this slide is some information that I had gleaned about the plaintiff from the

complaint and his deposition testimony, information like his date of birth, the date on which he was injured, his highest level of education, the nature of his employment at the time of the injury. And then in addition to that, I also provided here the results of some of the preliminary basic economic research I had to conduct before I could really begin my analysis.

And that research included, first of all, my evaluation of the plaintiff's statistical retirement age. So the first thing I needed to do, in order to calculate how much money the plaintiff would have earned if he hadn't been injured, I had to determine for how many more years he likely would have worked. And in order for me to determine how many years into the future Mr. Csikos would likely have worked, I reviewed US government data and I looked very specifically at the actual experience of 26, 27-year-old males with a high school diploma. I wanted to look at the group into which the plaintiff fit. And based on the actual experience of 26, 27-year-old males with a high school diploma, they retire at, on average, the age of 65.5 years. So this is the point at which I expect, if the plaintiff hadn't been injured, he would have permanently left the labor force.

Now, in addition to that, when I reviewed that US government data, I also learned that 26, 27-year-old males with a high school diploma typically do not work every day of every week of every year until they retire. In fact, based on the

actual experience of males in that category, I learned that they typically spend some time not working. They miss work now and then because of things like injury, illness and so on. That's what that work-life ratio represents. So again, based on my research, males who are 26, 27 years of age with a high school diploma will spend, on average, 81.9 percent of the time actually working until they retire. Or alternatively, they will spend 18.1 percent of the time not working. So that was significant for me, because that meant in each and every year, I was going to make a downward adjustment to my calculations in the amount of 18.1 percent in every year to take into account the probability in any given year that the plaintiff likely would have missed work because he was injured, he was ill and so on.

The last thing I needed to do, in terms of my basic preliminary research, was also examine data on the plaintiff's statistical life expectancy. And I'll return to that when I talk about the cost of lifetime care. But I did review US government data, specifically data published in the national vital statistics reports.

MR. VAN ETTEN: Your Honor, may we have a sidebar, please.

THE COURT: Okay.

(Continued on next page)

(At sidebar)

MR. VAN ETTEN: I've never seen this document.

THE COURT: The one that's on the screen?

MR. VAN ETTEN: Yes. This looks like something that might have been prepared in contemplation of litigation. It also has a page 1 on it. Page 1 in my document from her report that was exchanged from the expert witness is not that. I understand it might very well be a compilation. So I was going to try to do it, but I gave the witness her chance to do it.

If there are any other documents that are going to come in that I haven't seen since she prepared her report two years ago, I would like to see them.

THE COURT: Well, none of these are coming in, but what else do you have in terms of demonstratives?

MR. DELLA JACONO: I have six or seven of these slides. They're a compilation of her entire report that she puts down in a nice, neat package. This is what she sent to me. I got this last night.

MR. VAN ETTEN: So this is something I have never seen before.

THE COURT: How long is it going to take you to look at them?

MR. VAN ETTEN: If it's the same stuff from before, it will take me two or three minutes.

MR. DELLA JACONO: I apologize. I thought you had it.

THE COURT: Why don't we take a quick break, give you a moment to look at them, and then we'll start again.

MR. VAN ETTEN: Thank you.

MR. DELLA JACONO: Thank you.

(Continued on next page)

(Jury present)

THE COURT: Ladies and gentlemen, we're going to take a quick break. It's not your normal afternoon break. It is going to be short. Please stay in the jury room. About a five-minute break. Don't discuss the case, leave your notebooks on your chair.

(Continued on next page)

(Jury not present)

MR. DELLA JACONO: I just need a minute --

THE COURT: I'm not sure what the easiest way to do this is. If you can email it to the chambers email box or if you have a hard copy.

MR. DELLA JACONO: Do you have a hard copy?

THE WITNESS: I do.

THE COURT: Five minutes.

(Recess)

THE COURT: Any issues we need to talk about?

MR. VAN ETTEN: Yes, please.

THE COURT: What is the issue?

MR. VAN ETTEN: Okay, Judge, it looks to me what Ms. Kucsma has done has updated the prior report from two years ago and has changed some of the growth rates. And there's also been a change on the adjusted earning factor from the prior report and a few other little changes.

Now, to be quite fair, some of these numbers now actually may reduce the ultimate projections in some regards, but I don't have the opportunity now to figure out why they were reduced to be able to be doing this. I mean, this is an updated disclosure, a new disclosure changing growth rates, yearly growth factors. Again, there's a couple numbers not there. Bottom line is these numbers might even be more favorable, but that also goes to my ability to effectively

cross-examine this witness on why the changes were made now. So I have a problem with just getting this and finding this out now.

THE COURT: So what happened?

MR. DELLA JACONO: It's updated for the purposes of today.

THE COURT: But you can't file an updated expert report in the middle of your expert's testimony. That's not really fair.

MR. DELLA JACONO: I'm not filing it. And actually, the numbers do help him.

MR. VAN ETTEN: I understand that.

THE COURT: But they are different is the problem.

MR. DELLA JACONO: Yes, they are different. And there's no question that they're different, and I'm not saying that they are not different. But because of the growth rate, inflation rate and everything that's happened over the past year, it's only a more accurate representation to this jury.

I understand the surprise. I understand that.

THE COURT: Correct.

MR. DELLA JACONO: I'm an attorney, I have done this for a number of years, I understand that. But these numbers do not hurt the actual -- his cross-examination, I understand what he wants to do, but these numbers are actually lower. If you want us to use the old numbers, we can use the old numbers,

it's not a problem. I could use the old numbers, but those numbers are going to be higher.

THE COURT: Mr. Van Etten, I have no idea really what this does to your cross-examination, so it's hard for me to assess. The easiest thing in the world for me is to just say go back to the old numbers.

MR. VAN ETTEN: Understood.

MR. DELLA JACONO: Then it's going to have to be, your Honor, calculations, because counsel is going to argue to Ms. Kucsma, aren't the numbers different because of all the -- he's going to do the same thing he's going to do anyway, she's already done it. That's the only reason I'm saying it.

I understand his dilemma. I understand the Court's dilemma. He's going to cross-examine her on the old numbers putting in these new numbers anyway. If he wants to do it that way, fine and put the two numbers side by side, we can do that as well. I'm not adverse to that as well.

And again, these numbers are not going to the jury in the sense of they're going to have --

THE COURT: They're not going to have the report. They're going to have the numbers, they're going to write them down.

MR. DELLA JACONO: Those numbers I was going to give to them or she was going to put them on the board. It's going to be the same thing.

MR. VAN ETTEN: I will allow the witness to go forward with these new numbers. Obviously, I'll be crossing on them. I'm just preserving my objection based upon the fact that it was a late disclosure.

THE COURT: I can remedy your late disclosure.

MR. VAN ETTEN: I understand that, Judge. But the issue is that by having the expert then put projections that are higher, I'm actually countering the best interest of my client, that is my betwixt and between here. That remedy does not work to the benefit of my client.

I had a circumstance where, in this case, my firm messed up and we got an expert disclosure out late.

THE COURT: I recall that.

MR. VAN ETTEN: And we were precluded from it. And now I'm getting disclosure in the middle of a trial. That very much perturbs me.

THE COURT: Here's the thing, though. I can solve that, and how I would normally solve it is by saying, you are limited by the prior disclosure.

The problem with that is you are going to make points on cross-examination, and he's then going to say, Ms. Kucsma, Mr. Van Etten just made these points, what would that do to your actual calculations. And she would say, well, as it turns out, last night, I actually did some recalculations, and this is what it does to them.

So I get your problem, and I'm sympathetic. I mean, look, my view on this is -- and this has nothing to do with Ms. Kucsma -- her numbers have a lot of problems at this point based on the cross-examination of Carfi. This issue is kind of a pimple on the problem.

MR. VAN ETTEN: That's the dilemma that I have with the one shoulder and the left shoulder.

THE COURT: Let's go forward with these numbers.

MR. VAN ETTEN: Let's go forward with these numbers.

MR. DELLA JACONO: Do you want me to ask her on direct if these are new numbers? Do you want to do it on cross? It doesn't matter to me.

MR. VAN ETTEN: Whatever you want to do.

MR. DELLA JACONO: I'll let you do it. That's fine.

MR. VAN ETTEN: Thank you, your Honor.

MR. DELLA JACONO: Thank you.

THE COURT: Thank you.

(Continued on next page)

(Jury present)

THE COURT: Mr. Della Jacono.

BY MR. DELLA JACONO:

Q. Getting back to where we were, you gave out the statistical life expectancy to the jury and how you calculated that. And were we done with this first slide?

A. Yes. Thank you.

MR. DELLA JACONO: Go to Slide two.

Q. Now, if you could please go into, what was his pre-injury earning base?

A. Based on the information I reviewed, I reviewed a check that indicated that the plaintiff had been paid $800 per week. I also reviewed some deposition testimony that confirmed that, that he was paying the plaintiff $800 per week. In addition to that, I also reviewed benchmark statistical data published by the US Department of Labor. And I looked very specifically at the median earnings for construction laborers in the New York metropolitan area. I also looked at benchmark statistical data for construction helpers in the New York metropolitan area. I also looked at benchmark statistical data for painters in the New York metropolitan area. And these were all occupations that reflected either the plaintiff's current or prior employment.

And just to give some perspective to my calculations, in 2021, the median earnings of laborers and painters in the

New York metropolitan area was about $59,000 per year. And the median earnings in 2021 for construction helpers were about $47,000 per year.

Ultimately, though, I did rely upon the deposition testimony of the plaintiff's employer, as well as that check. And I calculated or I established, I should say, his earnings based at $41,600. And that was based upon a payment of earnings of $800 per week. And that was consistent -- actually, less than -- what I had obtained through my research when I looked at the benchmark statistical data for the earnings of individuals in similar occupations to that of the plaintiff in the New York metropolitan area.

Q. So can you give us the projected gross earnings for his past years? So this would be his lost wages from the accident date to today.

A. Yes.

In order to calculate how much money the plaintiff would have earned from 2018 through the present time, I started by calculating how much money the plaintiff would have earned each year through the present time if he never missed a day of work and had no job-related expenses. And in order to do that, I had to take into account the affects of inflation. I had to examine how earnings for individuals in these occupations have in fact changed year over year from 2018 through the present time. And if you look at that top table, the yearly growth

figures you see there are based on data published by the US Department of Labor. And they reflect, on average, how much earnings did in fact increase year over year through the present time for the occupations that I mentioned just a few moments ago.

I was then able to, again, calculate the gross earnings for each year through the present time. I then, though, had to make three downward adjustments in order to calculate how much money the plaintiff likely would have earned from 2018 through the present time.

The first thing I needed to do was take into account the probability that the plaintiff would not have worked every day of every week of every year through the present time. I had to take into account the probability that he would have missed work now and then. He may have missed work, as I mentioned earlier, because he was injured; he sprained an ankle, for example, or he became ill. He also may have missed work because he was unemployed and there simply was no work for him. The first adjustment I made was that downward adjustment of 18.1 percent each year. That was that work-life ratio I mentioned to you earlier. And that was to take into account the likelihood that the plaintiff would have missed work in any given year because of injury, illness and so on.

I then made a second downward adjustment, though, each year in the amount of 9.9 percent, and that was to take into

account the probability of unemployment, the likelihood that the plaintiff would have missed work because there simply wasn't work available for him.

And then the third and final downward adjustment I made each and every year was to take into account what we refer to as job maintenance or job-related expenses. I had to take into account the fact that if the plaintiff hadn't been injured, had he continued to be employed, he would have had certain job-related expenses he would have incurred on a daily, weekly basis. And those expenses would incur transportation to and from the job site, a cup of coffee in the morning, a hot dog for lunch. And I was able to estimate those job-related expenses at 5 percent of the plaintiff's earnings. And that was also based on data published through the US Department of Labor, specifically data published through the consumer expenditure survey.

So what you see here summarized below is a summary of those three downward adjustments. In each and every year, I took the figures in the top table and I reduced them by 29.9 percent, nearly 30 percent. And that, again, was to take into account the likelihood that, in any given year, the plaintiff would not have worked every day of every week in the year, and also to take into the account that when he was working, he would have had these various job-related expenses.

(Continued on next page)

BY MR. DELLA JACONO:

Q. So, what is your total for adjusted earnings in the past years?

A. I calculated the total loss of earnings in past years at $132,473. This represents the additional money the plaintiff would have earned through the present time had he not been injured in 2018 and had he been able to continue his employment.

Q. Thank you.

MR. DELLA JACONO: Next slide.

Q. Now, let's talk about the future, from this point going forward with the work expectancy that you have already told us about. How would you calculate that going forward?

A. I basically used the same analysis that I have described before. I once again calculated how much money the plaintiff would have earned each year going forward and I continued my calculations through February 9th, 2057. That's the date on which the plaintiff will turn 65.5 years. That's what I determined, based on my research is his statistical retirement age.

Once again, in column 3 you see I calculated the gross earnings, how much money the plaintiff would have earned each year if he never missed a day of work and had no job related expenses. Once again, I had to build in the effects of inflation. I had to take into account the fact that if the

plaintiff hadn't been injured, had he continued working, his earnings would have likely continued to increase year over year. In order for me to determine on average how much his earnings would have increased year over year going forward, I started by looking at historical data published by the U.S. Department of Labor. In addition to that, I also took into account projections of future wage growth that are published by the U.S. government, for example, projections of future wage growth published by the Social Security Administration, and also projections of future wage growth published by the Congressional Budget Office. Based on my review of all of that data, I determined that, on average, the plaintiff's earnings would have increased 3.6 percent each year going forward; more in some years, less in other years, but on average 3.6 percent each year.

And if you go to the next slide you will see I continue these calculations all the way through 2057. I also, once again, if you look at column 4, made those three downward adjustments. So, I took the gross earning figures in column 3 and made the three downward adjustments to take into account the probability that the plaintiff would have missed work, become unemployed, and also the fact that he would have had job-related expenses when he was working.

Q. And the total?

A. Based on my analysis, I calculated the total lost earnings

in future years at $2,104,432.

Q. If we can go to the next slide, please?

Now, we are going to go into, talk a little bit about the lifetime care plan. OK?

A. Yes.

Q. Can you tell us how you calculated these numbers?

A. Sure. The first thing I did was reviewed the narrative report prepared by Dr. Carfi, and that's really what I used as my starting point because I'm not a medical doctor. So, I did rely upon that narrative report for three basic pieces of information. Number one, I relied upon that narrative report for a list of all the categories of care that the plaintiff will likely need for the remainder of his life expectancy. Number two, I relied on that narrative report of Dr. Carfi for information about how frequently the plaintiff will need care on a daily basis, yearly basis, every other year. Lastly, I also relied upon the narrative report of Dr. Carfi for what I have called the base costs. In his narrative report, Dr. Carfi indicated how much, for example, it would have cost the plaintiff to get physical therapy in 2020. Dr. Carfi also provided information in his report about how much various medications cost in 2020.

So, again, I relied on Dr. Carfi's narrative report for those three pieces of information. My job, then, was to take into account the effects of inflation. I had to take into

account the fact that medical costs have, on average, increased each year historically, and in my professional opinion they will continue to increase each year going forward. So I had to determine how much the costs are going to increase each year going forward and that allowed me to then calculate the total amount of money that would be needed to cover the cost of all of the care that Dr. Carfi had outlined in his narrative report.

MR. DELLA JACONO: Next slide, please?

Q. So, this next slide, does this talk about all the different components of the life care plan?

A. Yes.

So, as I mentioned a moment ago, in Dr. Carfi's narrative report he provided me with base costs for various categories of medical care in 2020. So, the first thing I needed to do, I started my calculation of future medical costs on November 1st of this year, 2022, and I just simply calculated those costs going forward. So the first thing I needed to do was take the cost from that medical narrative report of Dr. Carfi's, those costs represented how much physical therapy, medications, and so on, used to cost in 2020. The first thing I needed to do then was calculate how much those categories of care cost today in 2022. And that's what you see, you see there the yearly increase in past years, that's what I use those rates for, to simply calculate how much

it would cost to get the various categories of care outlined in Dr. Carfi's report now in 2022.

Once I did that I then had to calculate how much, on average, those costs are going to increase going forward for the remainder of the plaintiff's life expectancy, and in order to do that I used the figures you see there in the column indicated as the yearly increase in future years.

The yearly increase in past years is based on data published by the U.S. Department of Labor. Very specifically, I looked at various consumer price indexes. So, the U.S. Department of Labor publishes what we call a general consumer price index which allows us to examine, on average, how much more expensive things have gotten for everyone, but the U.S. Department of Labor also has sort of a sub-category, if you will, they have smaller consumer price indexes that allow us to examine, for example, on average, how much more does it cost today to go visit a doctor than it cost in 2020. How much more does it cost today to get physical therapy than it did in 2020. How much more, or in this case less, does it cost, in general, to get prescription drugs than it cost in 2020. How much more expensive are nonprescription drugs and supplies today. That's what those figures in the yearly increase and past years reflect. And again, that's based on actual data because we know, I was able to look at the consumer price index data and examine how much these costs have in fact increased over the

last two years.

In order to determine, on average, how much these costs are likely going to increase going forward, though, I had to do two things, I had to start by looking back further. So, I can't look at just the last two years but I looked at historical data, historical consumer price index data for the last 10, 20, 30 years. I looked at the various categories, physician services, visits to a doctor, other medical professionals that would include physical therapy, prescription drugs, and so on. But I also had to take into account projections of future inflation, current inflation, and also factors that are likely going to continue to impact the cost of medical care going forward and those factors would include the aging population.

So, once I considered all of that information, historical data looking back more than two years, as well as current factors that are going to impact inflation and medical costs going forward, as well as projections of future inflation I was able to determine, on average, how much the costs of these various categories of medical care likely will increase each year going forward.

MR. DELLA JACONO: Next slide.

A. And I then simply combined all the information that I mentioned a moment ago, and what we see here is just one example of how I took the information from the narrative report

that Dr. Carfi prepared and built in the effects of inflation.

So here, for illustrative purposes, I selected the category from Dr. Carfi's report that was entitled Medical Care. So you will see, once again, if you look here you will see the categories of care, rehabilitation specialist, orthopedist, pain management, and psychotherapy. Those categories of care I took directly from the medical narrative report of Dr. Carfi. We also see that each element of medical care here, according to Dr. Carfi's narrative report, he indicated the plaintiff would require this care on a yearly basis for the rest of his lifetime. And then you will see the 2020 costs, those are the base costs that came from Dr. Carfi's report.

So you will see the first thing I did again was I took those yearly increases in past years for physician services, for the rehabilitation specialist, the orthopedist, and the pain management specialist, and I also took the yearly increase in past years for other medical professionals, for the psychotherapist, and I used those growth rates to calculate how much it would cost now in 2022 to go see the rehabilitation specialist, the orthopedist, get the pain management, and also get the psychotherapy and those are those 2022 costs.

And then, lastly, once I determined how much it would cost this year, I simply had to calculate, on average, how much these costs are going to increase each year through August 19th

of 2069 -- and that is the plaintiff's statistical life expectancy based on the average life expectancy for a roughly 31-year-old male. That's reflected, again, or based I should say, on U.S. government data, specifically the National Vital Statistics Reports.

And you will see then I simply calculated the total amount of money that would be needed each and every year starting in November of 2022, continuing through 2069, for these various categories of medical care, and you will see those costs are increasing reflecting the effects of inflation. I then added up the cost of this care over the plaintiff's remaining statistical life expectancy and I was able to calculate that the total amount of money necessary to cover the cost of medical care that Dr. Carfi included in his narrative report is $869,769.

I then took every other category of Dr. Carfi's medical narrative report and performed the same calculations.

Q. Now, there has been some testimony about some of the care for the plaintiff that the plaintiff has not done. Would your calculations have to change based on the fact that if he did not go for psychotherapy, or if he did not take certain medications, your numbers would have to be reduced?

A. I certainly assume that the jury would probably adjust my calculations accordingly. Again, I relied upon the original narrative report and I calculated the total amount of money

that Dr. Carfi had initially indicated the plaintiff was going to require over his remaining statistical life expectancy.

Q. Thank you.

MR. DELLA JACONO: Can you go to the next slide?

Q. And the cost of the lifetime plan on this particular page 10, is that the calculations that you have now?

A. Yes.

Q. And that's including everything in Dr. Carfi's plan?

A. Yes. This, the costs we are looking at here, again, reflect the total amount of money necessary to cover the costs of all of the care that was originally outlined by Dr. Carfi in his narrative report in 2020.

MR. DELLA JACONO: Next slide? I think we are done. Thank you.

Q. Have all of your calculations and your opinions been given with a reasonable degree of economic certainty?

A. Yes, they have.

Q. Anything else that we should go over here or anything else that should be added to his life care plan or anything else to his lost wages or future wages that you have not given to this jury as of yet?

A. I think the only thing that I would mention is I did have a summary sheet that I also prepared, really just summarizing everything I testified to here, and as we see on the screen right now, again based on that original narrative report, I did

calculate the total cost of lifetime care at $3,311,960, and when I combined that with the lost earnings, with the amount of money the plaintiff would have earned from 2018 through his statistical data of retirement, I calculated the total value of economic loss in this case at $5,548,865.

Q. Just so we make it clear, these are just the economic damages, none of these calculations have to do with non-economic damages; is that correct?

A. That's correct.

Q. Would these numbers have been any different if you were hired by defense counsel?

MR. VAN ETTEN: Note my objection.

THE COURT: Sustained.

MR. DELLA JACONO: OK. I have nothing further. Thank you so much.

THE WITNESS: Thank you.

THE COURT: Mr. Van Etten, do you need a break or are you ready to go?

MR. VAN ETTEN: Oh, I am ready to go, Judge.

THE COURT: I thought you were but I just wanted to make sure.

CROSS-EXAMINATION

BY MR. VAN ETTEN:

Q. Hello again.

A. Hello again.

Q. It's been about 10 years since you and I have met, probably both our hair colors have changed.
A. It is nice to see you again.
Q. Every piece of economic damage that you just testified to are based, for the medicals, on what Dr. Carfi gave you in a report from 2020, true?
A. Yes. The costs of lifetime care are based on that medical narrative report.
Q. And the lost earnings component of the case is based on a check, one check?
A. Well, in my review, though, of benchmark statistical data, as well as the testimony of Mr. Vadanuta who I understand was the one that was paying the plaintiff.
Q. When you testify as an expert you normally get tax returns, W-2s, 1099s or other types of form documents, don't you?
A. Sometimes. Frequently I don't, which is why I have to do my due diligence as an economic expert and consider the benchmark statistical data as well.
Q. I understand you are talking about the benchmark data. You just testified to, in fact, some of the things you do when you are talking about growth rates you say you looked back for historical price data as part of your research?
A. Yes.
Q. Right? And that's something you, as an economist, does; correct?

A. Yes. That is part of my regular research.
Q. You have to look back and find historical data in order in which to base your opinions on growth rates and other issues; fair?
A. Frequently I do, yes.
Q. And so, if you want to get an accurate projection for lost earnings you should be able to go back and get the historical data from Mr. Csikos as to what he has earned; fair?
A. I mean, again, I relied upon the information provided to me and it is not uncommon that I am not able to obtain documentation of a plaintiff's historical earnings, which is why it is important, if I am relying on a single check or the testimony of the plaintiff and the testimony of the plaintiff's boss, it is important that I also consider the benchmark statistical data.
Q. Now, you just updated this whole segment that you just showed to the jury last night?
A. Per the footnote, yes, and I included my original report. Yes, I had to do that.
Q. So, that's last night. So, did you update the fact that Mr. Csikos testified that he earned anywhere from $750 to $800, not $800 per week?
A. Well, I haven't read the transcript of his trial testimony. I do know that during his deposition he had talked about the last job that he had prior to this job, I think he had earned

$1,300 per week; he had another job where he earned $900 per week. I do believe he made reference to $750 to $800 a week. His employer, though, very clearly stated that he paid him $800 a week so I considered all of that information, and that along with the benchmark statistical data, I did determine that the reported $800 a week was reasonable.

Q. Let me ask you this, though. So, if he was making $1,300 a week before, though the plaintiff couldn't testify during the trial as to what he was making before, and then he was making $750 to $800, his earnings were going down; true?

A. Well, he certainly would have been earning less in his current job than he had earned in a prior job; yes.

Q. Yet you are making projections for him not going on that same downward trend, you are going upwards every year; fair?

A. Well, I don't know I would say that's a downward trend. I mean, individuals who are employed in these types of occupations will frequently be paid more on one job. I believe during his deposition he indicated he was working a greater number of hours when he was earning $1,300 per week so that's what I would expect to see for individuals working in these types of occupations. Keep in mind, I assumed his earnings would increase, on average, each year.

Q. But you are assuming they're going to increase on average. And again, what I am asking is, you are taking everything that you have projected based on the testimony of Mr. Csikos, you

have not gotten, other than one check for $800, any documentation to verify that he actually made $1,300; true?
A. Again, other than the deposition testimony of his employer, that's correct, I didn't review anything else that indicated the $800 per week.
Q. No, but I talked about the $1,300 from the prior job. You don't even know about that being accurate because you have never seen any documentation to it; true?
A. And I didn't use that, obviously, when I calculated his lost earnings in this case.
Q. OK. So, because you didn't have that data and you didn't have anything to support it, you didn't use that information; true?
A. No. I relied upon the $800, number one, because I had, again, the deposition testimony of the plaintiff's employer and he said very clearly that he had been paying the plaintiff $800 per week, and that also, again, was consistent with the benchmark statistical data.
Q. When you did your report you did your initial report in 2020, correct?
A. Yes; April of 2020.
Q. And now you have come in and you have changed your report, correct?
A. I have, as I indicated in my April 2020 report, updated --
Q. Can I interrupt one thing? I asked you if you changed it,

I didn't ask you why, I asked you had you changed it.
A. I updated my calculations. I didn't change methodology or any of the sources but I did have to update my calculations, yes.
Q. So I will try again. You updated your report? Yes? No?
A. Yes, I updated my calculations.
Q. And when you updated your calculations you made various changes, correct?
A. Very specifically, I updated all of the data that was previously sourced in my report for which more up-to-date data has become available since April of 2020.
Q. So, when I asked if you made a change can you answer me yes or no that you made a change?
A. I updated all of my calculations.
Q. What I am trying to ask you, though, and you made some changes so we agree on that at least. When you looked at the percentages, when you made your initial report from 2020, at that time you used a growth rate of what for the future lost earnings?
A. 3.9 percent, I believe.
Q. OK.
A. Yes.
Q. And when you just did your current report, the growth rate for 2021, what was it?
A. In my current report it was negative, negative .8 percent.

Q. Yet when you did your initial report you had anticipated a 3.9 percent growth rate, true?
A. Only on average.
So, again, as I said in my direct testimony, I certainly would expect, in some years, the growth rate to be less or even negative, and in other years to be higher. And certainly what I anticipated, among other things, was the year over year inflation rate we see now of 8.2 percent.
Q. What I always enjoy looking at with an economic report is -- can you go to your last page on the future lost earnings?
A. Yes.
Q. So that would be 2056?
A. In my original report?
Q. Your current report.
A. Current report; yes, February of 2057.
Q. Yes, true, '56 would be the last full year though, right?
A. Yes.
Q. So, with an individual with one paycheck you have calculated out to earning $41,000 per year, and then you take your deductions out, correct?
A. Yes.
Q. But then the gross earnings that he is going to now make 34 years from now are almost $150,000, true?
A. That's correct.
Q. Because we all know that manual laborers are going to

increase their salary by four-fold in 30 years, right?
A. We know that just several years ago the minimum wage in the State of New York was under $10 an hour and now it is $15 an hour, so we certainly know, if we look at the historical changes in earnings and we look at the projections of future wage growth, yes, that's what we would expect.
Q. And he was making more than minimum wage if he was making $800 a week, true?
A. That's correct.
Q. So he is not going to have that type of jump, true?
A. He is going to, again, have wage growth that is consistent with what we have seen historically. If you look, for example, even in 2019, you will see that the yearly increase for individuals employed in these types of occupations was 3.1 percent. Granted, not 3.6 percent but it was 3.1 percent. So, this was consistent with historical increases in earnings for individuals in these occupations as well as projected wage growth.
Q. I understand that, but we are talking about you are going to take a person engaged in heavy physical labor and you are now going to assume that he is going to be able to work the same as he did at 27 as he is at 65, right?
A. No, I'm not, and that's exactly why it was necessary for me to make the downward adjustment each and every year to take into account the effects of injury, illness and so on on his

ability to work. I have applied that downward adjustment uniformly every year over his statistical working lifetime, however more likely than not he would miss more work as he got older, but since I'm not a medical doctor I simply applied it uniformly over his working lifetime.

Q. In order to get that jump from $41,000 to about $150,000 are you compounding the 3.4 each year?

A. Of course. That's how wage growth occurs.

Q. And you do a lot of testimony with unions, correct?

A. I do. Yes.

Q. Yes.

And in unions, in fact, the union workers who were protected by a union, have to negotiate a rate and have that rate approved every three, five, 10 years, right?

A. Yes.

Q. They have people doing that for them, correct?

A. That's correct.

Q. And they get those rate increases, in fact, some people are -- teachers I have seen sometimes teacher unions and teachers are fighting over a 1 percent or 2 percent annual raise; correct?

A. If you look back before, for example, the last recession, you will see that NYPD officers, teachers and so on were regularly getting 4 and 5 percent increases. So, it really depends. The collective bargaining is going to be a function

of the strength of the economy at the time the collective bargaining agreement was reached.

Q. And who is collectively bargaining for Mr. Csikos?

A. No one. I did not rely upon any union data in this case because my understanding is --

Q. I understand that, but my point is you are compounding the amount of 3.4. Where unions have to fight to get raises, you are taking a laborer and saying he is going to get 3.4 percent more next year, taking that on and compounding another 3.4 percent next year, that every year he is going to get a raise, guaranteed. True?

A. First of all, unions don't have to fight. When the economy is very strong actually unions have a significant amount of bargaining power. Obviously, when the economy is not as strong then the unions, to use your phrase, have to "fight." Keep in mind the compounding effects of wage growth, that is actually what happens. If you look at the U.S. Department of Labor data, you see that earnings for individuals in these occupations in fact increase year over year. I calculated the compound growth rates by relying on that data published by the U.S. Department of Labor.

Q. And I am talking about an individual such as Mr. Csikos, not the data, I am talking about the individual who is sitting here as to how he is going to compound 3.4 percent per year with no one to back him up or protect him. You don't know that

he can do that.
A. Your question makes no sense. He is a participant in the market so there are many individuals that work in the marketplace that are not members of unions and yet their earnings, at least in nominal terms, generally increase year over year if, for no other reason, than because they get cost of living adjustments. So, those individuals who are participants in the marketplace do not see their employers reduce their wages. They may see them not increase as much going forward, but in reality, people participating in the marketplace, whether they have somebody negotiating on their behalf or not, their actual earnings typically increase year over year.
Q. So, again, your basis on this is just looking at data and that you are compounding what you believe from the one paycheck and that's how you are coming up with your calculations?
A. Well, I am looking at the data but I am also using, like, 30 years of experience as an economist and, again, market participants -- the plaintiff in this case was participating in the market, he was going to work every day, and there is no reason, there is nothing to indicate that his earnings as a market participant would not have increased year over year. Perhaps not as much as if he would have had he been a union member but I didn't assume he was a Union member.
Q. How much a year was he making when he was working in the

restaurants?
A. Oh, I don't recall. That may have been the $900 -- I think it was, I think he testified during his deposition he was making, on average, $900 per week, I think.
Q. Have you seen anything to verify that?
A. No.
Q. So you don't have a problem, based on your economic training, not having any written documentation to verify the earnings in order to make your projections, fair?
A. If I don't have written documentation, then I always do my due diligence, again by relying upon benchmark statistical data.
Q. And so, if Mr. Csikos came in and said I worked overtime every week for Mr. Vadanuta and he paid me a personal check -- which is all you have -- of $800, but then he slipped me $800 on the side, would you go with that he got $1,600 a week or $800 on the check?
A. You know, I don't know, because that wasn't information provided to me, but that would not be inconsistent again with the benchmark statistical data indicating that in 2021, laborers and painters in the New York City area made almost $60,000 a year.
Q. I was asking you as a hypothetical, that was a point. It's a hypothetical, which would you rely on, the actual foundational check and direct evidence, or testimony that he

also got money on the side?
A. In that case I likely would have included two calculations of earnings, one based on the $800 check, the other based on the reported earnings of the plaintiff. And again, I would have noted that both of those were consistent with the benchmark statistical data.
Q. How much taxes was taken out of his $800 a week in pay?
A. I have not taken taxes into account in my analysis.
Q. No, no. My question was how much did he get taken out of his $800 a week in pay.
A. That I don't know.
Q. How much did he get taken out of pay when he worked at the prior job?
A. That I don't know.
My understanding is that in New York I am to present pretax figures to the jury so I did not consider any taxes.
Q. I understand that. I was asking if you knew whether or not he was paying taxes.
A. I don't know how much he paid in taxes.
Q. If you are going to get paid minimum wage you have to pay taxes, right?
A. I believe it depends -- there is some threshold level of income under which you don't have to file taxes but I don't recall what that threshold level of income is.
Q. And the statistical data for these industries where you are

getting these monies from, those are from people for reported income where that is verifiable income, true?

A. It's reported income, yes.

Q. And reported income means they're paying taxes and the employers are sitting there and taking taxes out and doing what is supposed to be done, true?

A. The data that's collected by the U.S. Department of Labor is collected, in part, by surveys of employers and that would presumably include people that perhaps had not, for whatever reason, filed a tax return.

Q. Presumably, but you don't know?

A. Well, again, my understanding in New York is I am not supposed to present aftertax figures to the jury so I did not inquire about taxes, nor did I estimate what taxes the plaintiff may have paid.

Q. You went off the topic again.

What I was asking is those that are reporting for the data where you say how much the industry earns, that's reported income from those people that are doing it the proper way and reporting taxes, etc. I wasn't saying whether or not you should have calculated that.

A. Correct, but that's not what I said actually, though.

The U.S. Department of Labor collects at least some of this data by surveying employers and asking employers, for example, on average, how much did you pay your construction

helpers last year per hour? And the employer would say, on average, I paid my construction helper $16 an hour. That's how some of that data is collected through the U.S. Department of Labor.

Q. Now let's get to the meat and potatoes now of the life care plan. I think you testified that everything in that life care plan is based upon the information given to you by Dr. Carfi?

A. My calculations are based on his narrative report; that's correct.

Q. And in your initial report from 2020 you made projections between 2020 into 2022 for various medical costs, therapy costs, psychotherapy costs, medicine costs; correct?

A. That's correct.

Q. I want you to assume that Dr. Carfi just testified that plaintiff has testified that Dr. Lattuga, and that of all of those items in 2020 that Dr. Carfi was recommending, the only treatments that have been put to this jury were for the doctor, and the pain management doctor, and Tylenol. OK? Were you aware of that when you updated your report last night?

A. I wasn't aware that testimony -- it is not unusual, though, for injured plaintiffs to not get care they need if, for no other reason, than they can't afford it.

Q. How about that it has been recommended by their treating doctors?

A. Well, yeah, my calculations are based on the original

narrative report of Dr. Carfi.
Q. And Dr. Carfi is not at treating doctor?
A. In this case I believe that is correct.
Q. And as a non-treating doctor he can't make recommendations for future treatments, true?
A. That, I actually don't know the answer to that question.
Q. Do you care?
A. It's not relevant for my analysis, no.
Q. It is not relevant because you have been paid as an economist to make a projection off of a non-treating doctor, true?
A. No, it is not relevant because I'm not a medical or legal expert so I can't offer any opinion about what a medical doctor may or may not be able to do. I was provided with the expert report of Dr. Carfi. I'm an economist, so my job was to take the expert opinions of Dr. Carfi and simply take into account the effects that inflation would have on the costs he provided in his narrative report.
Q. In your new report you made the projection now from 2022 going forward, correct?
A. Yes.
Q. So, from 2020 to 2022, did you do a historical search into Mr. Csikos to find out how much the medical costs were that he incurred in the past two years?
A. No. That would not have been relevant for my analysis.

Q. Wouldn't it have verified whether your initial projections were accurate?
A. No. Again, I am relying on the expert opinion of Dr. Carfi.
Q. So, if Dr. Carfi's expert opinion is inaccurate and incorrect your projections have no merit, fair?
A. If, for whatever reason, the jury determined that parts of Dr. Carfi's narrative report were incorrect or inappropriate, then I assume they would adjust my calculations accordingly.
Q. So, if there is no psychotherapy, let's talk about, because that I think is one of your large items and there has been no psychotherapy treatments, there has been no psychotherapy recommendations -- the most recent medical record of plaintiff indicated that he had no psychological complaints -- you would agree then if the jury didn't get any evidence about psychological injuries, they could sit there and throw that number that you have written down out the window. Fair?
A. I certainly agree that the jury could and can adjust my numbers any way they see appropriate. Of course.
Q. And for physical therapy, if there had been testimony from plaintiff that the physical therapy wasn't effective and that Dr. Carfi said it is only needed for maintenance purposes, the jury can then choose to throw that number out on physical therapy if they believe that Dr. Carfi's projections are not accurate?

A. The jury is the trier of fact. The ultimate determination of damages is up to them so, again, I assume that they can and will adjust my calculations as they see fit.
Q. And essentially, when you are talking about these growth rates, too, these are moving targets in a sense. Your initial projection was a 3.9 and now you have lowered it down to a 3.6 for the lost earnings, fair?
A. They're moving targets, though, they're based on all of the data that's available to me at the time I prepare my report. Now we have two years of additional data that I had to take into account in my analysis.
Q. And that data resulted in you lessening the growth rate, fair?
A. For wages, yes, it did.
Q. Well, there were certain items with the growth rates on medical costs that you also had to lower, right?
A. I don't recall how those growth rates changed.
Q. I could be wrong because I probably failed economics in college and that's why I am lawyer.
A. No, you may be correct. I want to double check here. I don't recall off the top of my head.
Q. I believe other medical professionals, it went from 3 to 2.75, and nonprescription drugs went from 2.6 to 2.4 and general price level from 2.6 to 2.4.
A. Correct, and physician services and prescription drugs

stayed the same.
Q. So, these projections you made, as we now see two years down the road, they have now changed and you, as an economist, are essentially taking these numbers and adding them up for the jury, true?
A. That is certainly part of my analysis; that's correct.
Q. And you are also -- again, I have to do it again because what we have here, and I understand it is probably based solely on Dr. Carfi, but with such things as therapies, which I believe the therapies is the largest component of the numbers you put in to your calculations --
A. I believe that, yes, was the largest category of care in Dr. Carfi's narrative report, yes.
Q. All right. And those therapies you are having -- I can't find that number on the last year, I don't know why I am missing that. Do you have that chart? Because I am not sure on the documentation on that, do you have the chart for what those therapies are projected out on an annual basis?
A. They, in 2022, the cost of the physical therapy is $21,980 for a year's worth of physical therapy.
Q. I understand that, but on the medical care end I have rehabilitation specialist, orthopedist, pain management, psychotherapy, and you added up all the medical care. I don't have a chart on an annual projection for the physical therapy. Do you have one of those?

A. I do have all of my backup calculations, I just didn't want to bore the jury by presenting them all before.
Q. Can I see the one for physical therapy?
A. Sure.
Q. Thank you.
A. I will get it for you.
Q. Thank you.
So, physical therapy in 2068, when Mr. Csikos is 77 years of age, is going to be $76,000 a year for him to go two times per week; right?
A. Yes.
Q. And because we all know that a 76-year-old man is going to continue treating two times per week, right?
A. I base my calculations, again, on the narrative report of Dr. Carfi.
Q. So, again, you have no foundation for your projection as it applies to whether or not Mr. Csikos actually needs these treatments; true?
A. My foundation was the narrative report of Dr. Carfi.
MR. VAN ETTEN: Thank you very much.
THE WITNESS: Thank you.
MR. DELLA JACONO: No redirect.
THE COURT: OK. Thank you, you can step down.
THE WITNESS: Thank you, your Honor.
(witness excused)

THE COURT: Do you have another witness?

MR. DELLA JACONO: That's it.

THE COURT: You are done, so plaintiff rests?

MR. DELLA JACONO: Yes.

THE COURT: Do you have a witness here?

MR. VAN ETTEN: No, your Honor.

THE COURT: I didn't think so.

OK. So this is traditionally where we take a break anyway, it is getting close to 4:00 so we are going to break for the day. So I am giving you a short day, that means I may take back time but I have time in the bank at this point. Have a wonderful evening. Please leave your books on the care. Don't discuss the case. I will see you all in the morning; please be here at 9:15 so we can start promptly at 9:30.

Have a good night.

(Continued on next page)

(Jury not present)

THE COURT: Please, be seated.

So, Mr. Van Etten.

MR. VAN ETTEN: Yes.

THE COURT: Do you have a motion?

MR. VAN ETTEN: Oh. Yes, your Honor.

At this point the defendants would move to dismiss plaintiff's case because they didn't make out a prima facie case to establish under 240(1) labor law violation. As the testimony of Mr. Csikos indicated, he was provided with, was utilizing an A-frame ladder to reach an eight-foot high ceiling. While we may say there is a five or six-foot ladder, that is an issue of fact, possibly the size of the ladder doesn't matter. The ladder itself, as described by Mr. Csikos, had been used before, was in good condition, had no problems, he had never had a problem with it moving or shifting at any time in the months before where he used it on a daily basis, nor on the day of the incident when he had used it immediately preceding the incident. At some point thereafter he is now claiming to have fallen. The testimony of Mr. Csikos was that it was at four feet. There is indications in the medical records that are part of the record it might have been three feet. There are indications he missed a step. There are multiple versions of how this may or may not have happened. And now we have a version of plaintiff apparently decided,

because it was only an eight foot ceiling, to put his head above the ceiling and go up four feet on a ladder when he fell.

The initial testimony, the first two times he answered the question of counsel, until prompted by counsel, was I lost my balance and fell. He said that twice, until prompted. Did anything else happen with the ladder? And then he said the ladder moved, and then he claimed that the ladder had fallen. That's where that is.

First, while I understand that if it were to be believed by this jury for a credibility perspective that he was at four feet, there would be an issue of a significant elevation. I would not even try to cloud the record and say it wasn't. The testimony or the evidence from the statement of it being one foot certainly would not make it a significant height of elevation for what we are talking about, standing at one foot to reach an eight foot ceiling. That is something that anybody does in the regular course of their day to change a light bulb in their house. OK? That's not a significant elevation. There is nothing to indicate, for those reasons, that Section 240(1) was violated in this particular instance and the credible evidence is not there to support plaintiff's claim.

So, that would be my first motion and I can make other motions, but if you are going to rule on that one I will hold off on the other motions on the life care plan and the

economics.

THE COURT: Mr. Della Jacono.

MR. DELLA JACONO: The standard is not a significant elevation, first of all. Second of all, the plaintiff testified he is the only witness to the accident. These other versions were by medical people that he doesn't even remember speaking to. There were other people in the ambulance which counsel brought out, there were other people going with him to the hospital. He doesn't remember speaking to anyone. Those versions are cases that don't even apply with respect to only credibility of the plaintiff, not with respect to whether there was a violation of 240 of the labor law.

I think we have made out our case and I should move for directed verdict based on the testimony of Mr. Csikos and only Mr. Csikos. But, in and of itself, I don't think counsel's motion is appropriate at this time.

THE COURT: Well, your motion for directed verdict is denied.

Look. At a minimum there is a question of fact of whether he fell off the ladder or lost his balance and fell, which is what he did initially testify a couple of times, or whether the ladder moved. If he just fell off the ladder then there is a real issue of causation because even if someone was bracing the ladder, if you lose your balance and fall, you lose your balance and fall and that's not a 240 violation.

So, to me, with all due respect to both of you, this issue really comes down to that, that is: What happened. He has testified he lost his balance, he has testified that the ladder moved. Kind of hard to understand how the ladder moved. Mr. Van Etten has poked some pretty serious holes in the story, but at the end of the day that is for the jury. I feel like in this regard I am like the jury: I have heard the story, I am looking at the hallway, trying to figure out sort of really what happened.

That's a classic jury question, so the motion for directed verdict on both sides is denied.

What else do you want to argue?

MR. VAN ETTEN: All right, your Honor. At this point I move to strike the testimony of Dr. Carfi.

Dr. Carfi was hired as an expert back in 2020 to provide a life care plan. Dr. Carfi has not looked into, examined, or seen any of the current status of the plaintiff. He provided the life care plan and has acknowledged that there are some certain things that I guess you would say in a perfect world that somebody should try to get or do, but as we have seen from the record actually right before this Court at this time, there is no indication that other than some general testimony, which Dr. Lattuga talked about treatments and MRIs, there is nothing to support any of the recommended therapies or medicines other than Tylenol or devices that Mr. Csikos needs

or requires. The recommendations from 2020 have never been undertaken and the witness admitted it is up to the patients to even go forward and take those. And, since those recommendations were apparently made in 2020, none of them have been undertaken. For that reason it would be purely speculative for anyone to sit there and consider the fact that these future medical care costs will be required. It is rank speculation at this point for the jury to consider anything that Dr. Carfi said and I think he acknowledged it himself that the majority of what he said hasn't, may not, or won't be done, and there is nothing there that I think gives the jury reasonable certainty to provide any future medical care award pursuant to his testimony.

THE COURT: Does plaintiff want to be heard?

MR. DELLA JACONO: Sure.

There were aspects that I think were brought out about Dr. Carfi about the psychotherapy but the entire plan is not something that should be thrown out. Counsel has been talking about there is no need for physical therapy. That's not what Dr. Lattuga testified to. He said he is going to continue to need physical therapy and there could be the possibility of another surgery which he said is because of his age and because of the type of surgery that was done on his neck. So, those future cares that we are talking about, most of them should be applicable to this particular case. I can't stand here and

tell you that every single one of those things in Dr. Carfi's report is going to go forward because he did not have psychotherapy. He hadn't had it from the day of the accident and has not going forward. That is something, yes, that I basically conceded as we were moving forward. But the rest of the plan and his testimony should not be stricken. He is a doctor who does physical medicine and rehabilitation and this is his plan to take care of him moving forward from age 31 for his entire life expectancy. Who knows what happens along the time frame.

THE COURT: I'm not going to strike it. I think all of those arguments go to its weight. I think there are substantial issues about what weight the jury should give it.

Anything else, Mr. Van Etten?

MR. VAN ETTEN: Well, since you are not striking it then I don't have to worry about Dr. Kucsma.

THE COURT: I mean, look. You have got good arguments and these same arguments may be made if there is a plaintiff's verdict and, depending on what the verdict is, I would anticipate seeing some of these arguments being retread in post verdict motions, but for now that's denied.

So, I told you we would do a charge conference today and that's my plan. Are you ready for charge conference?

MR. VAN ETTEN: Yes.

THE COURT: I'm not quite. We are going to give

you -- we have a supplemental charge on expert witnesses which is not in the charge I gave you. I am also about to give you a supplemental charge on how to deal with future damages. I wasn't anticipating, the truth was I just didn't look at Kucsma's report closely enough that she did not present-value her numbers so there needs to be a charge so the jury understands that.

So why doesn't everybody take a 15-minute break and come back a little after 4:00.

MR. DELLA JACONO: Thank you.

MR. VAN ETTEN: Your Honor, just on that, too, did you get -- we sent you, on ECF, the case law on the issues on the life care itemization.

THE COURT: No.

LAW CLERK: It just came through the chambers inbox. I don't know if it has been filed yet but we did get the e-mail now.

MR. VAN ETTEN: I'm sorry. One of, I guess, associated counsel on it had been sending it to you. I didn't know if it had gone through.

LAW CLERK: Yes.

THE COURT: Everybody is off the record at this point, we have a 15-minute break.

(recess)

THE COURT: Here's how we do this. You tell me the first page that you have a proposed change on. So we'll start with the plaintiff.

What is the first page that you have an issue?

MR. DELLA JACONO: Doing the charge first, the verdict sheet second?

THE COURT: Just the charge. We're starting with the charge.

MR. DELLA JACONO: Page 11.

THE COURT: Do you have anything before that, Mr. Van Etten?

MR. VAN ETTEN: I think page 9, I had an issue on interested witnesses.

THE COURT: Let's back up from before that. So my first issue is on page 7, line 3.

So there were a bunch of stipulations that had been proposed, but they I think were all about the third and fourth party claims. Do the parties have any stipulations relative to this? I looked very quickly what was in the JPTO, and it doesn't look like anything relates.

MR. DELLA JACONO: The only thing is that 230 was the owner.

THE COURT: Was the owner of the building?

MR. VAN ETTEN: I have no objection to that. I stipulated to that.

MR. DELLA JACONO: They stipulated to that.

THE COURT: I don't think we need paragraph 3. We can take that out. I think there's a point in here that I can add that it's agreed that 230 owns the building. So I'll just charge them on that. I am taking out paragraph 3 on page 7.

Then, Mr. Van Etten, you said you thought you had something on page 9.

MR. VAN ETTEN: I had a note here. I'm just trying to read my writing here.

It was my understanding an interested witness are identified, and it would be the plaintiff is an interested witness as a party. And I did not find that in there.

THE COURT: It's not. I don't always identify actually who is the interested witnesses, because they can -- it seems to me they are more than capable of figuring out who has an interest in the result. There may be people -- I'm not sure who the defense witnesses are -- are they also interested witnesses?

MR. VAN ETTEN: Well, that's an interesting question, because the individual who is going to come in is no longer working at the building. And he was the resident manager, but was employed by an outside agency. So I do not believe he is an interested witness. That's why I wanted to, with interested witnesses, have the plaintiff identified, because I believe he would be the only interested witness in this case.

MR. DELLA JACONO: But he's still -- I mean, for purposes of this, his witness is still testifying on behalf of the building.

THE COURT: How does he stand to gain or lose personally?

MR. DELLA JACONO: At this point, he doesn't.

THE COURT: So it sounds to me the only interested witness is the plaintiff.

MR. VAN ETTEN: Yes.

THE COURT: Do you agree with that?

MR. DELLA JACONO: Do I agree that he's the only interested witness that testified here today?

THE COURT: No, that will testify in the trial.

MR. DELLA JACONO: Yes.

THE COURT: So I will add on page 9, line 15, plaintiff is an interested witness. In this case, plaintiff is an interested witness.

MR. VAN ETTEN: Thank you.

THE COURT: And then next, on page 10, there were some prior inconsistent statements. So I will leave paragraph K in.

In terms of redactions, are there going to be any redacted exhibits? There have not been so far.

MR. VAN ETTEN: The only redacted exhibit, your Honor -- hold on one second -- I'll show it to counsel. It's in evidence. We have in evidence the workers' compensation

records. If the jury was going to ask for those, we would have to do a thousand and one redactions because of certain things that are in there.

THE COURT: What's in there that needs to be redacted?

MR. VAN ETTEN: Workers' compensation, the benefits, the rates, the awards that they gave and things of that nature, that they deemed him partially permanent, all those types of things. But the C3 report I had the witness look at today look at with the signature and the inconsistent statement on the distance, I redacted one copy of it -- and I'll show counsel -- where I took out words like workers' compensation and workers' compensation administration. I didn't think workers' compensation was going to come up, and I just redacted those. So I have a sheet, which I think would be appropriate for Defendant's Exhibit X, if the jury needs it as a redacted form of the exhibit that had been submitted to the Court. Because when I looked at it in hindsight, really it's just saying workers' compensation, I am taking that out. Usually, we don't put that in a case in front of a jury.

THE COURT: So I'm going to leave paragraph L in.

MR. DELLA JACONO: Your Honor, the only thing -- I was talking to counsel about this now -- I was going to read in from the workers' compensation records from his prior medicals because that's in evidence, just to show the prior medicals.

THE COURT: I'm sorry, what do you mean you're going

to read them in? In your summation, you are going to read --

MR. DELLA JACONO: No, I was going to ask that they be -- because it's already an exhibit, it's already been put before the Court, it's already been agreed upon, the workers' compensation records, it has his medical bills and medical costs. It's only $50,000, but that's something the jury should have.

THE COURT: We'll get to that in a second, because I looked at the joint pretrial order and in that, when you state what you're seeking for damages, you are not seeking present or past medical expenses.

MR. DELLA JACONO: I didn't put that in my joint pretrial order?

THE COURT: No, you did not. The joint pretrial order says under damages --

MR. DELLA JACONO: Let me get that.

THE COURT: It's on page 6, about middle of the paragraph, it says, plaintiff will be seeking damages for past pain and suffering and future pain and suffering, which will be awarded by the trier of fact. Plaintiff will be seeking lost wages and future lost wages, which have been calculated and will be testified to by the plaintiff's expert. Plaintiff will also be seeking future medical expenses in a lifetime care plan. But no past medical expenses.

MR. DELLA JACONO: It was obviously a mistake. What

page was that, your Honor?

THE COURT: It's on ECF page 6 of the JPTO.

But let's keep going. It's going to become relevant in just a second. We can take care of it then.

For redaction purposes, I'm going to leave paragraph L on page 10 will stay in, because there are redactions. I don't know where, but let's talk about the paragraphs I just gave you.

Expert witnesses will go after interested witnesses. So it will be an insertion on what is now page 10. It will become the new paragraph J. And everything will get renumbered accordingly.

Any objection to the expert witness charge?

MR. VAN ETTEN: No, your Honor.

MR. DELLA JACONO: No.

THE COURT: Then now we're up to page 11.

MR. DELLA JACONO: Page 11, line 16.

THE COURT: Yes.

MR. DELLA JACONO: Physically significant, that's not --

THE COURT: That was taken directly from a case.

MR. DELLA JACONO: But that's not the law, it's not physically significant elevation.

THE COURT: It's a court of appeals case, as I recall.

MR. DELLA JACONO: In your original charge and the

charges that we had provided to you, it's just an elevation.

THE COURT: With all due respect, you're not on the court of appeals.

MR. DELLA JACONO: No.

THE COURT: So what you submitted, I use that usually as a starting point. But I mean, this is -- I don't have the name of the case handy, but that is directly from -- I believe it's either a court of appeals or an appellate division case.

It has to be at least enough of an elevation differential for there to be a risk of falling, and the way they describe that is significant. I then go on to say, there's no -- it would be helpful if they defined what is a significant height differential; they don't. They give this sort of, is it high enough up that the force of gravity presents a risk of falling.

MR. VAN ETTEN: They're taking it on a case-by-case basis. It's off of *Runner*. *Runner* was the original case that was a different thing with a trench they wound up allowing it to be a height differential.

THE COURT: A guy fell off a ramp, that wasn't enough. The cases are all over the place. That is directly from the case. And I will give you the name of the case.

MR. DELLA JACONO: The only reason I say it --

LAW CLERK: It is *Runner*.

THE COURT: It is *Runner*.

LAW CLERK: That's the New York Court of Appeals case.

MR. DELLA JACONO: The reason I bring it up, for the record, in the next paragraph, you talk about there's no minimum height.

THE COURT: Correct.

MR. DELLA JACONO: You are telling the jury first, it's got to be physically significant but there is no minimum height.

THE COURT: That's correct.

MR. DELLA JACONO: There's no guidelines there for them. That's why I'm saying, if we could at least be consistent to say at an elevation differential, which you used on the opening charges. That's why I'm arguing that physically significant is different than what we opened up with.

THE COURT: Well, it's not different than what you opened up on. That was a preliminary charge to get the jury --

MR. DELLA JACONO: Not what I opened up on, but your charges.

THE COURT: It's not different. As I told them at the time, if there are differences, this is what controls.

That is taken from the court of appeals. And the description is that there's -- that's what the cases say, like there's no specific differential that defines what constitutes a high enough elevation that you have to provide protection from a fall. So all of this is taken directly from cases.

MR. DELLA JACONO: That, I'm not arguing about. I know the cases.

THE COURT: You object. Your objection is overruled.

MR. DELLA JACONO: Thank you.

THE COURT: Next page with an issue.

MR. DELLA JACONO: Yes, page 12.

THE COURT: Go ahead. What line?

MR. DELLA JACONO: Now, it says that, here, plaintiff's theory is that the risk --

THE COURT: What line?

MR. DELLA JACONO: I'm sorry. Line 8.

Plaintiff's theory is that the risk he faced, which you have here, is that the ladder would shift causing him to fall and that adequate protection would have been to secure the ladder. Under the law -- I wanted to add -- under the law, plaintiff was not responsible for securing the ladder. Defendant was responsible for making sure that the ladder was secured. Plaintiff is not responsible for securing the ladder.

THE COURT: I understand that. It nowhere says that it was.

So the second element of plaintiff's claim is that plaintiff was not provided adequate protection against the risk of falling. The only reason I put your theory in there is because, frankly, I was not entirely sure what your theory was. I think that's your theory. And I thought it would be helpful

for the jury to understand that's kind of what they have to find is that the ladder shifted and that your theory is adequate security against that is to have someone essentially spotting the ladder; right?

MR. DELLA JACONO: Right.

THE COURT: So what you want me to add is?

MR. DELLA JACONO: That the plaintiff was not responsible for securing the ladder; the defendant had the responsibility to make sure that the ladder was secured.

THE COURT: If you find that there was a risk -- so if we go down that route, you're going to get more than you bargain for.

MR. DELLA JACONO: Go ahead, please.

THE COURT: I'm talking out loud. Hang on just a second.

If I were to add something like that, in order to balance the charge, I would need to say that defendant is only responsible for securing the ladder. If you find that, in fact, there was a risk of the ladder shifting and the risk of the ladder shifting created a fall danger for the person working on the ladder. That would be a balanced charge.

Is that what you want?

MR. DELLA JACONO: No.

THE COURT: I wouldn't usually go down that route because --

MR. DELLA JACONO: I don't want to go down that route.

THE COURT: -- I usually feel like less is more.

MR. VAN ETTEN: At that point, that would have been mine, because you have plaintiff's theory and you don't have defendant's theory. If you are keeping in that sentence on line 8 specifically -- forgetting adding and then balancing -- I would then ask for balancing. And it's defendant's theory that he was provided with an adequate safety device.

THE COURT: That doesn't say much, though, really.

MR. VAN ETTEN: He was provided with a ladder in good working condition. That's why I said, plaintiff's theory, the risk he faced is it would shift. That's going too much further than the law. I don't think you have to charge them what plaintiff's theory is. Plaintiff's theory is going to be what he says that it is to the jury. It shouldn't be in the charge. I was going to ask --

THE COURT: So you want it out?

MR. VAN ETTEN: Yes, I want it out. That was going to be my objection, that it was out. And if it's not out, then I would want some type of addition in the balancing you were talking with the other. I just think it should be out.

THE COURT: What's your position, what's plaintiff's position on whether that sentence should stay?

MR. DELLA JACONO: If you are putting all of the elements --

THE COURT: All of the elements have to go in. That's one thing I have to do. I don't have to charge on your theory of the case. I was doing it because I actually thought it would be helpful to the jury. But if that's going to generate an objection from the defense that he then wants the defense theory of the case, I'm also happy with just deleting the whole thing.

MR. DELLA JACONO: So you'll take out from "specifically."

THE COURT: To the end of the paragraph.

MR. DELLA JACONO: To the end of the paragraph.

THE COURT: Is that what the plaintiff would prefer?

I have to say, Mr. Van Etten, I think you are making a mistake to object to that. I think it's helpful to the jury to understand what that theory is. And I think, to balance it, your theory would be that an A-frame ladder was an appropriate and safe ladder for the work that the man was doing and that did not present a risk of falling.

MR. DELLA JACONO: But he has two theories; his first theory is -- which was already decided -- that he didn't need a ladder. And now they're saying he does need a ladder.

THE COURT: I don't think they --

MR. VAN ETTEN: I don't think I've argued that at the trial.

MR. DELLA JACONO: Yes, you have.

MR. VAN ETTEN: No, no.

THE COURT: I don't remember exactly what you argued.

MR. DELLA JACONO: But it's okay. If you want to take out that second point, that's fine. I am okay with it.

We'll leave the second element of the plaintiff's claim.

MR. VAN ETTEN: Now I like what the judge is saying, the balancing. Again, the balancing works for me.

MR. DELLA JACONO: If we're going to take it out, take it out. That was your first suggestion. You asked my opinion, that's my opinion. That's all I can do.

THE COURT: I was taking it out because there was an objection.

MR. VAN ETTEN: I withdraw my objection.

MR. DELLA JACONO: But I also had an objection to that second sentence as well.

THE COURT: Here's what I am going to do. I'm going to write it both ways and send it to you and that way you actually see what it will look like with it and without it.

MR. VAN ETTEN: Thank you.

MR. DELLA JACONO: Thank you.

THE COURT: All right. Now, the second paragraph on page 12 starting at 11, that part is not being taken out; if you find that the plaintiff proved by a preponderance of the evidence that there was a risk that the ladder could shift

causing him to fall, that's going to stay?

THE COURT: Right.

MR. DELLA JACONO: And he was not provided adequate protection against that risk.

THE COURT: Yes.

MR. DELLA JACONO: Then this element will have been proven and you should proceed to the next element.

THE COURT: Correct.

MR. DELLA JACONO: If you find that plaintiff has not proven either that there was a risk of the ladder shifting or that there was inadequate protection against the risk or both, then you must find that the plaintiff has not proved this element, your deliberations will be complete.

THE COURT: Correct.

MR. DELLA JACONO: You are going to keep that in there?

THE COURT: One way or the other, I'm going to keep that.

MR. DELLA JACONO: You're going to keep that one way or the other.

My only thing was not that there was a risk that the ladder could shift, that the ladder -- there was a risk the ladder shifted. I mean, it's just semantics.

THE COURT: That's not grammatically correct. So risk has to be in the subjunctive, so it's a forward-looking risk;

was there a risk that something specific would happen. Because that's what's creating, that's the fall, that's why there's -- a ladder itself doesn't have a fall risk. What creates the risk is that the ladder shifts.

If you have a ladder that's leaning against the building, I guess the risk is that someone bumps into it and knocks that ladder down. You can't really knock an A-frame down in a hallway where there's no room to move between it. So the only risk of falling that can be guarded against -- because again, you can't guard against the risk, or it would not be reasonable to guard against the risk that someone falls off of a five-foot stepladder. Like in scaffolding, they're chained to the scaffold, because there's a risk they fall off. But the risk with a stepladder is that the stepladder collapses -- there's no risk, this was a perfectly good stepladder -- or that it shifts, and therefore, the person who is on it topples over. That's the only risk I see.

MR. DELLA JACONO: The risk is if it moves.

THE COURT: If it moves.

MR. DELLA JACONO: And in order to make sure that it doesn't move, it has to be secured. That's my understanding of what the law is. It has to be secured -- not that there was a risk -- that the ladder has to be secured.

THE COURT: No, that is not a correct statement of the law. The person is working at an elevation differential. That

needs --

MR. DELLA JACONO: Correct.

THE COURT: So you need to protect against the risk of a fall. Not every person working on a ladder has a risk of a fall. If you have a ladder that's not going anywhere, where is your risk of a fall?

You say there's a risk of it shifting. I'm prepared to charge the jury that that's something that they need to consider; was there a risk of the ladder shifting.

To me, if you have somebody working where people are walking by, you have a huge risk that somebody is going to bump into the ladder and knock the person off. Here, you have a stationary ladder in the middle of a hallway, sitting on rubber feet. They have to find that there was a risk that that ladder shifted, that it moved.

MR. DELLA JACONO: What about the work that he was doing, that he has to be secured. That's what I'm saying, you are talking about a risk. I believe -- this is my argument -- I believe that that's not what they have to protect against. They have to protect the ladder from moving or shifting, and that's why it has to be secured, based on the work that he's doing, removing ceiling tiles with both of his hands. He must have another person there. That's going to be my argument. He knows it's going to be my argument. There has to be another person there or they are not providing adequate protection.

THE COURT: That, to me, is an argument that you make to the jury, that because what he was doing was ripping sheetrock off of the ceiling, that was inherently creating instability to the ladder, and therefore they needed to secure it.

MR. DELLA JACONO: Right.

THE COURT: That's a lawyer's argument.

That nevertheless means that there was a risk that the ladder could shift causing him to fall. You are saying, of course there was a risk, he was pulling sheetrock off the ceiling, that gives rise to an unstable ladder, he could bump the ladder and cause it to shift and then he causes the fall. Ergo, they're obligated to have someone spotting the ladder. That's your argument. But that would still satisfy (i). There is a risk, you would say there's a risk given the type of work he's doing.

MR. DELLA JACONO: Correct.

THE COURT: Your proposed grammatical change isn't correct grammatically.

MR. DELLA JACONO: I just want to check one thing, your Honor, give me a second.

THE COURT: Okay.

MR. DELLA JACONO: I was just reading your order from the summary judgment order.

THE COURT: That's what I said then, so I'm

consistent.

MR. DELLA JACONO: For the record, yes. Off the record --

THE COURT: You weren't happy with it then, and you're still not happy with it.

MR. DELLA JACONO: Judge, that's part of my job.

THE COURT: We all have our jobs to do.

Anything else on page 12?

MR. DELLA JACONO: No.

THE COURT: That brings us to damages. What is your next objection, Mr. Della Jacono?

MR. DELLA JACONO: 13.

THE COURT: What line?

MR. DELLA JACONO: Line 21.

THE COURT: Do you have anything before that, Mr. Van Etten?

MR. VAN ETTEN: Nothing before that.

MR. DELLA JACONO: The only reason -- I would like to take out the word defendant's violation, because it's just a violation of 240(1).

THE COURT: You are suing the defendant, so it's the defendant's violation.

MR. DELLA JACONO: It's a pure violation.

THE COURT: The defendant is liable because the defendant was the one who violated 240(1).

MR. DELLA JACONO: The defendant is liable because -- it doesn't matter who is responsible.

THE COURT: As the owner, they are responsible for making sure that there's adequate protection. They're liable because they failed to do that.

MR. DELLA JACONO: I disagree.

THE COURT: To provide or cause to be provided.

MR. DELLA JACONO: I disagree. But that's my only --

THE COURT: That brings us to page 14 and the issue of current medical expenses -- or I'm sorry -- past medical expenses.

The reason I went back to look at the JPTO is that I realized after your client got off the stand and after Lattuga got off the stand that there had been no evidence of what his current medical costs have been. I sort of assumed that it was because they were all taken care of by workers' comp.

MR. DELLA JACONO: They are all taken care of.

THE COURT: So there are none. Fine. So then I can take it out.

MR. DELLA JACONO: Right.

THE COURT: So this will get adjusted. And the verdict sheet will get adjusted to take past medical expenses out.

So I can't do this drafting on the fly, but tonight, we'll send you a revised medical expenses paragraph, which will

only look to future medical expenses. And it will say affirmatively -- because otherwise they're not going to understand it -- the plaintiff is not seeking damages for medical expenses incurred to date.

Do you want me to say something more about them?

MR. DELLA JACONO: I'm just concerned to leave it like that.

THE COURT: Well, tell me what you would like me to say.

MR. DELLA JACONO: I know he's not going to consent to the words workers' compensation, but they have already been paid for through -- can't say insurance -- I'm trying to figure out how we could word it.

THE COURT: Or I can just say nothing.

MR. DELLA JACONO: Maybe just leave it.

THE COURT: Okay. What I'm going to do then is I'm going to reverse these orders -- no, I'll leave it as is. It will stay in the same order and it will only look to future medical expenses. We'll send you a revised version of that section.

Anything next?

MR. DELLA JACONO: I have no more.

THE COURT: Mr. Van Etten.

MR. VAN ETTEN: We have to fill in the life expectancies.

THE COURT: Correct. Is there an agreed upon life expectancy and work expectancy?

MR. DELLA JACONO: I would use what Kucsma --

THE COURT: We have what Kucsma said.

MR. VAN ETTEN: I forgot, that was the one thing I left out of my cross.

LAW CLERK: 78 was the life expectancy.

MR. VAN ETTEN: Not that. The work-life expectancy. She changed it and she added two years.

MR. DELLA JACONO: She went to 65.5.

THE COURT: So work-life expectancy to -- I express it in terms of how many more years.

He's 30 now?

MR. DELLA JACONO: He's 31.

MR. VAN ETTEN: He's 31.

THE COURT: So we'll adjust what she said. Look, I'm happy to use a different number if somebody has a different number or if the parties can agree to a different number.

MR. VAN ETTEN: I usually go by the pattern jury instructions rather than what the experts give, because the experts are doing different charts. It is usually the pattern jury instructions, to me, that is what should be binding.

THE COURT: What do they say?

MR. VAN ETTEN: They say what they say in my car where I left it. I believe that the pattern jury instruction for

this was like 32.3, but that's just my recollection.

THE COURT: What's that --

MR. VAN ETTEN: That's for the future work-life expectancy. I believe it's 32.3.

THE COURT: Can you all talk with each other? I'm happy to go with the pattern jury instruction number.

MR. VAN ETTEN: Are you happy to go with the PJI?

MR. DELLA JACONO: Whatever it is. That's fine. I was just trying to be helpful because we have the number here. That's what you have to go with.

THE COURT: If you provide me those numbers, that's what we'll use.

MR. DELLA JACONO: I think you say 29 in here at one point, on page 15, line 15.

THE COURT: He's 31, okay.

Anything further from either side?

MR. DELLA JACONO: No.

MR. VAN ETTEN: No. That's fine, Judge.

THE COURT: Do you have any comments on the discounted present value?

MR. VAN ETTEN: How in the heck are they going to be able to figure that out, Judge?

THE COURT: This is a defense charge. Do you not want it?

MR. VAN ETTEN: I understand that. And I agree that

it has to be done. It has to be put in, I just have no idea. I expect you're going to get questions.

MR. DELLA JACONO: Can't the verdict just be --

THE COURT: Then you let me discount it?

MR. DELLA JACONO: Yes. Is that okay?

THE COURT: I'm just looking to see -- Juror No. 2, I think, has an MBA. So you have somebody on the jury who will understand how to do it.

MR. VAN ETTEN: I think there's another one that's financially out there too.

THE COURT: A couple that are financially literate. And this will go in at the very end.

MR. VAN ETTEN: After the lost earnings; right?

THE COURT: After the lost earnings, before don't take into account taxes -- maybe after don't take into account taxes. So that brings us to page 17.

So normally, I send all the exhibits back to avoid having to get notes saying I want to see X and Y. But I'm concerned, Mr. Van Etten, about your statement that some of the exhibits that have been admitted are not appropriate to go back to the jury without heavy redactions.

MR. VAN ETTEN: The workers' compensation records for sure, in their totality. I mean, they have not been referenced by anyone, other than the C3, which we have pulled out separately as a defense exhibit. I don't recall from any of

the other -- some of the records are written to workers' compensation, whatever -- I mean, it has been mentioned. I was just being anal for my exhibit. But for everything else, I don't have a concern, from my recollection, of the other exhibits. But we had deposition transcripts, full deposition transcripts as exhibits. I'm assuming that those are not going in; correct?

THE COURT: So you guys seem to think that everything where there was not an objection is in evidence. I don't have a problem with that. That's not how I usually do it. I usually admit the exhibits when they're put in front of somebody.

MR. VAN ETTEN: Right.

THE COURT: So there are a whole ton of records here. Is that really what you guys want to do is just dump these records in to the jury?

MR. DELLA JACONO: The only thing that I was anticipating that could possibly go to the jury -- I wouldn't send the workers' comp records unless they ask for that because they haven't been referenced in this particular case at all. And that's the biggest binder that we've sent to you. But the medical records from Lattuga, because he referred to them --

THE COURT: That's Exhibit H.

MR. DELLA JACONO: Yes. The MRI films, because I know those are going to be discussed through his experts from

Wellness and Bay, those may have to go back.

THE COURT: Well, again, I'm not sending depositions back --

MR. DELLA JACONO: No.

THE COURT: -- that weren't -- I mean, there are no depositions, other than the Reisner deposition, that we're reading into evidence.

The expert disclosures are not -- those were objected to. There's a bunch of contracts and things that plaintiff had marked.

MR. DELLA JACONO: There's no reason to go back there.

THE COURT: But to the extent exhibits go back, I presume it's all paper exhibits. You don't have this stuff loaded onto a computer; right?

MR. VAN ETTEN: I have mine loaded on a computer. I don't have plaintiff's, I believe.

Do you have your pretrial order in front of you, John?

MR. DELLA JACONO: Yes, it's here.

MR. VAN ETTEN: I would say this, your Honor, what has gone in to date, Plaintiff's Exhibits 7 through 12, those are all the medical records that have been referenced or potentially can be referenced.

THE COURT: So far only 11 has come in.

MR. DELLA JACONO: Only 11 has been put in.

MR. VAN ETTEN: Right, the Presbyterian Hospital. And

we can concede to it or that can be a stipulated fact, if we want to do it.

Again, I'm just trying to sit there, in the interest of fairness, the Bay Medical, nobody has referred to it and I don't think anybody is going to, which is Exhibit 7, but we had stipulated to it, so I'm not taking it away.

From the defense perspective, it's F, G, V and X.

THE COURT: That you want to go back to the jury?

MR. VAN ETTEN: Yes. Because everything else were duplicative. And F and G have definitely been shown to the jury. Those have --

THE COURT: Not G.

MR. VAN ETTEN: Bellevue Hospital records.

THE COURT: You haven't even identified them yet. You identified them once to cross him with it.

MR. VAN ETTEN: I said which have been previously agreed to be admitted into evidence when I did it.

THE COURT: Okay.

MR. VAN ETTEN: So I thought that was --

THE COURT: You were just impeaching him.

But in any event, you don't object to G; right?

MR. DELLA JACONO: No.

My understanding is exactly what you said before was that once we agreed upon the exhibits, they were already going to be marked and put in. That was my understanding, and I

can't go back on that now.

THE COURT: That's fine.

Look, I'm indifferent. But to the extent this is what you want to go back to the jury, you need to have them tidy, without your markings on them, rubber band, together and ready so that when I send the jury out after I charge them, the exhibits go back with them.

MR. VAN ETTEN: Okay.

THE COURT: So you need to look at each other's exhibits to make sure everything is in there that's supposed to be and nothing is not in there and that you are okay on it.

I'm going to take out in the charge the reference to working the equipment, because they're going to get hard copy exhibits.

MR. VAN ETTEN: Okay.

MR. DELLA JACONO: When will be the sum and charge?

THE COURT: That's a good question. So let's now deal with what's left of the trial. We're done with all of this.

Who are your witnesses tomorrow?

MR. VAN ETTEN: I start tomorrow with Dr. Bonomo. Dr. Bonomo is a neurologist. He will be fairly short because they really didn't put in a neurologist. He is just one of my examining physicians. I didn't want a missing witness charge.

He will be followed by Dr. Varmus, the liability expert. Based on the limitations from the prior court rulings,

he will also be fairly short; he will be a half hour, 40 minutes on direct, whatever the cross is going to be.

THE COURT: What is he going to testify to?

MR. VAN ETTEN: He's going to testify that an A-frame ladder is a proper safety device.

MR. DELLA JACONO: That's basically all he can testify to.

MR. VAN ETTEN: And then following Varmus, I have Dr. Chernoff who is coming in.

THE COURT: He is the orthopedist?

MR. VAN ETTEN: He's the orthopedist.

And Paul Anzelde is coming in.

THE COURT: He was the super?

MR. VAN ETTEN: He's the resident manager or super.

And on Friday would be Dr. Greenfield, our COVID witness. And I am not going to bring in Alin Vadanuta now, with the way the case ended with plaintiff resting, and we've got the photos in.

THE COURT: With Greenfield, we might could get to him tomorrow. Is he not available?

MR. VAN ETTEN: I don't think he is. We had him originally because he was only available on Friday morning.

THE COURT: That was before he got COVID.

MR. VAN ETTEN: Judge, I would have four experts and one fact witness. I would love to get this trial -- Greenfield

will also be about an hour. We would be done by 11:00 for sure.

THE COURT: So here's the story on doing it via Zoom or whatever -- do you object to putting him on via Zoom?

MR. DELLA JACONO: No objection.

THE COURT: Thank you.

Angela, what do they need to do?

THE DEPUTY CLERK: Normally, they have to supply the company and to run the show. We don't do any of that.

THE COURT: We don't do that. So the issue is, can you get an AV person or a computer -- we'll reach out to the DE. We will try to give you some names. We'll see what we can do. We're not making any recommendations, just so you have people to call, because this is short notice for those types of people. But their business should be cratering now, as compared to what it was in '20 and '21, so they may be available to help you out.

Let us know. And we'll send you a revised charge. If not tonight, we'll give you one in the morning.

So the plan will be both parties -- are you planning a rebuttal case?

MR. DELLA JACONO: Not right now.

THE COURT: So by all indications, you are going to rest before lunch on Friday, sum up on Friday, charge the jury on Friday and let them deliberate on Friday.

MR. VAN ETTEN: That works.

THE COURT: How long do you anticipate your summation to be, Mr. Van Etten?

MR. VAN ETTEN: Though I have been longer than everything I told you except for on one witness, I don't think, in this case, it's going to be longer than a half hour.

THE COURT: How about from the plaintiff, about the same?

MR. DELLA JACONO: Half hour, 40 minutes.

THE COURT: And we will go defendant, plaintiff.

MR. DELLA JACONO: We do have the verdict sheet we didn't do.

THE COURT: Thank you.

So you want to be heard on further --

MR. DELLA JACONO: My only thought you have already taken care of with the charge, but I'm going to say it again. Number one, has plaintiff proven by a preponderance of the evidence that defendant violated New York Labor Law 240(1), I'm asking that you put down, has plaintiff proven by a preponderance of the evidence that there was a violation of New York Labor Law Section 240(1).

THE COURT: Denied.

You are suing defendant. The defendant has to violate it. If the defendant was a stranger to this, then they would have no responsibility. They're the owner.

MR. DELLA JACONO: The only reason why I say it -- and I'll just put it on the record again -- if there's a violation and some other person caused the violation, the defendant is responsible.

THE COURT: Because they're the owner.

MR. DELLA JACONO: But it's not that they're violating 240(1). I know it's a semantic thing.

THE COURT: It is semantic, except I disagree with you. Because the law requires the owner to provide or cause to be provided.

So I remember sitting at that a table and saying to both of you when this case first came in, this is my nightmare when I was on the co-op board because it means if you've got a contractor who is not careful and you've got somebody working at an elevation so that there's a risk of falling and the person falls and gets hurt, the building is liable.

MR. DELLA JACONO: Right.

THE COURT: The building is liable because they did not cause someone to provide protection against a fall. So that's why they violated. The contractor violated because they failed to provide it. But as the owner, you are vicariously liable if you fail to make sure that it happens.

Question two, medical expenses will come out because there's no current medical expenses.

Mr. Van Etten, do you want to be heard on greater

granularity in these?

MR. VAN ETTEN: Yes.

I think the issue, as we've said before and as I indicated to you in the email that I sent, that for the purposes of potential appeals, particularly, also in light of the testimony and the prior court order that the Court issued in regard to the motions *in limine*, that there has to be an itemization of the future medical expenses that the jury were to award. They have been broken down by the experts, as the lists were put up. And so I think that it would be best served for the purposes of how this trial went in that for the medical expenses that there's then down there for future medicals, each one itemized. I believe it would be the physician's costs, the medicines, the physical therapy, the psychotherapy, if it's still there, and devices. I think those were the five areas.

So I think it should be there for that reason. And that would allow the jury particularly to itemize it.

I think where it also becomes relevant, too, notwithstanding the prior order of the Court, is counsel on his own witness asked Dr. Carfi about the psychotherapy, if he hasn't gone to it, if he hasn't, it would be plaintiff's choice also. I think that differentiation has been made throughout this trial, that there are areas of damages that are certainly questionable at best. And so I think it needs to be spelled out rather than in one totality. Because if you did it in one

totality and, let's say, they said $600,000, we don't know if they gave the psychotherapy -- which, quite frankly, I think, would not be an award viable here -- or something else. I think there's certain awards there, that's why I think it has to be specified, because of the testimony here, the limited testimony from Dr. Lattuga on any future medical care issues, I think there needs to be an itemization.

MR. DELLA JACONO: I'll reiterate my argument from before. What Dr. Carfi said about the psychotherapy, he didn't know that he had gone before, understood. He didn't know if he was going to go in the future, but he's recommending that he does. This is the care and the life care plan that Dr. Carfi put together in order for plaintiff to reach his maximum medical improvement in all aspects, whether the plaintiff goes or not. Whether the plaintiff goes or not, that's up to the plaintiff. But this is what Dr. Carfi was recommending that the plaintiff do.

THE COURT: I didn't hear his testimony that way. I mean, he didn't even examine the plaintiff. He took a history and he looked at his prior medical reports. And at that time, Mr. Csikos was reporting that he was depressed. I can totally understand why that would have generated a recommendation of some psychotherapy. The notion that the man would therefore need to stay in psychotherapy for the rest of his life once a week seems ridiculous. But that's kind of neither here nor

there. He was not a treating physician, so he wasn't saying, my advice to the plaintiff is that he have all these things. It was, this is what I think he needs.

MR. DELLA JACONO: Right, the recommendation.

THE COURT: But not a recommendation to the plaintiff. This is what he was testifying, in an ideal world, the plaintiff would have.

MR. DELLA JACONO: I think he was giving it to the plaintiff because it was for him. It was specifically for the plaintiff. He provided a life care plan --

THE COURT: We don't know it was given to the plaintiff.

MR. VAN ETTEN: I directly asked those questions, if it was given to him, to workers' comp, to his treating doctors; none of these recommendations were made in any way, shape or form for plaintiff or to plaintiff.

THE COURT: I don't think he testified that he gave those recommendations to the plaintiff.

MR. DELLA JACONO: The recommendations were for the plaintiff.

THE COURT: Correct. But he didn't give them to the plaintiff.

MR. DELLA JACONO: Correct, he testified that he didn't given him. That was his testimony.

THE COURT: So the notion that this is -- this is what

he thinks the plaintiff needs.

MR. DELLA JACONO: Correct. And the jury can disregard it, if they feel so.

THE COURT: I am not there on providing a full list. That said, I could see if they awarded -- I don't even know what the numbers are anymore.

MR. DELLA JACONO: He had a number of 32,000 annually. Kucsma had a number of somewhere in the $3 million range for all the care that Dr. Carfi's report that she relied upon. And it was broken down, obviously, for each individual aspect of it.

THE COURT: All these numbers are very muddled, and I was trying to take good notes, so god only knows what the jury heard.

But what are you particularly concerned about? Because I would be willing to do special interrogatories for limited pieces of this.

MR. VAN ETTEN: I'm just trying to put it together with Kucsma's, hold on. It's probably the most organized I've ever been, Judge, and then I just lost it right at the end.

Judge, what happened with Carfi's testimony and to what Ms. Kucsma put in, the itemizations as she did it were physician services, other medical professionals, which I believe is physical therapy, prescription drugs, nonprescription drugs and supply, and general price level. I'm

assuming that's the orthopedic devices. So I should say -- I'm sorry, this is how she did it: Medical care, medication, diagnostic studies, medical supplies, home equipment adaptions, and then therapies.

THE COURT: Therapies include both physical therapy and psychotherapy?

MR. VAN ETTEN: No.

THE COURT: No.

MR. VAN ETTEN: No. Medical care includes the psychotherapy, I believe. I can check that.

THE COURT: No, it can't.

MR. VAN ETTEN: The medical care includes the psychotherapy, that's what -- see, in fact, that's also where I think --

THE COURT: Yes, you are right.

MR. VAN ETTEN: That one, I certainly think has to be, because medical care, it totaled $869,000 by her; 700,000 was for psychotherapy.

(Continued on next page)

THE COURT: Right.

MR. VAN ETTEN: The other doctors it was pain management 79, orthopedist 30, and rehab 59. I definitely think those have to be itemized for the medical care, particularly since we have a huge dispute on the psychological and the rehab for that matter since he has never treated in four-plus years with a rehab specialist and apparently I guess Dr. Carfi wants himself to treat two times a week, year, whatever. So, that one for sure I think has to. I mean, the medication we can address it and they can figure that out, I guess, and we don't have to break down the medicines I agree with that but, you know, to me if you do medical care, that almost certainly has to be itemized and I guess --

THE COURT: What -- hang on a second.

What is the $2 million for therapies?

MR. VAN ETTEN: That's for physical therapy.

THE COURT: Physical therapy?

MR. DELLA JACONO: Physical therapy.

MR. VAN ETTEN: Physical therapy is --

THE COURT: You want that.

MR. VAN ETTEN: I think physical therapy and the medical cares have to be itemized out. The others I don't care about.

THE COURT: Here would be my proposal then. The way I have it now is they give us an amount for medical expenses,

pain and suffering and lost earnings in the future, and then question 4 would be: If you awarded any future medical expenses in response to question 3(a), please provide the amount of that total that you attributed to psychotherapy, rehabilitation specialist, and physical therapy.

So, those are the three big nuts of the total. Mr. Van Etten, does that scratch your itch?

MR. VAN ETTEN: The problem is I guess this is the problem, kind of like we said before with some of the other issues. If you only look at the one does the jury then have the imprimatur that the other means that those are supported? That's my problem here.

THE COURT: I don't think it --

MR. DELLA JACONO: That doesn't sit.

THE COURT: I don't think it suggests that at all.

MR. DELLA JACONO: It doesn't.

MR. VAN ETTEN: So, it would be medical --

THE COURT: So, they add everything up together in medical expenses and present value, right? The number that they're going to enter on (a) is the present value so these numbers are all going to be -- yes, they're going to bear no relation to --

MR. VAN ETTEN: What we heard.

THE COURT: -- to those numbers.

MR. VAN ETTEN: Can you repeat it to me?

THE COURT: Maybe this will scratch your itch: So 3 will stay as it is so it just gives one big number for medical expenses. Then question 4 will read: If you awarded any future medical expenses in response to question 3(a), please provide the amount of that total you attributed to psychotherapy is (a), rehabilitation specialist is (b), physical therapy is (c), and (d) is other. And I will say those amounts should add to the total that you have on 3(a).

MR. VAN ETTEN: Can that just add there, Judge, and you have started to scratch my itch and I just have one gnawing little spot that I can't reach, for medication -- just because of the fact he stopped taking Gabapentin and is only taking Tylenol or aspirin as of his most recent reports.

THE COURT: That is a small number.

MR. VAN ETTEN: I understand that. I understand that.

MR. DELLA JACONO: I don't see the need to go that far.

THE COURT: I don't think we need to go that far either. I think this gives you what you need for purposes of if we get to that point.

Look. Again, as I told you before, I don't like cross-examining a jury about their verdict and I think this is kind of coming close but in this case, because of kind of where we are on the record, I agree that having those items broken out makes sense so we will do that.

Again, we will get you a revised redline version either tonight or first thing in the morning.

MR. DELLA JACONO: Thank you.

MR. VAN ETTEN: I appreciate it, Judge.

THE COURT: Anything further from the plaintiff.

MR. DELLA JACONO: No.

THE COURT: Anything further from the defendant?

MR. VAN ETTEN: No.

THE COURT: You guys are going to send me --

MR. VAN ETTEN: -- the PGIs.

THE COURT: Thank you, all. Have a good night.

(Adjourned to October 20, 2022, at 9:15 a.m.)

INDEX OF EXAMINATION

Examination of:	Page
GERGELY CSIKOS	
Cross By Mr. Van Etten	93
Redirect By Mr. Della Jacono	115
SEBASTIAN LATTUGA	
Direct By Mr. Della Jacono	119
Cross By Mr. Van Etten	140
Redirect By Mr. Della Jacono	183
Recross By Mr. Van Etten	187
JOSEPH CARFI	
Direct By Mr. Della Jacono	188
Cross By Mr. Van Etten	208
KRISTIN KUCSMA	
Direct By Mr. Della Jacono	224
Cross By Mr. Van Etten	253

DEFENDANT EXHIBITS

Exhibit No.	Received
F	95
X	100