SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS : CIVIL TERM : PART 7

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MARIA YESENIA HERNANDEZ TOBON,

Plaintiff,

Index No.
710565/2019

-against-

JURY TRIAL

TAN REALTY 67, L.L.C.,

Defendant.

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Supreme Courthouse
88-11 Sutphin Boulevard
Jamaica, New York 11435
NOVEMBER 7, 2024

B E F O R E:

THE HONORABLE NICOLE MCGREGOR MUNDY,

Supreme Court Justice

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

For the Plaintiff:
LAW OFFICE OF STEPHEN Z. WILLIAMSON, P.L.L.C.
1889 Palmer Avenue, Suite 3
Larchmont, New York 10538
BY: STEVE WILLIAMSON, ESQ.

ELLIOTT IFRAIMOFF & ASSOCIATES
118-35 Queens Boulevard, Suite 1250
Forest Hills, New York 11375
BY: WILLIAM E. ACEVEDO-HERNANDEZ, ESQ

For the Defendant:
CIPRIANI & WERNER
6800 Jericho Turnpike, Suite 120W
Syosset, New York 11791
BY: KENNETH B. DANIELSEN, ESQ.

LAURA PARO
DALILA CUMMINGS
SENIOR COURT REPORTERS

THE COURT: Bring in the jurors.

THE COURT OFFICER: All rise. Jury entering.

(Whereupon, the jury entered the Courtroom.)

THE COURT CLERK: Do all parties stipulate to the presence and proper placement of the jurors?

Beginning with the counsel for the plaintiff.

MR. WILLIAMSON: Yes, your Honor.

THE COURT CLERK: Defense.

MR. DANIELSEN: Yes, your Honor.

THE COURT CLERK: Thank you.

Jurors, you may be seated.

THE COURT: Everyone may be seated.

Good morning, members of the jury. Welcome back. All right, so we're going to get started with our trial.

Counsel, you may call your witness.

MR. WILLIAMSON: Good morning, folks.

Your Honor, with the Court's permission, and again for scheduling reasons, it would be our request to, just to interrupt the plaintiff's testimony for the final time because we have another expert.

We have Kris Kucsma, the economist, that we'd like to call at this time.

THE COURT: That is fine.

MR. WILLIAMSON: Miss Kucsma is in the hallway.

THE COURT: And we actually, members of the jury,

we're sharing our interpreter just for your full disclosure. So we don't have our interpreter this morning, which Miss Hernandez needs, so that's why we're taking witnesses out of turn right now, okay.

Off the record.

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

THE COURT OFFICER: Witness entering.

THE COURT CLERK: Please raise your right-hand.

K R I S T I N K U C S M A, called as a witness on behalf of the Plaintiff, having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

THE COURT CLERK: Please have a seat.

THE WITNESS: Thank you.

THE COURT CLERK: In a loud, clear voice, state and spell your name.

THE WITNESS: Kristin Kucsma. K-R-I-S-T-I-N. K-U-C-S-M-A.

THE COURT CLERK: Please state your business address for the record.

THE WITNESS: 290 West Mount Pleasant Avenue, Suite 2305 in Livingston, New Jersey 07039.

THE COURT CLERK: Thank you.

THE COURT: Good morning.

THE WITNESS: Good morning, your Honor.

THE COURT: You may begin, counsel.

DIRECT EXAMINATION

BY MR. WILLIAMSON:

Q Good morning, Miss Kucsma.

A Good morning.

Q Can you tell the jury what your occupation is?

A Yes, I am an economist. And at the present time I'm managing director and chief economist. Sobel Tinari Economics Group.

Q Can you tell us a little bit about the Sobel Tinari Economics Group, including what you guys do there on a day to day basis?

A Yes. We are an economics consulting group. Most of the work we do involves working with attorneys, both plaintiffs' attorneys and defense attorneys to evaluate economic damages in a wide variety of litigated matters.

Q Can you start us off by telling us about your education and training as an economist?

A I have a Bachelor of Arts degree in Economics that 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 was enrolled in the PhD program in Economics at Rutgers University. I completed all of my course work in that program. Passed my qualifying examinations,

but did not have a chance to complete my dissertation.

While I was in graduate school, 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 faculty at Seton Hall University and Drew University. And I was an Adjunct Professor at Rutgers University and what was at the time Saint Peter's College, now Saint Peter's University. I taught primarily in the Department of Economics to both 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 limited consulting work before I joined the Sobel Tinari Economics Group on January 2 of 2008. And I've been with that group ever since.

Q Is your role in this case limited to an analysis of the life care plan that Dr. Root prepared for Miss Hernandez Tobon?

A Yes.

Q Can you tell us what past experiences you had analyzing life care plans similar to the one in this case?

A I have evaluated the costs of lifetime care based on a life care plan hundreds of times, if not over a thousand times in my career.

Q During those hundreds or thousand times that you've done that work on cases like this involving life care plans, what are you typically asked to do?

A The role of an economist in a case like this is fairly

limited. I am not a medical doctor. I am not a life care planner. So it would not be appropriate for me to offer opinions about the type of care the plaintiff is going to need, how often she'll need the care, what the current cost of that care is.

My role, as the economist, is simply to take into account the effects of inflation. To take into account the fact that the costs of various types of medical care have increased year over year and in my professional opinion will continue to increase year over year over the plaintiff's remaining lifetime.

Q Now, approximately how many times, other than this case, have you been asked to do a consultation in a litigation matter like this whether it's an injury case or perhaps an employment matter?

A Just in general?

Q Yes.

A I prepared probably about 5 to 6,000 evaluations over my career.

Q And how many times have you testified in Court, whether it's in this state or another state in the capacity you are testifying now as an economist with respect to analyzing a life care plan or lost earnings and the like?

A To date, I've testified approximately 500 times in Federal and State Courts around the country.

Q And how many times before today have you been qualified

as an expert in the Courts of the State of New York?

A I would estimate that I've been qualified throughout the State of New York at least 100 times.

Q Have you also been qualified as an expert in the field of economics in cases like this in other states?

A Yes, I have.

Q Would that include New Jersey?

A Yes.

Q And some other states too?

A Yes, Connecticut, Pennsylvania, Louisiana, Florida. I've testified in Puerto Rico, as well. So various other territories and states around the country.

Q Have there been other cases where you've been retained as the economist and I was the attorney for the plaintiff or at least one of the attorneys for the plaintiff?

A Yes.

Q And have there been cases where my firm, or a firm I've been associated with, has engaged your firm and either a report has been written and the case didn't go to trial or like here there were reports written and the matter went to trial and you testified?

A Yes.

Q Do you know how many times my firm has engaged your firm before, whether it's for reports or for testimony like this or both?

A I don't know off the top of my head. Not many, as a proportion of the total number of cases I review each year.

Q But we've worked together before where I asked you to analyze a life care plan or analyze another plaintiff in a case I'm handling?

A Yes. We have. And I have appeared in Court a few times with you in cases which you've retained me.

Q And there are other times where I've asked you questions in a courtroom like this?

A Yes.

Q And are you and your firm typically paid for a case like this?

A We are paid for the services we provide.

Q That's for the services you provide for trial, the analysis and report, but also if you come to Court like today?

A Yes. So certainly we're certainly paid for the preparation, analysis, as well as my appearance here today and any preparation I undertook before coming here today.

Q Now, Miss Kucsma, in this case, in this particular case when we first contacted you and retained you in the Hernandez Tobon matter, what did we ask you to do?

A You provided me with a life care plan and asked me to calculate the cost of lifetime care for the plaintiff.

Q Now, was that the life care plan of Dr. Barry Root who testified, I think, last week in this case?

A Yes.

Q Did we actually provide you with his first report and life care plan which I think was in 2023 and then I think something later?

A I was provided with an initial report and supplemental report, both prepared by Dr. Root.

Q Back in 2023, did you prepare your own first report in response to his first report, and then when we got the second or most updated report you prepared a second or updated report of your own?

A Yes.

Q Other than the two life care plans we provided you, one in 23 and one in 24 from Dr. Root, did you get any other materials from us or anybody else in regard to this case?

A The only other thing I reviewed before I prepared my analysis was the Bill of Particulars.

Q That's a legal document that lays out certain details about the case?

A Yes.

Q Was that information sufficient for you to conduct an analysis in this case and reach your conclusions?

A Yes. I had everything I needed to offer my opinions to a reasonable degree of economic certainty.

Q Did you also need to have Miss Hernandez Tobon's date of birth for purposes of determining her statistical life

expectancy?

A Yes, I did.

Q Why is a statistical life expectancy important in an analysis like this?

A In order to calculate the cost of lifetime care for Miss Hernandez Tobon, I needed to determine for how many more years she likely will need various categories of care outlined in Dr. Root's report.

Q And how do you go about determining with a reasonable degree of certainty what a person's statistical life expectancy is, where do you go to find that information?

A As an economist, I relied upon U.S. Government data. Very specific data published in the National Vital Statistics Reports.

Q And you also, do you compare that or also utilize information from the New York State Court system or the New York State Pattern Jury Instruction?

A I am familiar with the life expectancy tables that are appended to the Pattern Jury Instructions.

Q And did you, in fact, make an investigation and ultimately reach a conclusion with respect to Miss Hernandez Tobon's statistical life expectancy?

A Yes, I did.

Q Can you tell us how you went about getting that information and what you found?

A Yes. Very specifically, as I said, I reviewed the National Vital Statistics Reports, and I looked very specifically at the average life expectancy for a roughly 44, 45 year old woman. The reason I use that age is because my calculations of the cost of lifetime care will begin now in November of 2024. And at the present time Miss Hernandez Tobon is approximately 44.32 years of age.

Q And then were you able to determine from that what her statistical life expectancy is?

A I was. Based on my review of that data, I determined that on average a 44, 45 year old woman will live to the age of 83.12 years.

Q And how many future years is that for her?

A That would be approximately 39 future years.

THE COURT: I'm sorry, 81 point --

THE WITNESS: I'm sorry. 83.12 years, your Honor.

Q Which given that she's 44 now would be how many future years statistically speaking?

A Statistically speaking, her date of death is 2063 so that would be approximately 39 years from today.

Q Did you reach that determination as to her statistical life expectancy to a reasonable degree of certainty?

A Yes, to a reasonable degree of economic certainty, that's correct.

Q Is the data that you utilized to determine that data

that is generally considered to be reliable and authoritative in your field?

A Yes.

Q Where did the cost of the various items of care come from that you analyzed?

A What I referred to as the base costs were provided by Dr. Root in his life care plan.

Q Did we ask you or did you do on your own any determination or evaluation as to whether those costs were accurate or reasonable?

A No. That is well outside my area of expertise as an economist.

Q Why is that?

A It's been my experience, economists generally are not medical experts, we're not life care planners, we're not qualified or trained in order to review medical records and make any sort of determination about the types of care that an individual is going to need.

And in order to determine the cost of that care, it is important to consider the individual plaintiff, the needs of the plaintiff, the geographic location of the plaintiff and so on. And that type of individualized analysis is frequently undertaken either by medical doctors or by life care planners.

It's not the type of analysis which an economist is qualified to undertake. And it's not an analysis that I

performed.

Q In your past cases, whether it's cases you've done reports on, or cases where you've done a report and then later come to Court like here, have you ever done that, namely, evaluated the reasonableness or the accuracy of the costs that either come from the life care planner or the medical doctor?

A Well, no, as I said, I'm not qualified to do that. That's well outside the scope of or expertise of an economist. That's not something I've ever been asked to do, nor is it something I've ever undertaken.

Q In other cases when you've been provided with a life care plan like in this case, did those numbers typically come from a medical doctor or life care planner?

A Yes, standard generally accepted practice of economists is to rely on the expert opinions of medical doctors, certified life care planners for information regarding the types of care an individual will need, how frequently they'll need the care, and also how much it will cost the individual to get that care in the current year.

Q Lastly, with respect to the costs that came from Dr. Root, did we ask you to evaluate in anyway the reasonable value or the fair market value of those costs?

A You did not ask me to do that, nor is it something I would be qualified to do.

Q Is that something that you've been asked to do before

or have done before in a case like this?

A No, never.

Q Now, are you a health care economist?

A I am not a health care economist.

THE COURT: You are not?

THE WITNESS: I am not, your Honor.

Q What's the difference between the kind of economist you are and the role that you play and health care economists?

A Generally health care economists focus on the overall health care system. Examine trends in health care spending, say by the U.S. Government, for example. Examine trends in what we call per capita health care spending on average.

How much does the U.S. Government spend on health care per person in the United States.

Health care economists very often will evaluate policy. Again, as it relates to health care systems in the United States. In some cases health care economists will also look at the general industry makeup to have, again, sort of an understanding how the industry is structured.

Health care economists, however, do not, again, undertake individualized assessments of individual plaintiffs. They do not typically offer opinions about what an individual person needs, how much money that individual person will need for his or her care and so on.

Q Miss Kucsma, in this case, was your role limited to

reviewing Dr. Root's life care plan, particularly the costs that he outlined in there, and then applying your expertise with respect to the effective inflation in the future years of Miss Hernandez Tobon's statistical life expectancy?

A Yes. That is the role of an economist in a case like this. As I said, it's a fairly limited role, but an important role because we do need to take into the account the fact that the cost of care will increase year after year for the remainder of Miss Hernandez Tobon's lifetime.

Q Before we get to your actual analysis, can you tell us what data or other sources you look to and relied on in this case to determine with a reasonable degree of medical certainty the effect in the future of inflation on the cost in Dr. Root's plan?

MR. DANIELSEN: Objection.

THE COURT: Basis.

MR. DANIELSEN: First, leading. And second, counsel just indicated a reasonable degree of medical certainty. I'm not aware.

MR. WILLIAMSON: Withdrawn. I apologize.

Q Can you just tell us, let me try to ask that question better, what sources or data you relied on in analyzing the costs in the life care plan from Dr. Root with respect to the effect of inflation in the future?

A I started by looking back historically at how much on

average the costs of various categories of medical care have, in fact, increased year over year.

And specifically, I started by looking at something called the Consumer Price Index. The Consumer Price Index, in general, is something that people will use to get a sense of, on average, how much more expensive everything is getting, how much more money do we have to pay this year compared to last year to put food on the table, to pay the rent, utilities and so on.

The way the U.S. Government calculates the Consumer Price Index is, they literally take a basket and they fill it up with all of the things that on average that people buy on a regular basis. They take the basket, they fill it up with eggs, and socks and toothpaste, then they examine how much it costs this year to buy that basket of eggs, socks and toothpaste, how much did it cost 10 years ago to buy the eggs, socks and toothpaste.

And then we simply compare how much more expensive that basket is this year as compared to last year.

The U.S. Government calculates many, many different Consumer Price Indexes. There are many, many different baskets that the U.S. Government uses to calculate how the cost of different items have changed over time.

For example, there is a Consumer Price Index specifically for food that allows us to see how much more expensive food is now than it was four years ago.

There is a Consumer Price Index for utilities that allows us to see very specifically how much more expensive is it to pay the gas and electric bills than it was four years ago and so on.

There are also many baskets related to the cost of medical care. There is a general basket for medical care, but there also, for example, is a basket very specifically for services provided by medical professionals.

So we can look at that basket and see how much more expensive it is to see a doctor this year than it was 10 years ago. There also was a basket for what we call other medical professionals. We can look at that Consumer Price Index to determine on average how much more expensive it is to get physical therapy now than it was 10 years ago.

There is a basket for prescription medications and so on.

For my starting point, I looked at all of the different Consumer Price Indexes that were related to the type of medical care Dr. Root has said the plaintiff is going to need in this case. And that allowed me to examine how much the costs of these different types of care have, in fact, increased each year in the past.

In addition to that, though, I also took into account projections of how these costs are likely going to increase going forward.

For example, I considered projections of future inflation, future costs projected by the Social Security Administration. I also considered projections that are published by the U.S. Government, specifically published by the Congressional Budget Office. This allowed me to examine projections on how these costs will likely increase going forward.

I also reviewed projections that are published by the U.S. Department of Labor in something called the Occupational Outlook Handbook. In that document, I was able to examine projections of how certain industries are expected to grow over the next 10 years.

And one of the things I learned, for example, is that projections for the industry of home care is expected to increase much faster than average. And that's important information for an economist because that's an indication that the demand for these services will continue to increase fairly rapidly in the future. And an increase in demand is going to continue to push up those costs going forward.

And then I also considered other current economic conditions that are likely going to have an impact on these costs going forward.

Q The sources you just mentioned, the Consumer Price Index, the future, projections of future inflation in the Social Security Administration, the Congressional Budget Office and the

U.S. Department of Labor, are those sources generally considered to be reliable and authoritative in your field and for an analysis like this?

A Yes.

Q Now, with that in mind, I'd like to ask you to take us through your analysis.

I'd like to ask you about your analysis, but before I do, let me ask you, did your office prepare some tables or slides that contains your analysis including the numbers, where the numbers are identical to the numbers in your second report in this litigation?

A Yes, we did.

MR. WILLIAMSON: Your Honor, I showed the tables to counsel previously. I would like, as I indicated to counsel, to use them only for demonstrative purposes.

THE COURT: You are asking that this be marked?

MR. WILLIAMSON: Yes, your Honor.

THE COURT: We're going to mark this as plaintiff's 34 for identification purposes.

(Plaintiff's Exhibit 34, Report, was received for identification as of this date.)

THE COURT OFFICER: Plaintiff's 34 marked as ID.

Q Miss Kucsma, what's been marked as plaintiff's 34, would that help you in explaining your analysis and your conclusions to this jury?

A Yes, I believe so.

MR. WILLIAMSON: Your Honor, I would offer the item solely for the purposes of -- let me say it again.

I would offer the item solely for demonstrative purposes.

THE COURT: Counsel.

MR. DANIELSEN: Your Honor, I have no objection. Counsel for plaintiff and I have discussed during the testimony of my economist I will use similar tables for demonstrative purposes. And so we can reciprocally agree on that point.

MR. WILLIAMSON: Agreed.

THE COURT: What was marked plaintiff's 34 for identification purposes will be entered as plaintiff's 34 in evidence.

(Plaintiff's Exhibit 34, Report, previously marked for identification, was received in evidence as of this date.)

MR. WILLIAMSON: Would you be kind enough, sir, to hand those to the witness.

THE COURT OFFICER: Plaintiff's 34 marked into evidence.

THE COURT: Thank you.

THE COURT OFFICER: Showing plaintiff's 34 to the witness.

Q Are these tables assembled in an order and in such a way where they can take us through your analysis and conclusions in sort of chronologic order?

A Yes, they are.

Q We're going to put the first table up on the screen.

Is this the first table?

A Yes.

Q Can you tell us what we have here and how you began or what came first in your analysis?

A Sure. What we're looking at here is just a summary of some basic information that I needed to consider before beginning my analysis.

I did need to have an understanding of when Miss Hernandez Tobon was born so that I could determine how old she is as of November 1 of this year. That's the date on which I'm going to begin my calculations of the cost of lifetime care.

So using the National Vital Statistics Reports, I was then able to determine her statistical life expectancy.

As I mentioned earlier, based on the date of birth, I was able to determine that as of November 1 of this year Miss Hernandez Tobon is 44.32 years of age.

Q Scroll down a little bit.

What do we have here?

A Here we just see the life expectancy that I mentioned earlier. The life expectancy of 83.12 years, approximately 39

years from today. And that, again, is based on my review of the National Vital Statistics Reports, and it reflects the average life expectancy of a roughly 44, 45 year old woman.

And then lastly, you see that the costs presented by Dr. Root in his life care plan reflect how much it would cost Miss Hernandez Tobon to get the care that Dr. Root has said she will need if she got that care in the current year 2024.

Q What's the next part of your analysis?

A If you look at the next slide you see a summary of the yearly increases that I applied in each year. These are the inflation rates, these are the figures I use to calculate on average how much the cost of each category of care will increase year over year.

So I can determine, for example, how much it will cost Miss Hernandez to go and to see a physical therapist next year, and the year after in 2026 and so on.

You'll see there are different yearly increases, different inflation rates depending on the category of care. That's because, as I mentioned earlier, the U.S. Government actually has different Consumer Price Indexes for different types of medical care.

I was allowed, or I was able, I should say, to examine how the costs of different types of medical care change over time. And for example, one of the things that we saw was that on average the cost of non prescription drugs and supplies

increase at a different rate than the cost of medical services from a medical doctor there.

And then, again, is based on the fact that historically that's what we've seen. And historically what we have seen is that on average the cost of various categories of medical care in general have outpaced inflation. They've been on average at least one point, roughly 1.3 percent higher than the general rate of inflation.

Q Are these different rates of inflation the rates of inflation you derived from the CPI, and also the inflation projection the from the Social Security Administration and the other government sources, the CBO and Department of Labor?

A Yes. All of these yearly increases were based on the data that I mentioned earlier.

Q Did you arrive at these different inflation rates to a reasonable degree of certainty in the field of economics?

A Yes, I did.

Q What was the next part of your analysis?

A The next part of my analysis was simply to take the information that was provided by Barry Root in his life care plan and apply these rates of inflation to those costs.

In his life care plan, Dr. Root provided his expert opinion about all of the various categories of care that Miss Hernandez Tobon will need.

He also provided me information with how frequently

she'll need the care on a yearly basis, every five years and so on.

And then lastly, he also provided the base cost. He provided me with the cost for each type of care currently in the year 2024.

So I took those base costs from Dr. Root's life care plan, and then simply calculated how those costs will grow each year over Miss Hernandez Tobon's remaining lifetime.

Q Before we get to this first category, can I ask you, were there any items in Dr. Root's life care plan that you excluded from your analysis?

A There was one surgery that I did exclude all together from my analysis. And that was because Dr. Root had indicated, he basically said if needed. Since he said if needed and there was no additional information about when it may be needed and so on, I chose to exclude it from my analysis.

Q Was that the total knee replacement that Dr. Root included in his plan?

A It was, yes. He provided a total knee replacement at a total cost of $60,000. And then he indicated, if needed. So that's not reflected in my calculation.

Q For that reason?

A For that reason.

Q Were there other items in his life care plan that he characterized not as if needed, but as needed where you

calculated them, but you did it either separately or in a separate category or something else?

A There were some categories of care that he referred to as potential categories of care that he did not include in his summary table.

I did calculate those costs. But as you'll see in a few minutes, I calculated them separately. So I subtotaled all of the costs reflected in Dr. Root's summary table, and I then added these potential costs on separately so that jury would have them for consideration.

Q What's the purpose or benefit of having them in a separate category?

A I hope it will make it easier for the jury. If the jury determines that it's appropriate to include them, they will have the number to include. And likewise, if the jury determines it's not appropriate to include them, then it's very easy just to ignore them instead of the jury having to do a lot of math.

Q You did the math for them?

A Yes, I did.

Q This first table, is it for one of the categories in Dr. Root's plan?

A Yes.

Q Is that routine medical care?

A Yes.

Q Can you take us through what this table means and what you ultimately concluded after doing the analysis that's entailed in this table?

A Sure. Can we enlarge the top couple of rows? Let's stop there for a quick second. Perfect.

Basically what we're looking at here is we're looking in the top several rows at information that was provided specifically by Dr. Root. So this is his expert opinion.

For example, Dr. Root identified various categories of routine medical care that in his opinion the plaintiff is going to need.

That includes pain management, orthopedics for the spine, orthopedics for the spine perioperative. Orthopedics for the knee. Visits to a physiatrist.

So again, these are all categories of care that were identified by Dr. Root, that in his expert opinion, the plaintiff will need over her lifetime or at least over the next several years.

In addition to that, scroll back to the -- there we go -- you'll see the 2024 cost. Those are the base costs provided by Dr. Root in his life care plan.

So for example, according to Dr. Root on average the cost of a full year's worth of pain management in the current year, 2024 is $1,250. So if Miss Hernandez Tobon was going to get a full year's worth of pain management in 2024, it would

cost on average $1,250.

Likewise, if we look at the orthopedics there, according to Dr. Root, the yearly cost for that would be $250 and so on.

So the 2024 costs, those are those base costs provided by Dr. Root, they reflect his expert opinion and much how much it would cost currently for the plaintiff to get a year's worth of that particular care.

And then lastly, what you'll see, pain management, for example, according to Dr. Root, if Miss Hernandez Tobon was going to get a full year's worth of pain management currently it would cost $1,250. The question is how much would it cost for her to get a full year's worth of pain management next year in 2025. That depends, of course, on my opinion about what the inflation rate is likely going to be.

In my professional opinion, the cost of seeing a pain management specialist next year will be approximately 3 percent higher than they are right now in 2024.

Which means next year in 2025 Miss Hernandez Tobon would need $1,288 for a full year's worth of pain management.

And then in 2026, those costs would go up again by another 3 percent and so on. And then I performed that calculation each year.

One more thing before we scroll any longer, if you look at pain management, you'll see in the year 2024 I've included a

figure of just $250. That's because I'm starting my calculations in November of this year.

Miss Hernandez Tobon is not going to get a year's worth of pain management in this year. She would only be getting it for the last part of this year.

The orthopedic spine routine there, those are visits that will occur either one to two times a year. So certainly she would have the ability to get one of those this year. Then in next year, in 2025, you are looking at 250 times two, $500 with that 3 percent inflation built in.

So the next year it would be 515. And you'll see that alternating going up and down, and up and down, and up and down. That takes into account the one to two times a year. Once a year and twice a year. Once a year and twice a year for the remainder of her lifetime.

And then if you look over, for example, at the physiatrist, you'll see according to Dr. Root's expert opinion, Miss Hernandez Tobon will need to see a physiatrist more frequently for the next two years, and then, thereafter, she will not need to see the physiatrist as frequently.

That's why there is a higher cost for those yearly visits to the physiatrist for the first two years and then they drop off each year for Miss Hernandez Tobon's lifetime.

I basically perform the calculations every year through 2063, Miss Hernandez Tobon's statistical life expectancy.

You'll see, again, if you look at that first column for pain management, you'll see in the last year the number drops off. That's because, according to my research, Miss Hernandez Tobon's statistical life expectancy ends in August of 2063.

So again, she wouldn't get a full year's worth of pain management, just about two-thirds of the year.

Q I guess this is as good a time as any to ask you.

As much as you testified that the statistical life expectancy comes from a reliable source, it's not a crystal ball, some people live longer, some people live less?

A That's correct, it's an average.

Q That's the best we have?

A For economists, it's the most statistically reliable data.

Q There are some columns. I belief the perioperative columns where we don't have numbers, we have these lines?

A If you look, you'll see there is a footnote there. If you look at the last footnote, you'll see that that perioperative care, I assumed that would occur in 2032 following the plaintiff's knee surgery. So that is care that would happen at the same time as the surgery there. So she wouldn't need this, in other words, every year. She would just need it for a brief period of time in the year in which she has the surgery.

Q I guess another way to ask is, the items that have columns without numbers running down, just these lines, are

those items Dr. Root said were either one time costs or finite amount of time as opposed to every year of her life?

A Yes.

Q That's why they're not recurring down the line?

A Correct.

Q Did you reach conclusions with respect to total numbers as to this category?

A Yes, I did. I summed all these up, and I calculated the total cost of routine medical care from November 1 of this year over Miss Hernandez Tobon's lifetime at $220,630.

There we go.

Q And that total that you just cited, 220,630, what does that encompass?

A That represents the total amount of money necessary to cover the cost of care, specifically routine medical care, that according to Dr. Root Miss Hernandez Tobon will need for the rest of her lifetime.

So it takes into account how much it would cost each year from 2024 through 2063 for Miss Hernandez Tobon to get this routine medical care.

Q And this category, is it basically visits to physicians, whether it's a pain management physician, orthopedic spine, orthopedic knee, physiatrist and the postoperative visits?

A Yes.

Q Did you reach these conclusions, including this total you just cited, to a reasonable degree of certainty in the field of economics?

A Yes.

Q What was the next category that you conducted or that you analyzed?

A The next category presented by Dr. Root in his life care plan was diagnostic testing.

Q If you could take us through what you did here and what conclusions you reached?

A Sure. In this case, I use the same method. So as you see, we see various types of diagnosis testing, x-rays, MRIs, that according to Dr. Root Miss Hernandez Tobon will need for the rest of her lifetime.

He also provided information about how frequently she would need these types of tests.

So for example, according to Dr. Root in his expert opinion, Miss Hernandez Tobon will need to get an x-ray for her cervical spine every year. She will need to get an MRI for her cervical spine not every year, but on average, every four years instead.

So that's why you see a gap when you look at the cost for the MRI for the cervical spine. I'm not calculating the cost every year since according to Dr. Root she will not need to get the MRIs every year.

And then once again, the 2024 costs just reflects Dr. Root's expert opinion about how much it will cost Miss Hernandez Tobon to get these various x-rays and MRIs currently in the year 2024.

I then took into account the effects of inflation. And calculated how these costs will increase each year over the plaintiff's remaining lifetime.

(Whereupon, the following was recorded by Senior Court Reporter Dalila Cummings:)

(Continued on following page.)

* * *

DIRECT EXAMINATION

BY MR. WILLIAMSON:

Q Am I correct, let me ask you, is the inflammation rate of three percent across the board for this category?

A It is, yes. And this reflects the data and the research I did specifically as it relates to services performed by other medical professionals. It happens to be for this analysis. The same yearly increase that I established for physician services, that's not always the case, but this particular case, based on the period of time and current economic conditions, the inflammation rate for the physician services is the same as the inflation rate that I applied for other medical professionals.

Q And then, did you conduct your analysis on this category all the way through the future years of her life expectancy?

A Yes.

Q Calculating the cost of annual versus the cost every five years or periodic?

A Yes.

Q And did you reach a conclusion as to the totals of the --

A I did. I did calculate the total cost of the diagnostic testing over Ms. Hernandez Tobon's lifetime at $139,530.

Q And did you conduct this analysis the same way you described before?

A Yes.

Q Did do this analysis and reach this total you just described also to a reasonable degree of certainty in the field of economics?

A Yes.

Q What's the next category?

A The next category included Dr. Root's opinions about current medication the plaintiff will need.

Q And if you could, with respect to this category, just again quickly take us through your analysis. Looks like we have a different inflation rate here at least?

A Yes.

Q At this part, and then just take us through the future years to the total.

A Sure. I conducted the same analysis I described before. In this case I had a combination of prescription medications and non-prescription medications, which is why you see two different inflation rates here. The yearly increase for Advil is based on projected general increases in the general price level. The inflation rate I applied for the other medications is based on the expected yearly increase for the cost of prescription medications.

Q The data shows that prescription medication is going up

at a different rate than over the counter?

A Yes.

Q Okay. Now, I see there is a column for Percocet that has those lines. Is that because that's not every year? It's just at one particular point in time if she has the surgery for after the surgery?

A Correct. This is also coincident with the surgery, so if you scroll down, you will see it appears when she would have various surgeries.

Q And did you conduct the same analysis here in the same way as the earlier categories?

A Yes.

Q Can you take us down to the totals?

A Yes. I calculated the total cost of what Dr. Root refers to current medication over Ms. Hernandez Tobon's lifetime at $20,077.

Q And did you do this analysis and reach this to a reasonable degree of certainty in the field of economics?

A Yes.

Q And just to scroll up quickly. In terms of medication we are talking about, these are the meds that Dr. Root had in his plan the Advil, Naprosyn, Flexeril and Percocet?

A Yes.

Q What is the next category?

A Next we have what Dr. Root referred to as

interventional care.

Q And what is this?

A This included various injections, services that are typically provided by a medical professional. So once again, we see the costs there that were provided by Dr. Root in his expert opinion, how much each of these injections or rounds of injections would cost in 2024. I then took into account again the effects of inflation. You will see is for everything other than the trigger point injections, Dr. Root had indicated that there was a maximum number of injections that Ms. Hernandez Tobon would need over her lifetime. So he did not indicate she would need these every year, but rather he had a cap on the number of injections that in his professional opinion she should get during the remaining lifetime. So that's why you see those calculations stop after I reached that maximum number, according to the expert opinion of Dr. Root.

Q Now, the first category here is trigger point injections. Was that one that was limited to only ten times in her lifetime or was that on an annual basis for her lifetime expectancy?

A According to Dr. Root, that would occur on an annual basis for the remainder of her lifetime. There was no limitations on maximum number of times she would need or she would get those during her lifetime.

Q For the next three items in this category, facet,

epidural injections, the lumbar, and facet or epidural injections on the cervical, and the steroid injections with respect to the knee, were those three categories limited to just ten times over her lifetime regardless of when she would get them?

A Yes.

Q And the last category, the other injection for the knee. Is that for a finite amount of years? Or was that for every year in the future?

A That also was for a finite number of years.

Q Can we scroll down a little bit. It stops. It also stops over here on the right. Finite. Finite amount of injections over how many numb of years she lives in the future?

A Correct. And what I have done in this case is I valued all of these injections, even though there was a limit. Basically, Dr. Root said she would need a maximum number of injections over her lifetime. What I chose to do to be really -- to be conservative, was value all of these injections in the earlier years, more likely than not. Some of these injections would be needed later in her lifetime. Since I didn't know exactly when, I chose to value them earlier.

Q Meaning by doing it this way the numbers are a little bit less than if you had projected the amount in the future years?

A Yes. Because they are probably not picking up the full

impacted inflation for any injections that Ms. Hernandez Tobon may have gotten say ten or twenty years from now.

Q They are just reflected in the earlier years to be conservative?

A Correct.

Q Okay. And then the inflation growth rate is at three percent across the board in this category?

A Yes.

Q And then, can we go down to the total? Did you arrive at totals in this category as well?

A I did. I calculated the total cost of interventional care at $80,139.

Q And did you conduct this analysis in the same manner you described before?

A Yes.

Q Did you reach that total you just described to a reasonable degree of certainty in the field of economics?

A Yes.

Q Okay. Let's go to the next category.

What are we looking at here with respect to the next category?

A We are now looking at surgical care which, again, includes various surgeries that according to Dr. Root the plaintiff will need.

Q Now, are any of these every year or are they all

one-time costs?

A These are one-time costs in future years. At some point in the future.

Q How do you do this chart or this analysis? We see visually that the different numbers appear to be in different years. How does that work?

A That's just based on Dr. Root's estimate of when in the future Ms. Hernandez Tobon may need these surgeries. Once again, I performed the same analysis. If, for example, it would cost $137,500 to get the lumbar decompression fusion revision surgery now in 2024, in 2037 the cost of that surgery would be $267,418. So that's the effects of inflation, compounding effect of inflation that would occur over the next roughly thirteen years.

Q Are these numbers at the top just, just below the names of the procedures, the 2024 base cost?

A Yes.

Q And then the lower numbers, are those costs with the effective inflation baked in?

A Correct.

Q Okay. Did you arrive at totals for that category?

A Yes, I did. I calculated the total cost of the surgical care that, according to Dr. Root, Ms. Hernandez Tobon would require at $516,011.

Q And just to be clear, for this category and all the

categories that preceded it that we already went over, do you have totals for each type of care and then the grand total that you have been describing, which encompasses the individualized totals?

A Yes.

Q And what's your total for this surgical care category?

A $516,011.

Q And did you reach that number -- that total in this category to a reasonable degree of certainty in the field of economics?

A Yes.

Q Let's go to the next category, if we could. What do we have here?

A Now, we are looking at my calculation of the cost for the therapeutic intervention that consists primarily of physical therapy.

And once again, I was provided with information from Dr. Root about the frequency of the physical therapy, as well as the base cost. And once again, I simply took into account the effects of inflation. Based on my review Dr. Root's life care plan, I learned that Ms. Hernandez Tobon will -- in his professional opinion -- require ongoing physical therapy each year for the remainder of her lifetime, and then, for lack of any better phrase, some additional physical therapy consistent with the surgeries. So once she had surgery, there would be

additional physical therapy necessary following those surgeries.

Q There's one category here reflect, for lack of a better term, the regular therapy that happens every year?

A Yes.

Q And does the other category reflect added therapy after surgery?

A Yes. Yes.

Q If she has it?

A Yes.

Q And what was the growth rate that you applied for physical therapy?

A Again, in this case I applied the growth rate for other medical professionals, which based on my research is three percent.

Q And scrolling down to the bottom, did you have totals for each category of physical therapy?

A Yes. I calculated the total cost for the physical therapy at $460,826.

Q And that total, does it encompass the number 439,807 for the annual regular therapy, and then an additional 21,000 for the postoperative physical therapy if she has those surgeries?

A Yes.

Q And those two numbers equal the total you just described?

A Yes.

Q Did you reach those totals including the final ones to a reasonable degree of certainty in the field of economics?

A Yes, I did.

Q And what is the next category?

A Durable medical equipment.

Q If you could take us through what you did here, what the numbers are. The growth rate and the different categories here.

A Sure. Once again, I started with Dr. Root's expert opinion there, about various supplies that Ms. Hernandez Tobon would need to purchase over her remaining lifetime. I relied upon the base cost that he provided. You will see in some cases Dr. Root indicated that Ms. Hernandez Tobon would need to replace these items on a yearly basis. And other cases he indicated she needed to replace them on average every five years, every four years. So that's why you see the costs are staggered for some of these items. And then again, in each one of these cases, I simply took into account the impact of the inflation. And in this case, I relied upon -- or I used the inflation rate of 2.4 percent, consistent with expected increases in the general price level.

Q And the first category, the hydrocollator and the heating pad, that's periodic, looks like every four, five years?

A Yes.

Q And the next category, gel packs, is every year?
A Yes.
Q The Aspen corset is every four years?
A Yes.
Q And then single axis cane, that's how many years?
A I believe that was every five years.
Q Same thing for the next category. The tips.
A Yes.
Q And can you take us down to the totals?
A I calculated the total cost of the durable medical equipment at $7,191.
Q And that's inclusive of all the categories we just went over?
A Yes.
Q Reach to a reasonable degree of certainty?
A Yes.
Q Okay. What is the next category?
A The next category is a calculation of the cost of home care.
Q Now, is this something that was projected by Dr. Root on an ongoing or every year basis or a specific period of time after surgery?
A In his life care plan Dr. Root indicated that Ms. Hernandez Tobon would need the service of a home health aide for a period of time after each of the surgeries. This is not

something that, according to Dr. Root, Ms. Hernandez Tobon would need on a yearly basis. Which is why you see just two discrete pedigrees for there for the cost of the home health aide services that the plaintiff would need after the surgeries, assuming she gets surgery.

Q What's the growth rate here?

A In this case I applied a yearly increase of 3.7 percent.

Q And each is for a finite period of time after the projected surgery?

A Yes.

Q What are the totals in this category?

A Calculated the total cost of this home care at $2,529.

Q Did you reach that total and do this analysis also to a reasonable degree of certainty?

A Yes.

Q What's the next care?

A The last slide should be my calculations of the cost what Dr. Root identified as potential future medical care.

Q Now, this is not the item you excluded, the knee replacement? These are the items that Dr. Root testified to being as needed?

A Yes. The knee replacement -- the $60,000, the knee replacement is not part of any -- will not be part of my testimony today. It's not part of those calculations.

Q But you did put these items in a separate category?
A Yes, I did.
Q Can you take us through these items?
A Sure. Once again, I simply replied upon the expert opinions of Dr. Root as my starting point. He provided these various categories and potential future medical care, including the implantation of a spinal cord stimulater. Then, also visits with the neurosurgeon for the spinal cord stimulater, hand held programmer, and then follow-up adjustment. I was relying on the expert opinion of Dr. Root.

He also provided me with a base cost. And then once again I applied the appropriate inflation rates. We see different inflation rates here because the cost of hospitalization surgeries, those costs have increased more than the cost of services provided by other medical professionals. And then the 2.5 percent again reflects the anticipated increase on average and the general price level.

Q Now, in the first category, which is the spinal cord stimulater implant, if one was to scroll down, this whole line, the first line, there's one, two, three, four, five numbers over her projected life span.
A Yes.
Q What do those five numbers spread out over her life expectancy reflect?
A Those represent the cost of the surgery of a total of

five implantations over her remaining lifetime.

Q In connection with the spinal cord stimulater?

A Yes.

Q And then, the services of the neurosurgeon for that, is that also five over her lifetime at the same periods of time?

A Yes.

Q And then the hand held programmer, I think is every five years; is that right?

A Yes.

Q Based on Dr. Root's projection?

A Yes.

Q And is there a follow-up adjustment that's every year?

A Yes.

Q That was also in his plan?

A Yes.

Q Is that also relating to the spinal cord stimulater?

A Yes.

Q What were the totals for this category?

A I calculated the total cost of this potential future medical care at $622,671.

Q And did you reach that total in all of these numbers in this analysis for this category to a reasonable degree of certainty?

A Yes.

Q Okay. I think now we are finally through the

categories of care, and at the summary.

A Yes.

Q This last and, I think, final slide does say summary at the top. What are we looking at here? What is this?

A Here we are looking at a summary, total cost of lifetime care. And specifically, what I have done here is just taken the total cost I calculated for each general category of care provided by Dr. Root and his life care plan, and summed them up, as I mentioned earlier. I did provide a subtotal for the jury to consider so without considering any of the potential future medical care, I determined the total cost of lifetime care according to Dr. Root's life care plan would be $1,446,933. That's the total amount of money that would be needed to cover the cost of all of the care that, according to Dr. Root, Ms. Hernandez Tobon would require for the rest of her lifetime, except that potential future medical care. And then you will see I added that potential future medical care in, so if the jury wanted to consider, they would have it. If we take the future value of all of the care, add the potential future medical care to it, then we arrive at the total cost $2,069,604.

Q Did you reach these totals to a reasonable degree of certainty in the field of economics?

A Yes.

Q And just so we are clear and the record's clear, this subtotal of future value of 1,446,933, does that encompass all

of the components of care? Meaning, the categories we went through, except for the last one, which was the potential future care on the spinal cord stimulater?

A Yes.

Q And then the number that is known as the subtotal of potential future medical care, the 622,671, is that in fact that separate category of potential future care pertaining to the spinal cord stimulater and the related item?

A Yes.

Q And then that grand total, 2,069,604, is that the total for both?

A Yes.

Q And were all of these conclusions on these final totals reached by you to a reasonable degree of certainty?

A Yes.

Q Is there anything else that we need to know about your analysis or conclusions in this case?

A I don't believe so. Hopefully I have explained how I use the information of Dr. Root's report to arrive at these calculations.

Q And just to end, Ms. Kucsma, did you do anything in this case -- we already covered the question of the assessing the accuracy or the value of the cost. In addition to that, did you play any role in on the medical side in determining Ms. Hernandez Tobon's injuries or alleged injuries in this case

or medically what care she's going to need in the future? Was your role limited to just to analyzing the cost of the inflation in the future?

A I'm not a medical expert, so I played no role in reviewing any medical records or determining any medical opinions. As I said, my role was fairly limited just to take into account the effects of inflation.

MR. WILLIAMSON: Thank you very much. Thank you for your time.

THE WITNESS: Thank you.

THE COURT: Thank you. Any cross?

MR. DANIELSEN: Yes, Your Honor.

CROSS EXAMINATION

BY MR. DANIELSEN:

Q Good morning, Ms. Kucsma. How are you?

A Good. Thank you. How are you?

Q I am well. Thank you.

A Good.

Q I have to admit, I am a little intimidated. Four hundred and ten trials, six hundred and ninety depositions. The estimate I got from your website. Is that right?

A I think that has to be updated, but that was correct at one point.

Q That is a lot. Are you testifying anywhere else this week?

A I have a deposition this week. I don't believe I'm going to be in court anywhere else.

Q When is the deposition?

A This afternoon, actually.

Q Well, we will get you out in time.

A The federal court would appreciate that. It's a federal deposition, so I appreciate you guys working with me.

Q So I listened to your testimony. And have you ever worked with Dr. Root?

A What do you mean work --

Q I will ask it a different way. You have had other cases where Dr. Root is the life care planner, where you have served as the economist; is that correct?

A I have worked on other cases, yes, where he was the life care planner.

Q If I understand your testimony, you are effectively taking the base costs that Dr. Root sets and you are utilizing those for your analysis; is that right?

A Yes. I have relied upon his expert opinions regarding the base cost.

Q And you are doing the same thing with the frequency of care, correct?

A Yes.

Q And so -- and I think we will probably agree on this point -- your analysis is only as strong or as accurate as

Dr. Root's analysis, correct?

A My calculations are based on his expert opinion. So I did use his expert opinions as my starting point.

Q If, for instance, his numbers are off and they would be -- I will ask a different way. There's two main ways that his numbers being off could impact your numbers. The first would be if the specific number of treatments that he is estimating was wrong. And the second would be if the pricing that he was using is wrong. Would you agree with that?

A I don't know exactly what you mean when you say if they were wrong. I mean, assume ultimately the jury will determine what's appropriate. And certainly if the jury determined that the cost or the frequencies would need to be adjusted, they could adjust my calculations.

Q So let's take a step back. Let's assume, just for a second, let's assume for a particular item of care, Dr. Root sets a price of $200. But in actuality it was a $100 item of care. Then your number would be off by about that much multiplied out, correct?

A I mean, do you mean if Dr. Root made a mistake or changed the cost?

Q If Dr. Root says something costs $200, but in reality that thing costs $100, and you are using that basis point for your analysis, then you would agree with me that your numbers would be off by the same amount as his?

A Again, I don't quite understand your question. If Dr. Root testified to his basis for your hypothetical, the $200, when you say it actually cost a hundred --

Q So I will ask it a different way. If Dr. Root says something costs $200, and then the jury heard testimony, and they heard his testimony, they heard other things from other people, and they decide that that thing shouldn't cost $200 per session, it should cost $100 per session, then your analysis would have to be reduced by some amount to account for that; is that correct?

A I certainly assume in that hypothetical if the jury determines that the cost for a particular item should be lower than what I use, they would adjust my calculations accordingly.

Q Okay. So let's do that on some of these items okay. So for instance, do you have your report in front of you, Doctor?

A Yes, I do.

Q Keep that handy, please.

A Sure.

Q Thank you. So let's start with physical therapy. That's one of the big items of care that you have, right?

A There was physical therapy in Dr. Root's life care plan, yes.

Q So your analysis up here on the screen, and using your report, about how much of your total life care plan is comprised

of costs associated with future physical therapy?

A It looks approximately $460,826 is associated with physical therapy, that makes up about a third of the subtotal future value, and approximately twenty-five percent of the total future value.

Q Okay. So, and do you have in your report or something in front of you that could help us recall about how many sessions per year Dr. Root is estimating?

A Let's see. I did not note that in my charts here, so I don't believe specifically.

Q Well, all right. If I were to suggest to you twenty-four to thirty-six, does that sound about right?

A Sounds approximately correct, yes.

Q So let's work with twenty-four to thirty-six, then. So in 2021 Ms. Hernandez had one physical therapy session. And then in 2022 she went ten times. Then in 2023 she went zero times. And then in 2024 she went thirty-three times in the months leading up to the trial here. So now, your analysis has $460,000 of your life care plan. If -- if Ms. Hernandez were to go to physical therapy in the future as many times as she did in 2023 -- zero times -- then the cost for the physical therapy in the future would be zero, correct?

A According to Dr. Root she will need to go more frequently. I really can't comment on what she may or may not do. Maybe she couldn't afford to go in the past. I really

don't know, but I do know according to Dr. Root and in his expert opinion she should get regular physical therapy for the rest of her lifetime.

Q Do you know if there's any testimony that she's having trouble paying for her medical care?

A I don't know one way or another. I'm not here to offer any opinions about what Ms. Hernandez Tobon needs or what she will do. My job really is simply to calculate the total amount of money that would be necessary to cover the cost of care that, in his expert opinion, Dr. Root has indicated the plaintiff will need.

Q All right. So your analysis, though, it doesn't take into consideration a year like 2023 where she goes zero times? Or 2021 where she goes one time, right?

A My calculations are based on the expert recommendations of Dr. Root.

Q Okay. And then, again, on the pricing, same thing. So you are using Dr. Root's base price in calculating this, right?

A As my starting point yes, I did.

Q So now I would like you to assume that Dr. Root indicates that the current cost -- withdraw that. I'm asking another question.

The cost that Dr. Root sets forth in his life care plan, those are present costs today, right?

A Yes.

Q So in Dr. Root's life care plan, do you have a present cost that he set forth for the physical therapy sessions?

A I don't believe I indicated the unit cost in my calculations here. It's in his report. I assume he testified to it.

Q Let's say $200. Does that sound about right?

A Sounds approximately correct, yes.

Q All right. And so, I would like you to assume that the actual cost that the plaintiff or the actual cost of those services so far has been closer to a hundred or $120. Using that number as a basis point, how far off, then, is your calculation?

A Well, my calculations are accurate. Again, based on the expert opinions of Dr. Root, I assume you asked him maybe why the costs are different, but I have based on my calculations on what he has indicated the cost of the physical therapy is, that the plaintiff should get going forward.

Q So he says it's two hundred, and so far the cost has been a hundred twenty per session. So that's a hundred to a hundred twenty per session. That's off by eighty to a hundred. That's about what? A fifty percent difference? Give or take in the cost?

A Yes.

Q Okay. And again, that doesn't take into consideration those years like 2023 where there's zero times or 2021 where

there's one time, right?

A Well, again, I'm having trouble with your questions, because these questions would be better posed to Dr. Root. My calculations are based on what he has indicated Ms. Hernandez Tobon should be getting going forward. How he may have considered past treatments or past costs are questions only he can answer.

Q Okay. Now, another item of care here is -- I've got to admit, I'm not so good at math and I had a hard time last night. The subtotal is 622. Is that basically the spinal stimulator?

A Yes.

Q So that one is in or out? If it's out, it's 1.4 million is your number; and if it's in, it's two million, right?

A Yes.

Q I wish I could have asked you that last night. That was about fifteen minutes.

All right. So that 622, why do you have it there in that subtotal like nothing else is kind of set forth in that special box down there. Why is that spinal stimulator in there like that?

A That was indicated as potential future medical care, so I felt it was just appropriate, again, to provide that separate since there was a distinction made by Dr. Root between the required care and the potential required care.

Q And so, other than Dr. Root, have you come to know of any other medical doctors in this cases or anyone, frankly, that said she's going to need this $622,000 spinal stimulator?

A I have not reviewed any medical records other than the report prepared by Dr. Root.

Q Just stick with me here for a sec. If we don't do the spinal stimulator, and that never happens, and she never goes to physical therapy -- which she didn't in a few years here other than 2024 -- fair to say then that we would whop off about 460,000 plus 622, that would be, like, a million dollars that we would take off her plan right there, right?

A I don't think so. Again, as the economic expert, I can't speak to what the jury may decide to do. Again, the physical therapy, my understanding according to Dr. Root, whether she's been getting it or not getting it, in his expert opinion she should be getting regular physical therapy going forward. So for that reason I would not take it out of my analysis, but the jury certainly is the one that will ultimately determine what to include, exclude, increase, decrease, based on my calculations.

Q But just in the real word for a second, outside of economic analysis and what Dr. Root is saying, if she doesn't go for physical therapy going forward, if she doesn't go, then that expense is not going to be incurred, correct?

A Well, I'm not sure I understand what you mean when you

talk about the, quote, real world. My understanding is that Dr. Root's opinions are based on the reality of the injuries that Ms. Hernandez Tobon has sustained and what in his opinion she should get going forward. And I have calculated the total amount of money that would be needed to cover that care.

Again, the jury will ultimately determine what Ms. Hernandez Tobon should get, will get, and so on. But I'm not the trier of fact.

Q Fair enough. So if the jury decides that they are going to look at 2023 and 2021, instead of 2024, these few months leading up to this trial. If they decide that, and they decide it's more likely that she's not going to go for physical therapy, than she is, then that $460,000 number, that wouldn't hold up, right?

A I really can't speak to what the jury may do. They certainly may adjust my calculations up or down, but it wouldn't be appropriate for me to speak on their behalf.

Q All right. And now, the physiatrist. How many times a year does Dr. Root say that she's going to go to a physiatrist?

A I don't recall off the top of my head. He, I believe, indicated that for the first two years Ms. Hernandez Tobon would need to see the physiatrist once a month. And then he noted that it would, quote, taper to four times per year thereafter.

Q So in 2024 she's seen a physiatrist, again, in the months leading up to the trial here, six times. But in 2023 she

saw a physiatrist zero times. And in 2022 she saw a physiatrist one time. Okay. So using, again, the same analysis with the physical therapy, if she doesn't go -- obviously, if she doesn't go or she goes to physiatry visits more in line with what she did in 2022 or 2023, then her actual cost -- money that came out of her pocket in the future, would be lower, right? She's not going, so she's not incurring the expense?

A Again, my analysis is based on the needs outlined by Dr. Root. Again, I assume if the jury considered that information and felt it was appropriate to make some sort of adjustment to Dr. Root's opinions about the frequency, then they would make some sort of adjustment to my calculations.

Q You have been qualified as an expert in many states in New York and New Jersey, correct? Including --

A Yes.

Q And many others as well?

A Yes, I have.

Q Has there ever been a time where your testimony has been excluded by a Court?

A In totality?

Q In part or in totality?

A There have been a handful of occasions where I was prepared to testify about something in my report, and then the Court determined that I would not be presenting it to the jury. That has happened on a handful of occasions.

Q Is one of those occasions Lauren Camarinos? Is that one of those cases where your testimony was excluded in part?

MR. DANIELSEN: Objection.

THE COURT: Basis?

MR. WILLIAMSON: May we approach?

THE COURT: Yes.

(An off-the-record discussion was held.)

(Whereupon, the following was recorded and transcribed by Senior Court Reporter Laura Paro.)

(Continued on next page.)

* * * * *

THE COURT: The objection is overruled.

You may proceed, counsel.

CROSS-EXAMINATION CONTINUED

BY MR. DANIELSEN:

Q So Miss Kucsma, the Camarinos case, was your testimony excluded in that case?

A I believe there was a portion of my report that the Court ultimately ruled would not be presented to the jury, but I don't recall specifically.

I think that's what happened.

Q So I do have here a copy of your report.

If I gave you a copy of the report, would that represent, help to refresh your recollection on the topic?

A I do know in this particular case there was no, what they call a Rule 104 hearing, which means I wasn't present when the defense filed a motion. And the Court made the ruling.

So I don't know how much insight I can provide to you in terms of what took place. I didn't participate in that process. I was just informed when it was all over.

Q I was just asking if I gave you your report, would it help refresh your recollection as to why your testimony was barred in the case?

THE COURT: One moment.

A I don't know. I may it may or may not.

As I said, I wasn't present during the hearing where it

was determined I wouldn't testify. I'm not sure.

Q I can hand it to you.

A I'd be happy to take a look at it. I don't know if it will help me answer your question or not.

MR. WILLIAMSON: You can give it to her.

MR. DANIELSEN: I can give it to her.

THE COURT: Are we marking this?

MR. DANIELSEN: I was going to allow her to use it to refresh her recollection.

Q Does that refresh your recollection at all?

THE COURT: Just a moment.

Q I apologize. How could it refresh your recollection you don't even have it?

THE COURT: You can show it to the witness, officer.

MR. DANIELSEN: I apologize.

A Thank you. Oh, I don't recall. Actually, I don't recall this at all.

Q That's okay, we can move on from it. If you don't recall you don't recall.

I have another question for you.

THE COURT: Ma'am, you can put it down.

MR. DANIELSEN: Thank you.

Q So let's say now, the physiatry on top of it, if she goes to the physiatrist as many times as she did in 2023, zero,

and then she goes to physical therapy as many times as she did in 2023, zero, and then if she doesn't get the spinal cord stimulator, how much do we take off of this report then, how much comes off the board?

A I mean, I wouldn't adjust my calculations. That's simply not a decision for me to make. I did provide in all of the previous slides there is a total for every individual element of the life care plan. So the jury can certainly make an adjustment if they determined there were certain elements of Dr. Root's life care plan that should not be included, but that's not a decision for me to make.

Q So I'm assuming you would feel the same way about every other item of care, if I were to go through them, and you would defer to Dr. Root on that; right?

A I would refer to Dr. Root.

And more importantly, I will defer to the jury. They will ultimately determine whether they accept Dr. Root's opinions or whether they feel parts of his opinions need to be adjusted.

MR. DANIELSEN: We'll just go with that. Thank you very much.

THE WITNESS: Thank you.

THE COURT: Any redirect?

MR. WILLIAMSON: Yes, your Honor.

REDIRECT EXAMINATION

BY MR. WILLIAMSON:

Q Counsel was kind enough to give me a copy of what he showed you about your testimony being barred in that other case.

I'm just going to hand up my copy to you where I circled three of the points.

MR. DANIELSEN: I object to this, your Honor.

Could we have a side bar?

THE COURT: Yes.

(Whereupon, a side-bar discussion was held.)

Q Miss Kucsma, do you have your copy of what I have in my hand which is what counsel asked you about with your testimony being barred in that other case?

A Yes, I do.

Q Could you go turn it so it's to the first page of the entire document?

A Yes.

Q You are at page 1?

A I am.

Q And then the numbers aren't paginated, but could you just go to page 4, I think it is, and page 5?

A Yes.

Q Do you see the points, point 1, and point 2, and 3, they are on 4 and 5 of that document, I think?

A Yes, I do.

Q Looking at those, I'm not asking you, nor should you

read from it --

THE COURT: Here's what we're going to do. This is what we're going to do.

Look it over, turn it over. You're not going to read from it.

THE WITNESS: Got it.

Q Just those points, the bolded points 1, 2 and 3.

A Okay.

Q Having looked at those, does that refresh your recollection as to whether your testimony was limited in that case because of something pertaining to your analysis or something pertaining to the doctors, the other witnesses in the case?

A My understanding is that at least one of the other witnesses, one of the doctors, upon which I had relied, had been barred. And therefore, since his opinions had been barred, and my opinions were based on his, I was not allowed to present the calculations I had performed based on his opinions.

Q Sounds like a situation similar to here, whereas, you said many times on direct and cross, your opinions in this case are relying around, based upon Dr. Root's expert opinions, as you said with respect to future care projections and costs?

A Yes.

Q And then counsel also asked you about what Miss Hernandez may or may not have done, he focused on 2024 and

resent years, but we're really dealing with 2018 up to now, in your analysis do you consider what's happened in the past, either how much treatment the plaintiff has had, what their access to care is, and what the other factors are in their life relative to their doing care or having access to care?

A None of that is relevant for my analysis. Again, my analysis is simply based, it's forward looking, and it's based on what in his expert opinions Dr. Root has concluded the plaintiff should be getting in going forward in terms of medical care.

Q But as you said, everything that's transpired in Miss Hernandez' life from 2018 up to now is certainly fair game for the jury?

A Of course. It's not relevant for my analysis. And if the jury feels they should consider it, they can fix my calculations accordingly.

MR. WILLIAMSON: Thank you.

THE COURT: You may stand down.

You can leave that or give it to my officer.

Counsel, do you have any more witnesses for the morning?

MR. WILLIAMSON: I think we're just waiting on the interpreter, so we have that to contend with.

THE COURT: Members of the jury, once again, today you are going to have an early lunch break.

So everyone, I see that fist pumping, everyone, let me give you my admonitions.

During the break, please do not do any research on any topic about this case. Do not discuss anything related to the case with anyone, including your fellow jurors. Do not speak to any of the attorneys, parties or witnesses. If anyone attempts to discuss the case with you notify the Court officer who will, in turn, report that to me.

So with that, enjoy your lunch and we'll see you back here at two o'clock sharp.

THE COURT OFFICER: All rise. Jury exiting.

(Whereupon, the jury exited the courtroom.)

THE COURT: Everyone, have a good lunch break.

MR. DANIELSEN: You too, Judge.

MR. WILLIAMSON: You too, Judge.

(Whereupon, the matter was adjourned for the luncheon recess.)

* * *

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

THE COURT CLERK: All rise, Part 7 is back in session.

THE COURT: You may be seated, everyone.

Off the record.

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

THE COURT: Please bring the jurors in.

THE COURT OFFICER: All rise. Jury entering.

(Whereupon, the jury entered the courtroom.)

THE COURT CLERK: All parties stipulate to the presence and proper placement of the jurors.

Beginning with counsel for the plaintiff.

MR. WILLIAMSON: Yes, your Honor.

THE COURT CLERK: Defense.

MR. DANIELSEN: Yes, your Honor.

THE COURT CLERK: Thank you, jurors.

You may be seated.

THE COURT: You may be seated, everyone.

Counsel, will we resume the testimony of Miss Hernandez?

MR. WILLIAMSON: Yes, your Honor.

With the permission of the Court, I'd like to have Miss Hernandez retake the stand so we can complete her testimony.

THE COURT: Miss Hernandez, please retake the stand.

THE COURT CLERK: Miss Hernandez, you are reminded that you are previously sworn and remain under oath.

THE COURT: You may proceed, counsel.

MR. WILLIAMSON: Your Honor, as everybody remembers, we were dealing with the photographs at the end of last session.

Counsel and I have come to an agreement with respect to three photos. So with the Court's permission --

THE COURT: Let's take them one at the time.

MR. WILLIAMSON: We have 27 marked for identification that plaintiff would offer into evidence.

THE COURT: Any objection, counsel?

MR. DANIELSEN: None, your Honor.

THE COURT: What was previously marked as plaintiff's 27 for identification purposes will be entered as plaintiff's 27 in evidence.

(Plaintiff's Exhibit 27, photo, previously marked for identification, was received in evidence as of this date.)

THE COURT OFFICER: Plaintiff's 27 is marked into evidence.

MR. WILLIAMSON: Next, your Honor, is plaintiff's 28, plaintiff's 28 would be offered by plaintiff into evidence.

THE COURT: Any objection?

MR. DANIELSEN: Without objection, your Honor.

THE COURT: What was previously marked as plaintiff's 28 for identification purposes will be entered as plaintiff's 28 in evidence.

(Plaintiff's Exhibit 28, photo, previously marked for identification, was received in evidence as of this

date.)

THE COURT OFFICER: Plaintiff's exhibit 28 is marked into evidence.

MR. WILLIAMSON: Then we also offer 29 into evidence.

THE COURT: Any objection?

MR. DANIELSEN: No objection, Judge.

THE COURT: What was previously marked as plaintiff's 29 for ID will be entered as plaintiff's 29 in evidence.

(Plaintiff's Exhibit 29, photo, previously marked for identification, was received in evidence as of this date.)

THE COURT OFFICER: Plaintiff's exhibit 29 is marked into evidence.

THE COURT: Thank you.

MR. WILLIAMSON: May I have those?

THE COURT OFFICER: Yes.

MR. WILLIAMSON: Thank you, sir.

DIRECT EXAMINATION CONTINUED

BY MR. WILLIAMSON:

Q Miss Hernandez, we're going to get to the photos in a second.

Before we do, I have one more topic to cover with you which actually came up in the morning session. And it's in

regard to how much treatment you had or didn't have in the period of time from 2021 up through 2023.

Now, I've got some of the items in evidence here. Let's start with New York Spine, which is 14 in evidence.

The records in evidence from New York Spine indicate that in 2021 you were there five times. On February 9, May 4, September 7, September 24 and November 23.

THE COURT: What exhibit is this, counsel?

MR. WILLIAMSON: This is 14.

THE COURT: Okay.

Q Is that consistent with your recollection?

MR. DANIELSEN: Objection, your Honor.

THE COURT: Basis.

MR. DANIELSEN: Leading.

THE COURT: Sustained.

Q Did you go to New York Spine on those days in 2021?

A Yes.

Q The record in evidence, number 14, also indicates that in 2022 you were there on February 22, May 31 and June 21.

Did you go to that office on those dates in 2022?

A Yes.

Q And the same record indicates that you were at the office at New York Spine in June of 2023, as well?

A Yes.

Q Did you go to that office on that date too?

A Yes.

Q With respect to Dr. Khaimov, your pain management doctor, the records are in evidence as plaintiff's 11. The records indicate in 21 that you were there twice in September.

Do you remember going those times?

A Yes.

MR. DANIELSEN: Objection, your Honor.

THE COURT: Basis.

MR. DANIELSEN: Leading.

THE COURT: Sustained. Just reminding everyone, none leading questions unless appropriate.

MR. DANIELSEN: Your Honor, I'm trying to be respectful, but all of these questions are incredibly leading.

THE COURT: One second, counsel. You have to do what you need to do for your client.

Q Miss Hernandez, Dr. Khaimov's records are in evidence and they indicate, the record in evidence, that in 2022 you went there four times?

MR. DANIELSEN: Objection. Leading.

THE COURT: Counsel, just maybe ask her the question. Just ask her a question, counsel. Let the witness testify. Ask her a question. Let the witness testify.

MR. WILLIAMSON: I'm just trying to correct from

the morning.

Q Did you go to Dr. Khaimov in 2022?

A Yes.

Q Did you go to Dr. Khaimov multiple times in 2023?

A Yes.

Q Did you also go this year?

A Yes.

Q And then with respect to the Pappas facility, there were questions this morning about whether you did physical therapy in 22 and 23.

Did you do physical therapy at Pappas in 2022?

A There were just a few.

Q If the record in evidence indicates 11 visits in 2022, does that sound right?

A Yes.

Q And did you see Dr. Pappas himself in 21 and 22?

A Yes.

Q Let me move on.

Now, there is so much talk about these photographs. They may be anticlimactic, but we're going to put them up.

Let's start with 26. This is 26 in evidence, Miss Hernandez. Who's in this photo?

A It's my sister, my brother-in-law, my husband, my son, my nephews and me.

Q Where are you in the photograph, to the right or to the

left?

A On the right.

Q Is that you?

A Yes.

Q Where is your husband?

A Next to me.

Q This gentleman?

A Yes.

Q Where was this?

A In Niagara Falls.

Q Was it before the accident?

A Yes.

Q Approximately when?

A 2013.

Q Let's put up number 27.

What does this show?

A My son, my husband and me.

Q Where are you guys?

A The stadium in New Jersey.

Q Before the accident?

A Yes.

Q Approximately when?

A 2015.

Q I'm going to put up 28.

What does this show?

A That I'm with my husband and my son.
Q Before the accident?
A Yes.
Q Where?
A At Long Beach.
Q Approximately when?
A 2016.
Q We're going to put up 29.
What does this show?
A That I'm with my sister.
Q Is she on the left?
A Yes.
Q Where was this?
A That's in New Windsor, New Jersey, heading upstate.
Q Were you guys there for a function; what is that?
A Yes, it was for a Sweet 15 for my niece.
Q Is that before the accident?
A It was one month before my accident.
Q This was in 2018?
A Yes.
Q A month before the accident?
A Yes, correct.
Q How do you know that for sure?
A Last night I was trying to remember details for the pictures, and I remembered the date and the event for that one.

Q You said it was your niece?
A Yes.
Q I'm going to show you 32.
What does this show?
A That I'm with my son.
Q Where is this?
A Natural bridge in Pennsylvania.
Q Was it before the accident?
A Yes.
Q Approximately when?
A 2013.
Q And then lastly, I'm going to show you 31.
What does this show?
A That I am with my son at some electronic games, roller coasters.
Q Do you remember where this was?
A Yes.
Q Where?
A In Playland.
Q Is this before the accident?
A Yes.
Q When approximately?
A 2012.
Q Miss Hernandez, focusing on these years in the photos before the accident, was your life different before the accident

as compared to after?

A Yes, very.

Q Can you tell us what the biggest differences were, what are the biggest ways your life was different before?

A Well, the biggest change is that I can't work. I can't share with my family like I used to before. I can't do household chores like I used to. And the biggest is probably that I can't take care of my daughter like I wish I could at 100 percent.

Q Miss Hernandez, in the five years before the incident, say from 2017 back to 2013, did you have any physical limitations that either stopped you or limited you from doing your daily activities?

A Before the accident?

Q Before.

A No, never.

Q Did you have any trouble sleeping or doing activities with friends and family back then?

A No.

Q Did you say this is the photograph that was approximately a month before the accident?

A Yes.

Q I see that you are, are you wearing high heels in that photo?

A Yes. I always wore them.

Q Have you been able to wear high heels since the accident?
A No.
Q When you go to a party or a function?
A No, I can't.
Q Why not?
A It triggers more pain in my back.
Q Let me shift gears now back to the present day 2024, this year.
Currently, are you still dealing with the neck and back pain that you described to us previously?
A Yes, pain and weakness.
Q How does the weakness affect you?
A It affects me a lot when the pain comes, and it affects my neck. My head also hurts and feels heavy when the pain comes.
Q What do you mean heavy?
A Throughout the day my neck hurts and I start feeling weakness. My head feels heavy, meaning I have to lay down to rest my head. So I might lay down on the sofa to rest my head and my neck.
Q In the current time meaning now 2024, is your sleep still impacted the way you described previously or is it better?
A It impacts me a lot. I wake up a lot at night with numbness in my back, and I often have to massage my back to help

my body move better.

Q Miss Hernandez, just one last question.

What would you say is the biggest problem or the biggest impact for you now and in the last couple of years with respect to your neck, or your back or both?

A To not be able to do anything physical and work. And to always deal with pain and weakness in my body.

Q I don't have anything further.

Thank you, Miss Hernandez.

THE COURT: Thank you. Any cross examination?

MR. DANIELSEN: Yes, your Honor.

THE COURT: You may proceed.

Counselor, are you going to lead off with reading of the deposition?

MR. DANIELSEN: No, no.

THE COURT: Go ahead.

CROSS-EXAMINATION

BY MR. DANIELSEN:

Q Good afternoon, Miss Hernandez.

A Good afternoon.

Q How are you today?

A Good.

Q Miss Hernandez, the date of your incident, for how long were you at the hospital that day?

A From around noon to when I went home in the afternoon.

Q Was it evening when you went home or still daylight, dark, something else?

A I don't remember exactly, but it was already a little late.

THE COURT: I didn't hear. It was already a little what?

THE WITNESS: I little late.

Q Did you go back to your house?

A Yes.

Q And over the next few days, what did you do, did you stay home or did you go to work or something else, a mix of those things?

A The first week after the incident I couldn't go to work, but then afterwards I went back to work.

Q And I think you testified that the first place you sought any medical treatment after the hospital was the Pappas facility; is that right?

A Yes, yes.

Q We have that in evidence as exhibit 2. I'm just going to bring up the first visit. It's plaintiff's 2.

And your first exam was September 14, 2018; is that right?

A Yes.

Q And if I remember correctly, you went to the Pappas facility first on September 14, and then some point after that

you went to see a lawyer; is that right?

MR. WILLIAMSON: Objection.

THE COURT: Basis. One second. Basis.

MR. WILLIAMSON: Relevance.

THE COURT: Overruled. Let's see where it's going.

A I don't remember exactly if I went to the offices of Dr. Pappas first or if I went to see the attorney, but it was within one or two weeks of each other.

Q I'm sorry, you said you don't remember?

A Yes, I don't remember who I saw first.

Q All right. Well, I asked you this question at your deposition and back then you remembered.

MR. DANIELSEN: So with your Honor's permission, I'd like to read from plaintiff's deposition to see if this refreshes your recollection.

THE COURT: One second.

Members of the jury, you are about to hear the lawyer for defendant read portions of the document referred to as an examination before trial of plaintiff. As you may hear, the lawyers refer to this document as an EBT or deposition.

At some point before this trial began, plaintiff, under oath, answered certain questions put to her by the lawyers for defendant. A stenographer recorded the

questions and answers and transcribed them into a document which plaintiff later signed before a Notary Public.

The portions of the transcript of the examination before trial that you will hear are to be considered as if the plaintiff were testifying from the witness stand.

You may proceed, counsel.

MR. DANIELSEN: Thank you, your Honor.

I'm going to read from the plaintiff's first day of deposition 8/12/2021, page 129 through page 130, line 12.

MR. WILLIAMSON: One second, counsel. What page?

MR. DANIELSEN: First day of deposition page 129, line 12 through page 130, line 12.

MR. WILLIAMSON: Got it.

MR. DANIELSEN: QUESTION: When did you first hire a lawyer for this lawsuit?

ANSWER: First I went to the doctors here at Pappas, and those doctors there took some tests from me. After the results came back, some short time after, I went to speak to a lawyer.

QUESTION: So did you go to a lawyer before you went to Pappas or did you go to Pappas first?

ANSWER: First I went to Pappas.

QUESTION: So you hired lawyers in this case, where did you hear about those lawyers?

ANSWER: Through my sister-in-law.

QUESTION: And your sister-in-law told you to go to Pappas for your medical treatment and then she also told you to go to the Law Offices of Elliot Ifraimoff and Associates, as a lawyer; correct?

ANSWER: Correct. First I went to Pappas and after they took some tests and told me that's everything that's wrong with me that's when I realized that I wouldn't be able to pay for everything that I needed to have done.

Does hearing your prior testimony help you to recall whether you went to the lawyer first or whether you went to Pappas first?

A I don't remember exactly what I did first, but my testimony is here.

Q So do you disagree with your prior testimony now or do you agree with it?

MR. WILLIAMSON: Objection.

THE COURT: Basis.

MR. WILLIAMSON: She said she doesn't remember.

MR. DANIELSEN: It's not really what she said.

THE COURT: Overruled. Slightly different question.

You may answer, ma'am.

A I don't remember exactly what I did first, but it's what I said.

Q That is your testimony that you just heard; correct?

A Yes.

MR. DANIELSEN: I'm going to ask your Honor that we mark the following document for identification.

MR. WILLIAMSON: May I see it.

THE COURT: Side-bar for a second please. Side-bar.

(Whereupon, a side-bar discussion was held.)

THE COURT: We're going to mark it.

MR. DANIELSEN: Just the one page.

THE COURT: We're going to mark this document as defendant's E for identification purposes.

(Defendant's Exhibit E, document, was received for identification as of this date.)

THE COURT OFFICER: Defendant's exhibit E marked as ID.

(Whereupon, the following was recorded by Senior Court Reporter Dalila Cummings:)

(Continued on following page.)

* * *

THE COURT OFFICER: Handing Defendant's Exhibit E to the witness.

CROSS-EXAMINATION

BY MR. DANIELSEN:

Q Ms. Hernandez, when you first went to your attorneys, they had you sign some documents. One of those documents was a power of attorney; something that was exchanged during the course of this case by your lawyers with my office. And you signed those documents. Is that your signature at the bottom of that page?

A Yes.

Q And is that document dated?

A Yes.

Q And your first visit at Pappas was September 14th; is that correct?

A Yes.

Q And that document there is dated September 10th; is it not?

A Yes, correct.

Q So when you testified at your deposition you told me in response to my questions, definitively, that you went to Pappas first, had some testing, and then you went to go see a lawyer. However, that was not the case, was it?

A The date is here.

Q So in actuality you went to the lawyer first, and then

you went to Pappas, correct?

A That is what the document says. And I also said that I did not remember who I saw first, because it was many years ago.

Q We will go through all the things that you testified that you can't remember right now, Ms. Hernandez.

So the person that sent you to go see Dr. Lattuga, that was Dr. Saulle at Pappas; is that right?

A No, it was Dr. Khaimov.

Q Dr. Pappas sent you to see Dr. Khaimov, correct?

A Yes, that is correct.

Q And Dr. Saulle at Pappas, he was also the one that sent you to Stand-up MRI, right?

A Yes.

THE INTERPRETER: Your Honor, just one moment.

THE COURT: Off the record.

(Whereupon, an off-the-record discussion was held.)

THE COURT: On the record. You may continue.

Q Now, you had testified that it was your sister, was it? That told you to go see Dr. Pappas, and also to go see your lawyer; is that right?

A No, I said that my sister-in-law was the one who recommended that I go for therapies, seeing that I was not well. And she is the one who recommended that I speak to a lawyer.

Q Well, did your sister-in-law say that you just go for

therapy, and that you should go see a lawyer? Or did your sister-in-law say that you should go to see Dr. Pappas and the Elliot Ifraimoff firm?

MR. WILLIAMSON: Objection.

THE COURT: Basis?

MR. WILLIAMSON: Relevance.

MR. DANIELSEN: I'm not going very much further, Judge.

THE COURT: Overruled. Let's keep it moving.

A She is the one who recommended that I go, and I decided to go.

Q Ms. Hernandez, when I asked you these questions at your deposition, you told me -- and you are correct; it was your sister-in-law -- your sister-in-law told you to go to Pappas office --

MR. WILLIAMSON: Objection.

Q -- and to the lawyer?

THE COURT: Basis?

MR. WILLIAMSON: One asked and answered, and two --

THE COURT: Sustained.

MR. WILLIAMSON: -- inconsistent --

THE COURT: Sustained.

Q All right. So now we know you went to the attorney's first; is that correct?

MR. WILLIAMSON: Objection.

THE COURT: Basis?

MR. WILLIAMSON: Asked and answered.

THE COURT: Sustained.

Q After you went to the attorneys and you went to your first visit at Pappas, how long was it between your first visit at Pappas and your first visit with Khaimov?

A It was a few months, because I was in physical therapy and then they sent me for an MRI because since I was still feeling pain, that's when they sent me to Dr. Khaimov.

Q I would like to talk to you a little bit about your treatment with Dr. Lin. You saw Dr. Lin on June 1st, 2011. And at that visit you complained of having pain eight to ten out of ten for weeks to month. Weeks to months. Left leg pain and numbness. Do you have any recollection of that as you sit here?

A I remember that I complained about back pain, but I don't remember when I saw Dr. Lin.

Q Okay. Well, do you recall having back pain that was described in that note, eight to ten out of ten that lasted for weeks to months, where you had left leg pain and numbness?

A I don't remember, but Dr. Lin's records are there, and if it's there, then it must have happened.

Q That would seem like a fairly significant event to forget; would you agree with me? Pain that lasted for weeks to months rated at eight to ten?

A I don't remember, but the pain must not have been so exact because I don't remember it. They didn't send me for extra testing. I think only my doctor saw me.

Q Well, that's interesting. So do you now remember going to the visit and making those complaints? Because you just said only your doctor saw me.

A I remember from yesterday that my attorney showed me the records for Dr. Lin that were there.

Q And then, Ms. Hernandez, so that we could move it along a little bit, you also were seen by Dr. Lin on July 5th, 2013, where you complained of chronic headache with pain and burning in both feet for several months. And then another time on March 20, 2015, where you were -- where it indicated patient was complaining of low back pain. Do you also not remember those events?

A I don't remember, but there are my medical records that are there from the doctor, so it must have happened.

Q And then finally, you don't recall going to the hospital for back pain on September 29, 2013, correct? No recollection of that?

THE INTERPRETER: I'm sorry. Can you repeat the date.

MR. DANIELSEN: Sure.

Q September 29, 2013.

A I don't remember, but they are my records.

Q So is it fair to say that the only back pain that you clearly remember is what happened after the accident? Nothing before, correct?

A Yes, because the pain has been much more severe, and I had to have a lot of testing done, so I do remember that.

Q Now, yesterday you testified a little bit about your knee. Do you remember that?

A Yes.

Q And I think you testified you were asked by Mr. Williamson about your first complaints of knee pain, and I think you said that you remembered that you were going for an EMG, and that by a miracle of God you weren't feeling a lot of leg pain that day, but as you were there, you realized that you were feeling pain in your right knee. Do you recall testifying in sum and substance to that yesterday?

A Yes.

Q I also asked you a question at your deposition about your left knee pain and about when you first recall feeling the left knee pain. Do you recall giving testimony at your deposition about that?

A Yes.

MR. DANIELSEN: Your Honor, I would like to read from Plaintiff's deposition transcript a short passage. Page 132.

MR. WILLIAMSON: The first day or the second day?

MR. DANIELSEN: I'm sorry. Day one, 8/12/2021.

THE COURT: Yes.

MR. DANIELSEN: Paragraph eight through paragraph eighteen.

MR. WILLIAMSON: Are you referring to the line numbers?

MR. DANIELSEN: I'm sorry, yes. Line eight to eighteen.

MR. WILLIAMSON: Thirty-one.

MR. DANIELSEN: One thirty-two.

MR. WILLIAMSON: One second, Counsel.

MR. DANIELSEN: Sure. Page 132, line eight to eighteen.

Thank you, Judge.

Q "QUESTION: So the first time that you began experiencing pain in your right knee was October 18, 2018, correct?

"ANSWER: It wasn't exactly on that day that I started feeling pain, but perhaps around this time -- I'm sorry -- but perhaps around this date is when I started feeling more of the pains as time was going on -- time was going by. In the beginning, I was taking pain medication an perhaps I didn't feel it before that.

Q Now, yesterday you had a very specific recollection. You spoke about a miracle of God while you were having your EMG,

and that's when you realized that you had the knee pain. Your deposition, it was maybe just around that time. So which was it? Was it on the table getting the EMG or was it maybe some other time around there that you remember the knee pain?

A I always felt pain in my legs, and I was confusing that pain with the pain in my knee. It was when they were doing the exam that I started feeling more pain in my knee.

Q So now it's specifically the time of the exam is when you noticed it?

A Yes. That is when I felt the knee pain and that's when I realized that my knee was injured.

Q Okay. And then the first time that you reported it to any doctors was in December of 2018? December 21st, 2018, is that right?

A Yes, that is correct. I was waiting for the next visit so I could see the doctor and explain to him what I was feeling.

Q Ms. Hernandez, back in 2006 you had a motor vehicle accident; is that right?

A That is correct.

Q And you got treatment for that motor vehicle accident, right?

A Yes, sir.

Q You got acupuncture?

A Yes.

Q You got physical therapy?

A Yes.
Q And you went for a CT scan, correct?
MR. WILLIAMSON: Objection.
THE COURT: Basis?
MR. WILLIAMSON: There's been no testimony of that.
THE COURT: In regard to what aspect? No testimony about what?
MR. WILLIAMSON: CT scan.
MR. DANIELSEN: I could read from her deposition if that's helpful.
MR. WILLIAMSON: What page, Counsel?
MR. DANIELSEN: Page 58. That's the day one 8/12/2021.
MR. WILLIAMSON: One second.
THE COURT: What page?
MR. DANIELSEN: Page 58, Your Honor. Lines five through nine.
MR. WILLIAMSON: Oh. Your Honor.
THE COURT: One second.
MR. WILLIAMSON: He's talking about the therapy.
THE COURT: One second.
MR. WILLIAMSON: I'm sorry.
THE COURT: You can read whatever you want from the deposition.

MR. WILLIAMSON: My objection, Your Honor, he was talking about the therapy. This is the hospital for the pregnancy, but go ahead. If you could just clarify it, in fairness. Clarify it in fairness, please.

MR. DANIELSEN: Sure. Yes.

Your Honor, if it's okay, I will just read from page 57, line 25.

MR. WILLIAMSON: Objection.

MR. DANIELSEN: What's the objection?

THE COURT: Basis?

MR. WILLIAMSON: He's asking her about the therapy. This is about a hospital for the pregnancy.

MR. DANIELSEN: I'm asking her about a CAT scan.

THE COURT: He can read from whatever he wants from the deposition.

MR. WILLIAMSON: It's fine.

THE COURT: You have an opportunity to redirect.

MR. DANIELSEN: I'm going to read page 57, line 25 through page 58.

MR. WILLIAMSON: One second, Counsel.

MR. DANIELSEN: Sure.

MR. WILLIAMSON: 57 or 58?

MR. DANIELSEN: Page 57 line 25. So the bottom line there, to page 58, line nine.

MR. WILLIAMSON: Bear with me one second.

THE COURT: Just for clarity, your objection was sustained so this is him starting a new question now from the deposition. All right.

MR. WILLIAMSON: Counsel, are you going to page 59?

MR. DANIELSEN: No.

MR. WILLIAMSON: Fifty-eight it stops?

MR. DANIELSEN: Yes.

THE COURT: Counselor, he said he's reading from the deposition from August 12, page 57, line 25, to page 58 line nine.

You can proceed.

MR. DANIELSEN: Thank you, Judge.

MR. WILLIAMSON: Thank you, Your Honor.

Q "QUESTION: If you were pregnant when you had the accident, I'm assuming that you made some claims relating to personal injury; is that correct?

MR. WILLIAMSON: Objection.

MR. DANIELSEN: Answer --

THE COURT: One second.

MR. WILLIAMSON: Can we approach, Your Honor?

THE COURT: Sure.

(An off-the-record discussion was held.)

THE COURT: After discussion with the parties, the objection is sustained.

Counsel, you can proceed.

MR. DANIELSEN: Yes. Okay.

Q Ms. Hernandez, at your deposition I had asked you a question about the 2006 motor vehicle accident and some treatment you got afterwards, and the answer that you gave was:

"ANSWER: Well, I did go to therapy while I was pregnant, but at therapy they couldn't really do much for me since I was pregnant. After I had my child, then they took a CAT Scan, and it was resolved right after that."

Do you recall where you had the acupuncture treatment, the physical therapy treatment, and the CAT Scan?

A Well, the acupuncture and the physical therapy, I don't remember exactly where I received those therapies, but for the CT scan, I think I was confusing it with while I was pregnant with my pregnancy, and I don't remember having had a CT scan done.

Q You are saying now you don't recall having had a CT scan done despite what your prior testimony on the topic said?

A Yes, I don't remember. It's been many years, and I don't remember.

Q Because that's one of the things we don't have in this case, Ms. Hernandez. We don't have any CT scans or MRI scans or anything that predates the accident, right?

A That I remember, no.

Q Now, back when this accident happened, you were still involved with your son's father, Mr. Leena (phonetic); is that right?

A Leanna (phonetic), yes.

Q Apologies. Leanna. Did Mr. Leanna help you find some place to go for physical therapy or acupuncture? Anything like that?

A Yes.

Q And did you ever check with him to get the name of those facilities or to see if he knew the name of those facilities?

A No. I have no -- I no longer have communication with him.

Q Well, I might get this mixed up, but isn't your sister-in-law or your sister married to someone in his family? They are still close, aren't they?

A Yes.

Q So you are in communication with that person, right; who's in communication with Mr. Leanna, right?

A Yes, but that's communications between us, not communications about this or with him.

Q So I had ask you back at your deposition in 2021 if you would be able to check and get the name of those people where you got the acupuncture, where you got the physical therapy, and CAT Scans. I'm just wondering if you ever checked in on that.

It's been four years.

A Yes, but I wasn't able to communicate with him again.

Q You had said before that it was, I think, your sister-in-law that mentioned the Ifraimoff firm to you the first time, right?

MR. WILLIAMSON: Objection.

THE COURT: Basis?

MR. WILLIAMSON: Asked and answered. Relevance.

THE COURT: Sustained.

Q Did Mr. Leanna ever mention the Ifraimoff firm to you?

MR. WILLIAMSON: Objection.

THE COURT: Basis?

MR. WILLIAMSON: Relevance.

THE COURT: Overruled. Let's see where this is going.

MR. WILLIAMSON: Objection, Your Honor. Can we approach?

THE COURT: You already made your objection, and I ruled.

MR. WILLIAMSON: I understand. May we approach?

THE COURT: Okay.

(An off-the-record discussion was held.)

THE COURT: You may proceed.

MR. DANIELSEN: Thank you, Your Honor. May I ask the court reporter to read back the last question?

THE COURT: Can you please read back the last question, Madam Court Reporter.

(The reporter reads back the requested portion of the proceedings.)

A No.

Q Okay. What neighborhood was the acupuncture and physical therapy facility and CT scan facility in?

A From what I can remember it was physical therapy and acupuncture in Corona, Queens. I don't remember the exact address.

Q Do you remember a street? Some landmarks?

A Not exactly.

Q So you have no information you can give us on this topic then?

A No.

Q Okay. So yesterday, I believe your attorney when he was directing you, asked you some questions about how the Dr. Lin's records got into this case. Do you remember that?

A To this case?

Q Yes.

A Yes, because I provided all that information.

Q Okay. So would it surprise you to know that the defendants in the case actually specifically requested the Dr. Lin's records after reading, and after reading the Pappas records that indicated the 2006 accident?

MR. WILLIAMSON: Objection.

THE COURT: Basis?

MR. WILLIAMSON: May we approach, Your Honor?

THE COURT: Okay.

(An off-the-record discussion was held.)

THE COURT: Members of the Jury, we are going to take a ten-minute break -- a comfort break right now. Remember my admonitions. Don't discuss the case amongst yourselves or with anyone, and don't discuss anything with the parties, the attorneys or witnesses. If anyone attempts to speak with you about this case, please notify my officer. We will take a ten-minute break.

Off the record.

(An off-the-record discussion was held.)

THE COURT: On the record, if you can read the last question, Madam Court Reporter.

(The reporter reads back the requested portion of the proceedings.)

MR. WILLIAMSON: It's my objection, Your Honor.

THE COURT: And basis?

MR. WILLIAMSON: The reason I have these documents, I'm going to tell you, Your Honor. He is trying to falsely suggest to this jury that the name of Dr. Lin was uncovered by the defendants in this litigation. And it is untrue. Dr. Lin's name first surfaced in this lawsuit

when we asked her -- Ms. Hernandez -- who is your PCP, and she provided it.

Counsel was not the original attorney for the defendant in this case. His predecessor counsel served a demand on us in February of 2020. They did not know Dr. Lin's name. They had no idea who her PCP was. They asked, generally, for primary care records. And this was February of 2020. That summer, in July, we provided an authorization for Dr. Lin's records and --

THE COURT: To whom?

MR. WILLIAMSON: To Defense Counsel, which was still not them. And then this was July 24, 2020, we provided an authorization for Mr. Lin's records specifically disclosing the name of Dr. Lin for the first time in this litigation. And then, on June 15th, 2021, when counsel still was not in this case, it was still his predecessor counsel, we provided them with a whole other set of authorization -- this is his predecessor counsel -- where we, again, provided Dr. Lin's name and an authorization for that.

So for him to suggest to this jury that the first time Dr. Lin's name or identity was uncovered in this lawsuit was when the defendants found his name in Pappas, is not true. It is not true and it is misleading. It suggests that she was hiding, which is his defense. That

is not true.

When this predecessor counsel asked for PCP records, Ms. Hernandez could have said I didn't have a PCP back then; I don't know the name; I don't remember. She said it's Dr. Lin; here is the authorization. And that's how his predecessor counsel got the name. And before he was ever in the case -- ever in the case, his predecessor counsel had the name, the identity of Dr. Lin, because Ms. Hernandez was honest and disclosed it. I'm not looking to --

THE COURT: All right, Counsel. Take it down.

MR. WILLIAMSON: I'm not looking to elicit all that information, Your Honor. But to suggest the opposite -- the diametric opposite to this jury, that the first time his name came about was when they found him in the Pappas record, is false and misleading. And that's why I have the objection.

And I knew where he was going, and that's why I have these documents.

THE COURT: One second. Can you reread the question one more time, please.

(The reporter reads back the requested portion of the proceedings.)

THE COURT: Counsel.

MR. DANIELSEN: Thank you, Your Honor. Your

Honor, first of all, yesterday, Mr. Williamson opened the door for this. And this is something that he has been doing since jury selection. This was a big part of the jury selection spiel, which was that you are going to hear about these records, and that they were handed over, and they were handed over. They weren't handed over.

THE COURT: What records are you referring to?

MR. DANIELSEN: The PCP records. They weren't handed over.

And yesterday, the question was:

"QUESTION: Okay. And then going back to Dr. Lin, which is number nine in evidence, how did --

This is from page 666, line 8, yesterday, Mr. Williamson's direct:

"QUESTION: Okay. And then going back to Dr. Lin, which is number nine in evidence, how did Dr. Lin first come to light in this case?

"ANSWER: I gave you everything I had. All of the medical records I had available to give to you.

"QUESTION: You mean to my office?

"ANSWER: Correct.

"QUESTION: Earlier in this case did you provide us with information about Elmhurst and Lin regarding your past medical history?

"ANSWER: Yes."

He has opened the door for it. It's fair inquiry. And I'm simply asking because that's not exactly the way this went down.

Can I finish? I don't interrupt you ever.

THE COURT OFFICER: Counsel.

THE COURT: Go ahead.

MR. DANIELSEN: A notice for discovery and inspection was served. It was e-filed. And the e-file had a highlighted copy of the page, of the Pappas records, which said prior motor vehicle accident about two years ago. Obviously that was wrong. I didn't misrepresent that to the jury and say 2016, because I didn't want to confuse anyone. We knew it was 2006. She received physical therapy and eventually made a full recovery.

THE COURT: One second. Mr. Williamson, no one speaks when you are speaking. And I'm asking you and everyone, no one speak at the same time for the sake of the court reporter, as well as for the sake and respect for one another.

Go ahead.

(Whereupon, the following was recorded and transcribed by Senior Court Reporter Laura Paro.)

(Continued on next page.)

* * * * *

MR. DANIELSEN: So I believe it is fair for me to inquire of the witness whether she knows that. Because the implication that Mr. Williamson's question made yesterday is that this stuff was freely given over. That's not the case.

Another point that I can make, which I don't intend to make, is that Mr. Williamson's office never actually gave the defendant's an unrestricted authorization to --

THE COURT: We're not going to get into that. One second. We're not going to get into that.

Right now can I just tell you, based on the arguments I just heard, the objection is overruled.

If the witness, she answers the question, she can answer the question that was presented to her.

MR. WILLIAMSON: Your Honor, I apologize. His question said Dr. Lin was identified in the Pappas records. The record he's referring to --

THE COURT: He asked her. He said, is it true that. Is that what you not said, started out. She answers yes or no.

MR. WILLIAMSON: Your Honor, if I can --

THE COURT: I've made my ruling, sir. Remember I told you at the beginning when I make my ruling you can take exception to it, but we'll move on.

But I'm not going to discuss it, okay, beyond what I've done so far. You've got a few more minutes on their comfort break.

MR. WILLIAMSON: Your Honor --

THE COURT: Yes, sir.

MR. WILLIAMSON: The Pappas record that he's referring to makes no reference to Dr. Lin his question was premised on them finding Dr. Lin in Pappas. What he's saying is patently false. The record that he just referenced to the Court makes no reference to Dr. Lin.

She wasn't seeing Dr. Lin in 06. The first record of Dr. Lin is in 2011.

THE COURT: Then the witness can answer yes or no. And then whatever follow-up questions he has, if you feel like objecting, you can make whatever objections you need to. And then I'll continue to rule on them.

But the witness can answer yes or no. He wasn't making a statement. He was asking her a question.

Off the record.

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

THE COURT CLERK: All rise.

THE COURT: Please bring in the jurors.

THE COURT OFFICER: Should we put the witness on the stand?

THE COURT: Yes.

THE COURT OFFICER: All rise. Jury entering.

(Whereupon, the jury entered the courtroom.)

THE COURT CLERK: Do all parties stipulate to the presence and proper placement of the jurors.

Beginning with counsel for the plaintiff.

MR. WILLIAMSON: Yes, your Honor.

THE COURT CLERK: Defense.

MR. DANIELSEN: Yes, your Honor.

THE COURT CLERK: Thank you.

Jurors, you may be seated.

THE COURT: Everyone may be seated.

Counsel, you may continue.

MR. DANIELSEN: Thank you. Before we get started I'm going to collect some of the photos from the Court officer, if it's okay.

THE COURT: Okay.

MR. DANIELSEN: Your Honor, if it's okay, I just ask that the last question and answer, or that the last question can be read back so the witness can answer.

THE COURT: Madam Court reporter, can you please read back the last question.

(Whereupon, the record was read.)

A I'm sorry, I didn't understand.

THE COURT: Can you restate the question, rephrase it or move on?

Q You don't understand the question, ma'am?
A No, I did not understand it.
Q We'll just move on.
So Miss Hernandez, you looked at a bunch of photographs during the direct examination with your attorney.
Do you remember that?
A Yes.
Q And this one in particular, number 32, plaintiff's 32, I'm just going to hand this over to you for a second.
Thank you.
THE COURT OFFICER: Showing the witness plaintiff's exhibit 32.
THE COURT: Thank you.
Q You said that was taken in 2013?
A Yes.
Q Your son is 17 years old; right?
A Yes.
Q So 2013 would be 11 years ago?
A Yes.
Q So is your son six years old in that picture?
A No. I'm not exactly sure how old my son was there.
Q Yeah. Because that would be a really big six year old; right?
A Yes.
Q So you don't know when that photo was taken; right?

A I mean, I'm trying to remember the years. I think it was in 2013, but it was a long time ago since my accident.

Q So, this is a thing we keep coming back to.

So it seems to me that your memory before the accident seems almost nonexistent, but that you have a very clear memory of everything from September 3, 2018 forward.

Is there a reason for that?

A No, no reason. I've just been so focused on my injuries and all of this, but of course, I have memory of these things. I have memory.

Q Well, you have no memory of any of the treatment with Dr. Lin; right?

A Yes, I know I've seen Dr. Lin. I have memory of that.

Q But you have no memory of the back pain that was reported to Dr. Lin on the various times that you saw him before the accident, you have no memory of that?

A I don't remember because it was many years ago. And I don't remember the pain being that severe. I mean, I've had pain before, but in that moment I don't.

Q Your accident was September 3, 2018; correct?

A Yes.

Q That is 2018, 19, 20, 21, 22, 23, 24, six years ago; right?

A Yes.

Q And when asked on direct by your attorney, you've been

able to help out with dates of treatment, you've been able to help out with names of doctors, all the places you've been treated, all of that; correct?

A Yes, treatment.

Q But when I took your deposition in 2021 in this case the six year period before that where there was prior treatment at Dr. Lin's all of those things, that you couldn't remember; right?

MR. WILLIAMSON: Objection.

THE COURT: Basis.

MR. WILLIAMSON: Referencing testimony. If he wants to impeach her he should go to the testimony.

THE COURT: I'm sorry, I didn't hear you.

MR. WILLIAMSON: Your Honor, it's an improper question because he's referencing the deposition. If he wants to impeach her he should read from it.

It's not the testimony.

THE COURT: Overruled.

A If I remember treatment with Dr. Lin?

Q I'm asking you Miss Hernandez, generally, it seems that your able to remember the last six years from September 3, 2018 up to the present very clearly, but that you have a very difficult time remembering the events before that, before September 3, 2018.

I'm wondering if there's a reason for it?

A No, because these are years that have really marked my life, they have changed my life. So how will I not remember all the surgeries that have marked my life?

Q A lot of other things marked your life before the accident; right, you had a son?

A Yes.

Q You had a job?

A Yes.

Q There are lots of other things that marked your life; right?

A Yes.

Q And fair to say suffering from back pain that lasts for months and months at a time with a pain rating of 8 to 10 out of 10 with radiating pain that would also be something that would maybe mark your life; right?

A Not as much as a surgery. I shared my records so that you could have all the information. And even if it were to be a pain in my back or headache, they may not be as severe as they are now.

Q Miss Hernandez, the photograph that you are holding there that was taken sometime before the accident; right?

A Correct.

Q Same as plaintiff's 28?

THE COURT: One second. You have to say yes or no.

A Yes.
Q Same as plaintiff's 27?
A Yes.
Q And then also, just like the rest of these, plaintiff's 26, plaintiff's 29 and plaintiff's 31, all of these, all of these are before the accident; right?
A Correct.
Q And I obviously don't have access to your photos; right? I don't have access to your phone, I don't have access to your Facebook, so these are the photographs that you chose to bring to Court, this stack and what's in your hand?
A Yes.
Q No photos afterwards, no photos of any parties afterwards?
A I've been limited. I don't have the same social life that I used to have. I can't take the pictures that I used to take like playing games with my son. With my son.
Q So you don't take any more photos?
A I take pictures of my children.
Q You are not in any of the photos ever?
A No, not now. Because my children are playing. I take pictures of my children.
Q Well, your daughter is how old now, three years old?
A Three years.
Q She's had a few birthdays in-between; right?

A Yes, of course.
Q No photos from the birthdays, nothing like that?
A Of my daughter, yes.
Q But you are not in any of them? You never take photos with her any more, even sitting down?
A No, I don't have photographs.
Q Was your daughter Christened?
A No, she's not Christened.
Q So any other big events, any other big celebrations for her in her life?
A No.
Q Your son --
THE COURT: I don't think she answered the question.
A No.
Q Your son graduated from high school; right?
A Correct.
Q He's going to college now; correct?
A Correct.
Q That's a big deal; right?
A Of course.
Q No photographs with your son, nothing?
A My husband went with my son to his graduation. I was in a lot of pain. So I did not assist with my son's graduation. I did not go to the school.

Q You didn't go to your son's graduation?
A No.
Q You are going to have somebody come in and testify on your behalf in this case; is that right?
A Correct.
Q Who is that person?
A She is my comadre who is somebody who has been in my life for a long time.
THE INTERPRETER: Your Honor, there is no translation for comadre in the English language.
THE COURT: That's fine.
Q So this is someone close to you?
A Yes.
Q So what's her name?
A Martha Tenezaca.
Q You have a sister; right, how many sisters do you have?
A I have one sister.
Q You have a sister-in-law too?
A I have three sister-in-laws.
Q You are close with all of these people, we see them in some photos; right?
A With my sister, yes.
Q And your husband, of course, is that your husband?
A Yes.
Q Is this your husband?

A Yes.
Q So they're not coming in, Miss Tenezaca is coming in?
A Yes, of course.
MR. DANIELSEN: I'll take that photo back. Thank you.
Q So I guess my question, Miss Hernandez, is why only the photos from before?
A I haven't taken pictures recently because I actually have low self esteem. I can't dress like I did before. I feel different about my physical appearance. And sometimes I feel depressed so I don't really have recent pictures of myself.
Q I just want to clarify something from before.
Your attorney asked you during your direct about --
THE COURT: Keep your voice up, counsel.
MR. DANIELSEN: Sorry. I apologize, your Honor.
Q Your attorney asked you before during your direct about the number of times that you went to pain management. I was wondering, I'd like to ask you a different question, prior to the physical therapy with Pappas, you didn't go at all in 2023; correct?
A In 2023 to physical therapy?
Q 2023, physical therapy.
A Yes, I stopped going for a while to see doctors.
Q And in 2021, the physical therapy, you only went one time; right?

A I don't remember exactly how many times I went.
Q But you did start going to physical therapy again this year in 2024; right?
A Correct.
Q In fact, you went 33 times this year; right?
A I'm not sure how many times I went.
Q Would it surprise you to know that you went to physical therapy more times this year than you went in 2021, 2022 and 2023 combined?
A Yes, I know because I stopped going to therapy.
Q Did the sudden increase in physical therapy, did that have something to do with the fact that your case was coming up for trial?
A No, sir, I stopped going to physical therapy first because it was during my pregnancy. So I made the decision and I wanted to take time to deal with the pain at home and do my therapies at home.
But the pain has never gone away and if I went back it's because I need therapy.
Q So the major increase in physical therapy in 2024, 33 times this year, that had nothing to do with the fact that the case was coming up for trial and it was solely related to you deciding that you needed more physical therapy treatment because the pain was more, as you said?
A Yes, it was my decision to go because I have pain.

Q What year was your daughter born?
A In 2021.
Q July of 2021; correct?
A Correct.
Q So in that year I agree you only went that one time.
And then in 2022 you actually went 10 times, the year that your daughter was born?
A Correct.
Q And then it was 2023, well after your daughter was born, that it completely dropped off to zero; correct?
A Yes, I made the decision to no longer go and forget all about doctors, forget about visits and just manage the pain at home.
Q That was in 2023 you made that decision?
A Yes.
Q You cut everything off in 2023 and you were going to manage it all at home?
A I was trying to deal with it at home with medication.
Q And then 2024 what changed?
A Well, I couldn't take it any more. The pain has been severe. It came back stronger and that's why I decided to go back to therapy.
Q You went to go see Dr. Lattuga at the beginning of September; right?
A Yes.

Q He told you to go get another MRI; right?
A Yes.
Q Did you have that MRI yet?
A Yes.
Q Oh, you had it; when?
A They did an MRI, but I don't remember exactly what day it was done.
Q You had an MRI done in the last five or six weeks?
A Oh, no, no, no. Sorry. No. It was much before.
Q So the last time, and maybe this is on me, the last time you went to go see Dr. Lattuga, you saw him very recently right before the trial; correct?
A Yes, correct.
Q September 4, I think; right?
A I'm not exactly sure of the date.
Q Does that sound about right?
A I'm not sure of the exact date, but I do know I saw him.
Q And we had Dr. Lattuga on the stand.
I'd like you to assume that he testified, that he said that you should go get another MRI.
The question I was asking you before is, have you gone to go get that other MRI yet?
A No, I haven't gone to have it done.
Q Have you scheduled it yet?

A No, not yet.
Q Are you waiting for the trial to be over?
A Yes.
MR. DANIELSEN: I don't think I have any further questions. Thank you, your Honor.
Q Thank you, Miss Hernandez.
THE COURT: Counsel, we have about eight minutes.
MR. WILLIAMSON: Can I just ask a couple of questions?
THE COURT: If you have redirect, sure.
MR. WILLIAMSON: It will be very short.

REDIRECT EXAMINATION

BY MR. WILLIAMSON:

Q Miss Hernandez, I am going to be very brief.
Counsel asked you a lot of questions about your treatment before the accident, and the references in Dr. Lin's records to low back pain. And he also asked about the 2006 accident.
Best as you can recall, when did your low back pain first start before the accident?
A Before the accident?
Q Yeah, before 2018, when did your prior low back pain first start?
A After my accident in 2006.
Q You hurt your back in that accident?

A Yes, my lower back.

Q And that's when you had the treatment, the therapy and the acupuncture in 2007?

A Correct.

Q And then I believe your testimony has been you don't really have a good memory of the times after that that you complained about your back?

MR. DANIELSEN: Objection.

THE COURT: Basis.

MR. DANIELSEN: Leading.

MR. WILLIAMSON: Withdrawn.

Q Do you have a good memory of the times after 2006, like in 2011, 2015, 2013, when the records show you complained about your low back?

A I know that I complained about back pain, I just didn't know the exact dates that I went and I complained about the back pain.

Q Do you remember the details in that 2011 Dr. Lin note?

A I don't remember the details. I mean now that I saw them, but I didn't remember them.

Q Do you dispute anything that's in those records from Dr. Lin?

A No. It's my information.

Q Let's just put up that photo that counsel was asking about.

This is the photograph of you and your son that counsel was asking about. Where did you say this was?

A It's a natural bridge in Pennsylvania.

Q Best as you can tell from looking at your son there, approximately how old was he then?

A Like 10 years old.

Q How old is he now?

A 17.

Q Is this definitely before the accident?

A Yes, long before.

MR. WILLIAMSON: Do I have any time, your Honor, or am I done?

THE COURT: One more minute literally.

Q From 2009 up to 2018, was your medical care done at Dr. Lin's office and Elmhurst?

A Yes, correct.

Q Anywhere else?

A Yes. Just once Elmhurst Hospital referred me to St. John's Hospital because I was going to have gallbladder surgery and that is where the specialist was located.

Q Other than that one time, was it just Lin and Elmhurst during those years?

A Correct.

MR. WILLIAMSON: Nothing further, your Honor.

THE COURT: Thank you.

Ma'am, you may stand down.

Members of the jury, it's that time of day. We're going to end trial for today. Good news is that we will resume trial tomorrow at 2:00 p.m.

So everyone get home safely, travel safely. Please remember my admonitions.

Do not discuss this case with one another or with anyone else. Do not discuss this case or anything else with the parties, attorneys or witnesses. If anyone attempts to discuss this case with you, please notify my Court officer who will in turn notify me.

I will see everyone here tomorrow 2:00 p.m. sharp. Everyone, have a good evening and get home safely.

THE COURT OFFICER: All rise. Jury exiting.

(Whereupon, the jury exited the courtroom.)

(Whereupon the trial was adjourned until Friday, November 8, 2024 at two o'clock.)

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