Jose Urquia v.
Deegan 135 Realty, LLC, et al

Dr. Vicki Seidenberg
May 16, 2025

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SUPREME COURT OF THE STATE OF NEW YORK.
COUNTY OF BRONX: CIVIL TERM: PART 1A-21

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JOSE LUIS URQUIA,

Plaintiff,

-against- Index No: 22340/2019E

DEEGAN 135 REALTY LLC, CHESS PROPERTIES LLC, CGS BUILDERS, INC., and CHESS BUILDERS LLC, TRIAL

Defendants.

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DEEGAN 135 REALTY LLC and CHESS BUILDERS LLC,

Third-Party Plaintiffs,

-against-

CAPITAL CONCRETE NY INC.,

Third-Party Defendant.

----------X

CAPITAL CONCRETE NY INC.,

Second Third-Party Plaintiff,

-against-

DUNN CO. SAFETY,

Second Third-Party Defendant.

----------X

Bronx Supreme Court
851 Grand Concourse
Bronx, New York 10451
May 16, 2025

B E F O R E:

HONORABLE MATTHEW PARKER-RASO,
Justice of the Supreme Court

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AMANDA ALVAREZ
Senior Court Reporter

(Whereupon, photographs were marked as Defendant's Exhibit B for Identification.)

THE COURT: We're we are on. Jury is out of the room.

My understanding is that defense counsels have an application?

MR. GILROY: Yes, Your Honor.

I understand that Dr. Seidenberg is being called this morning.

Dr. Seidenberg was the subject of a 3101(d) that was exchanged by the plaintiff's.

There were a couple of corrections and the most recent one was NYSCEF number 366. It was e-filed on March 11th of 2025.

I have a copy I'd like to mark fork identification.

It is titled, Plaintiff's Supplemental Expert Witness Disclosure. It contains information but no report regarding Dr. Seidenberg.

Today, at seven a.m. we received a report of Dr. Seidenberg. The report contains information outside of the four corners of the 3101(d) that was exchanged.

In particular, information concerning a meeting between Dr. Seidenberg and the plaintiff in which she recites, among other things, his present physical complaints, his activity level, various other data regarding

Mr. Urquia.

Now, this was not previously exchanged and I move to preclude or limit Dr. Seidenberg's testimony to the four corners of her 3101(d) that was exchanged prior to trial.

I don't think it's appropriate to exchange an expert's report with new informing during the trial.

THE COURT: What NYSCEF document number did you refer to?

MR. GILROY: Sure. I was referring to number 366.

MR. SHOWERS: I join in that motion to preclude, Your Honor.

THE COURT: Okay. Are you calling that doctor today?

MR. BRENNAN: Yes. She's right outside.

THE COURT: Okay. For some reason, I thought --

MR. BRENNAN: She's a life care planner as well, Judge; so, she has a medical degree. She's an expert in both physical medicine and rehabilitation and she is separately certified as a life care planner.

I have physical copy of the disclosures and I can hand a courtesy copy to the Court.

THE COURT: Well, let's talk about --

MR. BRENNAN: I'm very happy to respond to this.

THE COURT: Let me wrap my head around the NYSCEF document that we were discussing.

MR. BRENNAN: I actually think it's important to also consider the original disclosure for Dr. Seidenberg back in 2021.

THE COURT: We'll go backwards and then I'll hear from you, Mr. Brennan.

So, that March 11, 2025 supplemental expert witness disclosure, the subject matter was going to be plaintiff's future costs of medical care, plaintiff will require life expectancy, and will testify with a reasonable degree of life care planning and physical medicine and rehabilitation certain that the necessity and nature of the plaintiff's future medical care and the costs of the same are supplemented as follows.

And then there's quite a few charge listed there.

So, Mr. Brennan, what was the initial disclosure and when was it made?

MR. BRENNAN: The initial disclosure of Dr. Seidenberg was made back on April 6, 2021.

THE COURT: Do you have a NYSCEF --

MR. BRENNAN: It was not e-filed.

THE COURT: Kyle, can I get a copy of that.

MR. BRENNAN: I can just hand it to Your Honor. (Handing).

COURT OFFICER: (Handing).

MR. BRENNAN: But first of all, I would just point

the Court's attention to the requirements of CPLR 3101(d).

It's often common practice to disclose the reports. All that's required of an exchange is to provide sufficient enough detail about the nature of the opinion, the basis of the opinion, essentially what's expected to be testified to.

It's noted way back in -- the disclosure of 2021, that Dr. Seidenberg's opinions would be based on a review of the medical records, relevant documents in the case, as well as her evaluation of Mr. Urquia.

That's reiterated in the supplemental corrected disclosure from March this year.

You'll notice in the language of the original disclosures --

THE COURT: What exhibit is that in the packet you just handed me?

MR. BRENNAN: A and B. Dr. Seidenberg is the very first.

THE COURT: Okay. I'm there.

MR. BRENNAN: Then you will notice throughout the document, or the separate section of what Dr. Seidenberg is going to testify to in terms of what she considers medically necessary or recommended, you will see repeated language of Mr. Urquia states, said, active voice stuff, reflective of an obvious discussion with Mr. Urquia.

What I did this morning, just out of a courtesy,

because I've complied with the necessary requirements of 3101, which is send the full report. Majority of which is exactly what's included in disclosure, as well as -- the report is otherwise essentially medical timeline of all medical records, all of which have been entered in to evidence on stipulation, and then a reflexion of just a summary of the interview Dr. Seidenberg had with Mr. Urquia.

First of all, I think the application should be denied outright --

THE COURT: Based upon the previsions of 3101(d)?

MR. BRENNAN: Absolutely. There's nothing -- there really isn't anything that is in the report, except as to what Mr. Gilroy has deemed as information from an updated interview that hasn't been previously disclosed but it was disclosed back --

THE COURT: When was that interview?

MR. BRENNAN: It's directly in the report but it's like March 7th of this year, and then the report is dated March 11th, and that is the date of the exchange.

The disclosure in its body, in the 3101, noted that her opinion would be based on an evaluation of the plaintiff.

I don't --

THE COURT: I just want to go over 3101(d)1, all right?

Dealing with experts, and that statute provides that each party shall identify each person whom the party expects to call with an expert witness at trial.

And shall disclose in reasonable detail, the subject matter on which expert is expected to testify, the substance of the facts and opinions on which expert is expected to testify, the qualifications of each expert witness, and the summary of the grounds for each expert's opinions. Okay?

The next line is, however, where a party for good cause shown retains an expert an insufficient period of time before the commencement of the trial to give appropriate notice thereof -- that's not applicable to this case right now.

Mr. Gilroy, Mr. Showers, is there any contention about the disclosure that was initially made about this doctor back in April of 2021?

And it looks like there was corrected one dated March 11th of '25. That looks like it's just Exhibit A to this packet.

B, your next exhibit here that you're giving me is --

MR. BRENNAN: Is that economist?

THE COURT: Yeah.

MR. BRENNAN: So, all of Dr. Seidenberg --

THE COURT: It's in A.

Did you get them back in April of 2021 and March of this year? Because we started this trial just this week.

MR. GILROY: Yes, Your Honor.

Just to be clear. We had received plaintiff's -- certainly plaintiff's corrected supplemental expert witness disclosure. The document that was e-filed on March 11th.

The report, which was e-mailed at seven a.m., indicates that Dr. Seidenberg interviewed the plaintiff on March 3, 2025, and that she issued her report on March 7, 2025.

THE COURT: But are they required to submit reports pursuant to 3101(d)?

MR. GILROY: They are required to disclose the information in the parameters that Your Honor just read from the statute.

THE COURT: Right.

MR. GILROY: What my point is here is that the disclosure given to us this morning goes way beyond what was disclosed in any of the pretrial 3101(d) exchanges.

THE COURT: How so?

MR. GILROY: Well, just as I mentioned, there is a description and a discussion of a meeting held with Mr. Urquia.

THE COURT: This was in March of '25?

MR. GILROY: Mr. Brennan referred to as courtesy. I would refer to it in other term. It appears to be ambush.

We had no --

THE COURT: Let me ask this.

Is there anything that comes up in the meeting of March of 2025 that would be outside of the scope?

Because as Mr. Brennan said, it does look like the initial disclosure said that the expert's opinion would be based upon conversation with the plaintiff.

MR. GILROY: Your Honor, I wish I could give you a complete and correct answer to that.

As I said, I got this in the e-mail at -- I didn't open my e-mail at seven, but I got this in an e-mail on the way to Court.

THE COURT: Let me ask you, Mr. Brennan.

What -- is there anything new that's going to sandbag the defendants with the presentation?

MR. BRENNAN: Right. The only thing that's in the report that was not previously disclosed is Dr. Seidenberg's recitation of a medical timeline, which is all the information, all records, all doctors, all treatments, that's previously been disclosed and has been stipulated in evidence.

What the doctor does in her practices, is sympathize it into a timeline and order of things.

There's no treatment referenced in there that has not been disclosed, discussed, and is also reviewed and relied on by their own experts. It notes a date of am interview.

And the doctor, I anticipate is going to rely on her report, so I gave them a copy of the full report just so they have, which she might be looking at, but there's nothing substantive, other than the acknowledgement of the date of the interview that's different --

THE COURT: And your representation to the Court now is that the only thing potentially being added is timeline of treatment to the plaintiff?

MR. BRENNAN: Correct, and the date of the interview that she conducted Mr. Urquia and the date that she prepared that document.

THE COURT: Right, but at that interview, was there anything that's going to come out of blue during the presentation during this witness's testimony?

MR. BRENNAN: I cannot fathom what that would be. He continues to have active complaints. That's part of what the case is about, what still bothers him.

There's nothing new or different there, but it is updated.

THE COURT: Right. Before this meeting, when was the last time that expert met with the plaintiff?

MR. BRENNAN: Before she prepared the disclosure in 2021.

THE COURT: Okay. So, she hasn't seen the plaintiff in --

MR. BRENNAN: She's not a treating doctor.

THE COURT: I know, but she hasn't meet with the plaintiff in over four years?

MR. BRENNAN: Correct.

MR. SHOWERS: I missed that, Your Honor.

Was there a meeting in 2021?

MR. BRENNAN: I believe so.

MR. SHOWERS: Okay, that's not referenced in this narrative.

THE COURT: There's references to conversations with the plaintiff, I believe.

MR. SHOWERS: I only see --

MR. BRENNAN: In order to prepare the disclosure from 2021, Dr. Seidenberg -- that's the substance of the 2021 disclosure.

MR. SHOWERS: It lists one interview date.

We should probably mark the 20201, Your Honor, if we could and what was exchanged today.

But there's only one interview date in what was exchanged today on 3/3/25.

THE COURT: You want to point me anything in the

prior disclosure, Mr. Brennan?

MR. BRENNAN: About when that original interview took place?

I don't think the date is located there.

THE COURT: Or anything in there as to that interview was taking place?

MR. BRENNAN: Sure. It's in the body of the 3101, that her opinion -- it's the paragraph labeled, basis of opinion.

And it says that Dr. Seidenberg's opinion, in part, will be based on evaluation of the plaintiff.

THE COURT: An evaluation?

MR. BRENNAN: Right.

THE COURT: It says, results of her evaluation of the plaintiff and her review of medical records. Also based upon any discussions with the plaintiff's physicians, pleadings, results, testimony at trial, economic financial vocational data, and medical and care data generally accepted in the fields.

Do we have a standalone printout of this that we can mark, since Mr. Showers requested that?

MR. SHOWERS: Can we also mark the 2021, Your Honor? I can share with the Court.

THE COURT: Yes. We will do this supplemental one -- well, I have the March 11th one right here. And I just

need the original one from April 2021, if anyone has it.

MR. SHOWERS: I will e-mail that to the Court.

THE COURT: While we're e-mailing, Mr. Gilroy, when you first made your application, you said either it preclude it or limit it.

What would a limited scope look like to you?

MR. GILROY: To the contents of the 3101(d). What we were given notice and an opportunity to read and review and analyze and prepare for trial.

This morning's report -- Your Honor, I'm just reading it now.

This morning's report discusses a right knee surgery in January of 2025. That is not part of this --

MR. BRENNAN: It's not part of the case.

MR. GILROY: And it continues. Due to torn ligaments from his accident. That's what she says in her --

THE COURT: But the torn ligament -- I'm just saying the torn ligament has been an injury that's been pled and discussed throughout this trial.

MR. BRENNAN: But not to the right knee and the right knee is not part of the this case.

She will not talk about the right knee.

And if you look at the disclosure that's been with them since both April of '21 and March of this year, there is a no right knee claim, no right knee forecasted medical

treatment.

THE COURT: Okay. So, I am going to rule that she can't reference anything about the knee in relation to anything going forward.

MR. BRENNAN: The left knee has always been --

THE COURT: Hold on.

MR. GILROY: The fact that he gave an interview and that he offered complaints, which she includes and incorporates into her report --

THE COURT: But if the complaints are continuing complaints to the areas that have been pled and are noticed, I don't think that that's an issue. It's just --

MR. GILROY: Well, yeah.

Just in terms of -- I mean, that's just an example. I just started --

THE COURT: I understand. I think Mr. Brennan couching it as a courtesy, and I understand your, I got this at seven a.m. this morning so I haven't had an opportunity.

What if I made a ruling to the extent that the witness cannot testify about any injuries or complaints that have not been pled in the BP or testified to already at trial?

MR. GILROY: Your Honor, I think the witness -- the ruling should be broader than that.

I don't think the witness should be permitted to

testify to an interview, which we were surprised with at seven this morning.

In other words, there was no indication in any those reports that an actual interview took place, and no contents of such an interview were reported to us.

THE COURT: But is that required?

MR. GILROY: I would say it is. That is the essence of what a life care planner does, is they interview a claimant or a plaintiff, and then provide -- create a life care plan presumably placed upon that interview.

THE COURT: Right, but what I'm saying is the initial disclosure references that there are conversations with the plaintiff, which would form the basis of the opinion.

MR. GILROY: My understanding is that it indicates, in very broad terms, her evaluation.

I believe that is --

THE COURT: That is the word.

MR. GILROY: -- the term that was used. It doesn't say interview. It doesn't indicate the contents or the data that the doctor used to formulate her opinion.

It's apparently a major basis of her opinion. She devotes paragraphs to it starting on page ten of today's report.

THE COURT: Mr. Brennan?

MR. BRENNAN: I don't really have anything to say behind what I've already said to the Court.

To fame surprise that there's an interview that took place, the supplemental report was provided because four years had passed and we were approaching a new trial.

So, the treatment start reflects the starting date of 2025 for the recommended modalities moving forward.

I will note this and invite the Court to examine, even though it's taking time out of the day.

THE COURT: It's okay.

MR. BRENNAN: Every single body part that Dr. Seidenberg made recommendations for in 2021 is consistent in 2025.

Every single recommended treatment is still there.

All the modalities are still there.

This includes injections, the physical therapy.

The only thing that I think is of substance that Mr. Gilroy is pointing to is an updated interview.

But to preclude when the patient himself, Mr. Urquia himself, is going to testify to about his current complaints, is -- I think is a particularly silly argument to make, because there's no surprise about that.

We've argued from the moment we filed a Bill of Particulars in this case that these injuries are permanent in nature and will last the rest of his life expectancy.

There's nothing new here, Judge.

An interview took place in March of this year.

THE COURT: I' looking at page 10 of the report, which Mr. Gilroy directs my attention to, and it does a reference a January 2025 right knee surgery.

Would that be woven into her --

MR. BRENNAN: Not at all. It's not in this case.

I will agree and consent under no circumstances because we never pled a right knee. It's not a part of this case. It's never been put in the Bill of Particulars. It's never been treated for in this particular case.

I assure the Court the right knee will not be addressed on Dr. Seidenberg's testimony.

THE COURT: I'm looking through dates on the report so far, and it looks like all the medical interventions go from 2019, on page two, to --

MR. BRENNAN: To 2022, Judge.

THE COURT: Yeah, hold on.

I have until August 2023 for cervical steroid injections.

MR. SHOWERS: One of my concerns is where did the numbers in 2021 come from if Dr. Seidenberg did meet with the plaintiff until 2025?

THE COURT: You didn't get a report in 2020, you got a disclosure.

So the basis of the disclosure was, you know, in line with 3101(d) --

MR. SHOWERS: But if there was no interview in 2021, what was the disclosure based upon?

THE COURT: You can ask her that. If you're trying to challenge what her basis of opinion is, then ask her on cross-examination.

MR. SHOWERS: We've asked repeatedly for plaintiff's counsel for a narrative, and as recently as two days ago, he didn't give us one.

THE COURT: Were there any motions before this, for a narrative, or a report, or during discovery?

MR. GILROY: There was a motion to preclude to Dr. Seidenberg. This was filed at NYSCEF 351.

THE COURT: When?

MR. BRENNAN: It was motion in limine.

MR. GILROY: Yeah, it was motion in limine.

THE COURT: I didn't get that motion in limine when I was ruling on all of the other motions in limine before the start of the trial.

MR. BRENNAN: You did.

MR. GILROY: I believe we discussed it, Your Honor. The basis of that was before a narrative was received.

THE COURT: All right, let me look at my notes.

Are you planning to have a rebuttal on this expert

topic?

MR. GILROY: Your Honor, I haven't had a chance to completely read this and analyze what we got this morning.

We have a vocational rehab expert witness who has been scheduled to testify.

How would we defend against this, I really -- in the minutes we've had to review this report, I haven't come up with an absolute plan.

THE COURT: Where is the expert referenced in the most recent visit interview in the report?

MR. BRENNAN: At the very beginning, Judge. Page one, I think.

THE COURT: I see it. Interview date 3/3/25.

MR. BRENNAN: Can I make a note of something?

THE COURT: Hold on one second, please.

Go ahead, Mr. Brennan.

MR. BRENNAN: So, I just pull the Court's attention to page one. If you look at this substantively, we have essentially a restitution of every relevant doctors visit, facilities that my client treated at, diagnostic test taken, all of which are stipulated into evidence, already reviewed upon, reviewed by the defendant doctors, commented on their reports.

Defendants' have had Dr. Seidenberg's opinion since March 11th, and had each one of their own experts comment on

Dr. Seidenberg's most recent opinions.

Which is why it's actually relevant to mark that entire document that I handed to Court, because it has every doctor's -- every 3101(d) exchanged in this case.

If they want to ask about any of the substance of the most recent interview, the basis -- the opinions are formulated from that interview already have been in defendants' position since March 11 of this year.

So, again, there's substantively --

THE COURT: It's the same.

MR. BRENNAN: It's the same.

There's nothing that's going to be offered here that's not an opinion. They've already been made aware of.

I would note their vocational rehabilitation Mr. Pessalano does not comment beyond -- does not comment substantively on any recommendation for future medical care, because the defendants' doctor say my client doesn't need it.

So again, talking about digesting and strategizing a response to this, they said he doesn't need it. There's no change in that position. They said flat out, he is fine. He either didn't injure these body parts in this accident or he's -- it's completely resolved.

And so the answer is if Dr. Seidenberg recommends a test, he doesn't need. If she recommends a surgery, he

doesn't need it. If he recommends physical therapy, he doesn't need.

It's an impossibility to say this substantively changes any defense strategy an iota.

MR. GILROY: Your Honor, we disagree with that -- that that's the description of, he doesn't need it.

It's a little more detailed than that.

THE COURT: Well, I mean, is that part of it?

All right, let me just throw it out here.

I'm just reading through the report right now. The first pages, it is, other than this surgery in 2025, everything in here is part and parcel of what's been on notice for quite some time.

So, I don't think precluding her all together is the right thing to do here because the plan -- she was initially disclosed in '21. The basis of her opinion and the sum and substance of what she's expected to testify to were set forth earlier in 2021.

I think there is something to say about nothing -- I mean that's the one glaring thing that stands out to me and you've already conceded that that's not part of her opinion, correct? That 2025 --

MR. BRENNAN: Correct, Judge.

MR. SHOWERS: Your Honor? In the March 11, 2025, disclosure, the only basis for her testimony is --

THE COURT: What page?

MR. SHOWERS: On page two of the disclosure. There's no reference to any review of any medical reports and no reference to any discussion with the plaintiff.

MR. BRENNAN: Well, she was originally noticed --

MR. SHOWERS: My position and it's Mr. Gilroy's position as well is, she should be limited to what is in the four corners of the 3101 dated March 11, 2025.

If you do it that way, as an attorney you're strictly limited to what you put in here as an attorney. And your witness cannot come in at trial and testify as to things that are outside the bounds of this document.

THE COURT: So, are you saying that by serving this one in 2025, they essentially thrown this earlier one out?

MR. SHOWERS: Yes. They called it corrected and amended.

THE COURT: What do you say to that, Mr. Brennan?

MR. BRENNAN: It was corrected because there was a misfiling of the document earlier that day. That's where the correction comes from.

But she's -- the 3101(d), the statute itself, requires -- we put them on notice about this witness and the basis of her opinion since 2021.

THE COURT: Yeah, I see that. I see that.

MR. BRENNAN: Yeah.

Again, the recommendations for future medical care all pertain to the same exact body parts since 2021, all reference the same types of treatment, all reference the same recommended procedures. They are updated for the calender year 2025, because she anticipated she was would be testifying in 2025, and would be important to have it from 2025 moving forward, not a basis from 2021 moving forward.

So, again, there's -- it's -- we're talking about the substance of the opinion here, all of which has been on notice.

Every single record referenced in the report I disclosed this morning is in evidence. It's been reviewed and re-referenced by every one of their own experts.

There's nothing substantive that they haven't had a chance to look at.

THE COURT: Yeah. I agree with you, Mr. Brennan, okay?

However, I want to be very specific in this -- Mr. Gilroy's right to point out this surgery not pled. So, there'll be no questioning on that.

She's subject to cross on any type of interview, but I find that the earlier disclosure did comply with 3101(d).

MR. GILROY: Your Honor, what our specific request is, is that the Court limit reference to the fact that Dr.

Seidenberg apparently interviewed Mr. Urquia two months ago and we weren't notified about this interview or given her report of the substance of this interview until hours ago.

THE COURT: So, what would that look like? The complaints?

MR. GILROY: Well, the fact that an expert witness did or did not examine or, in this case of a planner, interview the plaintiff, clearly goes to the weight of that person's testimony.

If somebody -- it was our impression walking in, until we saw that -- walking into the trial --

THE COURT: That she just reviewed records?

MR. GILROY: That she reviewed records and was going to give us her opinion as to the costs of what various treatments are.

MR. BRENNAN: Judge, play this out logically --

THE COURT: Hold on. Hold on.

MR. GILROY: I will point out that there's no testimony other than part of Dr. Simela's testimony about a 10 or 15% chance of a need for future surgery.

There is a no testimony regarding a need for further treatment for any of Mr. Urquia's injuries. I assume that with taking --

THE COURT: The doctor yesterday --

MR. GILROY: I'm sorry.

THE COURT: The doctor testified yesterday that there was a likelihood for future surgery.

MR. GILROY: I do recall the doctor testifying. He should come for medical visits on a regular basis.

THE COURT: My recollection is that there might be, because of the non permanency of the surgery that's done, he would not only go for future visits and scans stuff, but there may be a future surgery necessary.

MR. GILROY: Yes. He put a 10 or 15% chance --

MR. BRENNAN: That's actually an incorrect statement of the testimony. It was within the first ten years. He has over three decades of life expectancy.

Dr. Simela's testimony was within -- the statistics say within the first ten years, there's that percentage likelihood of the prevision; that increases the longer you live.

We have a patient here who is currently 41. We put the like expectancy on notice throughout both disclosures of Dr. Seidenberg.

MR. GILROY: Your Honor --

MR. BRENNAN: But also, Judge, let me play this out logically for a second.

THE COURT: No. I'm ruling. I am done. Okay?

I am going to mark the initial disclosure. So April 7, 2021 response for demand for witness disclosure,

that will be marked as -- who wants to do it?

MR. GILROY: Defendant.

THE COURT: -- third party or direct? It's a joint application.

MR. SHOWERS: Defendant is fine.

THE COURT: Okay. So, we'll do them together.

So, the initial response from 2021 and the updated response of March 11, 2025, will be marked as Direct Defendant's Exhibit C.

MR. GILROY: Shouldn't they be Court Exhibits?

THE COURT: That's fine.

(Whereupon, the initial response was marked as Court Exhibit III by the Reporter.)

THE COURT: Mr. Brennan, you want your entire disclosure packet as Court Exhibit IV?

MR. BRENNAN: Yeah. It's just a reference point for Your Honor. Just for the record, I think it doesn't include the radiologist -- the disclosures. But I can supplement that -- the defendants' radiologist disclosures, Dr. Learner.

THE COURT: Okay.

(Whereupon, the expert disclosures was marked as Court Exhibit IV by the Reporter.)

MR. BRENNAN: I wanted to explicitly -- I want to follow the Court's ruling. I have no intention of asking

Dr. Seidenberg but I want to make sure she never mentions the right knee under any circumstances. I'd like the opportunity to say, don't say that body part at all, just so we are not confusing issues here.

THE COURT: Yeah, that's fine.

Mr. Showers, I'll hear from you.

MR. GILROY: Many of the future treatments that are alluded to and discussed in Dr. Seidenberg's reports, all of them are for things that have not been -- there's no testimony that there's a need, for example, chiropractor massage therapy. There's a $45,000 projection in the 3101(d) for future massage therapy from chiropractors.

Dr. Simela did not testify that there is a need for -- or a causal relationship of chiropractic treatments in the future.

So I am asking, is this being offered subject to connection by competent medical testimony? In other words, the need for future treatments in the nature of chiropractors, visits to hand doctor, occupational therapy, and physical therapy -- a number of different items and treatments into the future that Dr. Seidenberg will testify to her projections of the costs. But we don't have the foundation that that particular treatment is needed.

THE COURT: I think that's a fair point.

MR. BRENNAN: You would think so except she's a

medical doctor who's also being offered as an expert in the field of physical medicine and rehabilitation. So, her CV's long been exchanged and that was exchanged -- so when you're talking about the competent medical evidence, we're going to have it in the form of Dr. Seidenberg.

Part of her foundation is that -- she's separately certified in life care planning, but she's a licensed medical physician who has worked for decades in the field of physical medicine and rehabilitation.

Which is exactly the type of doctor that determines the -- like Dr. Abramov for the actual treating physician here, you know, started him on a course of certain types of physical therapy, sent him for certain types of tests.

That's the kind of doctor that kind of quarterbacks.

THE COURT: Slow down.

MR. BRENNAN: I'm sorry. I'm a little heated.

MR. GILROY: Your Honor, if the need was if doctors -- the doctor's opinion was there's a need was formed on the basis of her March 2025 interview, which was disclosed to us today, we would object.

MR. SHOWERS: Your Honor, there's also no testimony for the need for which is found EMG and NCV tests. There's no testimony for the need for further epidural injections. There's no testimony for the need for ultrasound.

THE COURT: Wouldn't she -- isn't it fair to say that the disclosure included her, other than the life planning stuff, medical qualifications?

MR. SHOWERS: May I just say there's no testimony also for occupational therapy. There's no testimony regarding the need for future medicine. There's no -- in fact, Dr. Simela yesterday testified that plaintiff is using over-the-counter medicine currently. There's no testimony for the need for left shoulder arthroscopy, right wrist arthroscopy, the lumbar and anterior cervical revisions or surgeries in the first place. Those were not to a reasonable degree of medical certainty.

So, Dr. Seidenberg is wildly outside of her field. She can't testify to all this medical treatment, because it has nothing to do with the field of medicine that she's licensed in.

THE COURT: What do you say to that?

MR. BRENNAN: First of all, listen to her testimony. Let's see if I lay the proper foundation.

Mr. Urquia has undergone injections. He's already undergone EMG testing. He has been recommended for a right wrist surgery. He has been on the path and recommended for a left shoulder surgery.

When you say there's been no testimony, there are other witnesses to come. Treating physicians are still to

come.

I assure you that Dr. Seidenberg's qualifications and basis for this opinion, which was already disclosed, will be noted in her direct examination. That could go to the weight.

I made it clear to the jury both in jury selection and in the opening, you can accept or reject. That's what the fact finders are here for.

She's got the qualifications to do this and she'll explain why.

THE COURT: No. You'll lay her qualifications to do this, if you're going to try to do that.

MR. BRENNAN: Exactly.

THE COURT: I want to see what the doctor says, all right? And I think it's fair enough for the jury, especially with the charges, that there's conflicting versions of recommendations or whatever, they have to fit it together.

I think an interview is par for the course in preparing for trial. And just my initial kind of review of the report, it does center on things that have been already set forth either in the BP or testimony so far. All right?

So, I'm going to deny the application.

I will note your exceptions, without you having to say it. Okay? But I am going to permit the expert to

testify and we'll go from there. Okay?

MR. SHOWERS: Yeah. Your Honor, I want to note for the record that I don't see these claims in the Bills of Particulars. I just don't see them there.

THE COURT: Future care?

MR. SHOWERS: No, Your Honor. Just these specific claims that Dr. Seidenberg is making are not in the Bill of Particulars.

These future surgeries not in the Bill of Particulars that I could see.

THE COURT: Is future surgery not pled -- future treatment?

MR. BRENNAN: It's pled as a matter of course, that all this is permanent in nature and is ongoing and will require additional treatment. So, yes. All this is --

THE COURT: I am to allow the testimony, okay?

Are we reedy to proceed?

MR. BRENNAN: Yes, Judge.

THE COURT: Let's get the jury down here, please.

COURT OFFICER: All rise. Jury entering.

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

THE COURT: Good morning, members of the jury.

We can be seated. Happy Friday.

Sorry. I know that you all were here. We had a

little bit more business to take care of before we could call you down. I appreciate your patience as always.

We will continue today with plaintiff's presentation of his case.

Counsel, if you want to call your next witness please.

MR. BRENNAN: Thank you, Your Honor.

Plaintiff calls to the stand Dr. Vicki Seidenberg.

V I C K I S E I D E N B E R G, called as a witness by and on behalf of the Plaintiff, after having been first duly sworn, was examined and testified as follows:

COURT OFFICER: Please, raise your right hand.

Do you swear or affirm the testimony you are about to give is the truth under penalty of perjury?

THE WITNESS: Yes.

COURT OFFICER: In a loud clear voice, please state your name and address for the record.

THE WITNESS: Vicki Seidenberg, 30 Primrose Lane, Roslyn Heights, New York 11577.

THE COURT: Thank you. Witness is sworn.

Counsel, you may inquire.

MR. BRENNAN: Thank you, Your Honer.

DIRECT EXAMINATION

BY MR. BRENNAN:

Q If you can, introduce yourself to the jury.

A Hi. I'm Dr. Vicki Seidenberg. Nice to meet you.

Q Are you duly licensed physician in the State of New York?

A Yes, I am. I'm board certificated in the field of physical medicine and rehabilitation.

Q We'll take about that in a moment.

Can you give the jury a sense of your educational background?

A I completed my, after doing undergraduate, at State University of Stony Brook. I completed my medical education and I got my degree from a state university at Buffalo School Of Medicine.

From there, I went on to do my training, my residency in Chicago, where I specialized in physical medicine and rehabilitation.

Q Can you tell us what comprises the field of physical medicine and rehabilitation?

A So, PM&R, physical medicine and rehabilitation is also known as physiatry. And it's quite a big field of medicine and unfortunately many people don't even know what I do.

I specialize in the evaluation, diagnoses, and treatment of patients with neuromuscular skeletal diseases. So, I take care of patients with nerve muscle and bone problems.

It's quite a large field. My training encompasses treating spinal cord injury patients, traumatic brain injury

patients, amputees, multi-trauma orthopedics, stroke rehabilitation, cardiac rehabilitation, and pediatric rehabilitation, as well as sports medicine, outpatient, muscular skeletal and pain management.

So, a physiatrist is the team leader in the care of patients with disabilities. And I like to say that we treat them in a holistic fashion.

How do we do that? The goal of treating a patient with a disability is not only decreasing pain, but maintaining function, whatever functional level that patient might be able to have.

Q When was it that you actually started practicing in that particular field?

A Since 1995. So, I've been in practice for over almost 30 years.

Q So, when you were saying you want to help maintain -- not just improve, but help maintain, what do you mean by that, Doctor?

A So we take multi-disciplinary approach. So, I'm the doctor in charge of their care. It's my job to diagnose, treat their pain, prevent secondary complications related to their disability. And then we treat with modalities, different kinds of therapies.

I prescribe -- I don't do the actual therapy. I prescribe physical therapy which works on strength, balance,

walking, maintaining joint range of motion. I may prescribe occupational therapy, also known as OT.

OT focuses more on the upper extremities, fine motor skills, and also what we call activities of daily living. Can that patient get to the bathroom by themselves, in and out of tub, to the toilet, things like that.

In a case of the patients with brain injury and stroke, they might need speech, swallow evaluations, what kind of diet can that person eat, do they have swallowing difficulties, do they need a feeding tube?

Q In addition to some of those therapies you may prescribe, do you also play a role in what kind of specialist a patient under your care might need?

A Yes. Yes, I'm the gatekeeper. I oversee the medical care. One of the goals is to prevent secondary complications and with each disability, there are multiple complications that can occur. So it is the goal to prevent and -- hopefully postpone and prevent some medical complications.

Q What are some the professional experiences you've had since you started practicing in that field back in -- I missed the year.

A In 1995.

Q Okay.

A After my training, I returned to New York. I worked in outpatient muscular skeletal orthopedic practice, doing pain

manage, doing something called electrodiagnostic testing, injections.

So, the goal of the physiatrist is to treat that patient and prevent, hopefully, or postpone surgery for many -- particularly in orthopedic practice. That's the goal.

You have neck pain, you have back pain.

Not every person with neck pain or back pain needs a surgeon. They need a physiatrist.

So, I worked in an outpatient muscular skeletal practice for many years and then relocated my family to Long Island, where I maintained not only an out-patient muscular skeletal practice but then I started working in the hospital. I was working in an acute rehab facility, Northshore, now Northwell in Glen Cove.

We had an acute inpatient rehabilitation center, where people go immediately after multi-trauma. Immediately after an accident, you've had surgery, you've had trauma, you're not ready to go home, you're not safe to go home, and you have ongoing medical issues. You then go to inpatient rehabilitation, where I oversee the care.

From acute rehab, I also worked in a subacute facility. So, sometimes particularly nowadays, they -- insurance companies don't allow patients to stay in acute rehab for very long. But a patient not be safe to go home, so there are subacute facilities, of which the patient is then transferred and they

get continued therapy.

And again, I'm the medical doctor overseeing their wounds, their bowel and bladder care, infections. And I'm prescribing different therapies, different braces.

I'm educated in -- so, some patients have amputees and they need prosthesis. So, I know about the different kinds of prosthesis.

Q You touched upon a couple of things I want to explore a little more deeply. Specifically, your role and your experience with pain management of those types of orthopedic patients.

A Yes. Again, you want to attack pain from multiple areas. You don't want to look at pain through a microscope. It's not just the twisted ankle, because the twisted ankle -- the knee bone is connected to hip bone and it translates up and now the back -- the pelvis is irritated and can cause back pain.

So medications, I do multiple injections into joints, into tendons. I might brace patient might need a brace. I would prescribe therapy.

Q We've heard some testimony about a couple of different kinds of injections. Can you help us distinguish the difference between an epidural and a trigger point injection?

A Okay. So, there's -- now, we're going into really back pain and neck pain treatment.

So, trigger point injections are injections into the muscle, okay? So, everybody has gotten those knots in their

neck, in their back, and it hurts when you push on them.

A trigger point injection is actually an injection into the muscle; and what we found is that the muscle has developed adhesions and it's not functioning properly.

So, you inject the muscle with some numbing medicine and some sterile saline to flush the area and try to break up adhesiones.

An epidural injection is an injection directly into the spinal cord. We're bathing the spinal cord with cortisone. Cortisone is an antiinflammatory medication. You've heard of NSAID, non-steroidal anti-inflammatory drug?

That's Motrin, that's Advil, that's Aleve.

Cortisone and prednisone are steroidal anti-inflammatories. So, they are injected directly into the spinal column to bathe an inflamed nerve.

Q Would you ever perform that kind of procedure yourself?

A I actually was not performing epidurals myself. One of my associate's was.

I was performing something called facet and sacroiliac joint injections. So, this is a third type of injection that we use for pain management for people with neck and back pain.

Basically what that is, is an injection into the joints. So, your spinal column has vertebra that are lined up.

You have your cervical, which is the neck, the thoracic, which is the midback, and then the lumbar.

In between the bones are something called the discs. You've heard of the discs. The discs are like jelly donuts that sit between the bones.

But the bones have little wings, and the wings come out and they're connected. So, they have joints. Wherever two bones come together, there's a joint. Those are called facet joints. When there's trauma to the disc or the discs start to dry up, the bones get closer together and bones get inflamed.

So, one of the injections we do for back pain are facet joint injections.

Q You mentioned electrodiagnostic testing. Do you have any particular training in that area?

A Yes. Part of my training as a physiatrist is in electrodiagnostic testing. That's a two-part test.

The first part is a nerve conduction study, where you measure the impulses with electrodes from the spinal cord into a specific muscle to determine if there's any blockage.

The second part of the test involves a needle electrode that is actually inserted into muscles. It takes recordings from the muscle and determines if there's what we call denervation, or nerve damage to that muscle.

So, electrodiagnostic studies are used to determine if there's current or previous denervation or nerve damage and how that muscle is functioning.

Q Aside from your medical degree and your years

practicing in the field of physical medicine and rehabilitation, do you have other areas of expertise?

A Yes. I am a certified life care planner.

Q What does it mean to be a certified life care planner?

A A life care plan is a comprehensive report that -- the purpose of a life care plan is to help determine current and future medical needs and costs for people who have had injuries.

I had to get certified as a life care planner. I took a course, many months. I went down to North Carolina, took class down there. I had to take an exam. I received my certification as a life care planner.

Now, the only physicians that can become certified as life care planners are physiatrists.

Why is that? Because my medical training encompasses function, future care, and people with disabilities.

Q So, can I ask you how you'd become involved in a case like this with Mr. Urquia?

A Yes. I was asked to make a report for this compliant.

Q And did you do so in this matter?

A Yes.

Q And broadly speaking, what does a life care plan entail?

A It's quite an extensive report. I review all of the medical records from the time of the accident through current date. All the operative reports, all the diagnostic studies I

do a consultation with the client. And then, there's a lot of research because I have to research what future care would be required for that particular injury, what are the standards of care, and what are the costs for that particular treatment.

Q Have you ever testified in court before?

A Yes.

Q Approximately how many times?

A Over my 30 years, maybe about a dozen, give or take.

Q Have you ever testified on behalf of a plaintiff in a case like this, an injured party?

A Yes.

Q Have you ever testified on behalf of a client of firm?

A Yes, I have.

Q Have you ever testified on behalf of a defendant in a case?

A Yes.

Q Are you being compensated both for your time here today and for the time you spent preparing the life care plan?

A Yes.

Q What is that compensation?

A $8,500.

Q I want to go into the substance of your plan in a moment, but I just had a couple of broader questions for you.

You talked about records that you reviewed to prepare your plan?

A Yes.

Q Does that include the Lincoln Hospital records from Mr. Urquia's both initial ER visit, as well as a couple of subsequent clinical visits?

THE WITNESS: May I refer to my report?

MR. BRENNAN: With the Court's permission, if she can't independently recall, can she refer to what she prepared?

THE COURT: Yeah.

MR. BRENNAN: Thanks.

A Yes, I did review the Lincoln hospital records.

Q That's in evidence as Plaintiff's Exhibit 5.

Did you also review Dr. Abramov's records from Interventional Physical Medicine and Rehabilitation?

A Yes, I did.

MR. BRENNAN: That's is in evidence as Plaintiff's Exhibit 6.

Q Did you also review Dr. Nigel's records, the orthopedic doctor, over at University Orthopedics of New York?

A Yes, I did.

MR. BRENNAN: That's in evidence as Plaintiff's Exhibit 7.

Q Did you review Dr. Caligiuri, the hand specialist from the University Orthopedics of New York?

A Yes, I did.

MR. BRENNAN: That's in evidence as Plaintiff's Exhibit 8.

Q How about Dr. Kwan, the neurologist?

A Which neurologist?

Q Dr. Kwan.

A I have Dr. Hauskknecht.

Q Okay.

MR. BRENNAN: That's in evidence as Plaintiff's Exhibit 10. That's from Complete Care.

Q How about Dr. Perez, Dr. Colon, and Dr. Simela?

A Yes.

Q Okay. Did you have a chance to look also at the surgical records from Surgicore, New Horizon and Hudson Hospital?

A Yes.

MR. BRENNAN: Those are in evidence as 13, 14 and 15.

MR. SHOWERS: Can we just have the page numbers in the doctor's reports where those records were reviewed?

MR. BRENNAN: And 16.

THE WITNESS: Page eight and nine have the list of the records reviewed.

MR. SHOWERS: Thank you.

Q Did you have an opportunity to review surgical reports -- withdrawn. I think you just said that.

Imaging studies -- or rather reports -- radiology reports of other film studies?

A Yes.

Q Now, are you familiar with the phrase life expectancy?

A Yes.

Q How is such a thing determined?

A Part of the report is for me to determine the life expectancy of the patient. There are studies and tables from the National Statistics of Vital Statistics, I believe. United States Life Tables Center for disease control and prevention, National Center for Health Statistics and National Vital Statistic reports that determine life expectancy based upon race, based upon age, gender. So that's what I use.

Q Now, you say that -- you told us earlier rather that in addition to the review of records, you spoke with Mr. Urquia?

A Yes.

Q By the way, were you asked to update an original report in this particular matter?

A Yes, because the original report, I believe, was a few years ago.

Q Would you have interviewed Mr. Urquia on both occasions?

A Yes.

Q When you say a few years ago, if I represent to you sometime in 2021, does that sound about right?

A That sounds about right.

Q All right. When did you most recently interview Mr. Urquia?

A In March of 2025.

Q What did you learn, both in the review of the records and that initial interview of Mr. Urquia that you -- in order to prepare your life care plan?

A The consultation entails reviewing his medical history. I had already reviewed his medical records and had written a medical timeline of the history, so I knew quite a bit about him, but I like to review it with the patient.

Then we talked about his current symptoms, current treatment, current medications, his psychosocial history. So, is he married, does he have children, his previous employment, his previous education, and then we discussed his ongoing symptoms and functional limitations.

Q In both your consultation and review of the records, what did you learn about the inciting incident that gave rise to any medical treatment he needed? What happened to him?

A He was on a ladder and he was struck by metal beams while working construction.

Q Okay. After your consultation and review of the medical records, just to put a fine point on it, you prepared a life care plan?

A Yes, I did.

Q When we spoke a moment ago about life expectancy, what did you determine the life expectancy for Mr. Urquia to be?

A 35.7 years, so it's rounded up to 36 years.

Q And that would be from present day 2025 into the future?

A Yes.

Q Did you also, in addition, come up with not just recommendations for future medical care, but those particular costs?

A Yes.

MR. BRENNAN: Your Honor, with permission just for illustrated purposes, I would like to project on to the screen the different modalities to assist Dr. Seidenberg's testimony as she goes through the contents of her findings.

THE COURT: Mr. Showers?

MR. SHOWERS: Objection, Your Honor. I am not quite sure what counsel is referring to.

THE COURT: Why don't we have a sidebar?

MR. SHOWERS: Sure.

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

THE COURT: I'm going to excuse the jury for a few more minutes while we take care of some other business down here. We will have the court officer come bring you back when we're ready to continue the testimony, okay.

Jury is excused.

COURT OFFICER: All rise. Jury exiting.

(Whereupon, the sworn jurors exit the courtroom.)

THE COURT: Okay. You may be seated. The juror has been excused from the room. There's been an application to engage in some voir dire of the witness by defendants.

Who wants to start?

MR. SHOWERS: Can we both go?

THE COURT: Since you are the direct defendant -- it seems like it's joint application.

MR. SHOWERS: I just want you to give us both the opportunity.

THE COURT: You will both get the opportunity.

I will start with Dr. Showers.

VOIR DIRE EXAMINATION

BY MR. SHOWERS:

Q Good morning, Doctor.

A Good morning.

Q My name is Andrew Showers. I represent the defense in this case.

How many narrative reports -- or it's called a plan report, what was exchanged to us today, how many of those have you drafted in this case?

A The life care plan?

Q What I have in front of me is life care plan dated

3/7/25.

A Correct.

Q How many of those types of reports have you drafted in connection Mr. Urquia?

A I did one several years ago and then I updated it in March of this year.

Q Do you have the one that you did several years ago here today in court?

A No.

Q Where is that report?

A On my computer.

Q How many drafts did you make of your life care plan report?

A One.

Q One draft? What's the date of the first report?

A I don't recall off the top of my head.

Q You don't have your file with you here?

A No, I do not.

Q Did you have a meeting with Mr. Urquia back in 2021?

A Yes.

Q How was that meeting conducted?

A Via Zoom.

Q Was that one meeting?

A Yes.

Q Who was in attendance of that meeting?

A Myself, and the translator.
Q Who was the translator employed by?
A I don't recall.
Q The draft that you did back in 2021 -- was it dated 2021?
A If that's when it was written, yes, it was dated 2021.
Q Did you send that draft to plaintiff's attorney for any comments or edits?
A No.
Q Did you ever examine Mr. Urquia in person?
A No.
Q Is that true up until today?
A Correct.
Q Did you ever speak to any of Mr. Urquia's doctors?
A Personally, no.
Q I just want to clarify. Did you ever speak to them at all?
A No. I just reviewed their medical records.
Q And that's true for both reports?
A Yes.
Q When was the first time you reviewed Mr. Urquia's medical records?
A If the report was written in 2021, it had to be sometime that year.
Q How did you get those records?

A I received them from the attorney.

Q When you say the attorney, you are referring to the Wingate Firm provided them?

A Correct.

Q How long was your first report that you drafted in 2021?

A It was the same exact report. The update was really a second consultation with the client and a revision of the dates and the charts, because now it was two years later.

So, his life expectancy was a little shorter, I had to make some adjustments. But the body of the chart was essentially unchanged.

Q When you write a life care plan, do you typically do it via Zoom interview?

A Yes.

Q You mentioned your credentials. The credentialing agencies, did they require in-person interviews of the respective life care plan?

A No.

Q Where did you get the costs from that you came up with?

A I use several different sources based upon CPT codes. Then I do extensive research cost for in network, and out of network, and Medicare and then what you do is come up with a median cost. So, it's not the highest, it's not the lowest. It's an average of what the cost is for that particular --

Q Are any of those sources listed in your narrative report?

A Yes.

Q Where?

A Number two, number three under the resources. And then there are certain websites list on the last page, Healthcare Bluebook, FairHealthConsumer.org, GoodRx. Multiple listings of websites that I used for my sources.

MR. SHOWERS: Your Honor, for the record, I would just note that the -- that neither of the expert disclosures for Dr. Seidenberg contained any of the cost sources that the doctor apparently relied upon.

MR. BRENNAN: Right, the disclosure said --

MR. SHOWERS: I'm not done. That would be a further bases to preclude the doctor's testimony with respect to cost.

THE COURT: Mr. Brennan?

MR. SHOWERS: Costs were exchanged today for the first time.

MR. BRENNAN: That's incorrect. The costs have been exchanged for years and months.

MR. SHOWERS: Where -- the basis for the cost?

MR. BRENNAN: Sure. The disclosure said, as far back as 2021, that Dr. Seidenberg would be relying on accepted sources within her field for those costs --

generally accepted sources.

There is no life care planner on other side, by the way. Mr. Pessalano is a rehabilitation specialists.

The defendants have chosen in the defense of this case not to designate a life care planner.

MR. SHOWERS: Based upon a 3101(d) --

THE COURT: But you knew a life care planner was testifying, Counsel, correct.

MR. SHOWERS: Yes, but it's easily rebuttable because it doesn't reference any medical records and it doesn't reference any costs or the basis for the costs.

Now, today, it's been supplemented for the first time.

THE COURT: Again, the initial disclosure again sets forth experts witness will be based upon the medical records, the hospital records, discussion with plaintiff's physicians, pleadings, results, testimony pertinent economic financial and vocational data and medical and care data generally accepted in the field.

MR. SHOWERS: None of which is identified, Your Honor, in the record. Therefore, the doctor is limited to just what is in the 3101(d). She can't go beyond that. That's our position.

THE COURT: I don't think that there's prejudice.

I'll note your exception.

MR. SHOWERS: I just have a continuing objection and move to strike the testimony of Dr. --

THE COURT: Okay. Overruled.

Mr. Gilroy?

MR. GILROY: I join in that objection, Your Honor.

THE COURT: Okay. Overruled.

Are we ready to proceed?

MR. SHOWERS: Yes.

THE COURT: Let's get the jury back in here, please.

COURT OFFICER: All rise. Jury entering.

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

THE COURT: Okay, we can continue.

MR. BRENNAN: Thank you, Your Honor.

CONTINUED DIRECT EXAMINATION

BY MR. BRENNAN:

Q Dr. Seidenberg, before we broke, I think we were about to discuss the substance of your life care plan and the findings thereof, all right? We will continue there.

A Yes.

Q What I'm doing is projecting some of your findings on to the screen here just to help with your testimony -- more for the juries sake.

But in preparing your life care plan, did you break the

report down into particular sections?

A Yes. So, after I review all the medical records, review the recommendations from the treating physicians, review the diagnostic studies, the operative reports, do my research as well as my 30 plus years of treating patients with this kind of disability, I come up with charts to determine what current and future medical needs and costs would be related to his accident.

Q By the way, in preparing that, are you taking into consideration exactly what treatment he's undergoing now, or are you considering what you would recommend he have into future?

A It's a recommendation of what would be usually and customary with a patient with this kind of accident, or this kind of surgery, or this kind of disability.

Q I am going to start with the section you prepared entitled Medical Care.

Broadly speaking, what did you mean by that?

A So, the charts are broken into seven different charts. The first one is, as Mr. Brennan said, medical care. So, each doctor visit is broken down individually. The line -- the first line indicates what kind of doctor that is. The second line, the indication for that visit. The duration is his life expectancy based upon the calculation we talked about earlier. The frequency of those visits over his lifetime. Cost per visit, then some math is involved calculating the number of visits times the cost. And at the end, you have the total for

that particular treatment.

Q So, Doctor, let's start with the left-hand column there, in the particular type of physician. We see the first there is listed as physiatrist or pain management. Why is that particular specialist you recommend?

A Mr. Urquia has undergone several surgeries and has ongoing functional limitations and ongoing pain. He has received pain management in the past and has undergone several injections in the past to help alleviate some of his pain.

So, that treatment is with a physiatrist and a pain management specialist. That doctor also evaluates for future physical therapy and would prescribe therapy, braces, things like that.

I've allotted for a visit two to three times per year, for medications, for injections, for possible physical therapy. The average cost is $250 per visit. Over his lifetime, that would 80 visits, for a total of $20,000.

Q The next specialist you have listed there is a spine surgeon. Why are you recommending that he continue to see a spine surgeon?

A He had spinal fusion surgery, which involved putting hardware in the spine. He's at risk for secondary complications.

After you fuse the spine, the tension above and below where you fuse the spine increases leading to the risk of what

we call subsequent level disease.

In addition, he's at risk for loosening of the hardware, which could cause a shift in the spinal cord and further nerve problems.

So, I have recommended that over his lifetime, he periodically follows up with the spine surgeon so he can have X-rays and MRI studies. And I've allotted 20 visits over his almost 40-year lifetime. Cost is $350 per visit for a total cost to have $7,000 over his lifetime.

Q You have a separate orthopedic recommendation there for joint specialists. Why that?

A He had sustained injuries to his shoulders and knee. He did undergo, I believe, shoulder surgery. He continued to complain of limitations, pain. He had mechanical symptoms in his right shoulder of clicking sensations when he raised his arm. I've allotted for him to follow-up with an orthopedist, 10 visits over his lifetime for a total of $2,500.

Q And the individual cost per visit of what?

A It's $250 per visit.

Q How about the next item there? The separate hand specialist?

A Orthopedists tend to focus on specific body parts. He had sustained significant trauma to his right hand. He also had sustained a tear of the cartilage in the wrist and referred for hand surgery. I've allotted 10 visits with a hand specialist

over his lifetime at $250 per visit, $2,500 in total.

Q Finally on this particular page here, the chiropractor.

Now, I just want you to assume, and I think you probably know this from reviewing the medical records. Today he hasn't actually had any chiropractic treatments, so why would you recommend something like that?

A He's still reporting ongoing pain in both his neck and his back. Chiropractic treatment is form -- one modality that we use to help relieve muscle tension, improve range of motion. It's a therapeutic modality. So I recommended that he be allotted 200 visits over his lifetime for ongoing symptomatic management. The total cost is $45,000 over his lifetime.

MR. GILROY: Objection. Motion to strike on the basis previously stated.

THE COURT: I'd like to sidebar with counselors.

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

THE COURT: Members of the jury, we are going to break a little bit early for lunch today. I am going to ask that you report back to the jury room by two fifteen, okay?

We'll continue with the testimony and presentation of plaintiff. Jurors excused.

COURT OFFICER: All rise. Jury exiting.

(Whereupon, the sworn jurors exit the courtroom.)

(Whereupon, a lunch recess was taken.)

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

(Whereupon, the proceedings resumed at 2:08 p.m.)

THE COURT: All right. So we're back on. I hope everyone had a nice lunch. The jury is not in the room. But I just want to tie a bow around some continuing conversations that were going on this morning, particularly with the testimony of the witness who's on the stand, but not in the room right now, okay, but is currently being questioned.

So there's been some back and forth. And I had orally ruled that I was going to permit the testimony of the expert witness. And I'm holding to that ruling. And I just want to clarify for the record, we put into as Court Exhibit III, the two disclosures that were served by the plaintiff in connection with this particular witness. Again, the initial one was served some time back in 2021, and then the subsequent, couched as corrected, disclosure was served in 2025.

After reviewing both of those disclosures, you know, the Court really hasn't seen a disclosure like this in the past. It's quite -- both of them are quite detailed. They set forth charts which goes into the recommendations for treatment; the average frequency per year; costs. And all of the particulars of the recommendations that are being testified to were set forth

in these disclosures.

What's a little different about this witness, and this disclosure, is that I find that the disclosure set forth that this expert is testifying not only as an expert in life planning, but is also an expert in physical medicine and rehabilitation, and that those specialties are the basis for the opinions that are being set forth on the stand and as well as being detailed in the disclosures that were set forth. Of course, the report will never come in. It doesn't go to the jury. But I believe that the disclosures that were served, again, four years ago, and more recently, sufficiently put the defendants on notice as to what this witness would be testifying to.

Everything is subject to connection. All right. And I think that some of the concerns raised by the defendants -- in fact, I believe right before we broke for lunch, there was an objection as to the witness who's on the stand talking about chiropractic treatment, and I understand the objection but I believe that the basis of it could be resolved on cross if this witness didn't do certain things that might not give her a fully informed opinion that would be a topic that's, you know, properly raised on cross examination.

But again, I think that the disclosures that were made, the 3101(d)'s in relation to the witness, Vicki

Seidenberg, was sufficient enough to avoid any prejudice that the defendants are alleging at trial.

So that's my ruling. I will note, for the record, that the defendants take exception to my ruling on this. Correct?

MR. SHOWERS: Yes, Your Honor.

MR. GILROY: Yes.

THE COURT: And I think that we could move forward onto that the ruling has been made and we're going to go on with direct and cross on this one. Okay.

MR. GILROY: Understood, Your Honor.

THE COURT: Okay. Anything else before we bring the jury back down or am I opening a door by asking anything else?

MR. BRENNAN: Not from plaintiff, Your Honor.

MR. GILROY: Your Honor's comment that you're accepting testimony subject to connection.

THE COURT: Yes.

MR. GILROY: Implies to me that we're to expect additional medical testimony to the effect that the future treatment, 41 different categories, is all indicated, necessary and will more likely than not be needed by the plaintiff in the future.

THE COURT: That's what I would expect. I mean, you know, especially if there's not -- if there's items in

here that are not within the medical expertise of this witness, they would have to be subject to connection by some other doctor or some other medical report. Okay.

MR. BRENNAN: Yes, Judge.

THE COURT: Okay. Mr. Gilroy?

MR. GILROY: Thank you.

THE COURT: Mr. Showers?

MR. SHOWERS: I just echo what Mr. Gilroy said, Your Honor. As we discussed in your chambers, you know, several of the items in this report, there's been no testimony that it's happened, and there's been no physical exam by Dr. Seidenberg and so my contention is that Dr. Seidenberg can't opine that it will be needed in the future.

THE COURT: I understand the objection. Okay. And I am looking forward to hearing the continued testimony. Because, again, I think that there's been some testimony as to this witness' expertise, which in physical medicine and rehabilitation I think is particularly germane to whatever treatment she may be trying to say the plaintiff is -- might need in the future. So I look forward to seeing that flushed out on continued examination. Okay.

MR. BRENNAN: Yes, Judge.

THE COURT: All right. Let's get the jury down.

Please and thank you.

And we can call the witness back in. Can we please have Dr. Seidenberg in.

(Whereupon, the witness enters the courtroom.)

COURT OFFICER: All rise; jury entering.

(Whereupon, the jury enters the courtroom.)

THE COURT: Welcome back everybody. We can be seated. And we'll continue with the examination of the witness.

Counsel, you may inquire.

MR. BRENNAN: Yes. Judge, before I ask another question, I neglected to do something earlier that I'd like to correct now.

THE COURT: Okay.

MR. BRENNAN: Which is to offer Dr. Seidenberg as an expert in the field of physical medicine and rehabilitation as well as an expert in the field of life care planning.

THE COURT: Is there any objection on the offering in those three categories of expert testimony?

MR. GILROY: Is doctor -- I believe I heard that Dr. Seidenberg is a licensed physician in New York, is that --

MR. BRENNAN: That was the testimony.

MR. GILROY: Do I recall correctly?

THE COURT: Yes.

MR. GILROY: Thank you. I have no objection then.

THE COURT: Mr. Showers?

MR. SHOWERS: No objection, Your Honor.

THE COURT: Okay. Thank you, counselors.

So the witness is qualified as an expert in those three fields. Thank you, counsel.

MR. BRENNAN: Thank you, Your Honor.

CONTINUED DIRECT-EXAMINATION

BY MR. BRENNAN:

Q. And while we've already started to go into some of the details of your report, Dr. Seidenberg, I do want to ask you this: The conclusions that you've drawn in this life care plan, have you reached them to a reasonable degree of medical certainty specifically in the field of physical medicine and rehabilitation?

A. Yes.

Q. Have you also reached those conclusions within a reasonable degree of life care planning certainty?

A. Yes.

Q. Okay. Thank you very much.

What I am going to do is move on to what I saw labeled as diagnostic studies and lab work as part of your plan.

A. So, as we previously discussed, the report is divided

into several different charts to make it easier and more understandable.

The next chart involves diagnostic studies that would be required over his lifetime. When he does see the spine surgeon and the orthopedist, the physiatrist, they do need certain tests to determine if the fusion is healing, if there's any further secondary compilations, further degenerative changes or any compilations.

So I have allotted for x-rays of the cervical spine over his lifetime, ten x-rays at a cost of $605 per x-ray for a total cost of $6,150. X-rays look at bone.

The next thing is an MRI. MRI looks at a -- more at the spinal cord, at the nerves that come off the spinal cord at the little holes where the nerves come off. Essentially the spinal cord is like a tree trunk and at every level there is a nerve that comes off. Every nerve goes very specifically to a muscle either in your arm or your leg. And we know, based upon where somebody's symptoms are or where their weaknesses, we have a good idea what level of the spinal cord is involved. So an MRI scan will look at the spinal cord in the nerves. I have allotted for five over almost 40 years --

Q. Quick question, Dr. Seidenberg.

What would be the need for additional MRIs if there's already been an MRI performed, you know, in the past?

A. Again, there is risk for degeneration above and below

the level of the fusion. And if you think of the spinal cord like a rubber band, and you pull the band tight, physics tells us that the most tension is at the top and the bottom. When you then pinch the rubber band in the middle, the physics changes. And the stress and the tension is then increased right above and below the level of the pinch. And that's what happens when you -- when you immobilize and you fuse the spinal could. So he's at risk to develop disease above and below. In addition, there is scar tissue that forms, new bone that can form as a result of the surgery and the trauma. So different tests look for different things. And it is important, particularly in somebody who remains symptomatic, to monitor these things.

Q. Moving on. I see x-rays called for a different body part?

A. Yes. The lumbar spine is just the lower back. I've allotted for ten x-rays of the lumber spine over his lifetime. The cost is $450 per x-ray for a total cost of $4,500. And then the MRI of the lumbar spine for the same reason to assist the spinal cord, the nerves, five over his lifetime.

Q. Now, Dr. Seidenberg, we know that Mr. Urquia has had a fusion surgery to his cervical spine but has had no surgical intervention to his lumbar spine. Why are you calling for that kind of monitoring for his lumbar spine?

A. He remains symptomatic in the low back with nerve impingement symptoms in his leg. He was recommended to undergo

lumbar surgery and, therefore, it needs to be continued to be monitored.

Q. I think we're now next looking at similar studies but for a different body part?

A. Exactly. The studies then move on for the other areas of his body that were injured. His shoulder, again, x-rays look at bone. MRIs look at the joint capsule, look at the rotator cuff, look at something called the labrum which is the capsule of the shoulder, the wrist. Same thing, x-rays look at the bone, look for arthritis, look for bone formation spurs; and MRIs look at the cartilage and the ligaments.

Q. What are the costs and frequencies of those modalities that you've called for?

A. X-rays of the shoulder, ten over his lifetime. Total cost is $2,800. MRI of his shoulder, three over his lifetime. Total cost $5,370. X-ray of his wrist, three over his lifetime. $1,065. MRI of his wrist, two over his lifetime. $5,280.

And then I also recommended for his knee, he had injuries to his knee. Five x-rays of his knee at a cost of $280 per x-ray. A total cost of $1,400 over his lifetime. MRI of his knee, two over his lifetime for a total cost of $3,580.

Q. That's specifically the left knee; correct?

A. Correct.

Q. Can you tell us what's the next recommendation for these kind of monitoring studies are?

A. So this is the -- it's called an EMG/NCV nerve conduction studies and electronic diagnostic testing. I briefly discussed it earlier. It's a two-part test that studies how the nerve transmits its impulses from the spinal cord into the limb. It can tell if there's any blockage. Any what we call denervation, all loss of nerve impulses to the muscles. It is a two-part test.

One -- the first part is done with electrodes to measure the actual speed and there's a wave form that measures other things like axonal. It can test for a lot of different things. But it does basically test the speed of the nerve, how the nerve is transmitting from the spinal cord to the limb.

Second part of the test, electrodiagnostic studies uses a needle electrode which is inserted into the muscle and actually takes recordings from the muscle to assess for denervation or nerve damage.

Q. What would the importance of that kind of future diagnostic testing be for an individual like Mr. Urquia who's been involved in an accident like this?

A. Nerve conduction studies help to localize the level of the lesion, it also helps to determine the extent of the nerve damage.

Q. Now, I see invasive procedures is the next category. Can you tell us what you're considering for invasive procedures for Mr. Urquia?

A. He continues to remain symptomatic and has had some pain management in the past. Pain management, as we discussed earlier, involves a series of injections to different parts because you want to attack the pain from all areas. It's not just nerve pain. It's not just joint pain. It's not just muscle pain. You can't isolate a body part. It is a combination of different areas that contribute to somebody's pain. So the cervical epidural injects anti-inflammatory medicine cortisone directly into the nerve and bathes the nerve with medication to try to calm down the inflammation.

I've allotted for three injections over his lifetime. The cost is $15,525. The all these injections are done under fluoroscopy which is x-ray guidance so you know exactly where you're injecting and you're not damaging the spinal cord and causing further problems.

Facet joint injections those are the little joints we discussed earlier in the spinal column. Those injections I have allotted for three series of injections. The total cost is $22,410.

Q. That's specifically to the cervical spine those facet --

A. Correct.

Q. -- injections?

And just because it's been a little bit of time since we've heard it, I just wanted to ask you, what was the

contemplated life expectancy that you considered in this life care plan?

A. I believe -- let me just double check. I think it was 37 years -- thirty-six years.

Q. Okay. So that's three for over the course of 36 years?

A. Yes. One of the goals of injections is to try to make somebody more comfortable, more functional and hopefully postpone future surgery.

Q. Looks like there's some recommendations for the lumbar spine?

A. Same issues. He remains symptomatic with ongoing nerve pain and chronic back pain. There are injections, three, allotted for an epidural into the lumbar spine to try to calm down the nerve irritation. And the facet joint injections focus more on what we call axial back pain, the physical pain that's localized to the back. Facet joint injections, three series, $29,310. And the --

Q. For a total of $29,000?

A. A total, yes.

And the three epidurals over his lifetime for a total of $15,525.

Q. Moving a little further down. What else are you recommending to other parts of his body injection wise?

A. So for joint pain we frequently do cortisone

injections into the joints. He sustained trauma to his right wrist, has ongoing pain and weakness in his right hand. I recommended two injections into his wrist for pain management. The cost of the wrist injections, total cost is $3,900. Additionally, some injections into his shoulder, three injections into the shoulder, $7,125 total cost. And some injections for his knee, three injections over his lifetime, $3,300.

Q. That would be his left knee?

A. Yes.

Q. Okay. What category are we considering now?

A. The next is labeled projected evaluations and therapeutic modalities. This is physical therapy and occupational therapy. Physical therapy, working on his mobility, his muscle strength, his joint range of motion. And occupational therapy working on his hand, his fine motor skills, his grip strength, his dexterity, 18 visits for his hand over his lifetime for a total of $4,050. And for symptomatic treatment periodically over 37 years I believe I've allotted for 100 treatments over his lifetime. So every few years he can receive some treatment to help alleviate his pain and actually also prevent secondary problems. Muscle atrophy, wasting away of the muscles, maintain strength, maintain joint range of motion. Things like that.

Q. Can I just clarify, when you talk about specifically

physical therapy, you talked about symptomatic physical therapy. And just really more for me here, when you're talking about 100 visits, are we spacing that out equally out over the course of 36 years or is that distributed -- are you contemplating that it's distributed in a different way?

A. You average when you go in for physical therapy, you know, two to three times a week for approximately six to eight weeks at time. So over his lifetime I've allotted for 100 visits. Sometimes he might need two consecutive years of therapy, he might not go for a year or two. He might have a flair up where his back or his neck or his shoulder is really bad and might need some additional treatment.

Q. Thank you very much.

How about the following category?

A. These are just medications that are typically used for pain management.

The first one is just over the counter. I've allotted him for some Tylenol and Motrin. Eight bottles per year to take as needed for symptomatic treatment. The total cost is $4,032. Flexeril is a muscle relaxant. It would be prescribed by one of the doctors, the physiatrist most likely, that's for muscle spasms when you can't turn your neck or you have that crick in your back and your back gets locked up or your neck gets locked up. It also helps with sleep. I've allotted for four bottles per year for symptomatic treatment for a total of $2,592.

Tramadol is a little bit of stronger pain medication. It's a prescription. I've allotted for four bottles for severe pain and it also helps with sleep. The total cost of that is $4,032 over his lifetime. And then post surgical medications, this will pertain to the next chart, he's recommended to have surgeries in the future. Two bottles for after post surgical care. The total cost would be $360.

Q. Why there is a particular medication contemplated immediately following surgery?

A. Post surgical pain is -- can be quite severe. And frequently patients need something stronger than just Tylenol.

Q. So that brings us to that category you just alluded to.

A. So the patient has been recommended to undergo a surgeries and the money has been allotted for those future surgeries. So the chart is broken down before any surgery, before --

MR. SHOWERS: Objection, Your Honor. There's no question pending.

THE COURT: Can you read back the last question?

(Whereupon, the requested portion of the record was read by the reporter.)

THE COURT: Yup. Sustained.

Q. Can you tell us what about you contemplated for the surgical intervention portions of your life care plan?

A. Based upon the medical records and the recommendations from his surgeons, as well as his ongoing symptoms, and his history of surgery to his neck, this is for future surgical intervention.

Q. Okay. So did that first category, I see a reflexion of preoperative physician consultation. How would that differ from just the spine orthopedic visits you discussed earlier?

A. Any time anybody goes -- undergoes anesthesia, they have to see their primary care physician. They have to get a series of tests, EKGs, chest x-rays, blood work to make sure that they're healthy enough to go under anesthesia.

So prior to each procedure he needs to be seen by his doctor. And then have some what's called preoperative testing. This would be the cost for these three visits, the doctors visit. $350 per visit a total of $1,050. The preoperative testing, the EKG, the chest x-ray, the urine analysis, the CBC, blood work, chemistries things like that, make sure his liver and kidneys are working properly so can he tolerate the anesthesia. $525 for that testing. Total cost of $1,575.

Q. All right. So the next category there listed as revision anterior cervical discectomy and fusion. And I want you to assume yesterday we heard some testimony from Mr. Simela about particular increased risks about Mr. Urquia's need for that kind of procedure in the future. I think you talked a little bit about it yourself today. What are we looking at

there?

A. So the studies have shown that after 15 years that greater than 50 percent of patients will require revision surgery. And that pertains to the stresses that I discussed just earlier above and below the level of the fusion, that there areas that can develop increased degenerative changes, scar tissue, weakness of the disc, and nerve impingement requiring what we call revision surgery. Also there is a possibility for loosening of the hardware, that the hardware needs to be replaced.

Q. Okay. So what is the cost of that procedure?

A. Including the surgeon, the anesthesia and the hospital care, the hospital facility, the total cost $105,345.

Q. Why are you recommending or contemplating a decompressive lumbar laminectomy discectomy, facetectomy and fusion?

A. He was recommended for lumbar surgery. This would be the cost.

Q. What is the cost of that procedure?

A. $104,850.

Q. What about the next category you've contemplated?

A. Left shoulder arthroscopy which is a scope to repair the torn slat tear in his left shoulder. The cost is $22,250.

Q. And the next category?

A. Right wrist arthroscopy to repair the torn cartilage

in his right wrist $16,750.

Q. Here we're looking at visits with particular doctors. Some specialists we've already talked about here. Why does this appear at this point of your report?

A. This allots for the visits immediately after surgery. The other one is more for what I would call routine follow up maintenance care. But after surgery he has to go in to get the wound checked, to get the sutures removed, to get follow up x-rays, things like that. So I've allotted six per and postoperative visits with the spine doctor, the joint orthopedist and the hand specialist.

Q. And what would the cost be for those postoperative visits with the spine doctor?

A. $3,000.

Q. How about for the joint specialist?

A. $1,500.

Q. And finally, the hand specialist?

A. $1,500.

Q. Again, continuing along with your plan here, we're looking at categories that you've already discussed. Again, why are we seeing them here?

A. Therapy immediately after surgery is different than therapy for symptomatic care. And patients will go to therapy for a short time immediately after surgery. They're usually in some kind of brace. They have significant restrictive movement.

So this is for postoperative immediate care after his surgery.

Q. What specific type of care?

A. Occupational therapy again will work on his hand, fine motor skills after the wrist surgery. I've allotted for 18 sessions after his surgery. Total cost is $4,050.

Physical therapy after the spine surgery and shoulder surgery the total cost is $41,040.

Q. What does DME stand for?

A. Durable medical equipment. So these are things like braces, equipment that he can use in the house to help him if he's immobilized, he might need -- you know, he's going to be in a brace. After surgery he might need a walker or a cane so that he can safely walk. So he can transfer safely in the bathroom, shower chair, those kinds of things, that's durable medical equipment. And in addition, something called a cryocuff which is kind of like an electronic icepack, for lack of a better term.

Yes, so that's what that one-time allowance of $2,500 for all those things after each surgery.

Q. Is that in total?

A. In total, uh-huh.

Q. So, Dr. Seidenberg, I think that brings us to sort of the end of this examination here and your total lifetime cost projection.

MR. GILROY: Pardon, sorry to object and

interrupt your question. But, Your Honor, I do have an objection with regard to these totals.

THE COURT: Okay.

MR. GILROY: Can I state it here?

THE COURT: Yeah, sure.

MR. GILROY: Yeah, not all the categories in the report have been discussed or testified to. And these are totals of all the categories. There were some services included in the report that were not discussed or testified to and we're looking at totals that incorporate everything.

THE COURT: Mr. Brennan, is that a fair assessment?

MR. BRENNAN: I was caught offguard by that.

THE COURT: So if it's not --

MR. BRENNAN: Sure. I'll take it down. Can we do a quick sidebar on this?

THE COURT: Sure.

MR. BRENNAN: Thank you.

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

THE COURT: All right. So before we had a sidebar, we were just making sure that all of the categories had been testified to in order to get to this total number. And we've made sure that between this morning's testimony and this afternoon's, it looks like all

of the items testified to by the doctor are included. Okay.

MR. BRENNAN: Thank you, Your Honor.

Q. Dr. Seidenberg, I'll just ask you this because we have been dealing quite extensively with a lot of numbers. I am looking for the following: Do you have an opinion, within a reasonable degree of medical certainty in the field of physical medicine and rehabilitation, as well as life care planning, as to the total recommended lifetime cost of everything we've discussed for Mr. Jose Urquia for the injuries he sustained in the December 27, 2018 accident?

A. Yes.

Q. What is that total?

A. The total lifetime care cost is $590,626.

MR. BRENNAN: Thank you. I have no further questions for this witness.

THE COURT: Okay. Are you going to be using anything on the screen, Mr. Showers?

MR. SHOWERS: No, thank you.

THE COURT: Okay. Mr. Gilroy, on yours, are you going to be using anything on the screen?

MR. GILROY: I don't anticipate it.

THE COURT: Okay. I'm going to have this moved.

Before you start, just if you put that microphone either closer to you or the stand so that way we can ensure

that everything is being recorded on the record.

MR. SHOWERS: Yes.

THE COURT: Thank you, sir.

CROSS-EXAMINATION

BY MR. SHOWERS:

Q. My name is Andrew Showers and I represent the defendants in this case.

You were retained by the Wingate firm that represents Mr. Urquia; correct?

A. Yes.

Q. Okay. And you mentioned $8,500 for court today. Have you been paid any other monies by this firm?

A. Yes. I received $5,000 for the report.

Q. Now, that's not your only report; correct?

A. That's my only report. Yes.

Q. Well, my understanding was that you drafted a report in 2021.

A. Oh, I'm sorry, yes. I amended my initial report. Yes.

Q. So what were you compensated for for that report?

A. Don't recall exactly because it wasn't a lot of work when I had to amend it. I would say probably $1,000.

Q. Well, can you give us a range? Because you would have reviewed medical records for several years; correct?

A. Yes.

Q. In order to make the 2021 report; correct?
A. That was -- the initial fee was $5,000.
Q. Okay. So can you sum it up for me just how much you have been paid by the Wingate firm?
A. I don't know the exact number for the amended but probably about $1,000 because I did several more hours of work to revise the charts. So total for the report would have been $6,000.
Q. For two reports?
A. For the two reports, yes.
Q. And then today's testimony is $8,500?
A. Correct.
Q. Okay. And how many times have you testified for the Wingate firm?
A. I don't have an exact number. Probably testified over my lifetime, or about a dozen times, so a handful of times I have testified for Wingate, Russotti maybe four or five times.
Q. At trials?
A. Yes.
Q. And how many reports have you written for the firm?
A. I don't know.
Q. Well, somewhere between five and 20, 20 and 50, something else?
A. I do a considerable -- a considerable amount of work for many different law firms. I write on average -- my reports

can sometimes take me a month or so to complete. Maybe two to three reports a month I would say on average.

Q. For the Wingate firm?

A. Yes.

Q. So they're a good customer of yours; correct?

A. I have many customers so to speak, yes.

Q. Well, what percentage of your income is for writing reports for plaintiff's firms?

A. I write reports for plaintiffs and defendants.

Q. My question is for plaintiffs' firms, Doctor?

A. The majority are for plaintiff, yes.

Q. What percentage of your income comes from them?

A. Probably most of my income comes from that because I'm not currently treating patients.

Q. Okay. So 100 percent, 95 percent?

A. Yes, 95 percent -- 90 percent, yes.

Q. And you don't -- those hospitals you told us about previously in your testimony, you don't work at those hospitals any more; correct?

A. I'm still on staff but I'm not currently seeing patients in the hospital; that's correct.

Q. When is the last time you saw a patient in a hospital?

A. I have to just double check my CV on the date. I worked in the hospitals until 2015.

Q. And the last time you gave someone an injection?

A. When did COVID start? 2020 I would say. 2020 was the beginning of COVID? Yeah, around 2020.

Q. You interviewed Mr. Urquia via zoom; correct?

A. Yes.

Q. You never examined him physically in your presence in a room like an ordinary doctor would do; correct?

A. I like to think I'm an ordinary doctor. But no, I did not physically touch him.

Q. Ever?

A. Ever.

Q. Today would have been the first time you saw him in person; correct?

A. I believe so, yes.

Q. And when you saw him on zoom, did you see him from his chest to his head or something else?

A. I don't recall.

Q. Okay. So there was no -- you had a -- you were sitting down, he was sitting down the entire time during the conversation that you had?

A. I don't recall.

Q. He's not a patient of yours; correct?

A. I'm not a treating physician; that's correct.

Q. The accreditation that you have, are you familiar with International Commission on Healthcare Certification?

A. Yes.

Q. Is that one of your accrediting entities?
A. Yes.
Q. Okay. Is one of the rules of professional conduct that you shall function within the limits of the medical area which they are professionally qualified and competent?
A. Yes.
Q. And are you professionally qualified and competent in any type of surgery?
A. I'm not a surgeon, no.
Q. And is there a requirement for one-to-one in-person contact with the injured person with respect to the practice standards and guidelines?
A. I'm not aware of that specific point that you're referring to but a lot of things have changed since COVID.
Q. Well, this is revised the spring of 2023, Doctor.
MR. BRENNAN: Judge, you know, it's not in evidence. It's in the --
THE COURT: I mean, if you'd like to refresh her recollection.
MR. SHOWERS: Sure.
Would you like to mark it, Your Honor, or just hand it --
THE COURT: We'll mark it as -- what are we up to with defendants for ID? I think C?
THE CLERK: Yes.

THE COURT: We'll mark it as Defendant's C for identification. You can hand it to the court reporter. Thank you.

(Whereupon, a document entitled ICHCC Practice and Standards and Guidelines was marked as Defendant's Exhibit C for identification.)

MR. BRENNAN: Can I see what he's showing the witness?

THE COURT: He's got a copy right there.

MR. BRENNAN: I have.

THE COURT: We'll give you a copy of what's been handed to the witness, of course.

Q. Did you have an opportunity to flip through that, Doctor?

A. Yes.

Q. Okay. Now, I was looking at page four, the last paragraph.

A. Okay.

Q. And there's reference to an in-person interview with the --

THE COURT: Counselor, why don't you just ask if it refreshes her recollection as to the question that was asked earlier.

MR. SHOWERS: Okay. Thank you, Your Honor.

Q. Doctor, having read that paragraph on page four, does

that refresh your recollection as to whether a life care plan is based on an in-person interview with the injured or ill individual?

A. Yes.

Q. And that didn't happen here; correct?

A. No.

Q. Just --

A. No.

Q. Doctor, it's a yes or no.

A. No, it did not happen.

Q. Okay. Thank you.

And you live in New York State in this area; correct?

A. I live in New York State, yes.

Q. Long Island I think you said?

A. Yes.

Q. And you've lived there since 2023 -- this year?

A. Yes.

Q. Okay. Did you see the video of Mr. Urquia playing soccer? Did counsel show that to you?

A. Yes.

Q. When did you see that video?

A. Yesterday.

Q. So you drafted your report before you saw that video; is that correct?

A. Yes.

Q. As you sit here today, you don't plan to make any changes to your report after having seen that video?

A. No.

Q. I want you to assume that the plaintiff will testify that he has an intention to return to Peru at some point, did you investigate any of the prices for medical care in Peru?

A. No.

Q. Do you have access to that type of information?

A. No.

Q. Do you know anything about the Peru medical system whether you get universal health coverage?

A. No.

THE COURT: Counsel, just be careful with any type of reference to things that should not be spoken about at trial.

Q. Would you agree that since you have been retained by the Wingate firm on behalf of the plaintiff, part of your role is to support their position?

A. My role is to write a life care plan.

Q. It's a yes or no.

A. No, it's not to support anybody's position. It's to write a report based upon the patient's injuries, surgeries, functional limitations, and my knowledge and medical experience as a physician treating these patients and as a certified life care planner.

Q. Admittedly, 90 percent or more of your business comes from plaintiffs' attorneys; correct?

A. Yes, that's correct.

Q. But you don't see yourself as an advocate on behalf of the plaintiffs' bar; is that correct?

A. I'm an advocate on behalf of the patient.

Q. The patient that you see via zoom, that patient?

A. Yes.

Q. You mentioned various costs on the projection that we saw. Okay. Those costs how are they obtained?

A. There are codes, CPT codes, that doctors use to bill for certain procedures. And the costs are obtained from various resources. And what I do is I get resources and costs from insurance, from Medicare, and from if a patient had no insurance and I come up with what's called a median, the middle cost. So the average cost based upon all those numbers.

Q. That is done on a spreadsheet or how is that performed?

A. With a calculator.

Q. Okay. But where is that -- those -- where are those calculations today?

A. The final calculations are on my report.

Q. Well, if we wanted to investigate that, where would we go?

A. You'd have to look up all that information and get the

numbers and do the math.

Q. Okay. So let's just take an example. Orthopedist hand specialist, cost $250, that's in your report. Where did that come from?

A. Exactly what I just said.

Q. I mean, specifically that number. Where did you obtain that number?

A. It's an average cost based upon non-insurance, insurance, Medicare, and the costs are averaged.

Q. Doctor, where did it come from?

A. I use multiple sources that are listed in my resources on the back of the report.

Q. So, just for the sake of knowing where -- point me to the resource that you used to get $250.

A. Healthcarebluebook.com. Fairhealthconsumer.org. Optimum National Fee Analyzer. Jasmin Wasserman Fee Physicians Analyzer.

Q. And you mentioned a range. So is $250 the lowest part of the range that you found or the highest part of the range that you found?

A. It's the median, the middle value. So you take the highest cost, the lowest cost, and you add them up and you take the middle.

Q. Why wouldn't you take the lowest cost?

A. Somebody might not have any insurance or coverage and

somebody might choose to go to a doctor who's not in network who doesn't take the insurance. So you have to -- that's the standards of how you come up with the cost for the life care plans. That's how we're trained.

Q. Did you give us a range in your report of the lowest that you found and the highest that you found?

A. I gave you the median value.

Q. I understand that.

A. Which is the average.

Q. I'm asking if you gave us a range.

A. I did not give you the range.

Q. So we don't know the lowest number that you found for a hand orthopedist; correct?

A. That's correct.

Q. And is that true going through all of these figures on this table that we just looked at? We don't know the lowest number that you found for any of those procedures, operations, surgery; correct?

A. You also don't know the highest.

THE COURT: Doctor, you just have to answer the question that's asked. Okay.

A. Sorry. Yes, you do not know the lowest; correct.

Q. So that was omitted from your report? You could have put it there but you didn't; correct?

A. Correct.

Q. Okay. You didn't talk to any of the doctors that treated Mr. Urquia; correct?

A. I reviewed all the medical records --

THE COURT: Doctor, again, just answer the question as it's asked, please.

THE WITNESS: Sorry.

A. No, I didn't speak to any of them.

Q. You didn't bring your file to court; correct?

A. No.

Q. You didn't review any of Mr. Urquia's billing records; correct?

A. I don't recall if there were bills submitted in the records.

Q. You don't know the last time that he treated with a doctor for the injuries you're claiming in this case; correct?

A. No.

Q. You don't know if he has any future medical appointments scheduled as we are standing here today; correct?

A. No, I don't know.

Q. You never administered him any medical care whatsoever; correct?

A. That's correct.

Q. You're not a chiropractor; correct?

A. No, I'm not.

Q. You've never spoken with any chiropractor about

Mr. Urquia; correct?

A. Correct.

Q. Are you familiar with the American Academy of Physician Life Care Planners?

A. Yes.

Q. Let me come back to this.

You never reviewed any billing records for a chiropractor; correct?

A. Reviewed records?

Q. Billing records for any chiropractor; is that correct?

A. Ever?

Q. For this particular individual Mr. Urquia?

A. No.

Q. Is that because he hadn't had any chiropractic care?

A. He's had some physical therapy which involved myofascial release which is a modality that's usually performed by a chiropractor.

Q. Can you point me to a record that you reviewed where he had chiropractic care?

A. I don't have any records from a chiropractor.

Q. So if you don't have any records from a chiropractor, safe to assume he didn't see a chiropractor?

A. Yes.

Q. Okay. You saw gaps in his treatment; correct?

A. Yes.

Q. Okay. Can you give us those gaps, please?

A. I'd have to go through my whole medical timeline.

Q. Okay.

THE COURT: You can go through it, Doctor.

A. The accident was on December 27, 2018, he went to the hospital. He began treatment in January --

Q. I just want you to point out the gaps. That's all.

A. I don't really -- gaps are in between visits. I don't --

Q. Yeah. I mean, a good amount of time in between a visit, I would call that a gap.

A. A gap is a month, a week, three months?

Q. Yeah, let's say three months.

A. So from the time of the accident until middle of 2021 he was very consistent with his treatment and medical follow ups. And then I have visits at the end of 2021, the beginning of 2022. And then there would be, I guess, you would consider a gap. From my records the next visit was pain management in August of 2023.

Q. Okay. So since 2021 he hasn't had consistent medical treatment; is that a fair statement?

A. No, he was seen in 2022. And then again in 2023.

Q. And there are no three-month gaps in that time period?

A. That's usually when a doctor schedules a follow up, six to eight-week follow up.

Q. Okay.

A. So I don't consider that a gap.

Q. In your timeline, I have a gap from April of 2021 to August of 2021; is that correct? I'm on page four now.

A. After the visit in February of 2021, he was referred for additional pain management and additional injections.

Q. I said April of 2021 to August of 2021.

A. August, April. Yes, in April he was recommended to continue --

Q. Doctor, I just want to know, is there a four-month gap between April of 2021 and August of 2021?

MR. BRENNAN: Just to be clear --

MR. SHOWERS: Your Honor, it's -- is there an objection?

MR. BRENNAN: Yeah, there is an objection because --

MR. SHOWERS: Hold on. State your objection and we can have a --

MR. BRENNAN: Objection. It's --

MR. SHOWERS: Without any --

THE COURT: Counsel, with all due respect, I'll drive.

MR. SHOWERS: Thank you.

THE COURT: What's the basis of your objection?

MR. BRENNAN: There is -- it's misleading

because --

THE COURT: You can cure it on recross.

MR. SHOWERS: Yeah.

MR. BRENNAN: But he's saying medical timeline. This is what the doctor recorded not what the records reflect. So I just want that to be clear.

THE COURT: I understand. This is in accordance with the records the witness has reviewed but you can cure anything on recross.

Can you read back the question, please? I think it was the gap between August of --

MR. SHOWERS: April to August.

THE COURT: April and August of 2021, was there any treatment according to your records, Doctor?

THE WITNESS: According to my records he was recommended to attend therapy and pain management in between that time.

Q. Did you record any treatment during that time?

A. I recorded the next visit was with the surgeon. So I do not know whether he went to pain management and physical therapy on those specific dates in between those two months.

Q. Here's my question: I just want to know what is in your narrative report that we received today, do you see a gap from April 2021 to August 2021? It's a yes or no.

A. I don't know that I would consider it a gap. It's a

follow-up appointment with his surgeon. And I don't know if he was attending therapy in between. So you're trying to say that --

Q. I'm not trying to say anything. If you don't know, you don't know.

A. I don't know if he was receiving treatment between those two visits.

Q. Let me ask you, did you review all his medical records?

A. Yes, I did.

Q. So if there was treatment, you would have it in your narrative report; isn't that correct?

A. It's a summary of treatment.

Q. Okay.

A. So not --

Q. So it's not a narrative?

A. It's not every single date that he attended therapy and -- correct.

Q. So you didn't review all the medical records?

A. I did, but it's not all documented. There are thousands of pages of records. I cannot document every single date of every single visit.

Q. Isn't that what you were paid for?

A. It's a medical summary.

Q. So you never met with Mr. Urquia in person; correct?

A. Correct.
Q. And your summary is incomplete; correct?
A. I don't believe it's incomplete but...
Q. You just heard counsel's objection that it doesn't contain all his medical treatments, so wouldn't you call that incomplete?
A. Yes, I guess so.
Q. But we should understand that you did review everything; right, Doctor?
A. I did, yes.
Q. You have a last treatment here August of 2023.
A. Correct.
Q. Is that the last time he sought medical treatment?
A. According to his consultation, he continued to follow up periodically for treatment. So I don't know how many times he went after that.
Q. You don't know?
A. I don't know.
Q. Okay. For someone who's recommending future medical treatment, based upon a review of records, wouldn't it be important to know and document every single appointment that Mr. Urquia had?
A. No.
Q. When was the last time Mr. Urquia had an x-ray to his cervical spine?

A. The last x-ray that I have documented was 2021.

Q. And does he have any x-rays to his cervical spine scheduled, as we are standing here today, in the future?

A. Not that I'm aware of.

Q. By the way, did you ask him if he agreed to your plan that you drafted? Did you ask him Mr. Urquia do you agree to this plan?

A. No.

Q. So you have no idea if he intends to do any of this; correct, Doctor? It's a yes or no.

A. No.

Q. When was the last time he had an MRI to his cervical spine?

A. According to my records in 2021.

Q. And does he have any cervical spine MRIs scheduled in the future?

A. Not that I'm aware of.

Q. Have you ever seen a billing record for his prior MRIs?

A. I may have, I don't recall.

Q. It's not noted anywhere of what he was charged previously; correct?

A. Correct.

Q. The last time that he had an MRI to his lumbar spine, when was that doctor?

A. The last one I have documented was September of 2022.
Q. And do you know if he ever has one scheduled in the future?
A. Not that I'm aware of.
Q. By the way, did you ever mail this plan to Mr. Urquia?
A. No.
Q. Okay. So this plan is developed for litigation purposes; is that fair, Doctor?
A. That's what life care plans are usually used for, yes.
Q. They're not actually useful to the actual patient. It's just to bring it to court; correct?
A. I guess so, yes.
Q. Same questions for the right wrist, you don't know when he last had that examined; correct?
A. Correct.
Q. And you don't know if he intends to have it examined in the future; correct?
A. Correct.
Q. Left knee, you don't know when it was last examined?
A. My medical history ends in 2023. I have no records after that.
Q. So it's fair to say you don't know if he's got an appointment scheduled in the future for the left knee; correct?
A. That's correct.
Q. Same question for EMGs, NCVs, do you know when the

last one was?

A. 2023.

Q. And do you know if he has one scheduled in the future?

A. I don't know.

Q. Have you ever seen any billing records of Mr. Urquia's for the EMGs/NCVs?

A. I don't recall.

Q. Can you recall seeing any bills from Mr. Urquia's doctors?

A. I don't recall exactly every page of every record.

Q. I'm just asking about bills for this moment.

A. I don't recall seeing bills.

Q. So you don't know what he was charged for cervical epidural steroid injection; correct?

A. Correct.

Q. And you don't know what he paid for that?

A. Correct.

Q. Okay. You don't know if he'll need cervical epidural steroid injections in the future; correct?

A. He remains symptomatic so it's recommended treatment for somebody with that condition.

Q. Well, that's not from your personal knowledge; correct, Doctor?

A. It's my personal knowledge as a physiatrist.

Q. You can make a prediction about what somebody will

need in the future without ever examining them in person?

A. Yes.

Q. Even though the book I showed you before requires an in-person exam?

A. It requires an in-person interview not an examination. You do not have to be a physician to be a life care planner. In fact, many life care planners are not physicians and they never examine the patients.

Q. I thought we established before, and you agreed with me, that an in-person examination is required on page four. It says in person --

MR. BRENNAN: Objection.

THE COURT: Just let her look at it first.

MR. BRENNAN: Again, it's reading from a document not in evidence.

THE COURT: It's refreshing her recollection.

MR. BRENNAN: Okay.

A. It says specifically an in-person interview.

Q. Right. My understanding of in person is in the same room?

A. Correct.

Q. And that didn't happen here?

A. No, it didn't.

Q. And Doctor, doctors as general practice, now that we're outside of COVID, examine patients in their office in

order to make medical conclusions; is that a fair statement?

A. There are doctors who still do telemedicine visits post COVID.

Q. I'm talking about in the majority, Doctor, I'm not talking about on the fringes.

In the majority, doctors have patients into their office and examine them to make a medical conclusion; do you agree or disagree with that statement?

A. They're still many doctors who do telemedicine visits and make many conclusions based upon that.

Q. So you disagree with that?

A. I disagree with that.

Q. Okay. You have to disagree with me because otherwise that would break up your whole practice that you have here; correct?

A. No.

Q. Well, you don't have any -- do you have any one-on-one contact when you do these reports?

A. I do do a consultation with the clients, yes. But I don't do a physical examination, no.

Q. Okay. So why was Mr. Urquia's different? Why didn't you do an in-person exam with him?

A. I'm not a treating physician. I'm not acting as the treating physician. I'm acting as a life care planner. A life care plan does not entail a physical examination.

Q. But you just said you do it sometimes. You have an in-person with them sometimes; correct?

A. I didn't say that.

Q. You never -- for all the reports that you write for the Wingate firm, you never actually meet with the client in the same room?

A. Sometimes I do.

Q. Okay. And here's my question: Why didn't you do that here?

A. Well, I believe it was COVID when the first report was done. And the second time I called him for a follow up.

Q. You called him on the phone?

A. Yes.

Q. Okay. So the -- okay.

So I'm -- did you see him on video?

A. I believe so, yes.

Q. When was the last time Mr. Urquia had a cervical facet injection to his neck?

A. Sorry, my pages got all scrambled. I apologize.

He had an epidural in 2023.

Q. And does he have any scheduled in the future?

A. I'm not aware.

Q. And did you see any billing record for that?

A. I don't recall.

Q. Do you know how much he paid for that?

A. I don't know.

Q. Did you ever send this report that you did to any of Mr. Urquia's treating doctors to see if they agreed with it?

A. No.

Q. So the only person who really got this report was the lawyer; right?

A. Yes.

Q. When was the last time Mr. Urquia had a lumbar facet injection to his neck?

A. He did not have a facet injection.

Q. Is that recommended in your report?

A. Yes.

Q. So he hasn't had it ever; correct?

A. Correct.

Q. And did any orthopedist or surgeon say that he would need it?

A. He's followed with pain management who recommended additional spinal injections.

Q. Did they recommend a lumbar facet injection?

A. Those are just one of the spinal injections that are used for chronic pain.

Q. Which doctor recommended that?

A. Dr. Villarreal, I believe, he's seeing for pain management.

Q. And do you know how much Dr. Villarreal will charge

for that?

A. No, I do not.

Q. Same questions I'm just going to list them. Lumbar epidural steroid injection; ultrasound guided injection to the wrist; ultrasound guided injection to the shoulder; ultrasound guided injection to the left knee. Do you know if Mr. Urquia has any of those procedures scheduled currently?

A. I'm not aware.

Q. When was the last time Mr. Urquia had occupational therapy?

A. I don't recall.

Q. It's possible that he never had it?

A. It is possible. I don't have all his therapy notes in front of me.

Q. Does he have any occupational therapy scheduled in the future?

A. Not that I'm aware.

Q. You have a figure in there of $380 for physical therapy; is that correct?

A. Yes.

Q. Okay. That's the median; correct?

A. Yes.

Q. That's not the lowest; correct?

A. No.

Q. Is physical therapy -- how long -- how long of a

duration did you recommend? 20 minutes or how long a duration?

A. Usually therapy is about an hour.

Q. Okay. So physical therapist will be paid $380 for an hour worth of therapy?

A. There's modalities that are used. Ultrasound, electrical stimulation. Each modality is billed separate.

Q. So $380 you found that somewhere as a midpoint?

A. Yes.

Q. That's not the low end of the scale?

A. No.

Q. Could it be as low as $100?

A. Yes, probably not $100, but...

Q. I'm talking about in the area where Mr. Urquia might go.

A. Yeah, probably not $100.

Q. Well, did you do this in -- your cost, did you do it in a certain geographic area?

A. Yes.

Q. Did you do it in Roslyn or did you do it where Mr. Urquia lives or what?

A. The New York Tristate area.

Q. Well, that's a big area. Did you do it near his home address in New Rochelle?

A. I used multiple sources.

Q. You don't know?

A. No.
Q. Okay. I mean, if he's going to go to physical therapy somewhere, he's probably going to go somewhere close to his house; correct?
A. You would assume yes.
Q. So he's not going to go to a physical therapist in Short Hills, New Jersey; Greenwich, Connecticut; somewhere like that, Doctor?
A. Well, he can move there tomorrow.
Q. Doctor, what makes sense? That's what I'm asking, Doctor. He's going to go where he lives near; right?
A. Yes.
Q. But you don't know where you got that $380 from?
A. I do know where I got the number from.
Q. Geographically you don't know.
A. I used multiple sources for costs in the New York area.
Q. None of those sources you can tell us today; correct?
A. I told you them earlier.
Q. Same sources that you read us earlier?
A. Yes.
Q. So if we go to those sources and we add them up and take a medium, we're going to get $380; is that correct?
A. Yes.
Q. Your medical --

MR. SHOWERS: Withdrawn.

Q. Your medications summary. Did you look at Dr. Simela's records about medication?

A. I reviewed Dr. Simela's records.

Q. Did you see in the most recent record where Mr. Urquia was using over-the-counter Advil?

A. I don't recall exactly the most recent record medication, less -- I'm not sure what you're referring to.

Q. You've recommended some prescription pain pills that Mr. Urquia is currently not using. Do you see that in your report, Doctor?

MR. BRENNAN: Objection.

THE COURT: What's the basis?

MR. BRENNAN: That's basically testifying from through the question. How can he say what he's currently not using. We haven't even gotten to that portion of the client's testimony.

THE COURT: We had someone testify yesterday as to the recent pain medications.

MR. BRENNAN: Okay.

THE COURT: And they're in the records. I mean, aren't these in the records? Simela's isn't it in evidence already?

MR. BRENNAN: Right. Simela's testimony was that -- when he visited with the patient, he had reported

he had take ibuprofen. He didn't cover testimony about what medication, if any, he has continued to take. That's all I'm saying.

MR. SHOWERS: I was talking about the last record of Dr. Simela.

THE COURT: I'm going to overrule it.

You can answer, Doctor.

A. I got the list of medications from the client.

Q. Where is that?

A. When I did the consultation with him, I asked him what medications and he would read to me the medications that he had been taking.

Q. Okay. And these are -- so he's taking Oxycodone currently?

A. That's for postoperative care. I only allotted for the Oxycodone after the surgery.

Q. So he's not taking that currently; correct, Doctor?

A. He's not taking --

Q. Tramadol. Is he taking that currently?

A. He listed that, yes.

Q. Okay. So if he didn't mention that to Dr. Simela, that's just an inconsistency?

A. I guess yes.

Q. Do you know who's prescribing Tramadol?

A. I don't know.

Q. Flexeril. Do you know who is prescribing that or do you know if he's taking it?

A. I don't know.

Q. The surgery costs, where did you get those costs from?

A. Same place as I got the other cost from.

Q. Can you tell me specifically please?

A. Healthcarebluebook.com.

Q. Just one second.

Okay. You have -- are you looking at your resources?

A. Yes.

Q. Can you refer to the number, Doctor, just so I can have it?

A. Number two, number three, and some of the websites listed on the last page.

Q. Two, three and which website?

A. Healthcarebluebook.com.

Q. Where is that? Give me the number if you could?

A. It's not a number. It's after the numbers.

Q. Oh, okay.

A. And FairHealthConsumer.org.

Q. Okay. Is that all the sources that you used for the cost of the surgeries that you've listed?

A. Yes.

Q. So that's two -- four sources?

A. Yes.

Q. Thank you.

MR. SHOWERS: I don't have any --

Q. Just one second, Doctor, please.

MR. SHOWERS: I don't have any more questions for you at this time. Thank you.

MR. GILROY: Your Honor, can we take a five-minute break?

THE COURT: Yes, I agree. Let's take a quick bathroom break. We'll come back in about five minutes and we'll continue with the cross examination. Okay.

COURT OFFICER: All rise; jury exiting.

(Whereupon, the jury exits the courtroom.)

THE COURT: We'll take a quick five everybody.

(Whereupon, there was a recess taken.)

COURT OFFICER: All rise; jury entering.

(Whereupon, the jury enters the courtroom.)

THE COURT: Okay. Welcome back again.

Mr. Gilroy?

MR. GILROY: Thank you, Your Honor.

THE COURT: You're welcome.

CROSS-EXAMINATION

BY MR. GILROY:

Q. Good afternoon, Doctor.

A. Good afternoon.

Q. You told us earlier today that you were expressing

your opinions, the opinions you gave us today, to a reasonable degree of medical certainty; do you remember that?

A. Yes.

Q. And I would just like to understand a little better what you mean by -- you know, medical certainty sounds pretty certain. And how much is a reasonable degree of medical certainty to you as you use it and as you employed it in your own testimony today?

MR. BRENNAN: Objection.

THE COURT: Overruled.

A. I have almost 30 years of treating patients with this exact diagnosis. And it is my job, as a physiatrist and pain management specialist, to help control patient's pain, prevent complications, assess for secondary issues and prescribe medications, injections, and therapy. So I am very comfortable and very medically certain that my recommendations are what would be indicated for a patient with -- who's had this kind of injury.

Q. Okay, Doctor.

Now, you say very medically certain. Is that more than a reasonable degree of medical certainty?

A. I think it's a reasonable degree of medical certainty.

Q. Would you agree, Doctor, that a reasonable degree of certainty would mean something is more likely to happen in the future then not?

A. Yes.

Q. Okay. And Mr. Urquia, I believe, the testimony has been, that he has had three of these pain management injections in his spine, I believe that was his testimony.

A. He's actually had four into his spine and a series of trigger-point injections.

Q. Okay. And you predict that it is more likely than not that he will require something like over 20 such injections going forward?

A. The injections treat different areas of the spine. And these -- the recommendations in a life care are based upon standards of care for patients with this kind of injury.

Q. Well, what I'm trying to do now is focus on Mr. Urquia. And in particular, in the seven-and-a-half years since he had an accident, he has had four of these injections. You believe he will continue to, it's more likely than not, that he will continue to get injections, trigger points, pain management injections in his spine going into the future; is that what you're here to tell us?

A. The purpose is to allot for treatment for patients with this kind of injury. There are many reasons why patients do not go for care, do not go for follow up, do not go for treatment. Sometimes it's psychological, sometimes it's fear, sometimes it's financial. There are many people, I'm sure that everybody knows who should go to the doctor, who don't. The

purpose of the report is to allot for future treatment in a patient with his diagnosis and his functional disability and ongoing symptoms. Whether he chooses, that's not my role here.

Q. So Doctor, would it be fair to say that this is what you projected as a worst case scenario?

A. No, I wouldn't say it's the worst case scenario.

Q. Okay. Speaking, Doctor, about the patient's motivations, is that something that you consider when you interview a patient who's having a life care plan prepared for them?

A. Sometimes. I would say -- their motivation for what? To get better?

Q. Well, when Mr. Urquia met you and you interviewed him back in 2021, he told you that prior to his injuries, he was very active and he enjoyed playing soccer and spending time playing with his son; do you recall him saying that?

A. Yes.

Q. Okay. And did he tell you that again in -- when you saw him on the more recent occasion?

A. Yes.

Q. Okay. And did he tell you that he no longer does those things?

A. Yes.

Q. Okay. And did you consider what his motivation might have been in telling you that he no longer plays soccer and that

he no longer plays with his son?

A. I would assume it has to do with his ongoing pain.

Q. Did it occur to you, Doctor, that his motivation in telling you these things may have been to increase the chances of him being awarded a large verdict?

A. No, that didn't occur to me.

Q. Okay. You treat patients who are involved in litigation fairly frequently?

A. Sometimes.

Q. Well, you indicated a lot of your work is with law firms?

A. My current work is with life care planning; yes.

Q. Okay. So a lot of your life care planning. Do you do -- do you consider what the motivation of a person for gain might be?

A. No.

Q. Okay. And Doctor, you testified for us this morning that Mr. Urquia was recommended for a lumbar laminectomy; do you recall that?

A. Yes.

Q. Now, a lumbar laminectomy sometimes referred to as a spinal fusion?

A. Yes.

Q. That's what you indicated.

Now, that was one of items in the budget - the medical

budget - that you prepared for us. I think one of the largest items, in fact; is that fair?

A. Yes.

Q. And are you aware of or familiar with a medical procedure called an endoscopic discectomy?

A. Yes.

Q. Sometimes called a needle discectomy?

A. I wouldn't call it that but okay.

Q. Would you agree that an endoscopic discectomy is largely a pain management procedure where if a herniation is small enough, they're able to remove it by a needle?

A. It's not exactly by a needle but okay.

Q. That's not exactly correct?

A. Not exactly but okay.

Q. Okay. Would it surprise you, Doctor, if another physician, Mr. Urquia's treating surgeon, testified to those -- testified about the procedure in that exact way less than 24 hours ago?

A. If you say so.

Q. Okay. And in terms of medical cost projecting, which is what you did, is an endoscopic discectomy -- excuse me, I'm having trouble pronouncing it, an endoscopic discectomy a less invasive procedure than a spinal fusion?

A. Yes.

Q. Is it less costly?

A. Yes.

Q. And if, in fact, Mr. Urquia has never been recommended for a lumbar laminectomy but has been recommended for an endoscopic discectomy, then wouldn't it be more appropriate to include that lower cost in your medical life care plan?

A. Possible.

Q. And if that was -- if you budgeted for the larger procedure, the spinal fusion, instead of an endoscopic discectomy, which is what he has been recommended for, wouldn't you say your report is not accurate?

A. Yes, I guess if that's the case, yes.

MR. GILROY: Thank you, Doctor. Okay. Nothing further.

THE COURT: Any redirect?

MR. BRENNAN: No, Your Honor.

THE COURT: Okay. Doctor, you may step down. Okay. Thank you.

THE WITNESS: Thank you.

(Whereupon, the witness exits the courtroom.)

THE COURT: Counsels, you want to come up real quick? Thank you so much.

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

THE COURT: All right. Members of the jury, so we are going to conclude for the day. It's 4:00. It's

Friday. All right. I just want to go over some scheduling for next week so that way you're aware. We are not going to be on trial on Monday. Okay. So there's no need for you to report here on Monday morning. We will resume on Tuesday at 9:30, okay, and we'll continue with further witnesses of the plaintiff. Okay. So I wish you all a wonderful weekend, to rest up and come back on Tuesday. And, of course, remember the rules that were read to you in the beginning of the trial. All right. Have a wonderful weekend we'll see you Tuesday. The jury is excused.

COURT OFFICER: All rise; jury exiting.

(Whereupon, the jury exits the courtroom.)

(Whereupon, Court is recessed and the case adjourned to Tuesday, May 20, 2025.)

* * * *

I, Amanda Alvarez, certify that the within proceedings are a true and accurate transcript of the original stenographic record.

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Amanda Alvarez
Senior Court Reporter

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