

SUPREME COURT OF THE STATE OF NEW YORK.
COUNTY OF BRONX : CIVIL TERM : IA-35

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FELICIA WATSON,

Plaintiff,

-against-

OLR ECW HOUSING DEVELOPMENT FUND COMPANY,
INC., OLR ECW, L.P., OMNI NEW YORK, LLC,
And RELIANT REALTY SERVICES, LLC,

Defendants.

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TESTIMONY

Maria Sanmartin, Ph.D.

851 Grand Concourse
Bronx, New York 10451
December 12, 2024

B E F O R E:

HONORABLE RAYMOND FERNANDEZ,
Justice of the Supreme Court

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

FOR THE PLAINTIFF:

HARRIS, KEENAN & GOLDFARB, PLLC
233 Broadway, 9th Floor
New York, New York 10279
BY: SHERI HOLLAND, ESQ.
SETH HARRIS, ESQ.

FOR THE DEFENDANT:

PERRY, VAN ETEN, ROZANSKI & KUTNER, LLP
14 Wall Street, Suite 4D
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BY: JEFFREY VAN ETEN, ESQ.
PATRICK DOWNEY, ESQ.

Maggie J. Klasen
Senior Court Reporter

Index:
31065/2020E

1 THE COURT: Trial continued. Appearances remain
2 the same.

3 Good morning, Ms. Holland.

4 Good morning, Mr. Van Etten.

5 MR. VAN ETTEN: Good morning, Your Honor.

6 THE COURT: Just briefly, there was an issue with
7 regard to the witness yesterday, in respect to a 2019 MRI
8 study. This was -- there was a good deal of back and forth
9 on this issue. I am going to refer to the transcript dated
10 September 11th, the witness was asked -- page 382:

11 "QUESTION: Did you have an opportunity to review
12 that MRI during your course of treating Ms. Watson?

13 ANSWER: I don't remember during the course of
14 treatment, but I reviewed now. Yes."

15 At which time, the Court sustained an objection,
16 and did not permit further inquiry. Later -- and now, I'm
17 turning to page 456. Later, on cross-examination by Mr. Van
18 Etten, Mr. Van Etten:

19 "QUESTION: You never reviewed those films from
20 before until you came in here for trial, true?"

21 At which time there was an objection. I overruled
22 the objection. The witness was permitted to answer:

23 "ANSWER: I don't recall reviewing them, no. But
24 it's not important for my treatment of the patient."

25 We continue on now. Now, we go to redirect,

1 page 498. On redirect examination:

2 "QUESTION: Am I correct that you had an
3 opportunity to compare the 2019 cervical MRI, which was
4 taken before the accident in this case, with the
5 September 2020 MRI; am I correct?"

6 There was an objection. The witness answered
7 correct. At which time, I called for a sidebar. Now, it is
8 this Court's position that the witness flip flopped. It
9 went from I don't recall reviewing it to, then saying, yes,
10 I did review it. At sidebar, off the record, I informed Ms.
11 Holland that if she is going to continue this line of
12 inquiry, which she is free to do so -- I did not foreclose
13 this line of inquiry.

14 If she continues this line of inquiry, I will, on
15 balance, have to allow Mr. Van Etten, in my broad
16 discretion, recross examination to explore this further.
17 Ms. Holland elected to not go forward with that line of
18 questioning. She will be heard now.

19 Ms. Holland, go ahead.

20 MS. HOLLAND: I just want to make sure that the
21 portions of the transcript that the Court just read, that --
22 at what point those examinations took place. So, the
23 initial reading by the Court reflected my direct examination
24 of Dr. Macagno. And then I believe the second portion that
25 was read by the Court reflected the cross-examination by Mr.

1 Van Etten.

2 THE COURT: Correct.

3 MS. HOLLAND: But I should point out, in addition
4 to that portion of the cross-examination made by Mr. Van
5 Etten, he also asked further questions of the witness
6 regarding the 2019 MRI. There were questions asked of the
7 witness as to whether he was aware of the MRI, the -- I'm
8 pretty sure the contents of the MRI report, and the fact
9 that it was taken of my client's neck.

10 Based upon those inquiries, it was our position
11 that the door was opened by Mr. Van Etten, and I should've
12 been able to ask additional questions of the expert
13 regarding his review of the 2019 MRI. It's comparison to
14 the 2020 MRI, and his conclusion regarding his review of the
15 MRI.

16 Now, I should point out that the objection for
17 which I'm making the record took place at, approximately
18 4:30, 4:35 in the afternoon. And this witness, who we had
19 to pay, had been in court all day. It was certainly my
20 concern that if I asked questions, as the Court ultimately
21 agreed, that I would be permitted to do so. Mr. Van Etten
22 made it very, very clear that his intention was to go into
23 this subject area to the point where I was going to have to
24 bring this witness back the next day. Okay?

25 So, you know, under all of those circumstances, I

1 felt that I was being put in a very tough position with
2 respect to the inquiry. It's my position that Mr. Van Etten
3 should not have been able to explore any further with this
4 witness -- this issue regarding the 2019 MRI. That,
5 instead, the ruling could have been that I would have been
6 able to ask the witness his conclusion after reviewing the
7 MRI.

8 I think I made it very clear that I wasn't
9 intending to put the film back up, given the hour, that I
10 just wanted to ask the witness about his conclusions
11 regarding his comparison of the two MRIs, and that would
12 have been the end of the inquiry. There would have been no
13 further basis for Mr. Van Etten to explore this witness's
14 review of the MRI. So, that being said, I made the best
15 decision under the circumstances, so that's my response,
16 Judge.

17 THE COURT: Okay. Ms. Holland. Thank you very
18 much. My ruling on this issue remains the same. It is this
19 Court's position I did not foreclose that line of
20 questioning. You are absolutely at liberty to call that
21 witness again and go down this -- and go down that rabbit
22 hole, should you so choose.

23 With respect to what is financially at stake?
24 Respectfully, that is the cost of doing business. If you
25 have to pay a witness to come back the next day, that is not

1 of this Court's concern. You are free to ask those
2 questions. I never told you that you were not, and you
3 remain at liberty -- your case is not -- you have not
4 rested. You can call him again, if you so choose.

5 MS. HOLLAND: Thank you, Your Honor.

6 THE COURT: At this point, the record is what it
7 is.

8 Mr. Van Etten --

9 MR. VAN ETTEN: Yes.

10 THE COURT: -- you don't need to be heard on this,
11 do you?

12 MR. VAN ETTEN: The only thing I was going to say,
13 Judge -- I'm sorry. It is in the record, and I apologize.
14 He did specifically state that he downloaded the images for
15 trial, A, you didn't complete all that. And, B, I never
16 went, as Ms. Holland said, to the contents of what the
17 record were, only to address that he had never looked at it
18 in consideration in providing his opinion. I had to refer
19 to it that, but I never went to the content. This was a
20 credibility issue, not a probative evidentiary issue.

21 THE COURT: That's what I understood it to be, as
22 well, that you were attacking his credibility that he
23 reached a diagnosis without having the full and complete
24 picture. That was my understanding, as well.

25 My ruling remains the same. Okay? My ruling

1 remains the same. Off the record, please.

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

3 (Whereupon, Plaintiff's Exhibit 27-A was marked for
4 Identification.)

5 (Whereupon, Plaintiff's Exhibit 27-B was marked for
6 Identification.)

7 THE COURT: The jury, please.

8 COURT OFFICER: All rise. Jury entering.

9 (Whereupon, the sworn jurors enter the courtroom
10 and take their respective seat.)

11 THE COURT: Good morning. Good morning. Hi. Come
12 right in, take your seats. Okay? We're going to get right
13 underway. Very good.

14 All right. Ms. Holland, when you're ready, you may
15 call the witness.

16 MS. HOLLAND: Yes. The plaintiff calls Maria
17 Sanmartin.

18 COURT OFFICER: Just watch your step, there are
19 some wires here. Just stand and raise your right hand.

20 M A R I A S A N M A R T I N, P H D, a witness
21 called by and on behalf of the Plaintiff, upon being duly
22 sworn, took the witness stand, and testified as follows:

23 COURT OFFICER: In a loud, clear voice, please
24 state your full name and your title for the record.

25 THE WITNESS: Maria Sanmartin, and I am an

1 economist.

2 COURT OFFICER: Thank you. You may be seated.

3 THE COURT: Good morning. How are you?

4 THE WITNESS: Good morning.

5 THE COURT: Hi. What I'm going to have you do, I
6 need you to speak right into this microphone that's in front
7 of you. Okay?

8 THE WITNESS: Perfect.

9 THE COURT: Thank you very much.

10 Ms. Holland, you may inquire when you're ready.

11 DIRECT EXAMINATION

12 BY MS. HOLLAND:

13 Q Good morning, Ms. Sanmartin.

14 A Good morning.

15 Q Ms. Sanmartin, what is your occupation?

16 A So, I am currently an assistant professor in economics
17 in the School of Medicine at Hofstra Northwell.

18 Q And are you an economist, as well?

19 A I am an economist.

20 Q And can you please tell the jury, what is an economist?

21 A So, this is a very broad question. In economics, what
22 we do is we study how societies allocate and scale resources.
23 And in particular, as an economist, we answer questions such as
24 what is produced, how it's produced, and who gets what, and we
25 answer those questions in different markets. As I am a health

1 economist, I answer these questions in the health market. In
2 the health market, I follow prices, health policy, growth rates.
3 Those are the types of things that I do.

4 Q Okay. And I'm going to talk to you about growth rates
5 in a second. Can you please tell the jury your educational
6 background.

7 A Sure. So I * presumed my bachelor's degree in
8 economics in Uruguay. Then I did my master's degree, also in
9 economics, in Spain. And, finally, I did my Ph.D., also in
10 economics, at Stony Brook University.

11 Q And can you tell us about your work experience in
12 health economics.

13 A Sure. So, once I graduated from my Ph.D., I start
14 working as an assistant professor in the Master of Health
15 Administration at Hofstra University. Over there, I taught
16 economic courses to the students that were studying the Master
17 of Health Administration. I mentor students, and I also write
18 scientific papers.

19 Q And in your current position, you said you work for
20 Northwell Health?

21 A Correct.

22 Q And can you tell the jury what you do at Northwell
23 Health.

24 A So, I am also an assistant professor. My main duties
25 are to do research in the area of health economics. I write

1 papers in peer-review journals. I also write grants. I teach
2 students, and I mentor students.

3 Q Okay. And when you say you teach students, you teach
4 student in the subject area of what?

5 A Of economics. I have been teaching since I was doing
6 my Ph.D., several courses, such as labor economics, health
7 economics, microeconomics, and also research methods.

8 Q Now, actually, prior to getting to your Ph.D., can you
9 briefly describe your work experience in the field of economics.

10 A Sure. So, when I was doing my bachelor's degree, and
11 also when I finished, I worked in a private consulting firm in
12 Uruguay where we basically do -- what we did was to write
13 reports to businesses. And over there, we had to make * models
14 and assumptions about what was going to be the growth rates in
15 the economy, and also some economic evaluation of businesses.

16 Q So you worked as an economist for this private
17 consulting firm; is that correct?

18 A That is correct.

19 Q And did you also on work for a firm known or called
20 Siemens?

21 A Yes, it is a private company, Siemens Healthineers.

22 Q Okay. And can you explain to the jury what your job
23 responsibilities were when you worked for Siemens?

24 A Yes. So, over there, I worked in the research
25 department as a senior economist. What we do, when we work for

1 companies, in this particular case, my -- what I did, was to
2 perform analysis where we compare cost and effectiveness. So
3 for certain new treatments, and in this particular case, it's a
4 new robot that they were building, we want to make sure that the
5 cost of the new treatment or the new robot -- to relate. The
6 new cost with the effectiveness, so it is really helping the
7 patient. So we make this analysis where we compare cost with
8 effectiveness and outcomes in patients.

9 Q Now, in addition to your work experience in the field
10 of economics, do you also do economic analysis in personal
11 injury cases?

12 A Yes.

13 Q Okay. And how long have you been doing that?

14 A Around four years.

15 Q And do you do that work with other health economists?

16 A Yes, I do. Yes.

17 Q And can you tell us their names.

18 A With Dr. Laken and Dr. Dwyer.

19 Q Okay. Now, have you testified in the Courts of the
20 State of New York as a health economist?

21 A Yes.

22 Q And, approximately, how many times have you testified?

23 A Six times.

24 Q And have you ever testified on behalf of my firm in a
25 personal injury case?

1 A Yes, once.

2 Q Okay. You and I met for the first time today; is that
3 correct?

4 A Yes.

5 Q Now, in -- withdrawn.

6 Have you been declared by the Courts in the State of
7 New York as an expert in the field of economics?

8 MR. VAN ETEN: Objection.

9 THE COURT: Overruled.

10 A Yes.

11 MS. HOLLAND: Your Honor, at this time, I'd like to
12 declare Ms. Sanmartin as an expert in the field of economics
13 and as an economist.

14 THE COURT: The witness will be permitted to give
15 her opinion.

16 MS. HOLLAND: Thank you, Your Honor.

17 Q Now, Ms. Sanmartin, let's talk about the evaluation
18 that you gave in this case. You were retained by my office,
19 you, Dr. Dwyer, and Dr. Laken, to conduct an evaluation of the
20 costs of future medical care as opined by Dr. Ali Guy; is that
21 correct?

22 MR. VAN ETEN: Objection.

23 THE COURT: I'm sorry. Can I have the question
24 again.

25 MS. HOLLAND: Your Honor, I will rephrase it.

1 THE COURT: Please.

2 MS. HOLLAND: Sure.

3 Q You were retained by my office, you, Dr. Laken, and Dr.
4 Dwyer; is that correct?

5 A Yes.

6 Q And why were you retained in this matter?

7 A So we were retained to perform an economic analysis.
8 In a case like this, our role is to determine how much money Ms.
9 Watson will need to pay for all the health care services that
10 she will need during her whole life, based on a life care plan,
11 which, in this case, is from Dr. Guy. So --

12 Q Go ahead. I'm sorry.

13 A So we are provided with life care plan, which is
14 basically telling us what is the type of services, duration,
15 period that she is going to need the services, and also current
16 costs. As there is uncertainty of what is going to happen with
17 prices over time, our role is to project prices using growth
18 rates.

19 Q Okay. And just to be clear, you have a Ph.D., you are
20 not a medical doctor; is that correct?

21 A Correct, I am not a medical doctor.

22 Q Right. So you have no opinion in this case as to
23 whether Ms. Watson actually needs the care recommended by Dr.
24 Guy, you're simply here to tell the jury how much it's going to
25 cost?

1 A That is correct.

2 Q Okay. Now, you mentioned the word growth rate. Tell
3 the jury what you mean by the word growth rate.

4 A Okay. So growth rate or inflation, it is the rate at
5 which prices go up over time. The US Bureau of Labor Statistics
6 collects information about prices. And they produced what is
7 called the consumer price index, or CPI. The consumer price
8 index is a bundle of goods and services of a typical household
9 in the United States.

10 So while they are collecting this information, one of
11 the subcategories of care is medical prices. Medical prices
12 have increased an average of 3.3 percent in the last 25 years.
13 And what do I mean when I say an average of 3.3 percent? I mean
14 that some prices have increased more than 3.3, and other prices
15 have increased less than 3.3. So my job is going to be to match
16 the categories of care that are provided by the US Bureau of
17 Labor Statistics with the ones that Dr. Guy explains in his life
18 care plan.

19 Q Okay. All right. Great. Now, in addition to relying
20 on the plan that was provided to you by Dr. Guy , you had to
21 also make certain -- or an assumption in this case; is that
22 correct?

23 A Yes, that is correct.

24 Q And tell the jury why an economist has to make an
25 assumption, and what assumption was made.

1 A So, there are basically two main assumptions that we
2 need to do. One is about growth rates, so all the growth rates
3 that we are going to use in the life care plan. And the other
4 assumption is about life expectancy. Dr. Guy says that Ms.
5 Watson is going to need care for her whole life span. But, you
6 know, what is her whole life span? What is her life expectancy?

7 So to get the life expectancy, we rely upon the life
8 tables that are produced by the Center for Disease Control and
9 Prevention, which are the life tables of the New York Court
10 relies upon. So in these tables, we need to know gender, and we
11 need to know the date of birth of the plaintiff. And based on
12 those, we determine what is going to be the life span of, in
13 this case, Ms. Watson.

14 Q Okay. And just to be clear, the table that you're
15 referring to is a publication that lists the year the person was
16 born and their gender, and then the next column will tell you if
17 you were born this year, if you are a female, this is your
18 expected life expectancy?

19 A That is correct. That is survivor probabilities. They
20 are, yes. They are survivor probabilities, so based exactly on
21 what you said, gender and date of birth, they will tell you how
22 many years you are going to live.

23 Q Okay. All right. So now, let's talk about the
24 analysis -- the specific analysis that was done in this case.
25 Okay?

1 With respect to the analysis that was done in this
2 case, was a report prepared?

3 A Yes.

4 Q How many reports were prepared in this case?

5 A So it was made -- the first report was on April of --
6 April 27 of 2024. And then we updated the report, and
7 especially the chart, and that was on December 8th of 2024.

8 Q Okay. And when you say you updated the chart, part of
9 your preparation in this case was the preparation of a chart
10 listing the actual categories of medical care and their costs;
11 is that correct?

12 A That is correct.

13 Q Okay. So let's go to the April 27th, 2024, report.
14 Okay? Can you explain to the jury, first, how the three of you
15 worked together, meaning you, Dr. Laken, and Dr. Dwyer, how the
16 three of you worked together in preparing these charts when you
17 take an assignment from an attorney.

18 A Sure. So, our office was contacted on April of 2024.
19 The way that we work is that one of us is going to take the lead
20 in the report. And what does it mean? It means that one of us
21 is going to make all the calculations. However, what we do is
22 we discuss what are going to be the assumptions that we use,
23 meaning growth rates and life expectancy, and also checking what
24 the other has done.

25 So in this particular report, the first one that we did

1 for this case, the one that took the lead was Dr. Laken, and
2 then Dr. Dwyer and myself were the ones that discussed the
3 assumptions and, you know, controlled what was going on in the
4 report.

5 Q Okay. And then once Dr. Laken actually prepared the
6 actual chart, okay, with his calculations, what was the next
7 step that you took?

8 A So we review the assumptions, we review the
9 calculations. So all the assumptions were correct, the life
10 expectancy that he used in this particular case was 81.7 years.
11 All the growth rates, I am going to explain it in a little bit,
12 were also correct. And you know, he -- yeah. He found out what
13 was going to be the lifetime cost for Ms. Watson.

14 Q Okay. Did you have an opportunity to actually review
15 that first report that he prepared?

16 A Yes.

17 Q Okay.

18 A I reviewed it. And at the time, one of the things that
19 happened was that the end year that Dr. Laken used was not the
20 right one. And, you know, we didn't see that -- we didn't see
21 that when we review it. So when it came the time to prepare for
22 the trial, and that means creating the second report, I figured
23 out that the final date was not the right one. He used 2048,
24 and the right one was 2055. So, what we did is we updated the
25 report, taking into account the passage of time, and also

1 correcting the end date in the chart table.

2 Q Okay. So let me -- you said a lot right there.

3 A Okay.

4 Q I want to make sure everybody understands what
5 happened. Okay?

6 My first question, very simply, when that April 27th,
7 2024 -- when those charts were prepared, there was an error; is
8 that correct?

9 A Yes.

10 Q Okay. Now, Ms. Watson's told the jury, based upon her
11 age and obviously she's a woman, based upon the chart, right,
12 what is her projected life expectancy?

13 A Her projected life expectancy is 81.7 years old.

14 Q Okay. So almost 82 years old; is that correct?

15 A Almost, yes. That's correct.

16 Q Okay. Now, when the first report was prepared by Dr.
17 Laken, when he did his calculation, what was the life
18 expectancy --

19 A That he used?

20 Q Yes. What was the life expectancy that he used?

21 A Yes. So he wrote the right life expectancy in the
22 report, which is 81.7. Now, if he had used the right life
23 expectancy in the table, that could have mean that he had to
24 make -- he had to go to 2055. Now, as he -- there had been a
25 mistake, he went until 2044.

1 Q Okay. 2044 or 2048?

2 A I think it was '48, sorry. '48. Correct, thank you.

3 Q So, basically, when he did his calculations, he did his
4 calculations up to age 74, as opposed to 81.7?

5 A Correct.

6 Q Is that correct?

7 A Yes.

8 Q All right. Now -- so now, Sunday gets here, this past
9 Sunday, December 8th, you're now reviewing the report to get
10 ready to come in here and testify; is that correct?

11 MR. VAN ETEN: Objection.

12 MS. HOLLAND: Well, I'll try it again. I'm
13 leading, I'm sorry. I'll try it again. I'll withdraw the
14 question.

15 THE COURT: Thank you, Counsel.

16 MS. HOLLAND: I'll withdraw the question. Okay.

17 Q Actually, I'm going to take it back one step.

18 When you received Dr. Laken's calculations and the
19 chart, right, this is back in April of 2024, you looked at it;
20 is that correct?

21 A Yes.

22 Q And did you make a mistake, too?

23 A Yes.

24 Q Okay. What was the mistake that you did?

25 A In my particular case, I didn't check the end date. I

1 check the calculations, I check the assumptions, and everything
2 was right, but then I didn't see that it was not 2055.

3 Q Okay. Now, fast forward to this past Sunday,
4 December 8th, tell the jury what you did on Sunday,
5 December 8th. Tell the jury what you did.

6 A So, first of all, I contacted Dr. Laken and Dr. Dwyer.
7 I said, look, I see that the life expectancy is 81.7. I am
8 reviewing the tables. This is correct, but I am looking at the
9 chart and this there is something wrong. It doesn't make sense.
10 Could you please double check this to see that, you know, my
11 assumptions were correct there. And they said, yes, we have a
12 mistake here.

13 What we do in our office when we have a mistake, we
14 contact the lawyer. We say, we have a mistake here, we have to
15 fix it. Because at the end of the day, what we want to make
16 sure is that Ms. Watson has the money to pay her expenses. So
17 if we made a mistake, we need to get the right number.

18 Q Okay. So then the recalculation was done; is that
19 correct?

20 A Yes.

21 Q And it was done to age 81.7; is that right?

22 A Yes.

23 Q Okay. So now, I want you to explain to the jury, with
24 the Court's permission, I'm going to have you come down, and I'm
25 going to bring you your chart, and have you explain to the jury

1 the different categories recommended by Dr. Guy, and the
2 projected costs up to age 81.7.

3 A Perfect.

4 THE COURT: Just watch your step, Doctor. Okay?

5 THE WITNESS: Sure.

6 THE COURT: We can all see.

7 Counsel, a question when you're ready.

8 MS. HOLLAND: Thank you.

9 Q Okay. So, Ms. Sanmartin, I'm directing your attention
10 to -- it's marked for identification as Plaintiff's 27-A, and
11 when you're ready, 27-B is available to you. Okay.

12 Can you please explain to the jury the calculations
13 that were done for each category, and then the final cost for
14 each category.

15 A Sure. So if you remember what I have just said, when
16 our office is contacted, we receive a life care plan. A life
17 care plan comes from a medical expert, so it's going to give us
18 type of --

19 MR. VAN ETEN: Objection.

20 THE COURT: Overruled. Continue, Doctor.

21 A It's going to give us type of service, it's going to
22 give us the duration for how long the patient will need, it's
23 going to give us a frequency, how many times per year the
24 patient will need the type of services, and it's going to give
25 us the cost in current dollars. It's going to give us, okay, if

1 he needs this type of service, this is going to be the cost.

2 So I'm going to explain in -- in very much detail the
3 first column, but then I am going to go faster because it is the
4 same methodology. So the first category of care that Dr. Guy
5 recommends is a spinal surgery. So we have spinal surgery, it
6 recommends between three to four --

7 THE COURT: She can't see. Okay. Thank you.

8 THE WITNESS: Sorry. Sorry about that.

9 A So we have spinal surgery. Here, Dr. Guy recommends
10 that Ms. Watson receive the treatment between three to four
11 visits per year. So when I have a * conversion table, I always
12 use the midpoint, and this particular case is going to be at
13 3.5. Then each visit is \$350. So what I do is 3.5 times 350,
14 it's going to give us an annual cost of \$1,225. Then, you are
15 going see that this number is going to go up the next year,
16 2026. And this is going to go up using the growth rate, which,
17 in this case, is 2.8 percent.

18 If you remember what I have just said to use the growth
19 rates, I use information from the US Bureau of Labor Statistics.
20 So what I did here was we have physician follow-up, in this case
21 a spinal surgeon, and in the category of US Bureau of Labor
22 Statistics, we have professional services. So what I did was I
23 calculated a weighted average there for the last 25 years, and
24 then I match this with spinal surgeon, giving us a growth rate
25 of 2.8 percent. So the first category -- the first cost is

1 going to increase by a rate of 2.8 percent.

2 Then, I am going to do exactly the same year by year,
3 increasing 2.8 percent, 2.8 percent, until 2055. And if you
4 remember what I said, 2055 was the year where the patient is
5 going to reach the life expectancy. So we have each year, the
6 cost is going to increase at the rate of 2.8 percent, and then
7 we're going to have a life time cost of \$57,449. Okay?

8 Then the next category of care that is recommended --
9 before I go there. This was a long explanation. Now, what I am
10 going to do from now on is tell you type of service, growth
11 rate, annual cost, and the life time cost. Okay? So the second
12 category of care is MRIs. The annual cost is \$2,400. The
13 growth rate that I'm using is 2.8 percent, and the life time
14 cost is going to be \$115,010.

15 The third category of care provided by Dr. Guy is EMGs.
16 The annual cost is going to be \$3,333. The growth rate that I
17 am using is 2.8 percent, and the life time cost is \$159,720.
18 Another category of care provided in the life care plan is
19 physical therapy. The annual cost is going to be, for 2025,
20 \$10,400. The growth rate that I am using there is 2.2 percent,
21 and this is annual, and the life time cost for physical therapy
22 is going to be \$451,585.

23 The next category of care provided in the life care
24 plan is medication. We have that the annual cost provided in
25 the life care plan is \$9,600. The growth rate that I am using

1 is 3.5 percent, and the life time cost is going to be \$517,433.
2 Then we have another category of care provided in the life care
3 plan is lab tests. We have that the annual cost is \$1,200. The
4 growth rate that I am using there is 2.8 percent, and the life
5 time cost is going to be \$57,505.

6 Now, in the next category, you will see that we only
7 have 40 years. What does that mean? It means that in this
8 particular case, Dr. Guy says that Ms. Watson is going to need
9 the treatment for the next four years, and that's why we don't
10 have any other numbers here. So the annual cost for epidural
11 injections is \$30,000. The growth rate that I am using per year
12 is 2.8 percent, and the life time calls for this category of
13 care \$125,135.

14 Q Okay. And now you continue your testimony using 27-B.

15 A Okay. So for the next three categories, we have the
16 same situation. Dr. Guy only reports this type of care for the
17 next four years, and that's why you are not going to see any
18 number over here. So let me start with facet injections. We
19 have that the annual and will cost is \$36,000, the growth rate
20 that I am using per year is 2.8 percent, and the life time cost
21 is \$150,162.

22 The next category of care provided by Dr. Guy is
23 radiofrequency ablations. We have that the annual cost is
24 \$40,000. I am using a growth rate of 2.8 percent, and we have a
25 life time cost of \$166,846. The next category of care is

1 trigger point injections. We have that the annual cost is
2 \$4,800. The growth rate that I am using is 2.8 percent per
3 year, and we have an annual cost of \$20,022.

4 Then we have the next two categories of care that Dr.
5 Guy recommends for her whole life span, and that's why you're
6 going to see that we have numbers in every year. The next
7 category of care is nerve conduction studies. I use a growth
8 rate of 2.8 percent. The annual cost is \$4,000, and the life
9 time cost for this category of care is \$191,683. The next
10 category of care that I am using is home health aide. We have
11 that the annual cost is \$54,600. I'm using an annual growth
12 rate of 3 percent, and the life time cost is \$2,705,113.

13 And then for the last two categories, you are going to
14 see that it says cervical surgery or lumbar surgery. When the
15 life care plan doesn't provide a year, what we do is we just
16 include the total cost of the surgery, the first year. We
17 aren't using any particular growth rate. Now, if the life care
18 plan says, well, Ms. Watson is going to need the surgery in a
19 particular year, ten years from now, 15 years from now, we would
20 use a 4.5 percent growth rate.

21 But in this particular case, as it is not to determined
22 when she is going to need the treatment, we always use a
23 conservative approach using the current annual cost. So for
24 cervical surgery, we have that the annual cost is \$387,200,
25 which is exactly the same as the life time cost. And then for

1 lumbar surgery, we have that the annual cost is \$267,700, which
2 is exactly the same number that we have for the life time cost.

3 So once we do this for each category of care, we sum
4 all the totals, and we end up with a total future cost of health
5 care that equals to \$5,372,563.

6 Q Okay. Thank you, Dr. Sanmartin. You can head to your
7 seat.

8 A Sure.

9 Q I forgot to ask you two questions.

10 A Sure.

11 Q My first question is: To come here to court today --
12 we had to pay a fee for you to come to court; is that correct?

13 A Yes.

14 Q And do you know what the fee is?

15 A Yes, a flat rate of 5,000.

16 Q A flat rate of \$5,000?

17 A Yes.

18 Q Okay. Now, the first analysis that was done, okay, the
19 one where we had the error, you didn't calculate it out for the
20 full life expectancy, what was the total cost for the treatment
21 in connection to that first analysis done in April of 2024?

22 A I don't recall the exact number, but it should be
23 around 3,000. Around \$3,000, yes. I don't recall the exact
24 number. I don't recall if it was 3,200 or 3,300, but it's
25 around \$3,000.

1 Q I think you might be misunderstanding my question. I'm
2 saying, what was the total cost of care?

3 A Oh, of care. I'm sorry. It was around \$4 million,
4 yes, and I can tell you the exact number here.

5 MR. VAN ETTEN: I'll stipulate to \$3,000.

6 A I'm sorry. I thought you were -- you asked me for the
7 flat rate. I thought I was -- Yes, I apologize.

8 Q That's okay. So it was, like, 4 million-plus; is that
9 correct?

10 A Yes, yes.

11 Q Okay. Okay. Thank you, Dr. Sanmartin.

12 MS. HOLLAND: I have no further questions.

13 THE WITNESS: Thank you.

14 THE COURT: Thank you, Ms. Holland.

15 Mr. Van Etten, can we just do five minutes, if
16 that's okay?

17 MR. VAN ETTEN: If you want five minutes, sure.

18 THE COURT: Yeah, let's do five minutes. Okay?
19 Let's go use the restroom. Don't discuss the case. All
20 right?

21 COURT OFFICER: All rise. Jury exiting.

22 (Whereupon, the sworn jurors exit the courtroom.)

23 COURT OFFICER: All rise. Jury entering.

24 (Whereupon, the sworn jurors enter the courtroom
25 and take their respective seat.)

1 THE COURT: Go ahead. Jump right back in your
2 seats. All right? All right. We are going to resume
3 hearing from this witness.

4 Mr. Van Etten, when you're ready, sir.

5 MR. VAN ETTEN: Thank you, Your Honor.

6 CROSS EXAMINATION

7 BY MR. VAN ETTEN:

8 Q Good morning.

9 A Good morning.

10 Q How are you, Doctor?

11 A I'm doing well. How about yourself?

12 Q Good. Better than I was at the start of the trial.

13 Thank you for asking. I'm going to follow-up with some
14 questions. All right? I ask -- if I ever ask you questions
15 that makes no sense because this involves economics, and I'm a
16 lawyer, let me know, and I will rephrase it. Let me know. This
17 is not my area or expertise. Okay?

18 A I will, thank you.

19 Q And you and I have never met before, correct?

20 A We have never met.

21 Q I have been lucky enough to meet Dr. Laken and Dr.
22 Dwyer on other occasions. I don't know if they ever mentioned
23 that, but probably not. My first following up on something, you
24 indicated right at the -- fairly much in the beginning, that Dr.
25 Laken, Dr. Dwyer, and yourself, one of you gets assigned a case,

1 they look at it, review it, and prepare it, and the three of you
2 consult on it, fair?

3 A We consult, yes, answers that we used. Correct.

4 Q So the three of you go and you review a report, you
5 prepare it, and then you send it out to the law firm that hired
6 you for the purposes of preparing the report?

7 A So, Dr. Laken in this case was the one that took the
8 lead, and then we review the report, and then we send it out.
9 Yes.

10 Q Okay. So my concern is that you prepared a report in
11 April of 2024, sent that out, that got exchanged with us by
12 counsel as part of this case, and then during the trial, you
13 gave a new report, true?

14 A It's an updated report, yes.

15 Q Well, updated report, that's an interesting term
16 because, actually, you did a report in April of 2024, and then
17 you did an updated report.

18 But nothing changed?

19 A Well, the assumptions are all correct, yes. The
20 assumptions are exactly the same in terms of growth rate and in
21 terms of life expectancy. Now, when you go to the chart, the
22 end date changed.

23 Q Right. Because you guys made an error?

24 A Yes.

25 Q Okay. So the update has nothing to do with

1 recommendations for Ms. Watson from Dr. Guy, true?

2 A Could you please say it again.

3 Q Sure. Your update didn't have to do with Dr. Guy
4 giving you an update and saying, oh, she needs this or she
5 doesn't need this?

6 A No, no. The life care plan was exactly the same. Yes.

7 Q Right. So it isn't about a change in growth rate,
8 correct?

9 A Correct.

10 Q The change was because a mistake, that three different
11 economists made, in April, fair?

12 A So there are two things. One, we have to take care of
13 the passage of time. So if you see the first report, it started
14 in 2024, and now we started in 2025. So we always need to
15 update the report to take into account the passage of time, this
16 is one thing. Now, the second thing here is that the end date
17 -- I am going to repeat this again. The life expectancy of Ms.
18 Watson is exactly the same, however, the end date in the chart
19 changed.

20 Q Right. Because you failed to give her the
21 recommendations to age 81.7, you said?

22 A 81.7. Yeah.

23 Q So the first report was a mistake. Would you agree
24 with that?

25 A Yes, yes. Definitely, yes. When we make a mistake, I

1 mean, I have to acknowledge that we make a mistake, and, you
2 know, we were willing to fix it, and we find the total amount of
3 money that Ms. Watson will need for her care.

4 Q Okay. One of the other issues. Now, you've testified
5 you said six times before?

6 A Yes.

7 Q And in any of those six times, have you had
8 circumstances where the report from the doctor comes in and
9 changes things, so you have to update it?

10 A Let me remember if that happened to me. I think, yes,
11 it happened to me, that it -- or they decide that a type of, you
12 know, particular services of care, it's not going to be needed.
13 And then we need to, yes, correct the report. Correct.

14 Q Okay. And so, I just want you to assume -- and I don't
15 know if you noticed, Dr. Guy hasn't testified yet.

16 Are you aware of that?

17 A No.

18 Q Okay. So if Dr. Guy doesn't come in and testify,
19 everything that you just projected has no support, true?

20 A Well, because I use a life care plan from a medical
21 expert opinion, then my role in a case like this is to project
22 prices, and I made assumptions about that. So, you know, I am
23 using the expertise -- sorry. I'm using a life care plan from a
24 medical expert for what I am doing.

25 Q I understand that. My point is what you just said

1 perfectly. Thank you.

2 An assumption is being made for you to prepare your
3 report, fair?

4 A No, I made my economic assumptions, but I am using a
5 report from a medical expert to do it.

6 Q Right. My report is, though, in order for you to make
7 these projections, you need a doctor to tell you what he or she
8 thinks is needed, fair?

9 A Yes, that's what a life care plan -- yes.

10 Q And if that doctor does not come in here and testify to
11 what is needed, then the projections you made have no
12 foundation, fair?

13 A Well, I don't know how it works, you know, over here in
14 court. What I do know is that when I make the predictions, I am
15 using the opinion of a medical expert.

16 Q And you understand, because you're coming in and
17 swearing and giving testimony, that's based on your opinion,
18 correct?

19 A Correct.

20 Q And so we need Dr. Guy to come in and give his opinion
21 in order for your projections to be accepted by the jury, fair?

22 A Again, as I said, I mean, I am not aware of how the
23 whole process works. What I -- what I -- I can only tell you is
24 that I am using a life care plan from a medical expert. Now, if
25 you tell me Dr. Guy is now going to recommend a different type

1 of treatment, we can always update our report, and we can tell
2 you what is going to be the projected cost for -- for Ms.
3 Watson.

4 Q And if Dr. Guy comes in, and he tells this jury that in
5 January of 2024 -- because that's when the report was, correct?

6 A So, it was done on April 27th -- his report, yes. It
7 was done in January, yes.

8 Q And if I was unclear on that, I apologize. So his
9 report was in January of 2024, so it's been almost a year, fair?

10 A Yes.

11 Q Okay. So if he comes in and says, I said this in
12 January and it's no longer needed, then the projections you
13 gave, that projection would not something the jury should
14 consider because the expert doesn't support it, true?

15 A If he decides to change the life care plan, we can
16 always redo the numbers.

17 Q You don't want to have to come back in here again, do
18 you?

19 A Well, yeah, I don't know about that. I'm just
20 mentioning that we can always update the numbers.

21 Q Sure. I will just give you an example, if I may.

22 A Okay.

23 Q For example, do you have -- and I'll show it using your
24 exhibit, to you, and to the jury, with this chart.

25 One of the last ones was surgical -- cervical surgery.

1 Okay?

2 A Yes.

3 Q And that's something that was recommended by Dr. Guy in
4 January, okay, correct?

5 A Yes.

6 Q Okay. Yesterday, Dr. Macagno testified -- Dr. Macagno,
7 just so -- I don't know if you know who he is. I just ask you
8 to assume that he is spinal surgeon who is treating Ms. Watson.
9 Okay? Can you make that assumption?

10 A Okay.

11 Q And he testified yesterday that Ms. Watson --

12 MS. HOLLAND: I'm going to object to this, Judge.
13 I object to this line of questioning. It's clear she's
14 relying on Dr. Guys report.

15 THE COURT: Counsel. Counsel. Counsel, let's
16 talk, please. Approach.

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

18 (Whereupon, the following discussion takes place at
19 sidebar among the Court and Counsel, outside the hearing of
20 the sworn jurors.)

21 THE COURT: Ms. Holland, can you state your
22 objection for the record, please.

23 MS. HOLLAND: Yes. My objection is that counsel
24 should not be permitted to cross-examine this witness on the
25 testimony given by Dr. Macagno. Number one, Dr. Macagno --

1 withdrawn.

2 Number one, this line of inquiry regarding what Dr.
3 Macagno testified to is beyond the scope of my direct
4 examination. But more importantly, it is clear from this
5 witness and her testimony is based strictly upon the life
6 care plan of Dr. Guy. She said that on direct, and she said
7 it on cross. And also she made it very clear under the
8 questioning of Mr. Van Etten that if any of the recommended
9 categories of treatment, including the duration and the cost
10 were to change, then her ultimate calculations would change.
11 She made that very, very clear.

12 So it is my position that counsel is trying to
13 utilize this witness in order to get the testimony of Dr.
14 Macagno in front of this jury again, which is completely
15 improper. And, oh, by the way, counsel just stated off the
16 record that the reason why he was pursuing this line of
17 questioning was because we never established, officially,
18 that she was testifying subject to connection. I thought
19 that was a foregone conclusion, since she's here before Dr.
20 Guy in order to accommodate scheduling issues with different
21 witnesses. So, clearly, she's testifying subject to
22 connection. That's the extent of my objection.

23 THE COURT: Thank you, Ms. Holland.

24 Mr. Van Etten, sir?

25 MR. VAN ETTEN: Sure. Thank you, Your Honor.

1 The issue here, Judge, is that I had asked
2 specifically to the witness if she was -- had a past
3 experience where the person who gives them a report gives
4 it, and changes opinions, and then they come in before they
5 come in and change the report. Because, in this instance,
6 we have a changed report, and she said they do. Sometimes
7 they add, sometimes they take off, and they have the ability
8 to change the report. As we know, we had a changed report
9 last minute here.

10 There was testimony yesterday from a doctor who
11 changed issues upon which she's testifying. This is
12 information that could have been provided to her on future
13 costs, as to, oops, there isn't a cervical surgery anymore
14 involved, the treating doctor said no, there's no surgical
15 surgery involved. That's what he said with the maximum
16 medical improvement, yet despite the fact that that is the
17 evidence in chief from the treating doctor, they are taking
18 a future witness's, whose opinion from ten months ago to
19 bore a number, because they know from the testimony of the
20 witnesses is inappropriate.

21 I'm showing her that another witness who has
22 information contrary to what she is relying on. And if
23 that's the case, I'm asking her, would she agree then if
24 that is the evidence that she should be reducing the
25 numbers, rather than just the projections. I'm allowed to

1 do that as cross as to this witness.

2 As to counsel's statements that it's beyond her
3 direct, this is cross. I'm not limited to the scope of what
4 she brought the witness into. I can cross the witness on
5 many issues. It's not limited to what she asked the party.
6 So this is what I'm doing for multiple costs and issues,
7 that we have a doctor coming in, yet we had a treating
8 doctor contradict the expert that the plaintiff's hired. I
9 would like the jury to hear this witness, and how she
10 addresses the treating doctor's thoughts on what she's
11 projecting, and whether that would change her ultimate
12 projections.

13 MS. HOLLAND: So what I'm seeing here now, Judge,
14 is that counsel is using a bunch of red herrings. Let's
15 just get one thing straight. Number one, you are not free
16 to cross-examine the witness on any topic, whatsoever,
17 really, because it's cross-examination. There are limits
18 and rules for cross-examination. Number two, when he says
19 there's a change in the report, the change in the reports
20 report was based upon the failure to calculate the future
21 medical costs based upon her actual life expectancy. A red
22 herring that counsel just referred to in his argument.

23 But more importantly, Dr. Guy is physical medicine
24 and rehabilitation specialist. He's going to come in here,
25 and in that capacity, discuss his recommendations for future

1 surgery. The mere fact that a treating doctor -- and I
2 don't want to get too much in the weeds about whether or not
3 she needs future surgery to the neck, because I take issue
4 with counsel's characterization of Dr. Macagno's testimony
5 in that regard.

6 The bottom line is Dr. Guy is a doctor from a
7 different specialty. The jury will have to decide and weigh
8 Dr. Guy's conclusions with Dr. Macagno's conclusions, and
9 make a determination of whether she will need future
10 cervical surgery. Okay? My original objection stands.
11 This witness's testimony is based upon Dr. Guy's report.
12 She made it very clear, and counsel is trying to use this
13 opportunity to get Dr. Macagno's testimony in front of this
14 jury again.

15 THE COURT: Okay. Thank you both. I'm sustaining
16 the objection for the reasons Ms. Holland stated originally.
17 I will leave it at that. And we will continue -- you will
18 continue your cross-examination, but you will not inquire of
19 this witness as to anything with Dr. Macagno. Okay?

20 MR. VAN ETEN: And that would include -- I can't
21 inquire with Dr. Macagno as to his comments on physical
22 therapy, correct? And his comments on EMGs and nerve
23 conduction studies and all of the other things that he
24 discussed yesterday that he said were not necessary for his
25 patient?

1 THE COURT: That is correct. It is this Court's
2 position that this witness prepared her report in accordance
3 with Dr. Guy's report. And she has testified unequivocally
4 that if Dr. Guy changed his report, she would change her
5 report accordingly. She doesn't know Dr. Macagno. And I
6 feel the question is unfair to pose to her. Hypothetically,
7 if you heard -- if some doctor you've never heard of
8 testified to x, y, z, you changed your report then, too,
9 right? That is not what she was paid to do.

10 I'm sustaining the objection. Your exception is
11 noted. If you would like to speak about this further, we
12 will do it when the witness is gone. Okay?

13 MR. VAN ETEN: Would I also then be precluded from
14 asking her about the plaintiff and saying the physical
15 therapy has done her no good and she's not treating, as to
16 that impacts, would I be precluded on that, as well? So
17 that we may be cutting it short for me then, I guess.

18 THE COURT: Correct, Mr. Van Etten.

19 MR. VAN ETEN: I'm precluded --

20 THE COURT: Yes. She -- her report will change in
21 accordance with whatever Dr. Guy presents to her. So,
22 really, all of this examination is for Dr. Guy, and a lot of
23 what you said, I look forward to in your summation, sir.
24 Okay? So that's where we are, again. You can make your
25 record to the close of business, but we're done for now.

1 Finish the witness, and you can go back on the record when
2 we're done with the witness.

3 MR. VAN ETTEN: Thank you, Judge.

4 (Whereupon, the following takes place in open
5 court, in the presence of the sworn jury.)

6 MS. HOLLAND: Your Honor, was that objection
7 sustained?

8 THE COURT: It's sustained. Proceed, Mr. Van
9 Etten.

10 MR. VAN ETTEN: Sure.

11 Q All right. Okay. Just off, for one second, for the
12 assumption. You had also said something when you were talking
13 about Ms. Watson, and you said with the recommendations that you
14 gave, and you said "if she needs", correct?

15 A No.

16 Q You didn't just testify to that?

17 A Say that?

18 Q Yes.

19 A I don't know what I said, yeah. I'm so sorry.

20 Q Because, again, I just want to be clear before I ask
21 you some follow-ups --

22 A Okay.

23 Q -- that when you are making this projection, because
24 you said you're doing this to provide costs in the future for
25 Ms. Watson's benefit, correct?

1 A Yes.

2 Q And you said "if she needs those recommended care",
3 fair?

4 A No. So -- I am not a medical expert, so I don't have
5 the expertise to say what is the type of treatment that she
6 needs or she doesn't need. What we do as an economist, we just
7 project what is going to happen with prices in the future. So
8 we assume that the information that is provided in the life care
9 plan, it's what she's going to need in the future.

10 Q And, again, it's probably me not being clear. I
11 thought you had said if she needs, and you just said it's
12 assumed that that's what she's going to need?

13 A It's based on an expert opinion. Yes. I am not a
14 medical expert, so I cannot say, oh, she's not going to need
15 physical therapy. We -- what we do is we base our whole report
16 on the opinion of a medical expert, who -- the medical expert is
17 the one who has the expertise to say what is the treatment that
18 Ms. Watson is going to need or not.

19 Q Okay. I'm going to get back right to your charts.
20 Because there were other changes in your new, updated report
21 other than just the extension of the life expectancy, correct?

22 A So, we update --

23 Q Yes or no. Yes or no, was there changes other than
24 just the extension for life expectancy?

25 A Yes.

1 Q Okay.

2 A And can I explain.

3 Q When I'm done, she gets a chance.

4 A Okay. I'm sorry.

5 Q Okay. You would acknowledge then, the mistake made by
6 your office from April to December 8th was a \$1.2 million
7 mistake by your office?

8 A It was around the number, yes.

9 Q Pretty big mistake to make?

10 MS. HOLLAND: Objection to form.

11 THE COURT: I'm going to overrule it.

12 A So --

13 Q Yes or no.

14 A Well, when we make mistakes -- so I could have come
15 here and say there is no mistake. When we find mistakes, we
16 need to, you know, we need to find what is the right amount of
17 money that Ms. Watson is going to need for her treatment. So if
18 we make a mistake, we fix the mistake, and we came with the
19 right numbers.

20 Q The mistake, though, that you made was in her favor,
21 correct?

22 A In this particular case, it is a very silly mistake.
23 So it turns out that it's -- you know, it's more years, and then
24 she's going to need more money for the treatment.

25 Q And you changed some other numbers, which I'll get to.

1 But -- if I could just find something.

2 As I said, you work with Dr. Dwyer, correct?

3 A Yes, and Dr. Laken.

4 Q Right. I had the pleasure of meeting Dr. Dwyer on
5 October 17th and questioning her.

6 MS. HOLLAND: Objection to the colloquy and his
7 pleasure of meeting Dr. Dwyer.

8 MR. VAN ETTEN: Okay. I'm sorry.

9 THE COURT: Ask the -- thank you.

10 MR. VAN ETTEN: Sure.

11 Q On October 17, 2024, I was cross-examining Dr. Dwyer in
12 a case entitled Susanna Curey (ph.) versus David Newman, et al.,
13 index number 4464/2016, and an issue had come up about a mistake
14 that had been made. Okay?

15 MS. HOLLAND: I'm going to object to all of this.

16 THE COURT: Approach, please. Approach.

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

18 MS. HOLLAND: Your Honor, is that objection
19 sustained?

20 THE COURT: Sustained. Next question, please, Mr.
21 Van Etten.

22 MR. VAN ETTEN: Sure.

23 Q You said earlier -- and, again, if I'm mishearing what
24 you said, you said you always use the midpoint; is that correct?

25 A When Dr. Guy recommends between three to four visits,

1 the example, what I do, is I use the midpoint, and I use 3.5.
2 Or if he says, for instance, that the treatment is going to cost
3 -- it's going to cost \$1,000 -- between \$1,000 and \$2,000, then
4 I use the midpoint, that is going to be 1,500. Yes.

5 Q In the future, I'm going to ask you if you can't answer
6 my questions yes or no, because I've made promises to get
7 everybody out of here by lunch. Okay? And so I just asked you
8 if you always use the midpoint. Okay? I thought that was a yes
9 or no question.

10 Did you not understand that as a yes or no question
11 that you use the midpoint?

12 MS. HOLLAND: Objection. Objection.

13 THE COURT: I'll allow the question.

14 Do you understand what he means by midpoint?

15 THE WITNESS: It depends. Midpoint of what?

16 THE COURT: Clarify.

17 Q Okay. You testified before you were using the midpoint
18 when they made a projection of three to five years or how many
19 years of testimony, is that not what you said?

20 A Yes.

21 Q Okay. Do you have your original report?

22 A Yes.

23 Q Okay. And that's the report from April?

24 A Yes, I do.

25 MR. VAN ETEN: Did we mark that yet?

1 Q Can I see that, please?

2 A Sure.

3 Q Thank you. In the information you got from Dr. Guy,
4 did he not say that Ms. Watson might need facet injections,
5 radiofrequency ablations, and trigger points for, approximately,
6 three to five years?

7 A Yes.

8 Q Okay. So the midpoint would be four years?

9 A Yes.

10 Q And in your original report, how many years did you
11 compute out for?

12 A Yes, five years.

13 Q And you projected five years?

14 A Yes.

15 Q Is that the midpoint?

16 A No.

17 Q So by not choosing the midpoint, you projected out the
18 highest amount possible when making that first projection, true?

19 A But --

20 Q True, yes or no?

21 A Yes.

22 Q Okay. And that's because you were being paid as an
23 economist to make a projection on behalf of Ms. Watson, true?

24 A Could you please repeat it again.

25 Q And that's because you were being paid to make a

1 projection on behalf of Ms. Watson, true?

2 A No. No, no, no.

3 Q Okay. And you made changes when you updated your
4 report, where you no longer included 2024, correct?

5 A Yes.

6 Q But when you made your projections, again, for those
7 same three items, you did the full time again, correct, the four
8 years?

9 A The four years. So we use -- in the updated report, we
10 use four years, yes.

11 Q Okay. Now, for 2024, all right, because we're talking
12 only about Dr. Guy now. Okay? I want you to assume that Dr.
13 Guy, when he comes in to testify, would testify that in 2024,
14 there were no facet injections, no radiofrequency ablations, and
15 no trigger point injections in 2024. Okay?

16 Can you make that assumption?

17 A Well, I --

18 Q Do you understand what I'm saying?

19 A No, I do. I do understand. Yeah.

20 Q And in your first report, you had projected \$36,000,
21 \$40,000, and \$4,800 for those costs, correct?

22 A Yes.

23 Q And we are now in December, and they haven't been done.
24 So your original --

25 MS. HOLLAND: Objection.

1 THE COURT: I --

2 Q Assuming that Dr. Guy testifies that they haven't been
3 done, so those are original projections that you gave in April
4 of, roughly, \$80,000 would have been inapplicable to Ms. Watson,
5 true?

6 A So, if Dr. Guy decides to change the treatment, then
7 update a life care plan, I can always update the numbers that we
8 have here.

9 Q But I'm just saying because you did not get the
10 opportunity -- by the way, did you speak to Dr. Guy before
11 testifying?

12 A No, no.

13 Q Okay. Did you ask him, hey, Doc, are there any updates
14 I should be aware of before I have to swear to tell the truth to
15 everybody?

16 A No because I am basing my opinion on his life care
17 plan.

18 Q And that's a plan that only was given to you by
19 plaintiff, not from the doctor himself, true? The plaintiff's
20 attorneys, sorry.

21 A Yes, the plaintiff attorney. Yes, the attorney is the
22 one that gives me the plan.

23 Q And so now -- assume now that, just for those three
24 items where we're at right now, for the facet injections, the
25 radiofrequency ablations, and trigger points, those treatments

1 haven't taken place. Dr. Guy comes in on Tuesday, I believe,
2 and doesn't say they're going to take place, I would be correct
3 when we tell the jury at the end of this case about the
4 evidence, I can tell them to ignore it because Dr. Guy says
5 they're no longer needed.

6 Would that be fair?

7 MS. HOLLAND: I object to the form of this
8 question.

9 THE COURT: Overruled. Can you answer that
10 question?

11 THE WITNESS: Sure.

12 A So if an updated report from Dr. Guy is done, and he
13 mentions new treatments, or some type of treatment is not needed
14 anymore, I can always update the numbers.

15 Q As I said, I didn't want to have to bring you back in
16 here -- so that's what I'm saying. If he says it's no longer
17 needed --

18 THE COURT: Yes, yes. Move on. She said yes.

19 Q That would apply to the surgeries, too, correct?

20 A So, if he thinks that the surgery is not needed, and he
21 creates an updated plan, I can always update the numbers.

22 Q But when you keep saying an updated plan -- because
23 what happens in a trial, and, again, I'm not sure if you're
24 familiar with this --

25 MS. HOLLAND: I object.

1 THE COURT: The witness said yes.

2 Q Okay. What I'm saying -- but forgetting a plan.

3 If he testifies, not submits a plan, but testifies to
4 this jury is not needed --

5 MS. HOLLAND: Objection. Asked and answered.

6 THE COURT: Mr. Van Etten, sustained.

7 MR. VAN ETTEN: Okay.

8 Q Now, with the extension of years -- again, I just want
9 to get one other thing clear. You've testified you said six
10 times before. You're familiar with, in New York Court
11 proceedings, with looking at future life expectancies, the
12 Courts have what's called the pattern jury instructions,
13 correct?

14 A Yes.

15 Q And did you look at the pattern jury instructions as to
16 what they say the future life expectancy is of Ms. Watson?

17 A Yes.

18 Q And is that not 28 point, I think, 4 or 7 years?

19 A 28.7?

20 Q Yeah. Not 31, as you projected?

21 A No. So when this report was done, this was based on
22 the 1997 life tables, which were the life tables that rely upon
23 the Court. Now, we have two options there. If they have used
24 the 2020 tables now, we can use the new tables, or we can use
25 the last tables. If we use the new tables, the number, the life

1 expectancy, and I have it here, the number could be 82.4, using
2 the 2020 tables.

3 Now, if we used the previous one, which were the ones
4 that were used when the report was done, is 81.7. So what does
5 it mean? It means that we are not including almost half a year
6 of treatment.

7 Q Which tables are you, using is my question?

8 A So I am using the 1997 life tables, the ones that were
9 used when the report was done.

10 Q In the pattern jury instructions?

11 A Correct.

12 Q Okay. Then maybe I'll stand corrected.

13 If it's determined that it is 28 years, and not the
14 31 years, then the projection to 2055, you would agree, should
15 be to 2053?

16 A Why the life expectancy going to change?

17 Q Because the Judge ultimately tells the jury what the
18 life expectancy is.

19 MS. HOLLAND: Your Honor, objection to all of the
20 colloquy.

21 THE COURT: Sustained. Ask a question, please --
22 another question.

23 Q Now, you also -- you made projections in your original
24 report for \$10,400 in physical therapy costs in 2024, correct?

25 A Uh-huh, yes.

1 Q And that was based on a recommendation of treatments
2 one time -- I'm sorry. Do you need a cough drop?

3 A I'm sorry. No, no. I have the one. Thank you. I
4 appreciate it.

5 Q And those projections for costs in 2024 were based on
6 one visit per week to a physical therapy, and one overall exam
7 per year?

8 A One visit per week, it is based on that. One visit per
9 week.

10 Q Okay. And so that would be 52 visits per year?

11 A Uh-huh, correct.

12 Q Okay. And that's the recommendation from Dr. Guy,
13 correct?

14 A Yes.

15 Q Okay. I'm going to show you Dr. Guy's records,
16 Defendant's -- Plaintiff's 5 in evidence. And his --

17 MS. HOLLAND: I'm objecting. He's now going to
18 cross her on Dr. Guy's records, Judge.

19 THE COURT: The records or his report that she
20 prepared for --

21 MS. HOLLAND: The records.

22 THE COURT: Okay. I'm sustaining the objection.
23 I'm sustaining the objection.

24 Q When you come in here to tell the truth about your
25 projections, would you, as an economist, hope that the

1 information that is being provided to you by the doctor is
2 accurate?

3 MS. HOLLAND: Objection as to form as to what the
4 witness hopes. We're here for facts.

5 THE COURT: Ask it a different way.

6 Q As a professional, and you come in to testify, would it
7 be your need, as an economist, that the person providing you
8 with their recommendations is giving you accurate information?

9 A I base my numbers on the opinion of a medical expert.

10 Q So you don't care if they're accurate?

11 MS. HOLLAND: Objection.

12 THE COURT: Sustained. That's not what she said.

13 MR. VAN ETTEN: Your Honor, I asked her yes, no,
14 and she didn't answer it. I'm allowed to follow --

15 MS. HOLLAND: Objection.

16 THE COURT: Please ask another question.

17 Q If a doctor provided you with a report, and he said it
18 was worth a gazillion dollars, and she needed treatments every
19 day of her life by six healthcare providers, you would just
20 project those numbers, correct?

21 A Some things here -- now, I have been doing this job for
22 a while, so I know the conflicting * levels of most of the
23 prices. So they can increase it over time, yes. But if I see a
24 number that is completely outrageous, I will probably contact
25 the lawyer, and make sure, you know, that the number make sense.

1 This is one thing.

2 The second thing is, if it is related to care, I am
3 going to accept the opinion of the medical expert because I am
4 not a medical expert. And, as I am not a medical expert, I
5 don't have the expertise to say if it is right or wrong.

6 Q Fair. Fair. When you said you look at numbers for
7 costs, for example, with the medicine costs, you were talking
8 about medicines, did you, if you recall, in this instance, check
9 the medicine costs that were provided to you by Dr. Guy?

10 A So, when I said what I said, I am saying that, for
11 instance, if I see a physical therapy that is going to cost
12 10,000 a visit, I will probably contact the lawyer and say it is
13 highly unreasonable that physical therapy is going to cost
14 \$10,000. Now, for a particular type of medications, itself, we
15 have a wide range. You know how it is for medications of -- so
16 medication, in particular, is a very complicated category by
17 itself, so that's why I want to explain myself, what I meant.

18 Q I understand that. But I'm just asking if you remember
19 -- and it may not be you because I think you said Dr. Laken
20 prepared the initial report, and you just reviewed it, and now
21 you're testifying on it?

22 A Yes.

23 Q Do you know if he reviewed the medicines and the costs
24 provided by Dr. Guy to make sure that they weren't untoward?

25 MS. HOLLAND: Objection to the form of the

1 question. To make sure they were untoward?

2 THE COURT: Do you understand?

3 THE WITNESS: I did understand.

4 THE COURT: You can answer if you understand.

5 A Okay. I am not sure about that.

6 Q Okay. And let me just ask you something else here,
7 too. When you did these projections, the largest item -- line
8 item -- I'll call it line item.

9 Is line item a proper economic thing, when you say line
10 item?

11 A It's okay. The -- it's okay.

12 Q Okay. The largest line item is home health aide?

13 A Yes, it is.

14 Q And that number, when you added the seven extra years,
15 increased by \$800,000?

16 A It's probably around that, yes.

17 Q Okay. And are you aware that there is no home
18 healthcare -- home health aide being -- providing services for
19 Ms. Watson now?

20 MS. HOLLAND: Objection.

21 THE COURT: Are you aware?

22 THE WITNESS: So, I only have the information about
23 the life care plan.

24 THE COURT: Okay. Next question.

25 Q But you made a cost projection for home health aides in

1 your first plan for \$54,600 for 2024, correct?

2 A So when we receive the report, what we do is we start
3 in the time that we -- the time that we received the report, so
4 we have to project part of the 2024-year. Now, in the current
5 report, which is what we are basing the numbers, we start on
6 2025.

7 Q That's the new report. I'm saying the prior report, it
8 started in 2024, correct?

9 A Yes.

10 Q And you put out a projection saying that Ms. Watson
11 needed and would expend \$54,600 in home health costs in 2024,
12 true? That's what you put?

13 A So, the life care plan stated that she required that
14 type of treatment, the medical expert.

15 Q And I want you to assume that that didn't happen.

16 MS. HOLLAND: Objection, Judge. We've been through
17 this in the back multiple times.

18 THE COURT: Okay. Sustained.

19 Q Let's cut to the chase. So, basically, if I have this
20 correctly then, you get a life care plan report from an expert
21 hired by the plaintiff's attorney for this trial, and they give
22 you recommendations about Ms. Watson, you take their
23 recommendations, and as an economist, you do an accounting and
24 add them up, and then factor in interest, put these projections
25 of what the future costs will be, true?

1 A No, we don't factor interest. We use growth rates.

2 Q I'm sorry. I'm thinking of another part of the
3 business that you do is where interest comes in correct. So the
4 growth rates.

5 You factor in the growth rates?

6 A Yeah. So, we are not medical experts. We don't have
7 the expertise to say if the treatment is required or not, so our
8 job, if there is an uncertainty in the future about prices, is
9 to use growth rates. Yes.

10 Q Right. And those growth rates then, also take the bare
11 costs and increased the number of that projection, correct?

12 A It's not that they increase the number. It's, like,
13 probably everyone is aware of inflation, and you know that five
14 or ten years from now, you need a certain amount of money to go
15 to a grocery store. And now, ten years later, you need much
16 more for the same thing. So this is exactly what we are doing.

17 We are saying if ten years from now Ms. Watson needs
18 the same treatment, it's going to cost a little bit more. I
19 think it is quite reasonable, what we are doing.

20 Q But my question is that -- when you put that growth
21 rate in, if I look at something and I say, this costs me \$5, and
22 I want to buy it again next year, am I going to -- I don't know,
23 I may just put my \$5 away, correct --

24 MS. HOLLAND: Objection.

25 Q -- and that's what I do?

1 MS. HOLLAND: Objection.

2 THE COURT: I don't understand the question.

3 MR. VAN ETTEN: Can I finish the question and then
4 I can make sense of it.

5 THE COURT: Go ahead. Go ahead.

6 MS. HOLLAND: I object to the form of the question.
7 I object to the beginning form of the question.

8 THE COURT: I'm going to let him finish the
9 question.

10 MR. VAN ETTEN: I will withdraw it.

11 Q If a person thinks something is going to cost them \$5,
12 and they go, okay, I'm going to do this and I want to get it
13 again next year, and I put \$5 away, and they look at that and
14 they do the future, they can easily say this is what it's going
15 to cost me at \$5 a year, that comes to a baseline number.

16 You look at that number and rather than that baseline,
17 you compute in the growth rate which increase the amount of your
18 projection? That's all I'm asking. Yes or no.

19 MS. HOLLAND: I object to the former question. I
20 object to the former question.

21 THE COURT: If the witness can answer -- did you
22 understand?

23 THE WITNESS: Yes, I understand.

24 THE COURT: You may answer.

25 Q Yes or no, please.

1 A So what we do is we --

2 Q I asked a yes or no, please.

3 THE COURT: Can you answer yes or no?

4 THE WITNESS: No.

5 MR. VAN ETEN: Okay. Thank you. That's the
6 point.

7 Q Then the bottom line is, and I think you said it
8 multiple times, and I'll probably get yelled at again, you are
9 not a doctor, and you don't know whether the recommendations you
10 get from Dr. Guy, good, bad, or indifferent, so all this is is a
11 projection based on whatever he is going to say that to this
12 jury, fair?

13 MS. HOLLAND: Objection to the form of the
14 question.

15 THE COURT: Really, it's asked and answered. Yes.
16 It's in the record, yes.

17 MR. VAN ETEN: Okay. Thank you very much.

18 THE COURT: Ms. Holland, do you need a minute or
19 can you --

20 MS. HOLLAND: No, I only have one question.

21 THE COURT: Go ahead. Very good.

22 REDIRECT EXAMINATION

23 BY MS. HOLLAND:

24 Q I forgot to ask you this on direct.

25 MR. VAN ETEN: Objection. It's beyond the scope

1 of cross if you forgot to ask it.

2 THE COURT: Sit down. Your question, Ms. Holland.

3 Q Yes. I forgot to ask you this on direct. I want to
4 make sure the jury understands.

5 When you did the recalculation this past Sunday, you
6 had to also account for the fact that the numbers that you're
7 projecting are the costs starting in 2025?

8 A Correct.

9 Q Okay.

10 A Yes.

11 Q So can you just explain that to the jury --

12 A Sure.

13 Q -- the first report was done in 2024, so you will have
14 one set of numbers, but that was assuming the care would start
15 in 2024?

16 A Correct.

17 Q Okay. And so now the numbers changed slightly --

18 A Yes.

19 Q -- because the care starts in 2025; is that correct?

20 A Yes, that's correct. And also --

21 THE COURT: Just wait. Hold on, hold on.

22 Q My question -- I gave you a preface to it. Can you
23 just please explain that to the jury so they understand what
24 we're talking about, if you --

25 A Yes, yes.

1 Q -- it already.

2 A So what it's important here is that in all the numbers
3 that I show -- that I have shown before, we start on 2025. So
4 the first year, we are not including the first year in the
5 updated report just to show the passage of time. So if you see
6 a life expectancy, it's cut in almost one year. So we are
7 excludeing, for almost one year, all the type of care that Ms.
8 Watson is going to need, just to show that time has passed by.

9 Q Okay. Right. Because when -- Dr. Guy's report is from
10 January of 2024, and we're now talking about your opinion as to
11 the cost of care starting in 2025?

12 A That's correct.

13 Q Okay. Thank you, Dr. Sanmartin.

14 A Thank you.

15 MS. HOLLAND: I have nothing further.

16 THE COURT: Okay. Doctor, thank you very much.

17 THE WITNESS: Thank you.

18 THE COURT: Watch your step getting down. Okay?

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

21 THE COURT: Okay. See? I told you. You come on
22 time, and we can get done early. All right? So we are
23 finished for today. We are back here on Monday, not
24 tomorrow, but on Monday. It has to be at 9:30. I have to
25 bring you in a little earlier because otherwise, we're going

1 to be here until it's very dark outside. Okay? You've got
2 to trust me. I got you out early today. Everybody, Monday
3 at 9:30. Nodding heads so we know Monday at 9:30. Okay?
4 Very good. Do not discuss the case. Please --

5 What's wrong?

6 JUROR: Do we know how long --

7 THE COURT: I don't know yet, but I promise you
8 this case will conclude next week. Your jury service will
9 be done next week. All right? This will not go further
10 past next week. Okay? Enjoy the weekend. Get home safe.
11 Do not discuss the case. Don't do any research. Keep a
12 very open mind. There's still witnesses that you haven't
13 heard from yet. Good? Thank you so much. Enjoy the rest
14 of the day.

15 COURT OFFICER: All rise. Jury exiting.

16 (Whereupon, the sworn jurors exit the courtroom.)

17 THE COURT: Okay. So I know we have a few things
18 for the record, right? Ms. Holland you indicated off the
19 record that you have a different witness for Monday.

20 Can you put that on the record, please.

21 MS. HOLLAND: Yes, just turning my phone on.

22 THE COURT: Go ahead.

23 MS. HOLLAND: May I just check my --

24 THE COURT: Yeah. Do you want to take five to
25 gather --

1 MS. HOLLAND: Yes.

2 THE COURT: Okay. Let's take five minutes and then
3 we'll gather on what we need to do.

4 (Whereupon, a short recess was held.)

5 (Whereupon, the item referred to, Plaintiff's
6 Exhibit 28, was received in evidence.)

7 (Whereupon, the item referred to, Plaintiff's
8 Exhibit 29, was received in evidence.)

9 THE COURT: Good afternoon, everyone. We've
10 excused the jury for today. We have a few more issues for
11 the record. I believe the first is plaintiff had long ago
12 disclosed a witness list that included the plaintiff's
13 daughter. Plaintiff now wishes to call the plaintiff's
14 daughter.

15 Ms. Holland, can you speak to this, please.

16 MS. HOLLAND: Sure. Yes, Your Honor. We would
17 like to call the plaintiff's daughter in this case. Based
18 upon the evidence in this case, she is a critical witness.
19 She responded to her mother right after the incident
20 occurred. Her daughter is a junior at Penn State University
21 in State College Pennsylvania. She does not have a car.
22 Okay? In fact, I don't even know if she has a driver's
23 license, but I know she definitely doesn't have a car.

24 State College Pennsylvania is, approximately, in
25 terms of driving distance, five and a half to six hours from

1 here. It is in a very remote part of Pennsylvania. In
2 fact, I would have to double check, but I think the closest
3 airport to State College Pennsylvania, I believe, is in
4 Philadelphia, which is, approximately, three hours from
5 State College Pennsylvania.

6 She is a premed major student, and she is in the
7 middle of final examinations. So we are requesting that she
8 be able to testify via Zoom under these circumstances, given
9 her exam schedule, the importance of her being able to be
10 close to school so she can study, go to the laboratory,
11 which she's taking a laboratory class as part of her major.
12 She has a lab exam coming up where she must be present in
13 the laboratory in order to do this exam. And given the
14 location of her university, and its remoteness and distance
15 from the Bronx, under all of these circumstances, Judge, we
16 believe that -- withdrawn.

17 We are requesting that she be able to testify via
18 Zoom. Now, she is available to testify this coming Monday
19 afternoon. As I mentioned off the record, we are
20 withdrawing our shoulder claim in this case. Dr. Katzman,
21 who was our expert on the shoulder claim, was scheduled to
22 testify this Monday afternoon, so this works out perfectly
23 in terms of the plaintiff's daughter's availability happens
24 to be Monday afternoon.

25 So it's not going to slow down the trial, it's not

1 going to effect the schedule. She will be a very short
2 witness. I will be doing her examination. She will be a
3 very short witness. So, again, that's the basis of my
4 request.

5 THE COURT: Thank you, Ms. Holland.

6 Mr. Van Etten, sir?

7 MR. VAN ETTEN: Yes, Your Honor. Obviously, we
8 oppose. We oppose about it being virtual via Zoom. This
9 trial has been scheduled for December 2nd for months. The
10 Court is well aware, parts of it are on the record, about
11 issues about extensions of time for trial that were
12 requested, but plaintiffs insisted on this going forward,
13 that all witnesses were available. The Court has, on
14 multiple occasions, requested plaintiff's witness lists and
15 scheduling. We have had gaps in our witness scheduling,
16 which does happen on trial.

17 And we are now taking where it comes -- and
18 plaintiff is not going to be resting until maybe right
19 before I put my last witness on because of their scheduling
20 issues. And now, they want a witness, also, essentially out
21 of turn, via Zoom. So, for that reason, I think that this
22 is improper, unexpected, prejudicial. And at the same time,
23 our building super was essentially precluded from testifying
24 to his impressions about the plaintiff's injuries and
25 conditions and things of that nature.

1 I have not had an offer of proof as to what this
2 witness will be testifying to. And so for her to be coming
3 in, not knowing what that may be, and not knowing if it goes
4 to those very same issues that we have been precluded,
5 essentially, from bringing in our super, to what he observed
6 as to the physical condition, and what Ms. Watson was doing
7 that day. I do not see what the basis would be of this
8 witness.

9 And, if anything, this would be something which
10 would be counter to what I've already been precluded. And I
11 just told everybody yesterday, based on the ruling, we
12 weren't going to bring him in. So, again, I think that is
13 prejudicial times two.

14 MS. HOLLAND: I'm not quite --

15 THE COURT: One second, Ms. Holland. I just want
16 to -- unless I'm mistaking, I did not preclude the super. I
17 reserved decision and I ultimately said it's up to you if
18 you call him, although his testimony may be cumulative, and
19 his testimony may be subject to a curative instruction if he
20 talks about a doctor or engineer. To be clear, that's my
21 record.

22 MR. VAN ETEN: I believe I was not going to be
23 able to talk about those issues from your ruling, Judge.
24 And I'll have to pull up --

25 THE COURT: You will have to pull my ruling up

1 because I said you are -- my ruling was unequivocal. You
2 may call him, if you do so. But just be mindful, she
3 already admitted -- which her testimony is evidence. She
4 had admitted she had scratches, no open wounds, she was
5 ambulatory, she went to EMS on her own.

6 So all I had indicated on that record, and I'm
7 pretty good about knowing what I say on my record, is that
8 it may be cumulative. So think about it, from your own
9 strategy perspective, if you still want to do it. I left it
10 entirely up to you. Do I have to find it right now? I can
11 find it very quickly for you.

12 MR. VAN ETEN: So would testimony of her having
13 scratches on her leg by her daughter not also be cumulative
14 to --

15 THE COURT: I was just about to turn to Ms. Holland
16 for an offer of proof because she is not an engineer, and
17 she is not a medical expert.

18 So what is she going to testify to, please?

19 MS. HOLLAND: Okay. So, Your Honor, I want to make
20 sure I'm addressing all of what counsel raised. I will jump
21 to the offer of proof. First of all, not only is she a --
22 well, withdrawn.

23 I believe counsel asked Ms. Watson how her body
24 ended up in the position on the floor. But Ms. Watson told
25 you she came in -- withdrawn.

1 Ms. Watson testified she came in, went to get a
2 cotton ball off -- out of a basket at the back of her toilet
3 seat, and the next thing she knew, she was on the floor with
4 her back up against the toilet, facing forward. Right? And
5 there was cross-examination of Ms. Watson as to how she
6 ended up in that position. And Ms. Watson testified that
7 she didn't know because her first memory is going into the
8 bathroom, and that her -- grabbing the cotton ball. And her
9 next memory is being on the floor with her back up against
10 the wall, speaking to her daughter.

11 So the daughter will be able to testify as to what
12 happened in the bathroom once she was alerted that there was
13 a problem in the bathroom. And that is very relevant in
14 this case since counsel is suggesting to this jury, through
15 his cross-examination, that my client -- that maybe my
16 client's testimony, as to what happened to her once the
17 ceiling fell, is not truthful.

18 So I will say that the daughter will be testifying
19 as to what occurred in the bathroom. Right, Judge?

20 THE COURT: When she found her?

21 MS. HOLLAND: That's right. When she found her.
22 Right? In addition, this is a damages case. Okay? And she
23 can testify about the damages part of the case. Okay?

24 THE COURT: That's more of what I was anticipating.

25 MS. HOLLAND: Yes. Right. So that's the first

1 thing. Next, counsel -- Mr. Van Etten said something about
 2 calling people out of turn, we're calling out of turn. He
 3 is wrong. He is calling his Dr. Feuer out of turn. Okay?
 4 We are on our case. Dr. Guy testifies on Tuesday. Okay?
 5 They wanted to call Dr. Feuer out of turn, and we consented
 6 to them calling Dr. Feuer out of turn. That is why Dr.
 7 Feuer is testifying Monday morning. Okay?

8 We're still on our case. So to the extent that the
 9 Court going to consider counsel's argument that we're now
 10 calling Ms. Watson's daughter out of turn, that's absolutely
 11 incorrect. Okay? We are on our case. Dr. Guy testifies
 12 Tuesday. All right? I don't even know what else Mr. Van
 13 Etten said.

14 THE COURT: Okay. Okay. Okay.

15 MR. VAN ETTEN: Just briefly, Judge?

16 THE COURT: Go ahead.

17 MR. VAN ETTEN: On the issue, I specifically asked
 18 Ms. Watson if her daughter was there and was a witness and
 19 saw the ceiling falling and striking or coming into contact,
 20 and she didn't.

21 THE COURT: She was on a witness list.

22 MR. VAN ETTEN: I understand that for that point.
 23 And if we're going to be bringing in on the other issue, I'm
 24 going to have issues with it. And then the last point on
 25 this, you gave us a timeframe to get this done by the 18th.

1 My Dr. Feuer would have been available on the 19th. I had
2 to arrange to get him in before the 19th to get this trial
3 done by the 18th, and taking him, and change his schedule to
4 meet the Court's convenience. That's why it's being out of
5 turn with their witnesses.

6 We have an afternoon today, they could have brought
7 their Dr. Guy on Monday. Now, we replace Katzman. They
8 haven't done this. I have bent over backwards on this, and
9 now, to sit there because of these actual delays. And we're
10 doing this -- and by the way, just looking at the Penn State
11 website, it says final exams end Friday.

12 MS. HOLLAND: Okay. Are you kidding me right now?

13 THE COURT: Stop. We are going to --

14 MR. VAN ETTEN: That's what it says, they end
15 Friday.

16 THE COURT: Counselors. No, no, no, no, no. Both
17 side, I'm ready to rule. I've heard both of you.

18 MS. HOLLAND: Okay.

19 THE COURT: As to, ultimately, whether the witness
20 will be permitted to testify, yes. Plaintiff listed her as
21 a witness. She will be permitted to testify.

22 I give Ms. Holland the same instructions or
23 guidance or caution that I gave Mr. Van Etten, that there's
24 a lot in the record about her physical appearance. And stay
25 away from anything that might be cumulative. This jury has

1 already heard and seen pictures of what she looked like.
2 The witness is not an engineer, and should not opine on how
3 the -- any force of the ceiling striking the plaintiff.

4 Thank you. I see you shaking your head no. Thank
5 you. And she is not a medical expert either. Okay? So
6 nothing about that. So I -- and that is exactly what I said
7 to you, Mr. Van Etten. You will refer to the trial
8 transcript. That is exactly what I said to you when I did
9 not grant a motion to preclude you from calling the super.

10 As to the issue of her appearing virtually, that --
11 in this post COVID world, that is at this Court's
12 discretion. I am going to permit it. We do have the
13 facilities to do so. We do have high speed internet. The
14 Court conducts much of its calendars online without any
15 hiccups. And that's that. She will be permitted to
16 testify.

17 We will discuss -- I'll have a conversation with my
18 clerk about contacting IT so that there will be someone from
19 my IT, the Court system's IT, to ensure that we don't have
20 these hiccups, that the witness can be heard clearly, that
21 the witness can hear us clearly. So I will -- knowing that
22 from now, I'm going to get in front of those issues. And
23 that's all there is to say.

24 MR. VAN ETTEN: I just -- at this point, I would
25 make a motion in limine that she be precluded from

1 mentioning that she's premed as part of her testimony to
2 avoid any improper inference, if she does speak about
3 damages.

4 MS. HOLLAND: What?

5 THE COURT: She can say she's in school. If she
6 starts talking like she's an expert, the jury will be told
7 she's not an expert.

8 MS. HOLLAND: Right. Judge --

9 THE COURT: Ms. Holland, if she starts talking like
10 she's a medical expert, I'm going to tell them -- the same
11 if the super came.

12 MR. VAN ETEN: Thank you. That's all I'm asking.

13 MS. HOLLAND: She's 20 years old.

14 THE COURT: She's not -- okay.

15 MR. VAN ETEN: You said premed and everything and
16 I --

17 THE COURT: Mr. Van Etten, my ruling is clear, and
18 it is entirely consistent with the ruling I gave you on the
19 motion in limine of plaintiff that I denied. Okay? Good
20 for the goose, right? It's all on balance.

21 What else for the record?

22 MR. VAN ETEN: That was my motion, Your Honor. At
23 one point, we were on the sidebar when I was attempting to
24 ask Dr. Sanmartin about testimony from a case in which Dr.
25 Dwyer, one of her compatriots, I'll call it, had testified

1 about issues on how they prepare their reports to be
2 accurate when they're not in court. Because of the fact
3 that we had a situation here, that Dr. Laken apparently
4 prepared an initial report, it was reviewed by their
5 practice by both Dr. Dwyer and Dr. Sanmartin to make sure
6 that it was accurate, and then that report was submitted to
7 all the parties as being accurate, and then on the eve of
8 trial, during trial, over the weekend, we find out that it
9 is inaccurate.

10 They changed it. They updated it. They took out
11 years. They added on seven years of additional life
12 expectancy based upon a mistake. So as part of the attack
13 on, I thought, the credibility of Dr. Laken, Dwyer, and
14 Sanmartin, that same practice, I pulled the transcript for
15 Dr. Dwyer where an issue on mistakes being made was
16 addressed, to see and ask her, is this an issue, is she
17 correct that you guys have to be accurate as you prepare
18 these things when you're doing these outside the presence of
19 court, and that's what I was going to bring it in, and I was
20 precluded from doing so. And that's my objection, that I
21 should not have been precluded because she -- I'm sorry.
22 And Dr. Dwyer had reviewed the report as per the testimony.

23 THE COURT: Do you want to be heard on this? This
24 is -- from what I understand, this was -- this was Mr. Van
25 Etten's attempt at confronting the witness with a transcript

1 of what one of her business partners said?

2 MR. VAN ETEN: Yes.

3 THE COURT: Okay. No. The objection remains
4 sustained.

5 MR. VAN ETEN: Sure. Thank you, Judge. Just
6 making a record. I appreciate it.

7 THE COURT: There's a lot of legal books on my
8 bench. Come and point to where you get to do that. I just
9 -- the objection remains sustained. Okay?

10 Is there anything else for the record? Okay.
11 Thank you.

12 (Whereupon, the proceedings were adjourned until
13 December 16, 2024, at 9:30 a.m.)

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