

1 SUPREME COURT OF THE STATE OF NEW YORK  
2 COUNTY OF BRONX: CIVIL TERM: PART IA-14  
-----X

3 BUESTAN, JESUS AND YOLANDA BUESTAN,  
4 PLAINTIFFS,

5 -against-

Index No.:  
31815/2019E

6 550 WASHINGTON OWNER LLC & TURNER CONSTRUCTION  
7 COMPANY,  
8 DEFENDANTS.  
-----X

9 JODI GELFAND 851 Grand Concourse  
10 DR. KATHLEEN ACER Bronx, New York 10451  
11 January 22, 2026

12 B E F O R E:

13 HON. JOHN A. HOWARD-ALGARIN  
14 Justice of the Supreme Court

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

16 GORAYEB & ASSOCIATES, P.C.  
17 Attorney for the Plaintiffs  
18 100 William Street  
19 New York, New York 10038  
20 BY: CHRISTOPHER VARGAS, ESQ.

21 FUCHS ROSENZWEIG, PLLC  
22 Attorneys for the Defendants  
23 62 William Street, Third Floor  
24 New York, New York 10005  
25 BY: DOUGLAS ROSENZWEIG, ESQ.

1 THE OFFICER: All rise. Jury entering.

2 THE COURT: Good morning. Be seated everyone as  
3 we continue the case, the Plaintiff's case. Plaintiff, are  
4 you ready to call your next witness?

5 MR. VARGAS: Yes. I call Jodi Gelfand to the  
6 stand.

7 J O D I G E L F A N D, a witness called on behalf  
8 of the Plaintiff, after having been first duly sworn, testified  
9 as follows:

10 THE OFFICER: In a loud, clear voice, state your  
11 name and address.

12 THE WITNESS: Jodi Gelfand, Two Richmond Road,  
13 Apartment 3B, Lido Beach, New York.

14 THE COURT: You may take a seat. The witness has  
15 been sworn. You may inquire.

16 MR. VARGAS: Thank you, Your Honor.

17 DIRECT EXAMINATION BY

18 MR. VARGAS:

19 Q Good morning, Ms. Gelfand. Can you start by telling  
20 the jury your educational background?

21 A Yes. I have an undergraduate degree in music; I have  
22 coursework toward MBA and coursework towards a Master's in  
23 Music. Then I became a PA. So I'm a physician's assistant.  
24 I'm also a certified life care planner and a certified case  
25 manager.

1 Q And when did you become a physician's assistant?

2 A I became a PA in 1993.

3 Q And when did you become a certified life care manager?

4 A In 2012.

5 Q And have you ever been found to be an expert life care  
6 planner in a court before today?

7 A Yes.

8 Q How many times?

9 A I don't know how many times.

10 Q Approximately?

11 A Well, for instance, last year I think I did -- I can  
12 tell you year by year. I don't know approximately. It's a  
13 handful. Okay. Last year, by my records, I have four. In  
14 2024, I have six. In 2023, I have three.

15 Q You said you had a master's as well?

16 A No coursework towards a master's.

17 Q And what was that in?

18 A Music and towards a MBA.

19 Q The MBA, that was for Master's in Business  
20 Administration?

21 A Yes.

22 Q What school was that?

23 A NYU.

24 Q What year was that?

25 A 1980 to '81 and '83 to '84.

1 Q Presently, as a life care planner, are you practicing  
2 on your own, with an organization, or something else?

3 A I practice on my own.

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

5 A Yes, I am.

6 Q How much are you being compensated?

7 A \$4,500.

8 MR. VARGAS: I offer Ms. Gelfand as a expert in  
9 life care planning.

10 MR. ROSENZWEIG: No objection?

11 THE COURT: So recognized.

12 Q Would you start by telling the jury what a life care  
13 planner does?

14 A Yes. So in the case of a patient who has had either a  
15 catastrophic injury or a chronic illness and is going to need  
16 future care, a life care planer assesses the current and future  
17 costs according to medical documentation and meeting the  
18 client, the current and future costs of the care through  
19 lifetime duration.

20 Q What factors do you take into account when coming to  
21 your opinion?

22 A I go through the medical records. I communicate with  
23 the doctors when necessary. I look at the operative reports.  
24 I look at the diagnostic studies. I look at the functional  
25 limitations, and I meet with the client. I do a home visit.

1 Q And did there come a time when you met with a Mr.  
2 Jesus Buestan?

3 A Yes.

4 Q When was that?

5 A That was on Monday, August 11, 2025 sat 11 AM.

6 Q Where did you meet with him?

7 A I went to his home.

8 Q Is that the usual thing you would do --

9 A Yes. Yes.

10 Q By the way, prior to testifying today, did I send you  
11 any further documents to review other than what you have  
12 listed?

13 A Yes. I reviewed the plaintiff's testimony Dr. Grimm's  
14 testimony, Dr. Weinstein's testimony.

15 Q Did any of those -- did any of that testimony change  
16 your opinion that you had prior, before reviewing the  
17 testimony?

18 A No.

19 Q Back to the meeting with the client on August 11,  
20 2025, what is the purpose of meeting with the client at their  
21 home?

22 A So the purpose of meeting with the client, there are  
23 several layers of it. There are several aspects of it, I  
24 should say. For one, you want to see, for instance, are they  
25 climbing upstairs to get into the apartment or the home. Do

1 they have difficulty going up and down stairs.

2           You want to find out who does the activities of daily  
3 living, who does the shopping and cooking and cleaning and  
4 laundry. You want to see the shower. You want to see the  
5 shower. You want to see if they have difficulty entering or  
6 exiting the shower. Same thing with the toilet, if they have  
7 difficulty sitting or coming up from the toilet seat. You want  
8 to make sure the bed, the mattress, has adequate support you  
9 need to get a feel for the home to see what the living  
10 conditions are.

11           Q       When you went and met with Mr. Buestan, what did you  
12 find?

13           A       Well, I found that he had difficulty with -- I  
14 interviewed him and he had difficulty with coming to a seated  
15 position and coming back to a standing position. He complained  
16 of back pain going down the right leg, the weakness. He  
17 complained of neck pain going to four fingers on each hand. He  
18 had difficulty -- he was not responsible for the cooking or the  
19 cleaning or the shopping. His shopping -- well not his  
20 shopping limitations -- his lifting limitations were about  
21 eight to ten pound. So his wife did that. He was able to do  
22 the laundry. He had a pushcart and he was able to push that  
23 and do the laundry.

24           Q       And as far as medical records you reviewed, can you  
25 tell the jury what you reviewed?

1           A       Yes. I reviewed the medical record from Dr. Kaplan,  
2 Dr. Grimm, Dr. Botwinick, and Dr. Weinstein.

3           Q       And based on the meeting with the client the review of  
4 the medical records, did you come to an opinion with a  
5 reasonable degree of life care planning certainty?

6           A       Yes.

7           Q       What is the opinion?

8           A       My opinion is that the injuries are causally related  
9 to the accident of --

10                   MR. ROSENZWEIG: Objection.

11                   THE COURT: Sustained.

12                   MR. ROSENZWEIG: Move to strike that for the  
13 record.

14                   THE COURT: You can disregard that portion of  
15 testimony. She can't give medical causation opinions.  
16 Moving right along.

17           Q       Continue.

18           A       What I was saying was within a reasonable degree of  
19 life care certainty. Life care planning methodology has to do  
20 with taking a look at the physician documentation and the  
21 diagnostic studies and the operative reports and I don't, as a  
22 life care planer, have anything to do with causation. That's  
23 not a legal statement.

24           Q       And your opinion as what kind of life care plan you  
25 would recommend for Mr. Buestan?

1 A I'm not sure of the question.

2 Q You reviewed all his documents?

3 A Yes.

4 Q Did you issue an opinion --

5 A Yes.

6 Q On what future life care plan he needs?

7 A Yes.

8 Q What is that?

9 A Do you want me to go chart by chart?

10 Q Yes. Okay.

11 A Sure. Okay. So first we have pain management office  
12 visits and these are once every three months. Now, these are  
13 all for lifetime time duration. So I'm not going to keep  
14 saying lifetime duration. Once every three months pain  
15 management office visits. Orthopedic surgery visits four times  
16 a year orthopedic hand surgeon visits four times a year. These  
17 are no longer part of the current plan. Orthopedic spinal  
18 surgeon visits one time a year.

19 Q And the cost for each of them?

20 A Yes. The cost for the pain management visits is \$250  
21 a visit. The orthopedic surgeon is \$300 a visit, and the  
22 orthopedic spinal surgeon is \$500 a visit.

23 Q How did you come to those costs?

24 A Two ways. Those costs are given to me by the doctors,  
25 and then I also go and I look on a website called

1 fairhealthconsumer.com and I see per the client ZIP Code what's  
2 the average cost of what's called a CPT code. It's the code  
3 that describes the -- in this case an office visit and the  
4 average cost and in that case is was \$724 for a private-pay  
5 patient.

6 Q Now, if there is a difference between the price from  
7 the ZIP Code where they live and the price the doctor gives,  
8 how do you resolve it?

9 A In this case, I went with the price the doctor gave.

10 Q Why is that?

11 A Because the doctor is familiar with the specifics of  
12 what they were charging at these specific subspecialty offices.

13 Q Continue on.

14 A Then we have lumbar steroid injections, three  
15 injections every two years. Those are priced at \$1,200 per  
16 injection plus \$2,000 facility fee for fluoroscopic guidance.  
17 The total is \$3,200, which is three injections every two years.

18 Then we have cervical injections. Same thing, but for  
19 the neck. And so that's three times every two years, three  
20 injections every. It's \$1,200 per injection plus \$2,000  
21 facility fee for fluoroscopic guidance. Again, a total of  
22 \$3,200 per injection. Then we have trigger-point injections  
23 which are one set of, recommended up to one set of injections  
24 for three months for cervical spine and lumbar spine. Those  
25 are priced at \$300 for a set of injections. Then we have

1 period occipital block injections. Am I allowed to say what  
2 they are or should I just keep going?

3 THE COURT: If you don't hear an objection, you  
4 can keep going.

5 A So that's up to three injections a year for headaches  
6 for occipital neuralgia. Those are \$800 for the  
7 ultrasound-guided injections.

8 Q In his neck?

9 A They're given in the neck, yes.

10 Q No. No. Next.

11 A Physical therapy, which at the time was priced at a  
12 frequency per months, those are priced at facilities within his  
13 Zip Code and physical therapy facilities within his ZIP Code,  
14 the first one was \$75 a session. The second one was \$120 for  
15 the initial visit.

16 Q I'm sorry. You have two options for physical therapy,  
17 correct?

18 A Correct.

19 Q Just so we are clear, why are there two options?

20 A You always give two options for physical therapy.

21 Q What are these two options, why are they different?

22 A You have different prices at different facilities and  
23 you want to show a range.

24 Q These are in his ZIP Code?

25 A Yes. Yes, sir.

1 Q I just want to make sure.

2 A So the second one is \$120 for the initial visit and  
3 then \$85 follow-up visits. Then we have his medications. He  
4 takes two medications. One is Gabapentin, which is a  
5 neuropathic pain medication, which just means a nerve medicine.  
6 That's 79.81 a month and acetaminophen , also known as Tylenol,  
7 extra strength, 25.35 a month.

8 Q Those prices, where did you get those?

9 A I got them from grx.com for Zip Code 10467. I also  
10 spoke to the pharmacy, Leroy Pharmacy.

11 Q Next.

12 A We have a cervical pillow. Just for sleeping. It's  
13 an ergonomic pillow that makes it easier for the cervical spine  
14 to stay in the most optimal position while sleeping.

15 It's a one-time item, 35.99. For these items, I added the tax  
16 for these items. I added the tax at the end. Free shipping.

17 I added an orthopedic bed wedge pillow for sleeping.  
18 So what that is, it just goes between the legs and can be  
19 positioned underneath the legs. So it helps give the back some  
20 support while sleeping and that's priced at 69.99 with free  
21 shipping.

22 Then I priced a TENS unit. That's when you go to  
23 physical therapy and you put the pads on you and an electric  
24 current comes through and relaxes the muscles. I priced the  
25 TENS unit at 29.77 and I priced the replacement of electric

1 pads once a year at 19.99. The estimated tax is \$2.39 and 6.99  
2 for shipping.

3 Q The next part of your plan?

4 A So now I have lumbar spine MRI which is priced at  
5 \$1,300 hundred and a frequency of once every five years. I  
6 have a cervical spine MRI which is priced at \$600 and a  
7 frequency of once every five years. I have thoracic spine MRI  
8 --

9 Q We're not covering thoracic and left wrist.

10 A Okay. Then I have X-rays of the lumbar spine once  
11 every six months at a price of \$90. X-ray films of the  
12 cervical spine once every six months at a price of \$85 and  
13 EMG/NCV nerve conduction studies. That's when they put needles  
14 in and you try to see is there damage to the nerve or the  
15 decreased construction of the nerve coming from the root in the  
16 neck or back or somewhere further away I priced. Upper and  
17 lower EMG studies. Their approximate cost is \$2,000 and that's  
18 once every five years.

19 Q And the next part of your plan?

20 A Cleaning services, and I priced that at two different  
21 places. One is priced between 200 and 250 a visit. These are  
22 priced biweekly, once every two weeks, and the other one is  
23 \$194.07 sense for the first cleaning and it goes to 164.95 for  
24 consistent cleanings.

25 Q And recommending home cleaning, you took into account

1 that he has his wife who lives there, correct?

2 A I have to take into account two things. I have to  
3 take into account the fact he is not the one performing the  
4 activities at the time. That's part of basic life care plan  
5 methodology. I have to look at home environment and he is not  
6 the one doing the services at the time and I have to take into  
7 account what happens if he gets divorced; what happens if his  
8 wife gets sick, and how to do an accurate and optimal life care  
9 plan. The other thing I have to consider is potential  
10 progression of injury. So he had a spine surgery and a neck  
11 surgery. So there are certain complications that are to be --

12 MR. ROSENZWEIG: Objection, Your Honor. Medical  
13 testimony.

14 THE WITNESS: Sorry.

15 THE COURT: Let's see where she goes. You may  
16 continue. Overruled for now.

17 A There are certain complications that were talked about  
18 in the medical documents that I received. Is that okay?

19 Q You don't have to ask. He will object if he doesn't  
20 think it's okay.

21 A It talked about in the medical documents that I  
22 received things such as posttraumatic arthritis. You form bone  
23 spurs after you have had a back surgery or neck surgery. You  
24 form bone spurs.

25 MR. ROSENZWEIG: Objection.

1 THE COURT: Sustained. Continue with regard to  
2 your projections. They have already received lots of  
3 education.

4 Q Does that cover your plan?

5 A Yes.

6 Q This is with a reasonable degree of life care  
7 planning?

8 A Certainty, yes.

9 MR. VARGAS: No further questions.

10 THE COURT: Cross examination.

11 CROSS-EXAMINATION BY

12 MR. ROSENZWEIG:

13 Q Good morning, Ms. Gelfand.

14 A Good morning, sir.

15 Q Just to clear it up, you are not telling the jury  
16 anything about causation in this case, correct?

17 A Correct.

18 Q Your job is to give details of a life care plan,  
19 correct?

20 A Correct.

21 Q In order to give a causation analysis, you would have  
22 to know all of medical records --

23 MR. VARGAS: Objection, Your Honor. He already  
24 objected.

25 THE COURT: Let's move on. Sustained.

1 Q You reviewed trial testimony in this case?

2 A Yes.

3 Q You reviewed Dr. Weinstein's testimony?

4 A Yes, sir.

5 Q You reviewed Dr. Grimm's testimony?

6 A Yes, sir.

7 Q You reviewed Dr. Kaplan's testimony?

8 A Yes, sir.

9 Q Are you telling this jury after reading that testimony  
10 you did not make any changes to your report?

11 A I didn't say that. The records from Dr. Grimm from  
12 the 2025, the narrative report from 2025, for instance, says  
13 that physical therapy should only be once or twice a month.  
14 Not twice a month. So that's a change. He had already had  
15 surgeries that were recommended in the 2021 narrative report.  
16 Those are obviously not appropriate because they have already  
17 been taken care of.

18 Q This is a fluid document, correct? It can change over  
19 time?

20 A A life care plan?

21 Q Yes.

22 A Yes.

23 Q So if Dr. Weinstein testified that Mr. Buestan didn't  
24 need certain treatment a few days ago, that would mean you had  
25 to adjust your life care plan, correct?

1           A       I'm not sure about the timing of what you are asking  
2 me, because I already handed in this life care plan but if I  
3 have to an updated life care plan, I would do an amended or  
4 updated life care plan.

5           Q       If you learned, for example, that Mr. Buestan was in  
6 two of ten pain with medication and Dr. Weinstein said he  
7 didn't need MRIs unless he has a flare-up, that would change  
8 your opinions?

9           A       No, sir, because what happens is -- what happens, the  
10 spinal injuries in particular, as a life care planner, I have  
11 to account for degenerative changes. I have to account for  
12 progressive degenerative changes, and the nature of  
13 interventional pain management is that it is episodic. So I  
14 have to quantify it; I have to account for it; I have to cost  
15 it.

16          Q       You didn't make any calculation if Mr. Buestan gets  
17 better, correct?

18          A       Correct.

19          Q       And he can improve. You are having him get worse. He  
20 can improve, correct?

21          A       Well --

22          Q       Correct?

23          A       No.

24          Q       He can't improve?

25          A       I am not making a medical opinion. What I am asked to

1 do is create a optimal life care plan and actually be  
2 conservative. I was asked to provide an optimal plan in an  
3 optimal world. I am not making a determination or having an  
4 opinion on whether he is getting better.

5 Q Or whether he needed the treatment, correct?

6 A The treatment is recommended by the physicians.

7 Q If the physicians' recommendation changes, your  
8 opinion changes, correct?

9 A Yes and no. Do you want me to answer?

10 Q No, I don't.

11 You brought documents with you today?

12 A Yes, sir.

13 Q What documents did you bring with you?

14 A I brought the life care plan I prepared; I brought the  
15 plaintiff's testimony; I wrought some notes that I took while I  
16 was preparing the life care plan; I brought my licenses; I  
17 brought my CV.

18 Q It also looks like you brought some records about your  
19 prior testimony.

20 A I am just getting to that.

21 Q Would you go through those with the jury?

22 A Yes. According to my record, in 2025 I testified one,  
23 two, three, four, five times. In 2024 I testified one, two,  
24 three, four, five, six times and --

25 THE JUDGE: I thought we went through this

1 already.

2 THE WITNESS: We did.

3 THE COURT: Go ahead. I will give some leeway.

4 MR. ROSENZWEIG: I appreciate that.

5 Q Do you have the names of the firm?

6 A I do.

7 Q All plaintiffs' personal injury firms?

8 A They are.

9 Q All the testimony you've been talking to the jury  
10 about is for plaintiffs' personal injury firms?

11 A Yes, they are.

12 Q One hundred percent of your work is for plaintiffs'  
13 personal injury firms?

14 A Yes.

15 Q Have you worked with the Gorayeb firm before?

16 A Yes.

17 Q How many times have you testified for them since  
18 keeping that list?

19 A In 2025, one, two, three, four -- I'm honestly not  
20 sure. Four or five. In 2023 -- '24 rather -- one, two, three,  
21 four, five. I want to make sure -- yes. One, two three, four  
22 five in 2023. Do you want me to keep going?

23 Q Yes.

24 A In 2022, five; in 2021 nothing; in 2020, one.

25 THE COURT: Is the focus of this question all for

1 Gorayeb?

2 MR. ROSENZWEIG: Yes.

3 Q That's what you understood the question to be?

4 A Yes.

5 Q Just for the jury, you know, going through that, how  
6 many total times have you testified for the Gorayeb firm in the  
7 last five years?

8 A Seventeen.

9 Q In addition to testifying, you prepare reports,  
10 correct?

11 A Yes.

12 Q How much do you charge for your reports?

13 A That's been different over time. I currently charge  
14 8,500.

15 Q And what was the difference?

16 A I started out at 4,500. I went to at some point 7,500  
17 last year, I believe in the first part of last year. I think  
18 it was at 7,500.

19 Q Do you keep a record of how many reports you do a  
20 year?

21 A I do.

22 Q How many reports did you do last year, in 2025?

23 A For different firms?

24 Q For different firms.

25 A Sixteen.

1 Q How about for the Gorayeb firm?

2 A Some of those are just follow-ups, so they're like  
3 \$2,000. How about the Gorayeb firm you asked?

4 Q Last year.

5 A I have nine. That's what I have.

6 Q About half of your reports are for the Gorayeb firm,  
7 correct?

8 A Yes, sir.

9 Q Do you have a template for your reporting?

10 A I have -- it's not a strict template. I have  
11 guidelines that I go by.

12 Q As of 2023, the majority of the work you do as a life  
13 care planer is for the Gorayeb firm. Correct?

14 A As of 2023?

15 Q Correct.

16 A You know, I did only a couple of more for them than I  
17 did for this firm. So one, two -- fourteen and then one, two,  
18 three, four, five, six, seven. I would say a little less than  
19 half.

20 Q The purpose of your life care plan is to be used in  
21 litigation. You know that when you are writing them, correct?

22 A Of course.

23 Q Here you knew your life care plan was going to be  
24 given to a economist who would tell the jury how many millions  
25 of dollars that would cost over time, correct?

1 A No.

2 Q You didn't know it would be given to an economist?

3 A I did not know anything about the number value.

4 Q But you know your report is going to be given to an  
5 economist, correct?

6 A Of course.

7 Q The economist will sit where you are sitting and tell  
8 the jury about all the money they need to give to Mr. Buestan,  
9 right?

10 A I assume so.

11 Q When you prepare the life care plan, you don't know if  
12 Mr. Buestan is actually going to go for that treatment,  
13 correct?

14 A The nature of --

15 Q Correct?

16 A I'm not saying yes or no, sir.

17 Q That's what I am asking.

18 A No.

19 Q Mr. Buestan has no obligation to use any of the money  
20 that you set aside for him for his actual healthcare, right?

21 A Correct.

22 Q You're aware that Dr. Kaplan was Plaintiff's primary  
23 orthopedist?

24 A I am.

25 Q Dr. Grimm was the pain management doctor?

1 A Yes, sir.

2 Q You worked for Dr. Kaplan from 2006 to 2020, correct?

3 A Yes, sir.

4 Q Were you working for Dr. Kaplan at the time Mr.  
5 Buestan was a patient?

6 A I believe so. Yes.

7 Q Did you ever treat Mr. Buestan?

8 A I don't remember.

9 Q Do you recall whether it was the Gorayeb firm that  
10 referred Mr. Buestan to Dr. Kaplan?

11 A Do I recall if Gorayeb referred him?

12 Q Right.

13 A No.

14 Q That wouldn't be an unusual circumstance, would it?

15 A I'm not sure how you want me to answer. This has  
16 nothing to do with me.

17 Q Are you aware that the Gorayeb firm referred patients  
18 to Dr. Kaplan?

19 A Oh, yes. Yes.

20 Q Many patients, correct?

21 A I don't know what you mean by many.

22 Q How would you quantify it?

23 A I have no idea how to quantify it. I don't know how  
24 many were private insurance; I don't know how many were private  
25 pay. I don't know.

1 Q Do you know whether any of the patients you have  
2 treated were personal injury plaintiffs?

3 A Oh, yes.

4 Q Fair number?

5 A A fair number. What does that mean, a fair number?

6 Q What does it mean to you? More than 50 percent?

7 A I would say maybe 50 percent and I am guessing.

8 Q Dr. Grimm also worked for Dr. Kaplan?

9 A Yes.

10 Q Dr. Grimm is the one that provided the recommendations  
11 upon which you based your life care plan?

12 A Correct.

13 Q Did you read all Dr. Grimm's records or just the  
14 narrative report?

15 A I read all of Dr. Grimm's records.

16 Q Dr. Grimm is not a spinal surgeon, correct?

17 A Correct.

18 Q Not a wrist surgeon, correct?

19 A Correct.

20 Q Do you know whether Dr. Grimm still treats Workers'  
21 Comp patients?

22 A I have no idea.

23 Q How about Dr. Weinstein?

24 A Oh. Wait a minute. I do have an idea because I read  
25 the deposition I guess it's called.

1 Q I am asking for your personal knowledge of it.

2 A No.

3 Q Did you ever read any medical records before the day  
4 of the accident?

5 A I did. Yes.

6 Q When did you review those for the first time?

7 A I believe those were given to me in the last few  
8 weeks.

9 Q After your appointment with Mr. Buestan?

10 A Oh, yes.

11 Q Did you ask Mr. Buestan, when you saw him at his  
12 apartment, had he ever had any prior neck or back injuries?

13 A No.

14 Q Did you ask whether he had prior neck or back pain?

15 A No.

16 Q Did he tell you whether he had prior neck or back  
17 pain?

18 A No. Causation is not part of life care planning.

19 Q You just tried to give an opinion on causation before.

20 MR. VARGAS: Your Honor, he objected the first  
21 time.

22 THE COURT: Also, I struck it from the record.

23 Q You knew it was inappropriate to give an opinion?

24 MR. VARGAS: If he wants her to give an opinion,  
25 we can do that question all over again.

1 THE COURT: Sustained.

2 Q You relied on Mr. Buestan and his wife to be honest  
3 with you, correct?

4 A Yes, sir.

5 Q If they weren't honest, then your life care plan  
6 wouldn't be accurate, correct?

7 A Correct.

8 Q Are you aware of the testimony that Mr. Buestan was  
9 asked about whether he was -- during his deposition -- about  
10 prior injuries and there was testimony on that. Do you recall  
11 that testimony?

12 A I do.

13 Q Did that give you any concern whether Mr. Buestan and  
14 his wife were being honest with you when you interviewed them?

15 A No.

16 Q Even though they had documented untruths in both their  
17 testimony?

18 A Well, I'm not allowed to comment on anything medical,  
19 but if you want an answer I --

20 Q I don't want an answer. I am asking as a life care  
21 planner, are you aware of the issues with credibility?

22 A Yes, sir.

23 Q Did you record your interview in any way?

24 A I took notes.

25 Q Are those notes here?

1           A     I believe they are right here. My home visit notes  
2 are not here. They are in the report.

3           Q     Were those handwritten?

4           A     Yes. They are handwritten.

5           Q     You don't have them here?

6           A     I don't have them in this folder.

7           Q     Did you review any of Plaintiff's social media posts  
8 marked during the trial?

9           A     I did not.

10          Q     Did you review surveillance video?

11          A     I did not.

12          Q     Would those be important in terms of the life care  
13 plan?

14          A     The life care plan is based on treating physicians'  
15 recommendations, diagnoses, and prognoses, it is not for me to  
16 establish causation.

17          Q     Yes or no. Would it have been helpful to review  
18 those?

19          A     No.

20          Q     Are you aware Mr. Buestan recently obtained his  
21 driver's license?

22          A     Yes.

23          Q     Are you aware he traveled to Ecuador twice?

24          A     Yes.

25          Q     And the Dominican Republic with his wife?

1 A Yes.

2 Q Did any of those events factor into your plan?

3 A No.

4 Q He is only treating with Dr. Grimm currently, correct?

5 A I don't know.

6 Q You read Dr. Kaplan and Dr. Grimm's medical records?

7 A Yes, sir.

8 Q You read Dr. Weinstein's medical record?

9 A Yes, sir.

10 Q You read in those records that Mr. Buestan denied any  
11 prior complaints of neck and back pain, correct?

12 A I did.

13 Q I want to get to the life care plan now.

14 A Okay.

15 Q If you need those records in front of you, keep them  
16 in front of you. Would you agree if a service is not likely or  
17 anticipated, it should not be included in the life care plan?

18 A I can't say yes or no, because I would like to answer  
19 that. The nature of a chronic or degenerative condition is  
20 episodic. The nature of interventional pain medicine is  
21 episodic. As I was saying before, they have to be costed,  
22 anticipated, and quantified so it goes in.

23 Q But in order for it to be in a life care plan and have  
24 support, it has to be likely or anticipated, correct?

25 A Yes.

1 Q If it's not likely or anticipated, it shouldn't be  
2 included in the report, correct?

3 A Correct.

4 Q I want to talk about the medical care. I will go in  
5 order of your records.

6 A Okay.

7 Q You priced out care for pain management?

8 A Yes.

9 Q Orthopedic treatment?

10 A Yes.

11 Q That would be with Dr. Grimm and Dr. Kaplan, correct?

12 A Yes.

13 Q Your former employers?

14 A Correct. Dr. Kaplan, not Dr. Grimm.

15 Q Dr. Grimm also works in New York Ortho, correct?

16 A Yes, but he was not my former employer.

17 Q He was a colleague, someone you worked with?

18 A Yes.

19 Q Friend?

20 A No.

21 Q How about Dr. Kaplan?

22 A He was my boss.

23 Q Friend, colleague?

24 A Colleague.

25 Q Do you stay in touch with him today?

1 A No.

2 Q When was the last time you spoke to Dr. Kaplan.

3 A I have no idea. Sometime during COVID I spoke to him  
4 and that's all I remember.

5 Q Did you speak with Dr. Weinstein in connection with  
6 this case?

7 A No.

8 Q How about Dr. Kaplan?

9 A You asked me about Dr. Kaplan.

10 Q To be clear, you never spoke to him in connection with  
11 this case?

12 A Oh, no.

13 Q How about Dr. Grimm?

14 A No.

15 Q That's something you do on occasions, talk to doctors?

16 A If there are discrepancies and not enough information  
17 is provided, yes.

18 Q In this case, you did not talk to any doctors,  
19 correct?

20 A Correct.

21 Q Can we agree we took the wrist treatment out of the  
22 report?

23 A They are no longer pertinent. I don't know what you  
24 are asking, because the report is handed in and it's in the  
25 report that is handed in, but, no, it would not be in the

1 report. It would not be in a current report.

2 Q So no treatment for the wrist anymore?

3 A Correct.

4 Q For pain management, you have more injections in the  
5 future, correct?

6 A Yes.

7 Q Those are with Dr. Grimm, correct?

8 A Yes.

9 Q You're aware that the last epidural injection was in  
10 2020, correct?

11 A No. It was in 2021, I believe.

12 Q Do you have that in your records?

13 A Oh. I do have the notes you asked about before.

14 Q You can refer to them if you need to?

15 A 2021. It would be in Dr. Grimm's narrative. Just a  
16 moment, please, sir. I can't find the last injection here, but  
17 I do believe it was 2021.

18 Q Either way, four years since his last epidural  
19 injection at least?

20 A That's correct.

21 Q Dr. Grimm also commented that he can get the  
22 injections if he needed, if there was a flare-up, correct?

23 A Yes.

24 Q You have him getting it every year?

25 A I have him getting them every two years for two

1 reasons. One is that, as I was saying before, this is episodic  
2 care. The interventional pain management, it has to be  
3 quantified, anticipated and costed and two, and more  
4 importantly, that's what Dr. Grimm recommended.

5 Q If Grimm recommended it, you put it in your report?

6 A Yes.

7 Q Even though it's good for his bottom line.

8 A That has nothing to do the me.

9 Q You want the jury to give an allocation for money  
10 every year of his life for physical therapy, correct?

11 A Yes.

12 Q Isn't it possible he has a good result with physical  
13 therapy and doesn't go anymore?

14 A I'm not allowed to speak medically.

15 Q Answer the question, ma'am?

16 MR. ROSENZWEIG: Objection.

17 THE COURT: Repeat the question.

18 (Whereupon, the requested portion was read by the  
19 reporter.)

20 MR. VARGAS: He answered and then he said just  
21 answer the question.

22 THE COURT: Isn't it possible he doesn't go to  
23 physical therapy anymore?

24 THE WITNESS: Yes.

25 Q There's no indication in your report that physical

1 therapy can decrease over time, correct?

2 A Correct.

3 Q He can still be going to physical therapy in his 70s?

4 A Yes.

5 Q Did you review Dr. Weinstein's testimony on physical  
6 therapy?

7 A I reviewed Dr. Weinstein's testimony and I do not  
8 remember what you're going to ask me.

9 Q It's page 354 of the transcript.

10 "I think that if he has periods when he has  
11 flare-ups, which could happen, he can have some physical  
12 therapy. I think that's reasonable."

13 Do you remember reading that testimony?

14 A I don't, but you just read it to me.

15 Q It doesn't say yearly or regular MRIs, correct?

16 A No. It's episodic. By life care planning standards,  
17 I have to account for it.

18 Q He may need it or may not, correct?

19 A Correct.

20 Q Medications, again it's all based on Dr. Grimm's  
21 recommendations for Gabapentin and Tylenol?

22 A Based on recommendations and what he is taking.

23 Q Did you consider the cost of generic medication?

24 A Gabapentin is generic and acetaminophen is a generic.  
25 Those are both generic medications. Yes.

1 Q Your life care plan doesn't account for whether he  
2 needs the medication or not. It's just based on the record,  
3 correct.

4 A And what he told me he was taking at the home visit.

5 Q You have home cleaning at twice per week?

6 A No?

7 Q Twice per month. I'm sorry?

8 A Twice per month.

9 Q Did you calculate it at once per month?

10 A No.

11 Q Who recommended the necessity of home cleaning?

12 A I did.

13 Q Did any doctor recommend that?

14 A No. It's part of life care planning methodology to  
15 take into account environmental factors, environmental issues,  
16 and as I was saying before in this case, I have to factor in  
17 the fact that his wife does it. I don't know what the status  
18 of the marriage or his wife's health will be. This is life  
19 care planning methodology. I don't make this up. It's in the  
20 literature and I have to factor in a probable progression of  
21 his injuries.

22 Q In fact, you have a little note in your record that  
23 says what you should say when you're asked about home care  
24 planning?

25 A I left it in there in case you asked where I got it

1 from.

2 Q You have the little blurb in there to tell you what to  
3 say?

4 A Yes.

5 MR. ROSENZWEIG: Thank you. That's all I have.

6 THE COURT: Any redirect?

7 MR. VARGAS: No, Your Honor.

8 THE COURT: Well, thank you, Doctor.

9 THE WITNESS: Again, I'm not a doctor. I'm a PA.

10 THE COURT: PA Gelfand.

11 THE WITNESS: Thank you, Your Honor.

12 THE COURT: You may step down from the witness  
13 stand. We didn't have any fortune with getting the next  
14 witness now, correct?

15 MR. VARGAS: No, Your Honor. Sorry.

16 THE COURT: What time should we anticipate the  
17 vocational rehab witness?

18 MR. VARGAS: Two o'clock I will be ready to go.

19 THE COURT: All right, everyone. We're going to  
20 take our break now. 2:15 we will see everyone bright and  
21 chipper. Go enjoy some of the sumptuous cuisine of 161st  
22 Street.

23 THE OFFICER: All rise. Jury exiting.

24 (Whereupon, the jury exited the courtroom.)

25 (Whereupon, a lunch recess was taken.)

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\*\*\*\*\*AFTERNOON SESSION\*\*\*\*\*

THE OFFICER: All rise. Jury entering.

(Whereupon, the jury entered the courtroom.)

THE COURT: Welcome back everyone. Be seated.  
Try the Hard Rock Cafe or not the McDonald's so much, but  
anyway we're on to our next witness.

MR. VARGAS: Your Honor, I call Dr. Kathleen Acer  
to the stand.

THE COURT: Welcome, Ms. Acer? I don't know if  
it's Doctor.

THE WITNESS: Doctor.

THE COURT: Pleasure. Follow my court officer's  
instructions please.

THE OFFICER: Raise your right hand please.

K A T H L E E N A C E R, a witness called on  
behalf of the Plaintiff, after having been first duly sworn,  
testified as follows:

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

THE WITNESS: Kathleen Acer, A-C-E-R, 275 Madison  
Avenue Suite 1916. New York, New York 10016?

THE COURT: You may be seated please, The witness  
has been sworn. You may inquire.

MR. VARGAS: Thank you, Your Honor.

Q Dr. Acer, we have your report in front of you marked

1 as Plaintiff's 54 for ID. If you need to refer to it as we  
2 talk, you may.

3 A Thank you.

4 Q Can you start by telling the jury your educational  
5 background?

6 A Sure. So I have an undergraduate degree in biology  
7 with a minor in psychology. I have a Master's Degree in School  
8 Psychology, and I have a dual PhD, which is essentially a  
9 combined program, for a Phd in school psych and in clinical  
10 psych. I have additional certifications in the area of chronic  
11 pain, in forensic evaluation, and I am a certified life care  
12 planner.

13 Q Doctor, have you been found to be an expert in  
14 vocational evaluation on prior occasions?

15 A I have.

16 Q How many times approximately?

17 A Hundreds.

18 MR. VARGAS: Your Honor, I offer Dr. Acer as an  
19 expert in vocational evaluation.

20 MR. ROSENZWEIG: I object subject to voir dire.

21 THE COURT: Okay. Let's have a sidebar.

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

24 THE COURT: Ladies and gentlemen of the jury,  
25 this is a moment where the Court, as a matter of procedure,

1 will ask you to step out while we conduct a mini  
2 investigation of sorts prior to you being presented with  
3 evidence because the Court is the gatekeeper of all  
4 evidence. So I would say maybe 15 minutes at most. You  
5 will return upstairs to the jury room. I hear none of you  
6 have availed yourselves of the magazines I sent up there.  
7 Okay. Good. Go enjoy.

8 THE OFFICER: All rise. Jury exiting.

9 (Whereupon, the jury exited the courtroom.)

10 THE COURT: All right, Counsel. You have raised  
11 the threshold question of Dr. Acer's qualification to serve  
12 as an expert vocational rehabilitative doctor, I guess, or  
13 to be able to opine as to the ultimate rehabilitative  
14 vocational prospects of the plaintiff. You want to test  
15 her qualifications?

16 MR. ROSENZWEIG: Yes.

17 VOIR DIRE BY

18 MR. ROSENZWEIG:

19 Q Good afternoon, Dr. Acer.

20 A Good afternoon.

21 Q Mr. Vargas was examining you. He asked whether you  
22 had ever been designated as expert. I wasn't clear whether  
23 that was in a court of law testifying like we're doing today.

24 A Yes.

25 Q When was the last time you were qualified as an expert

1 in vocational rehabilitation?

2 A Yesterday.

3 Q What case was that?

4 A It was a case in this building on the fourth floor.

5 Q Are you a certified rehabilitation counselor?

6 A No.

7 Q Is that the gold standard for rehabilitation experts,  
8 that body.

9 A There are many pathways to become a vocational expert.  
10 That is one of them.

11 Q You were a certified life care planer correct?

12 A I am.

13 Q And you are a licensed psychologist?

14 A Correct.

15 Q Any other degrees?

16 A I have a few different certifications in the area of  
17 forensic evaluation, chronic pain management, and a school  
18 psychologist.

19 Q Are you a member of American Board of Vocational  
20 Experts?

21 A No.

22 Q Are you a national certified counselor?

23 A No.

24 Q Are you a certified disability management specialist?

25 A No.

1 Q Have you ever applied to be a certified rehabilitation  
2 counselor?

3 A No.

4 Q Where do you work today?

5 A I work for a company in Manhattan. Psychological  
6 Specialists of Greater New York.

7 Q Serving in a psychological capacity?

8 A We specialize in vocational assessments, life care  
9 planning, and a variety of psychological evaluations.

10 Q Do you have any certifications in vocational  
11 rehabilitation counseling?

12 A No.

13 MR. ROSENZWEIG: Your Honor, I would say she is  
14 not qualified to be an expert in vocational rehabilitation  
15 counseling. She has in degrees or professional  
16 certifications in that realm.

17 THE COURT: Do you have any rehabilitative  
18 questions you would like to ask, Mr. Vargas?

19 EXAMINATION BY

20 MR. VARGAS:

21 Q Are there any licenses that are required before you  
22 can be deemed an expert in vocational rehabilitation?

23 A No.

24 Q Are there any state agencies that use you for  
25 vocational rehabilitation?

1           A       Yes.  I'm an approved vocational evaluator for New  
2 York State Office of Rehabilitation.  ACCES-VR it's called.

3           Q       How long have you held that position?

4           A       I've been doing evaluations for ACCES-VR as a  
5 vocational specialist since my internship days back in 1990.

6                   MR. VARGAS:  Your Honor, if it's good enough for  
7 the State of New York, I don't know why it wouldn't be good  
8 enough for the Court.

9                   THE COURT:  Not that that is controlling on me,  
10 but you said you were accepted as an expert in this  
11 building yesterday?

12                   THE WITNESS:  Yes, sir.

13                   THE COURT:  As part or within the ambit of your  
14 studies and accomplishment in the field of psychology, do  
15 you engage in testing and assessment for the purposes of  
16 vocational evaluations?

17                   THE WITNESS:  Yes.

18                   THE COURT:  What sort of testing devices do use  
19 in that regard?

20                   THE WITNESS:  I use a variety of measures  
21 including cognitive measures, academic measures, different  
22 vocational assessments for fine motor skills, grappler  
23 motor skills, for color vision.  I do evaluations for  
24 memory evaluation.  Basically a very complete vocational  
25 battery.

1 THE COURT: Have you ever authored any  
2 publication in the area of vocational rehabilitation?

3 THE WITNESS: No.

4 THE COURT: Over objection, I am going to permit  
5 her to testify and offer expert opinion on the issue, that  
6 being as a vocational rehabilitative expert.

7 MR. ROSENZWEIG: I just also ask that, you know,  
8 you've done a good job in the trial so far staying away  
9 from any claims of a head injury other than the mention of  
10 concussion that I think we agreed to. I don't want to  
11 stray into that category either. Mr. Vargas has said that  
12 he wasn't. I just want to make sure that's on the record  
13 so we don't have to interrupt the testimony.

14 THE COURT: Your preemptive objection is noted.  
15 That said, let's get the jury down here.

16 MR. ROSENZWEIG: For the record, I take  
17 exception.

18 THE COURT: Your exception is noted. Mr. Vargas,  
19 I'm going to ask you not to begin to reread or to follow  
20 the prior testimony that's already been covered. We've had  
21 multiple people give projections on what things cost. I  
22 just don't want you to retrace, is the word I was looking  
23 for, some of the testimony that's already been provided  
24 here.

25 MR. VARGAS: Will do.

1 THE COURT: Thank you.

2 MR. VARGAS: This is all about jobs.

3 THE OFFICER: All rise. Jury entering.

4 (Whereupon, the jury entered the courtroom.)

5 THE COURT: Be seated.

6 Overruled. Ms. Acer shall be permitted to  
7 testify in the area of vocational rehabilitation. You may  
8 proceed.

9 MR. VARGAS: Thank you, your honor.

10 Q Dr. Acer, if you can start by telling the jury what  
11 goes into a vocational evaluation.

12 A Sure.

13 Q Or what it is.

14 A A vocational evaluation -- essentially what my job as  
15 an evaluator is is to determine what sort of jobs, activities,  
16 what sort of skill set somebody has in performing different  
17 jobs. Now, the medical doctor will opine as to what physically  
18 a person can and can't do in any particular job, but there are  
19 an awful lot of other factors that go into what sort of a job a  
20 person can do.

21 There are cognitive abilities, their English  
22 abilities, how well they work the their hands. Do they have  
23 any problems with color vision. Emotionally how are they  
24 doing. How fast can they process information. All of these  
25 other features and skills go into what sort of job a person can

1 an cannot do.

2 My process involves a extensive evaluation, about six  
3 hours, of all of the different areas and then developing a  
4 profile of somebody which describes what their strengths and  
5 weaknesses are vocationally and then I match up what that  
6 person's profile looks like up to all of the -- there's 12,000  
7 plus jobs that the United States has categorized.

8 And I do a comparative analysis of here is what this  
9 gentleman can do. How does that compare to all of these other  
10 jobs. What jobs can he still do what jobs can he not to.

11 Q If you can tell the jury what kind of testing you  
12 perform.

13 A Sure. I start with basically IQ testing, cognitive  
14 testing. In this case, I did it nonverbally, in other words,  
15 because that English is not his first language, I use nonverbal  
16 assessment to determine his cognitive capabilities. I look  
17 then at his academic skills, math skills. I tested his English  
18 language skills, how much he understands and how much he can  
19 speak. I also looked at what his Spanish vocabulary abilities  
20 are.

21 I looked at how well he can work with his hands, how  
22 well he can use fine tools and instruments. I did a color  
23 vision test with him. I also test how fast he can process  
24 information nonverbal information. I also did some assessment  
25 of his quality of life to get a sense of the emotional

1 functioning and also how, you know, are there depression and  
2 anxiety symptoms and problems here as well. So all of those  
3 different measures. Again, about six hours worth of testing.

4 Q When did you meet with Mr. Buestan?

5 A September 2, 2025.

6 Q If you can tell the jury what your findings were.

7 A Essentially, after doing a clinical interview with him  
8 and going through all of that testing, I developed a profile of  
9 what he can and can't do as far as work is concerned. I  
10 combined those results with what his treating doctor had said  
11 he physically can and cannot do and compared those results to  
12 the 12,000 plus jobs in the database, the result of which was  
13 there were, what we say, no job matches.

14 In other words, when we look at the combination of his  
15 physical capabilities along with all of the other factors that  
16 I mentioned and compared that, there were no matches. In other  
17 words, there were no jobs in the database that I could say yes,  
18 he has all of the capabilities to perform. So he was  
19 eliminated from the job market essentially. There was no jobs  
20 out there that I felt he could easily negotiate or even  
21 negotiate on a full-time consistent reliable basis.

22 Q When you said what a doctor said he physically could  
23 do. Can you tell us which doctor or doctors?

24 A That was Dr. Grimm.

25 Q What did Dr. Grimm say he could do or couldn't do?

1           A       So Dr. Grimm did what's called a physical capacities  
2 evaluation, essentially saying how much weight can he lift and  
3 carry occasionally and frequently and essentially he said he  
4 only could lift and carry frequently less than ten pounds.  
5 That puts this in the category of what we call a sedentary  
6 position. Think a job that requires you to sit and not lift  
7 and carry or move around a lot; you don't have to have a lot of  
8 strength demands for this job.

9                   What I do is a sedentary position. I don't lift and  
10 carry anything more than maybe a pencil or a testing kit. So  
11 he said that's the max he could do. He also then put  
12 limitations on, within an eight-hour day, how much sitting  
13 standing, and walking he could do.

14                   What Dr. Grimm said is he could sit for about four  
15 hours a day given breaks with standing and moving about. He  
16 could only walk -- stand for two to three hours in a total  
17 eight-hour workday and he could walk for only zero to one  
18 hours. So very limited physically.

19                   Additionally, what Dr. Grimm shared is that there are  
20 certain situations, certain environments we work in, hazardous  
21 environments, whether you're working outside in extreme cold or  
22 heat. He essentially said that he is not capable of working in  
23 any sort of hazardous environment. I think working at heights  
24 or working with electricity or working with moving parts,  
25 hazardous-type job or working in extremes of the environment;

1 in the cold, in the heat, in high humidities. Unable to do any  
2 jobs with those parameters.

3 He also had significant limitations on his lower  
4 extremity. Basically, walking, he could not crawl, crouch, or  
5 climb ladders. So all of those limitations were also placed on  
6 what type of job he could and couldn't get.

7 Q Before you testified, did I send you any documents for  
8 your review?

9 A Yes. You sent me the medical records to review.

10 Q And how about trial testimony?

11 A Yes.

12 Q All of that was of the plaintiff?

13 A Correct.

14 Q And I want you to assume, or from his trial testimony,  
15 that he has a sixth grade education. Is that a significant  
16 factor in your evaluation?

17 A It is and it is part of what I look at as far as what  
18 could be, like what were the expectations for any retraining  
19 possibilities or any other, you know, could he go on  
20 educationally to undertake any sort of training, further  
21 training.

22 Q And he's also 44 years old, turning 45 on February  
23 1st. Is that a significant factor?

24 A Yes. Essentially somebody in their 40s, while they're  
25 considered towards the end of what we call their vocational

1 lifespan, if you will, and at that point obviously there is not  
2 a lot of time for somebody to go back and get GED or to learn a  
3 new language or to attend college or go through any sore of  
4 extensive retraining program or educational program.

5 Q And if we could, can we go through some of the test  
6 results you had?

7 A Sure. So, as I mentioned, the first thing I did was  
8 a cognitive assessment, basically IQ, but I only looked at the  
9 nonverbal capabilities. In other words, visual perceptual  
10 skills that he had and for that I used what's called the  
11 Wechsler Adult Intelligence. It's the gold standard that  
12 psychologists use.

13 And essentially his overall perceptual reasoning IQ  
14 was considered to be within the borderline range. So there is  
15 average, there's low average, and then there is borderline. He  
16 was in the upper limit of the borderline range on one measure.  
17 I gave him an additional cognitive measure that factors out any  
18 cultural. There's no language and it's untimed. So this is  
19 kind of a very pure measure, and he scored within the low  
20 average range for that. Another piece of that is processing  
21 speed, how fast he can process incoming information  
22 nonverbally, and he was within the borderline range for that as  
23 well.

24 The next thing I would look at would be his English  
25 vocabulary receptively, how much he understood and English

1 language, how much he could speak. And he was deficient in  
2 both of those areas. Essentially at an age equivalent of about  
3 a five-year-old or so. So Kindergarten level for English,  
4 understanding it and able to speak it.

5 I also looked at his Spanish vocabulary skills, and in  
6 that case he was also in the deficient range, which is expected  
7 given the background information where he was raised and that  
8 he had minimal education even in his native Spanish language  
9 and in his native country. So somebody with not great verbal  
10 skills.

11 The other thing I looked at would be his math levels,  
12 and, again, about elementary school level, expected, you know,  
13 and consistent with his history. I looked at his visual  
14 memory, borderline. Equivalent with other results. The -- I  
15 gave him motor tests, how well he could work the his hands.  
16 All of those tests were within the average range. So as  
17 expected. That's obviously an area of strength for him, was  
18 how well he could work with his hands. Again, given the fact  
19 that he had worked in construction all of his life, that is  
20 something we would expect him to be able to do and he had no  
21 issues as far as that's concerned. He has good color vision,  
22 so there were no color vision deficits. I also looked at his  
23 emotional functioning and on one -- it's called the pain  
24 patient profile. In other words, it asks people to answer  
25 questions about their functioning and we compare him to a group

1 of chronic pain patients and a group of community patients.  
2 Essentially, chronic pain patients already have elevated  
3 difficulty with anxiety and depression as one would expect from  
4 being in chronic, debilitating pain every day. He scored above  
5 even those levels on the anxiety and depression leading me to  
6 one of the recommendations is that he obtain counseling and  
7 possibly even medication for his levels of depression and  
8 anxiety. I also looked at his quality of life, and this is  
9 based on different areas. Like how satisfied he was with his  
10 health and his work functioning, with his ability to help  
11 others with where he was living along all of these dimensions.  
12 And he had significant difficulties with that, in that he is  
13 very unsatisfied and has a poor quality of life at this point.

14 Q These tests that you administer, do you do them in  
15 person or is it computer or something else?

16 A It's all done in person. Majority of the battery I  
17 personally administer. I also have a testing associate that  
18 assists with some of the other languages. I had also with me a  
19 translator that day.

20 Q Why do you give the test in person? Is there a  
21 reason?

22 A Yes. I want to be able to see someone, how their  
23 approach to testing is, how much effort is he putting forth.  
24 It's also valuable to look at sustained effort. Again, I had  
25 him in with me for six hours. Was he able to get through --

1 did he need breaks. You know, what was his approach to a more  
2 difficult item. Did he get frustrated; did he give up, you  
3 know, did he keep working. A lot of the kind of behavioral  
4 observations as a psychologist are relevant ande important to  
5 note as well.

6 Q Can anyone measure someone's IQ? Is there any  
7 requirement?

8 A Using the measures I use, only a PhD or PsyD level  
9 clinical psychologist is licensed in New York State to perform  
10 these tests and interpret them.

11 Q Why would measuring someone's IQ be significant in  
12 coming to an opinion for their vocational evaluation?

13 A So, essentially, when you look at the different type  
14 of jobs that are out there, especially sedentary jobs, IQ is  
15 very important and factors into many sedentary jobs.

16 Q And after doing the test, did you find that he was  
17 qualified for any jobs?

18 A No. When we looked at his whole profile, all of the  
19 things that I discussed combined with all of the physical  
20 issues that his treating doctor had said and the limitations he  
21 had, there was no matches in the job database that I compared  
22 him to that he could perform.

23 Q These jobs, you said 12,000 --

24 A 12,755.

25 Q What's the database those jobs are in?

1           A       Those are from the Department of Labor from the  
2 federal government's Department of Labor.

3           Q       Is there a name for that database?

4           A       It pulls from the classification of jobs and from the  
5 -- I use a system called the Oasis system which essentially  
6 crosschecks from labor department to the classification of job.

7           Q       In coming to your opinion as well, did you review any  
8 n coming to your opinion as well, did you review any medical  
9 records?

10          A       Yes. I reviewed medical records starting from the  
11 emergency room straight through the most recent evaluations  
12 from his treating folks.

13          Q       The opinions you've given the jury today, that's with  
14 a reasonable degree of vocational rehabilitation certainty?

15          A       Yes.

16                   MR. VARGAS: No further questions, Your Honor.

17                   THE COURT: Cross-examination.

18                   MR. ROSENZWEIG: May I inquire, Your Honor?

19                   THE COURT: Yes, you may.

20 CROSS-EXAMINATION BY

21 MR. ROSENZWEIG:

22           Q       Good afternoon, Dr. Acer?

23           A       Good afternoon.

24           Q       I'm not quite sure where to start based on that, but I  
25 will try to go in order so we can stay in touch with each

1 other. You're no stranger to the courtroom, correct?

2 A Correct.

3 Q In fact, you told us that you just testified  
4 yesterday?

5 A Yes.

6 Q How many times have you testified in 2025?

7 A About ten times.

8 Q Just a coincidence that you are back to back yesterday  
9 and today?

10 A Yes.

11 Q In that case yesterday, what did you testify, in what  
12 field?

13 A Vocational rehabilitation.

14 Q Was that for the Gorayeb firm or another plaintiffs'  
15 personal injury firm?

16 A Another firm.

17 Q A plaintiffs' personal injury firm?

18 A In this case, yes.

19 Q How much are you charging for your testimony today?

20 A I'm a salaried employee, so my company bills for my  
21 time and they bill at 425 an hour.

22 Q Do you also charge the reporting in this case?

23 A Time is billed for all of my time, including the time  
24 to review medical records, report writing, test administration,  
25 testimony. All of it is billed at the same rate.

1 Q How long have you been at your current employer?

2 A About ten years now.

3 Q Have you worked with the Gorayeb firm before this  
4 case?

5 A Yes.

6 Q How many times?

7 A Doing evaluations, perhaps a handful of times every  
8 year. One of the firms we work with.

9 Q Can you let the jury know what a handful means?

10 A Less than ten.

11 Q Somewhere between five and ten?

12 A Yes. Approximately.

13 Q Each year?

14 A That sound about right. Yes.

15 Q How many reports do you do in an average year?

16 A Total?

17 Q Total.

18 A So I see about ten to 12 cases a month.

19 Q You're not one of Mr. Buestan's treating physicians,  
20 correct?

21 A I am not.

22 Q You saw him one time, correct?

23 A Correct.

24 Q That was in September 2025?

25 A Correct.

1 Q And you reviewed medical records provided to you by  
2 Mr. Vargas' firm?

3 A Yes.

4 Q Did you review any medical records prior to September  
5 27, 2019?

6 A No.

7 Q Did you request whether the plaintiff's attorneys had  
8 such records?

9 A Not specifically, no.

10 Q What do you mean not specifically?

11 A I request all pertinent medical records and then they,  
12 you know, send me what --

13 Q So they decided what to send you?

14 A Yes.

15 Q Did you ever make a request to plaintiff's counsel for  
16 records predating the accident?

17 A No.

18 Q Have you reviewed any social media images of the  
19 plaintiff?

20 A No.

21 Q Have you reviewed the surveillance video in this case?

22 A No.

23 Q Those were no the provided to you, correct?

24 A Correct.

25 Q I just want to talk about your resume for a second.

1 You are a psychologist by training.

2 A I'm a clinical psychologist, yes.

3 Q And a certified life care planner?

4 A Yes.

5 Q Are you a certified rehabilitation counselor?

6 A No.

7 Q Can you tell the jury what that is?

8 A It is essentially a master's degree in a field of voc  
9 rehab.

10 Q Exactly what we are talking about today, correct?

11 A One of the ways to talk about vocational assessment.

12 A PhD in clinical psych, there's a lot of training and  
13 vocational assessments that are combined in a PhD program as  
14 well.

15 Q But there is a specialist certification called a  
16 certified rehabilitation counselor that you don't have,  
17 correct?

18 A That's correct.

19 Q Are you a member of the American Board of Vocational  
20 Experts?

21 A No.

22 Q Are you a national certified counselor?

23 A No.

24 Q Are you a certified disability management specialist?

25 A No.

1 Q Those are all different certifications you can get in  
2 the field of vocational rehabilitation, fair.

3 A There are hundreds of certifications a person can get,  
4 yes.

5 Q You don't have any of those, correct? You're just a  
6 certified life care planner?

7 A Just?

8 Q And a PhD. I'm not taking away your PhD. What I'm  
9 asking is; do you have any certifications that I've just  
10 mentioned?

11 A No. I don't have any of those particular  
12 certifications.

13 Q At this time, you are a full-time legal consultant?

14 A No.

15 Q What else do you do?

16 A My company also does evaluations for the state rehab  
17 agency, ACCES VR, as I mentioned. I also work for another  
18 company on a consultation basis basically a couple of days a  
19 week doing disability exams as a consultative examiner for  
20 Social Security Disability and Social Security insurance. So I  
21 do those exams. My company also does various private  
22 evaluations for custody or for various psychological  
23 evaluations.

24 Q One of the things I noticed in your resume, it says  
25 provides consulting services to attorneys including litigant

1 preparation and coaching for testimony. Is that something you  
2 do?

3 A Well, if requested, I will assist in evaluating  
4 different reports or clinical psych reports or things like  
5 that.

6 Q It says coaching for testimony. Do you coach  
7 testimony?

8 A I -- coaching in that, are there questions if I read a  
9 report and then provide an evaluation. I would consider that  
10 coaching.

11 Q I'm just reading. It says coaching for testimony and  
12 attorney preparation for trial. Are those things that you do?

13 A Yes. I evaluate other people's reports and then  
14 assist attorneys in understanding them in my field of  
15 expertise.

16 Q Did you do any coaching for testimony in this case?

17 A No.

18 Q Did you coach Mr. Buestan at all about his testimony  
19 in this case?

20 A No.

21 Q How about his wife?

22 A I don't coach the people that I evaluate.

23 Q Just to read it again. It says provide consulting  
24 services to attorneys including litigant preparation and  
25 coaching for testimony. What does that mean to you?

1 MR. VARGAS: Your Honor, she's already answered  
2 this question.

3 THE COURT: I'll allow it. It's  
4 cross-examination. Some leeway.

5 A As I said, if an attorney comes to me with another  
6 clinical psych exam or medical records with psychological  
7 records in it or vocational or life care planning, what I will  
8 do is I will provide an opinion, my opinion, on the value of  
9 that report, where the weaknesses or strengths are in that  
10 report and how they may or may not want to handle working with  
11 that witness.

12 Q That's your definition of coaching for testimony?

13 A Yes.

14 Q Now you reviewed Plaintiff's trial testimony in this  
15 case?

16 A No.

17 Q What testimony did you review from the trial?

18 A I am not sure I reviewed any of the testimony.

19 Q I thought when Mr. Vargas was questioning you, he said  
20 he gave you some of the transcripts from the trial.

21 A I believe we have them. Whether I studied them or not  
22 is a difference matter.

23 Q Well, did you look at what Plaintiff said during the  
24 testimony?

25 A I looked through it.

1 Q It's very important what he is saying today, correct?

2 A It does not have a lot of ramifications. I did my own  
3 independent evaluation and came to my own conclusions. It's  
4 not really based on -- it was based on my evaluation of him at  
5 the time that I saw him and what he was telling me in a  
6 clinical interview. Not so much what was subsequently said.

7 Q The jury heard him testify under oath and they made  
8 their own evaluation and will make their own evaluation. But  
9 did you read that Mr. Buestan said to this jury that he was in  
10 two of ten pain when he takes his medication?

11 A I don't recall that specifically. No.

12 Q Did you read that he testified that he has applied for  
13 several jobs in the last eight months, including dishwasher,  
14 doorman, hotel cleaner, and working at FreshDirect?

15 A I didn't read that. No.

16 Q Is this the first time you're hearing, when I am  
17 saying this right now, that he's told this jury that he applied  
18 for jobs?

19 A Yes. I guess so.

20 Q Did you read that Plaintiff testified he went back to  
21 the union looking for work?

22 A That I knew about, but I am not sure whether I read  
23 that or whether he told me that.

24 Q Did you read that Mr. Buestan admitted to treatment  
25 prior to September 27, 2019?

1 A No. I don't recall that.

2 Q When is the first time you ever heard that Mr. Buestan  
3 was making complaints of pain in his neck and back before  
4 September 27, 2019? Right now?

5 A Yes.

6 Q You've interviewed Mr. Buestan for six hours, correct?

7 A Yes.

8 Q Did you ask him whether he had any prior pain in his  
9 neck or his back?

10 A Yes.

11 Q What did he tell you?

12 A He said he had no significant issues prior to that  
13 date.

14 Q Did he tell you he went to acupuncture for four years?

15 A No.

16 Q Did he tell you he went to a doctor for two  
17 trigger-point injections?

18 A No.

19 Q Did he tell you that he was in six of ten pain, as per  
20 the reports, before the accident?

21 A No.

22 Q Is that information you would have wanted to know?

23 A Possibly.

24 Q Did you read the testimony that Plaintiff traveled to  
25 the Dominican Republic with his wife?

1 A I don't remember if I read it or he told me.

2 Q How about his trips to Ecuador? Did he talk to you  
3 about that?

4 A His trips --

5 Q To Ecuador.

6 A Oh, no.

7 Q Did he tell you he went to Ecuador twice within the  
8 last two years?

9 A No.

10 Q Did he tell you he takes public transportation like  
11 trains and buses?

12 A I knew he did.

13 Q Did he tell you that he recently passed his road test?

14 A No. He had a learner's permit when I saw him.

15 Q Do you know that he now drives a car? Did you read  
16 that in the trial testimony?

17 A No.

18 Q Did you review the testimony of Dr. Weinstein?

19 A No.

20 Q Would it surprise you to learn that on pain 375, he  
21 was asked:

22 "Question: Do you believe he," Mr. Buestan, "can  
23 return to work doing something?"

24 "Answer: Yes. Of course."

25 Were you aware of that testimony?

1 A No.

2 Q Is that something you would have wanted to know when  
3 making your vocational assessment?

4 A My vocational assessment is based on the medical  
5 delineation as Dr. Grimm provided and my own assessment.  
6 Somebody else's opinion does not directly factor into my  
7 statistical analysis of that data.

8 Q Well, Dr. Weinstein is a spinal surgeon, correct?

9 A Yes.

10 Q Dr. Grimm and Dr. Kaplan deferred to Dr. Weinstein  
11 about return to work. Are you familiar with that testimony?

12 A No.

13 Q And the spinal surgeon said he can go back to work.

14 A If you say so.

15 Q That's what Dr. Weinstein said, not what I said.

16 A I don't have personal knowledge of that.

17 Q Now, you have personal knowledge that Mr. Buestan has  
18 applied for jobs, right?

19 A That's what you say.

20 Q I'm also going to represent to you that he said he  
21 started applying for job eight months ago. But he never told  
22 you that in September of 2025, correct?

23 A That's right.

24 Q You rely on the people you evaluate to be honest with  
25 you, correct?

1 A Yes.

2 Q If they are not honest with you, you can't get good  
3 results, fair?

4 A No. My test is objective.

5 Q Well, you talked to him, right? You had an interview  
6 with him?

7 A Correct, but the interview results don't get factored  
8 into that data analysis.

9 Q I'm asking you. During the interview, you asked him  
10 did you have prior issues with your neck or your back, right?

11 A Yes, I did ask.

12 Q He denied that to your face, correct?

13 A He said he didn't.

14 Q That wasn't true?

15 A That's what you are telling me.

16 Q That's not what I'm telling you. That's what Mr.  
17 Buestan told this jury.

18 MR. VARGAS: Objection, Your Honor.

19 THE COURT: Sustained. You are characterizing  
20 what he told the jury.

21 Q Now, I read in your report that Mr. Buestan did admit  
22 to you about a prior accident, correct?

23 A He was out for about a week or so.

24 Q Tell us about that. We've never heard any testimony  
25 about a prior accident. What did Mr. Buestan tell you about

1 the prior accident?

2 A I am going to refer to my report.

3 Q Please do.

4 A To be specific on that.

5 Q If it's helpful, I have it on Paragraph 41 of the  
6 disclosure.

7 A He bruised the right side of his ribs and was out of  
8 work for a week returning with no limitations.

9 Q What happened to him?

10 A I don't know specifically.

11 Q Did you ask him what happened?

12 A I asked if he had a prior injury and that's what he  
13 told me.

14 Q Did he give you any details about what happened?

15 A No.

16 Q Did he seek any medical treatment?

17 A I don't know.

18 Q Did you ask him?

19 A I asked him whether he had any injuries. He said he  
20 was out of work for a week, went back without any limitations.  
21 That is the information I was looking for and was sufficient  
22 for my purposes.

23 Q Did you ask him if he had any medical treatment?

24 A No.

25 Q But he told you during your interview that his pain

1 was seven to eight of ten, correct?

2 A Yes, variable.

3 Q A week ago he told the jury his pain was two out of  
4 ten. Can you explain the discrepancy?

5 A When I evaluated him, it was in September. I can't  
6 really predict where his pain levels would be yesterday.

7 Q When he met you, it was in your office?

8 A Yes.

9 Q He took the train there?

10 A Yes.

11 Q He admitted he could perform his personal care?

12 A Yes. Slowly and with difficulty, but yes,  
13 independently.

14 Q He was able to help around the house?

15 A He did very minimal things around the house.

16 Q Was he able to go for 30-minute walks?

17 A Yes.

18 Q Perform home exercise?

19 A He was doing home physical therapy exercises, yes

20 Q He told you he likes to read and watch videos, right?

21 A Yes.

22 Q Again, he never mentioned the physical therapy or  
23 acupuncture from before the accident, fair?

24 A No, he didn't.

25 Q You said that he had limited vocabulary in English and

1 Spanish; is that fair?

2 A That's correct.

3 Q On page 68 of the transcript day one, he testified, "I  
4 tell them cervical vertebrae and my head hurt."

5 Does that sound like somebody with a limited  
6 vocabulary in Spanish?

7 A I'm fairly certain that he has heard the word cervical  
8 many times since his accident in 2019.

9 Q Does that word suggest to you more of a facility with  
10 vocabulary than someone who could just refer to it as a back or  
11 a neck?

12 A No. You're talking about a very specific one  
13 vocabulary word. I wouldn't generalize anything from one word.

14 Q Are you aware that he testified over two days?

15 A I didn't know how long.

16 Q Are you aware that he never asked for a question to be  
17 repeated because he didn't understand it?

18 A I don't have any personal knowledge of that.

19 Q I believe I read in your report that you stated that  
20 Mr. Buestan rated his life 99 percent of his community group;  
21 is that correct?

22 A The result of the quality-of-life assessment that I  
23 mentioned before, yes. He rated his life when compared to the  
24 community group, he rated his life less satisfying overall than  
25 99 percent.

1 Q That means his life is worse than 99 out of 100  
2 people, is what he told you, correct?

3 A That's how he scored on the test.

4 MR. ROSENZWEIG: Olivia, can you show the social  
5 media picture?

6 Q Have you ever seen E-1 before, Doctor?

7 A No.

8 Q Do you see Mr. Buestan in that picture?

9 A Yes.

10 Q Does that look like someone whose life is worse than  
11 99 of 100 people in the United States?

12 A I would say anybody can smile for a picture.

13 Q Does that look like someone who is worse than 99 out  
14 of 100 people in the United States?

15 A Again, anyone can smile for a fraction of a second it  
16 takes to take a picture. I would not generalize from one  
17 picture any sort of implications as far as somebody's  
18 psychological functioning.

19 Q If we had more pictures on social media of him smiling  
20 and looking well, it wouldn't affect your opinion?

21 A I don't think social media is a reliable psychological  
22 measure.

23 MR. ROSENZWEIG: Thank you, Olivia.

24 Q You did review the medical records after the accident,  
25 correct.

1 A Yes.

2 Q You are aware that he hasn't had any orthopedic  
3 treatment in the last 12 months, correct?

4 A I believe the last -- well, he was being treated by  
5 Dr. Grimm. He had reached maximum medical improvement from his  
6 spinal surgeon and he was being monitored by Dr. Grimm on a  
7 regular basis.

8 Q Dr. Grimm is the only doctor he's treating with now,  
9 correct?

10 A When I was saw him, yes. That was all he was seeing.

11 Q He's pain management, not an orthopedist, correct?

12 A Correct.

13 Q He's not seeing any mental health professionals?

14 A No, he wasn't.

15 Q Not in any couple's counseling, correct?

16 A Not that I know of.

17 Q Attention and concentration during your testing was  
18 appropriate?

19 A Was adequate. Yes.

20 Q Based on the testimony I have just told you about, do  
21 you now believe there are some jobs, in the 12,000 that you  
22 talked about, that Mr. Buestan is able to do?

23 A No.

24 Q Nothing he is able to do?

25 A No.

1 Q Even though he's applied to jobs? Doesn't that  
2 suggest to you that he believes he is capable of doing that  
3 work?

4 A Not necessarily.

5 Q He'd apply to a job he didn't think he can do?

6 A I think a lot of people apply to jobs that they don't  
7 think they can do.

8 Q Would you concede that if he went to vocational  
9 training, even though he is 44, that it would increase his  
10 chance of getting work?

11 A Giving his language abilities, giving his cognitive  
12 functioning, his processing abilities, it would be difficult  
13 for him to learn new skills at this point.

14 Q Could he try?

15 A Did he try?

16 Q Could he try?

17 A He could try skydiving. I don't think that's  
18 recommended either.

19 Q He told the jury he is taking English classes on  
20 YouTube. Did you know about that?

21 A No.

22 Q Is he capable of learning English?

23 A The chances of him developing proficiency in English  
24 at this point is small.

25 Q Do you know about his proficiency in English?

1 A I measured it.

2 Q Does he speak English?

3 A At the level a five-year-old can.

4 Q He is taking classes now to learn more, correct?

5 A If you say so.

6 Q Would that increase the jobs that are available to  
7 him? Those 1,200 jobs, would learning more English help him  
8 get something?

9 A It's not going to hurt, but it's not the only factor  
10 in the reason he didn't obtain these jobs.

11 Q You are not a neuropsychologist, correct?

12 A I am not.

13 Q You are not making any claim here about causation  
14 between the injury and subsequent physical injuries, correct?

15 A No, I'm not.

16 Q The same thing when you are talking about the mental  
17 testing. That's just how he is from his upbringing in Ecuador  
18 and nothing to do with this case, correct?

19 A I can't definitively say nothing. Is it consistent,  
20 the numbers that I obtained and his background? Yes, it is.

21 Q Have you written any professional papers in the last  
22 25 years.

23 A I have a book chapter that I wrote last year.

24 Q On what?

25 A On the psychological effects of chronic pain.

1 Q Anything in vocational rehabilitation in terms of  
2 getting jobs for an injured worker?

3 A Not in that specific journal, no.

4 Q Did you perform any validity testing for the memory  
5 testing that you did?

6 A I gave one subtest that looked at visual memory. I  
7 didn't really do memory testing per se.

8 Q Did you do any tests for symptom validity?

9 A No.

10 Q Tell the jury what symptom validity is.

11 A Depends on your usage of it. There are a lot of tests  
12 out there that -- they're statistical analyses of whether a  
13 test is approached in an open manner, depending on if it is  
14 symptoms of emotional distress. There are also different tests  
15 that a person, a neuropsychologist or a psychologist, can give  
16 to determine whether somebody's approach to testing is valid.

17 Q Did you give those sorts of tests are?

18 A I did not.

19 Q Do you know what malingering is?

20 A I do.

21 Q What is malingering?

22 A It is intentionally presenting oneself as having more  
23 problems or worse.

24 Q Did you do any testing for malingering here?

25 A No.

1 MR. ROSENZWEIG: Thank you. That's all I have.

2 THE COURT: Redirect?

3 MR. VARGAS: Yes, Your Honor.

4 REDIRECT EXAMINATION BY

5 MR. VARGAS:

6 Q On the subject of malingering, was there evidence of  
7 him malingering or trying to purposely fail your test?

8 A Absolutely not. In fact, given his profile, there is  
9 a very low likelihood -- and that's a clinical judgement; I'm a  
10 clinical psychologist -- that-- it made sense to me. So when  
11 you look at all of this testing and all of the data, it has to  
12 make sense, right?

13 So here we have an individual who has minimal  
14 education in his home country. He had -- his testing results  
15 for his cognitive skills were within the upper limit of the  
16 borderline range, up to low average. That's consistent with  
17 his background, with what sort of work, with how he presented  
18 to me.

19 Then I measured other things such as his fine motor  
20 skills. Now, if somebody is going to blow my test, he is not  
21 sophisticated enough to know I should do well on this and maybe  
22 not well on this or I should blow this and not -- they do  
23 across the board badly on everything, right?

24 So if you don't know what you are getting into and you  
25 really want to look bad, you're going to do terrible. You're

1 going to bomb everything I give you. He was within the average  
2 range on exactly where I would expect it for somebody who's  
3 worked in construction and with tools, they're going to be  
4 really good with using their hands. Guess what his top scores  
5 were. Using his hands. So he didn't blow those. He could  
6 have. He didn't make that choice.

7           Also, if I see testing that doesn't make sense to me,  
8 I then would do validity testing. I didn't do it. That means  
9 I didn't see any indication whatsoever that those results and  
10 my results were not valid and expected. He did what I thought  
11 he would do. It was very consistent.

12           Q     Do you do any vocational rehabilitation evaluations  
13 for any state agencies?

14           A     Yes. I do vocational rehabilitation evaluations for  
15 the state rehab agency. I have been approved to do evaluations  
16 for them for 30 years.

17           Q     And regardless of, you know, counsel cited to  
18 testimony of the doctors who testified here. You base your  
19 opinion on the testing in your evaluation, not what other  
20 people are telling you, correct?

21           A     That is correct. Other people's opinions, and while  
22 they can be valid, all I have to go on is my data. Again, I am  
23 doing six hours of testing. I have years and years of  
24 experience and I'm looking at and comparing numbers in a  
25 database.

1           Those are the results that I presented here today, is  
2 just data-driven conclusions. It's not based on one doctor's  
3 opinions or two doctors' opinions on what a person can and  
4 can't do. It is looking at data and comparing that to a  
5 database.

6           MR. VARGAS: Thank you. No further questions.

7           THE COURT: Any recross?

8           MR. ROSENZWEIG: Very briefly, Your Honor.

9 RE CROSS EXAMINATION BY

10 MR. ROSENZWEIG:

11         Q     You saw Mr. Buestan once?

12         A     That's right.

13         Q     After that one time you saw him, you determined he  
14 could never work. None of those 12,000 jobs is a job he can  
15 do, correct?

16         A     That's what the data said.

17           THE COURT: Okay. Dr. Acer, we thank you for  
18 your testimony. You can step down from the witness stand.  
19 Have a safe journey back to where you are going.

20           Okay. The next order of business. Plaintiff?

21           MR. VARGAS: Plaintiff rests subject to what we  
22 spoke about off the record, reserving my right for any  
23 motions at the defendants' conclusion.

24           THE COURT: Well, if you are going to make a  
25 motion about Defendants' case in chief, we will have to

1 hear the case in chief. So the plaintiff has rested. That  
2 means that the plaintiff's case is in before you. Now, the  
3 next order of business will be to hear from the defendants  
4 who don't have any witnesses scheduled for today. I know  
5 that makes you sad.

6 However, we will have a very business set of days  
7 on Tuesday, Wednesday, and Thursday next week at which time  
8 the case may be drawing to a close and you will you I  
9 anticipate receive instructions from this Court, unless  
10 something extraordinary happens, and begin deliberating  
11 thereafter. Let's see how things go.

12 Normally we would have come back on Monday, but  
13 given the historic and possibly catastrophic snowstorm  
14 that's heading our way on Sunday into Monday, it seems  
15 reasonable to this Court not to drag people through danger  
16 to get here and some of you not making it and we can't go  
17 forward anyway. So the more reasonable and prudent course  
18 of action will be to see you on Tuesday morning at 9:30.  
19 Okay. Enjoy the weekend.

20 (Whereupon, the trial was adjourned to Tuesday,  
21 January 27, 2016 at 9:30 AM.)  
22  
23  
24  
25