

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF KINGS: CIVIL TERM: PART 9

3 -----X

4 DENIS LEANDRO MOREIRA RIBEIRO,

5 PLAINTIFF,

6 - against -

7 WATERMARK CAPITAL GROUP, LLC, and
8 LIGHTSTONE MANAGEMENT, and LLC,

9 DEFENDANTS.

10 -----X

11 Supreme Court
12 360 Adams Street
13 Brooklyn, New York 11201
14 February 10, 2026

15 B E F O R E :

16 HONORABLE STEVEN Z. MOSTOFISKY,
17 Justice of the Supreme Court

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

19 LAW OFFICES OF MICHAEL S. LAMONSOFF, PLLC
20 Attorneys for the Plaintiff
21 Financial Slip at 32 Old Slip
22 8th Floor
23 New York, New York 10005
24 BY: BRENDAN O'MEARA, ESQ.

25 FULLERTON BECK LLP
Attorney for the Defendant
One West Red Oak Lane
White Plains, New York 10604
BY: SUSAN SCARIA, ESQ.

LAURA DELVAC
SENIOR COURT REPORTER

25

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1 (Pause in the proceedings.)

2 THE CLERK: Come to order.

3 THE COURT: Good morning everybody.

4 MR. O'MEARA: Good morning, your Honor.

5 THE COURT: Have a seat. Good morning.

6 THE REPORTER: Good morning, Judge.

7 THE COURT: Okay.

8 MS. SCARIA: Your Honor, I wanted to before we get
9 started make an application on the record, with respect to
10 some of the anticipated testimony by Dr. Seidenberg, in
11 order to do that, I would like to ask the expert to leave
12 the courtroom.

13 THE COURT: Could you leave the courtroom.

14 (Whereupon, Dr Seidenberg exited the courtroom.)

15 THE COURT: Okay, one second.

16 MS. SCARIA: I'm sorry, I actually have two
17 motions.

18 THE COURT: Did everybody put together the
19 evidence?

20 MR. O'MEARA: We put in substantial amount of it,
21 and then I got to do more today, Judge, I lost a witness for
22 tomorrow, he has to be switched to the 18th.

23 THE COURT: Hold on, this is -- this is like gentle
24 surgery here, okay. So today is the Plaintiff, and the
25 expert; right?

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1 MR. O'MEARA: Yes.

2 THE COURT: Okay. Tomorrow is?

3 MR. O'MEARA: Nobody.

4 THE COURT: So tomorrow is off?

5 MR. O'MEARA: Yes.

6 MS. SCARIA: Unless we have to continue with
7 Plaintiff.

8 THE COURT: 17th, I'm sorry, then we're going to
9 the 17th.

10 MR. O'MEARA: The full day is on the 17th and the
11 18th, Judge.

12 MS. SCARIA: So it doesn't really change the
13 schedule.

14 THE COURT: The jury won't let them have anything
15 tomorrow.

16 MS. SCARIA: Depending on what happens with
17 Plaintiff.

18 THE COURT: Depending on?

19 MS. SCARIA: If we finish Plaintiff today.

20 THE COURT: And the 20th, do we have somebody for
21 next Friday?

22 MS. SCARIA: Yes, your Honor, the rest of the
23 schedule does not change for the 20th, we have the
24 Defendants' neurology expert, Dr. Bender and then the next,
25 we're only up on the morning of the 23rd, on the 23rd, which

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1 is a Monday, we only have a witness in the afternoon, which
2 is the Defendants' orthopedic surgeon, Dr. G-I-D-U-M-A-L,
3 and then --

4 THE COURT: The 25th.

5 MS. SCARIA: The 25th is the Defendants' last
6 witness, the spine surgeon, Dr. Jared Brandoff, and he's
7 scheduled for the morning of the 25th.

8 THE COURT: The 26th, we will --

9 MS. SCARIA: Actually, your Honor.

10 THE COURT: I have motions on the 26th.

11 MS. SCARIA: Right.

12 THE COURT: As we get further on, we will see if we
13 will try to charge and do summations on the 26th.

14 MS. SCARIA: Okay.

15 THE COURT: Then we have the 27th, they could be
16 out, even charge in the morning of the 27th, like first
17 thing in the morning, as I told you, I'm going to be out
18 March 2nd, I don't want these people to have to stick
19 around.

20 MS. SCARIA: You said you're going to be out
21 March 3rd, just to clarify.

22 THE COURT: Hold on, let's go back to the
23 videotape, I can't mess this one up.

24 (Pause in the proceedings.)

25 THE COURT: Right, I'm out on the 3rd.

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1 MS. SCARIA: You're out on the 3rd.

2 THE COURT: Yes, I'm out on the 3rd. That's why if
3 we do the summations and the -- one second, if there's
4 anyway we can do the summations and jury charge either the
5 26th, I mean late on the 26th, if I, you know, we see what
6 we're doing with the motions by then, we will know what's
7 happening, first thing on the morning on the 27th, I would
8 like to do that, so even if they need more time, we can give
9 them until Monday, this way they will have all day Monday to
10 deliberate.

11 MS. SCARIA: That sounds reasonable, Judge, the
12 only thing --

13 THE COURT: Only if they can start deliberations on
14 Friday.

15 MS. SCARIA: That's what I was going to say.

16 THE COURT: I won't let them, still we will have to
17 stop at one, if I can do the charge and summations first
18 thing in the morning, maybe we will start 9:30 that day and
19 because I want to get this going, the people are very nice.

20 MS. SCARIA: Yeah.

21 THE COURT: That they're sticking around so long.

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

23 THE COURT: Do you want to go on the record for
24 this?

25 MS. SCARIA: Not this something else, your Honor,

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1 there are two applications the Defendants need to make.

2 THE COURT: Let's get call the case.

3 THE CLERK: This is the matter of Moreira Ribeiro
4 Denis Leandro versus 1111 Fulton Realty, LLC et. al, Index
5 Number 523843 of 2020.

6 Counsel, please put your appearance on the record.

7 MR. O'MEARA: Brendan O'Meara for the Plaintiff.

8 MS. SCARIA: Susan Scaria for the Defendants.

9 THE COURT: What's your application?

10 MS. SCARIA: Your Honor, the first application is
11 that the Defendants move for a mistrial based on the
12 Plaintiff's commentary during the openings statements.

13 Your Honor had in response to the Defendants'
14 motion in limine to prohibit the Plaintiff from saying
15 improper comments during the openings. Although your Honor
16 denied the Defendants' application, your Honor did ask
17 Plaintiff's Counsel and made sure that Plaintiff's Counsel
18 was not at least going to say two words, in addition to not
19 saying anything inappropriate, which those two words were
20 "nefarious" and "retribution".

21 Yet, during Plaintiff's opening, yet, he actually
22 used the word "retribution" to describe the Plaintiff's. He
23 also talked about eye for an eye and decades of allegedly
24 taking Plaintiff's life away. The commentary by Plaintiff's
25 Counsel was unreasonably inflammatory, combined with medical

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1 explanation and emotional analogies and potentially punitive
2 themes and based on this, the Defendants move for a
3 mistrial.

4 MR. O'MEARA: I did say "retribution," I apologize,
5 it came out by a mistake, the rest is all permissible.

6 MS. SCARIA: Your Honor, the apologies.

7 THE COURT: I deny the application, one of the
8 first thing we say in the jury charge, the first thing to
9 the jurors, what the attorneys say isn't evidence.

10 I ask counsel to refrain from doing this in the
11 future. I think the most important thing is if it comes out
12 during trial, stay away from those words during trial. If
13 you want to say that it's going to get him his life back or
14 it ruined his life or something like that, he will answer
15 those questions when you ask him what it did to his life.

16 There's no reason to ask any doctor or anyone else
17 if it ruined his life, if he deserves money and retribution
18 for what happened, the jury is going to listen, we have a
19 very good jury as we know, so I don't think it had any
20 effect on them, I think they understand it, they heard the
21 objections, they heard my responses, and they heard the
22 charge, which says nothing the lawyers or I say to you has
23 any effect on the case, listen to the evidence, listen to
24 what you heard.

25 So I will deny that application, I don't think it

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1 was prejudicial, I think it came up in summations, even
2 though I don't like objections in, in opening statements or
3 summations, you did object, I did take care of it. I think
4 counsel knows to stay away from those two or three words
5 during the trial, and I don't think there's a reason for a
6 mistrial, they will hear my charge at the end which will
7 also tell them what the attorneys say and what I say has
8 nothing to do with the outcome of the case, it's just words,
9 so I think that takes care of that.

10 MS. SCARIA: Thank you, your Honor.

11 And the second application, is last night, I'm not
12 sure what time, I have to check my email, Plaintiff's
13 Counsel emailed to me a 20-page report that has never been
14 disclosed that was issued by the life care planner who
15 intends to take the stand this morning Vicki
16 S-E-I-D-E-N-B-E-R-G.

17 THE COURT: You never had anything with her name on
18 it or anything?

19 MS. SCARIA: No, your Honor, although the Plaintiff
20 did disclose, Plaintiff's Counsel disclosed an 3101(d) in
21 2022 with a chart in it, it did not include any of the
22 details that are, it didn't include all of the details of
23 the summary, summary of the medical records or the basis of
24 the witness's opinions in the 3101(d), also, the -- in this
25 report, it, the report references two interviews, which was

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1 not mentioned in the 3101(d).

2 THE COURT: Counsel.

3 MR. O'MEARA: Your Honor, we went to the 3101(d),
4 the major thing that the subsequent documents did was update
5 the amount of the life care plan.

6 THE COURT: Last night.

7 MR. O'MEARA: She sent, I don't know when she sent
8 it to our office, I only prepped her last night, your Honor,
9 it reduces the health care plan by 50, \$60,000, it just
10 takes away the last three years.

11 MS. SCARIA: Your Honor, more specifically.

12 THE COURT: So, it lowers the life care plan?

13 MR. O'MEARA: The healthcare plan in 2022 was
14 \$471,000, it's now 421 or 22.

15 THE COURT: So it's to your benefit.

16 MS. SCARIA: Your Honor, the more problematic part
17 of it, in what the Defendants seek to preclude the witness
18 from testifying to is mention about review of the records
19 from spine specialists Dr. Mikelis, M-I-K-E-L-I-S, and
20 Dr. Shah, S-H-A-H, who are both doctors at a facility called
21 New York Spine.

22 According to the report, Dr Seidenberg reviewed
23 these records, no authorizations was ever provided to the
24 Defendants for these, for these providers and we have never
25 received any type of records. This is the first time that

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1 the Defendants are on notice that the Plaintiff went to
2 another spine surgeon.

3 THE COURT: Counsel, do you have any idea how they
4 got the authorizations?

5 MR. O'MEARA: Your Honor, no.

6 MS. SCARIA: We didn't get the authorizations, your
7 Honor.

8 THE COURT: I'm asking him.

9 MS. SCARIA: Oh --

10 MR. O'MEARA: I'm not asking specific, about
11 specific doctors, I'm asking for, for her general opinion.
12 I'm not getting into any specific doctors in relation to her
13 testimony.

14 MS. SCARIA: As long as --

15 THE COURT: I will hold this in abeyance, let's see
16 what the testimony is.

17 MS. SCARIA: Your Honor, I ask that the Court
18 preclude the Plaintiff.

19 THE COURT: It may not be said.

20 MS. SCARIA: I understand that, your Honor, but in
21 light of the way certain things have occurred already, I
22 just have to make any application.

23 THE COURT: I understand that.

24 MS. SCARIA: That the Defendants are requesting
25 that the Plaintiff's expert be precluded from referencing

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1 any treatment at New York Spine, and that Plaintiff's
2 Counsel be precluded from asking about any treatment or
3 visits to New York Spine.

4 THE COURT: He's lowering his request financially.

5 MS. SCARIA: Your Honor, that's great, that's to be
6 expected, because updated report is later in life, your
7 Honor.

8 THE COURT: Based on the numbers.

9 MS. SCARIA: That's to be expected because this
10 updated report is later in life.

11 THE COURT: That's why he's going to do that; am I
12 correct?

13 MS. SCARIA: Okay, your Honor, but the records that
14 I'm talking about refer to additional spine treatment that
15 would, that Plaintiff intends to use supposedly in support
16 of the need for future life care, the future life treatment,
17 so to the extent that Plaintiff --

18 THE COURT: That's based on those records.

19 MS. SCARIA: That's what this report says.

20 THE COURT: So to the extent it's based on those
21 records, based on saying I read so-and-so's report, based on
22 saying I'm doing it based on that report, I will grant the
23 motion as to that, because I don't think you're planning on
24 doing that anyway.

25 MR. O'MEARA: No.

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1 THE COURT: I will grant the application as to
2 that, preclude him from talking about those doctors.

3 If it's the witness' expertise, herself, as to her
4 knowledge without this information.

5 MS. SCARIA: Your Honor, she couldn't respectfully
6 she couldn't have the knowledge because she never examined
7 the Plaintiff.

8 THE COURT: I understand that.

9 MS. SCARIA: Okay, so she just to be clear --

10 THE COURT: She's basing it on records she read.

11 MS. SCARIA: Yes.

12 THE COURT: Not these records that came in last
13 night.

14 MS. SCARIA: I don't know when the records came in,
15 they're from 2024.

16 THE COURT: You said you just got them last night.

17 MS. SCARIA: I got Mr. O'Meara's report from the
18 life care planner last night.

19 THE COURT: Okay, but you got a summary of it;
20 right.

21 MS. SCARIA: A summary, I have a summary.

22 THE COURT: Of what the health care planner was
23 speaking of testifying about?

24 MS. SCARIA: Yes, in this 20-page report, I now --

25 THE COURT: You never got, you never got regular

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1 disclosure?

2 MS. SCARIA: Your Honor, in the 3101(d) that was
3 served in 2022, did not have a report attached to it, all it
4 had was a chart.

5 THE COURT: All it has to be is 3101(d).

6 MS. SCARIA: I understand that, but it has to be
7 comply with the CPLR and it didn't, so, but more
8 specifically, the only thing I'm talking about right now is
9 reliance upon treatment records that were never disclosed
10 and for which the Defendants were never provided
11 authorizations.

12 THE COURT: Okay. I think that's fair, stay away
13 from those.

14 MR. O'MEARA: I want to specifically talk to her.

15 THE COURT: And tell her about it.

16 MR. O'MEARA: Yes.

17 THE COURT: Go ahead, I think that takes care of
18 the issue.

19 (Pause in the proceedings.)

20 MR. O'MEARA: Can I bring her in?

21 THE COURT: Yes.

22 Let's call the first witness.

23 Are we ready?

24 MR. O'MEARA: Yes.

25 THE COURT: Let's call the jury.

Dr. Seidenberg - Plaintiff - Direct

1 (Pause in the proceedings.)

2 COURT OFFICER: All rise, jury entering.

3 (Whereupon, the jury entered the courtroom.)

4 THE COURT: Good morning everybody, have a seat,
5 once again I thank everybody for being here, and you know,
6 we get this late start, because there are things we have to
7 do, like I said, in the opening statement, there are some
8 legal issues that we always have to address that come up,
9 but I, again, I thank you all for coming here today and for
10 being really dedicated people to this trial and to the
11 Court, and to the system, so thank you very much, and call
12 your first witness.

13 MR. O'MEARA: Dr Seidenberg.

14 (Whereupon, Dr Seidenberg took the witness stand.)

15 DIRECT EXAMINATION BY

16 MR. O'MEARA:

17 THE CLERK: Raise your right hand, do you affirm
18 that the testimony you're about to give this court is the
19 truth?

20 THE WITNESS: Yes.

21 THE CLERK: Can you please state your name and
22 business address?

23 THE WITNESS: Vicki Seidenberg, V-I-C-K-I,
24 S-E-I-D-E-N-B-E-R-G. 30 Primrose Lane, P-R-I-M-R-O-S-E
25 Lane, Roslyn Heights, New York 11577.

Dr. Seidenberg - Plaintiff - Direct

1 THE CLERK: Thank you. You may be seated.

2 THE WITNESS: Thank you.

3 THE COURT: Counsel, you can begin.

4 MR. O'MEARA: Thank you, your Honor.

5 THE COURT: By the way, if you're thirsty or need
6 some water, you don't need my permission to take a drink.

7 THE WITNESS: Thank you.

8 Q Doctor, can you tell us what your medical specialty is?

9 A I'm a board certified in the field of physical medicine
10 and rehabilitation.

11 Q And can you describe what that is?

12 A Physical medicine and rehabilitation is a medical
13 specialty that many people really are not very familiar with,
14 it's also known as physiatry, and I'm specialist in
15 neuromusculoskeletal diseases.

16 My training encompasses treatment and management of
17 patients with spinal cord injury, traumatic brain injury,
18 musculoskeletal injuries sports medicine, and imitations,
19 cardiovascular stroke rehabilitation, and pediatric
20 rehabilitation.

21 After medical school, I go to residency, I did as a
22 four year residency in physical medicine and rehabilitation,
23 then I took my boards and got board certified in that particular
24 field.

25 Now the thing about physiatry is that I am the doctor

1 in charge of the care of patients with disabilities and
2 functional limitations. So it is the goal of the physiatrist to
3 not only prevent secondary complications from that disorder, but
4 also to improve function.

5 So how do I do that? I prescribe different modalities,
6 I prescribe physical therapy, physical therapy works on walking
7 on strengthening and joint range of motion, I may prescribe
8 occupational therapy which deals with upper extremity strength,
9 fine motor skills and something we called activities of daily
10 living.

11 A patient might need speech therapy if they had a
12 stroke or brain injury, not only do I have to evaluate their
13 swallow and make sure they can eat a regular diet so they don't
14 aspirate or swallow food into their lungs, but they may have
15 speech and language issues that need to be addressed.

16 It's also my role to prescribe what we call durable
17 medical equipment, so I'm knowledgeable in different equipment,
18 somebody who is quadriplegic needs a very different wheelchair
19 than someone whose paraplegic.

20 Patients who have amputations, I'm educated in
21 prosthetics and orthotics, somebody who runs a marathon needs a
22 different artificial limb than walking to the bathroom that's
23 75 years old. So we are the gatekeeper, it is our role to
24 improve function, decrease pain and improve quality of life and
25 prevent secondary complications if patients who have traumatic

1 injuries and disabilities.

2 Q What is your educational background?

3 A I went to my undergraduate in SUNY Stony Brook, I got
4 my medical degree from the State University of Buffalo, School
5 of Biomedical Sciences, and I did my residency in Chicago, and
6 then I took my boards.

7 Q Can you describe what taking your boards means?

8 A In order to be qualified, eligible to take your board,
9 you have to complete medical school and complete residency in a
10 specific training program, it is a three-part examination over
11 several years actually, part one, part two, part three, and you
12 get certified, and then you have to continue to do ongoing
13 medical education.

14 I actually was required to get recertified because I
15 have been in practice for almost 30 years, so you have to
16 maintain your certification by getting certain amount of what we
17 call continuing medical education credits, and then I had to get
18 recertified.

19 Q And are you affiliated with any hospitals?

20 A Yes, the Northwell Hospital System and Long Island
21 Jewish.

22 Q And have you been qualified as a medical expert in the
23 past?

24 A Yes.

25 Q How many times have you been qualified?

1 A Maybe a dozen, give or take.

2 MR. O'MEARA: Your Honor, I would offer
3 Dr Seidenberg as an expert in the physical medicine and
4 rehabilitation -- I'm sorry, one second.

5 Q Are you certified life care planner?

6 A I am.

7 Q Can you describe what that is?

8 A So life care plan is a medical report that's used to
9 help determine current and future medical needs and costs for
10 people who have had disabilities or traumatic injuries.

11 It's a complexed report, it's based on extensive
12 research, and review of medical evidence, diagnostic studies,
13 consultation with the client, and then the research to come up
14 with the charts to determine what the costs of the future care
15 would be.

16 Q And are you a certified life care planner?

17 A I am a certified life care planner.

18 Q How does one become a certified life care planner?

19 A I had to take an extensive course over many months, I
20 had to go down to North Carolina for a few days, I had to write
21 many reports, submit them and take an exam, get certified, and
22 I'm also required to do ongoing continuing education to maintain
23 that certification.

24 Q Do you know how many life care plans you've developed?

25 A No, I do not.

1 Q How many times years have you been creating life care
2 plans?

3 A I got certified as a life care planner in 2018.

4 MR. O'MEARA: Your Honor, now I would offer as an
5 expert in physical medicine and rehabilitation and life care
6 planner.

7 THE COURT: Any objection?

8 MS. SCARIA: No objection.

9 THE COURT: So certified.

10 Q And doctor, did we retain your office to come here
11 today?

12 A Yes.

13 Q How much are we paying you to be here today?

14 A \$8500.

15 Q Could it be ten?

16 A I'm sorry, ten, yes, I'm sorry, I apologize.

17 Q Did you have -- did we have a meeting or conference or
18 talk about the case before you came?

19 A Yes.

20 Q Did you write or prepare a report for, in relation to
21 this case?

22 A Yes.

23 Q And do you have it in front of you?

24 A I do.

25 MR. O'MEARA: Your Honor, I ask that she be

Dr. Seidenberg - Plaintiff - Direct

1 permitted to take a look at the report, if need be.

2 THE COURT: Yes. Mark it for ID first or use it to
3 refresh your recollection.

4 MR. O'MEARA: Correct.

5 THE COURT: It is in evidence?

6 MS. SCARIA: No, it is not.

7 MR. O'MEARA: It is not, it is just to review.

8 THE COURT: You can use it to refresh your
9 recollection. One second. You can't hear.

10 (Pause in the proceedings.)

11 THE COURT: Doctor, move microphone close to you,
12 and slide the chair up a little bit, and slide the mic
13 closer to you.

14 Q Doctor, I don't know if I asked you, have you testified
15 in court before?

16 A Yes.

17 Q How many times?

18 A About a dozen times.

19 Q Is it usually for plaintiffs or defendants or both?

20 A It's generally for plaintiffs.

21 Q And do you do defendants' work?

22 A I have done defendants's work. Generally plaintiffs
23 are the ones looking for life care plans.

24 Q Do you know who Denis Leandro Moreira Ribeiro is?

25 A Yes.

1 Q How do you know who he is?

2 A I did a life care plan.

3 Q Did someone refer him to you?

4 A Yes.

5 Q And do you remember what documents you, and did you
6 review documents in relation to Mr. Ribeiro?

7 A Yes.

8 Q And just generally, what did you review?

9 A In order to prepare any life care plan, I review
10 hospital records, treating physician notes, physical therapy
11 notes, all of the diagnostic studies, MRI reports, X-rays,
12 things like that.

13 Q And did you ever speak to Mr. Ribeiro?

14 A Yes.

15 Q And do you charge something different for the actual
16 report as well?

17 A Yes.

18 Q And do you remember what that was?

19 A This report was initially done in 2022, and then I had
20 to do an amended report to get it up to date to make sure it was
21 ready for today.

22 Q Did you take a verbal history from Mr. Ribeiro?

23 A Yes.

24 Q And to the best of your knowledge, do you know how this
25 accident occurred?

1 A Yes.

2 Q Can you tell us?

3 A While working construction, he was carrying some heavy
4 equipment, I believe his foot got caught, he slipped and fell,
5 and injuring his right shoulder, left knee, ankle, back and
6 right wrist.

7 Q And would that also be a brief history of his
8 diagnosis, was that also his diagnosis?

9 A Yes.

10 Q And did Mr. Ribeiro communicate any complaints to you
11 during that interview?

12 A Yes.

13 Q And can you tell me what those were?

14 A He remained symptomatic, he had ongoing pain and
15 functional limitations as a result of his right shoulder, right
16 wrist, left knee, ankle and low back pain. His symptoms were
17 exacerbated made worse with physical activity and cold damp
18 weather. He continued to report decreased grip strength and
19 pain in his right wrist and shoulder, as well as right arm
20 weakness and difficulty raising his arm and lifting things above
21 his head, he had intermittent swelling in his ankle, and knee,
22 and utilized support brace that he had purchased periodically
23 when the pain was particularly bad, he had ongoing back pain
24 that had initially improved after his surgery, but had
25 progressively gotten worse, and that was associated with pain

1 numbness and tingling down his legs into his feet and toes, as a
2 result, he had difficulty performing his activities of daily
3 living due to trouble bending over, lifting, and this also
4 affected his sleep, he felt that he was also off balance, and
5 was having troubling standing on one leg. He continued to take
6 medications on an as-needed basis for spasms and pain, but he
7 reported that he barely gets three to four hours of rest before
8 he awakens.

9 He continued to attend therapy periodically, and was
10 following with his physicians on an as-needed basis.

11 Q And based upon your interview and your review of the
12 records, did you create a life care plan?

13 A I did.

14 Q And did you prefer a series of charts that would assist
15 you in demonstrating that?

16 A Yes.

17 MR. O'MEARA: Your Honor, I'm going to ask that
18 they be marked for identification as one.

19 MS. SCARIA: Your Honor, the defense has not been
20 provided with a copy or seen it.

21 THE COURT: I can't hear you.

22 MS. SCARIA: The Defendants haven't been provided a
23 copy or seen what Plaintiff's Counsel intends to mark. We
24 would like to take a look at it to determine if any
25 objections are necessary, the report you looked at earlier.

Dr. Seidenberg - Plaintiff - Direct

1 MR. O'MEARA: Just the charts.

2 MS. SCARIA: Do you have it in some other format?

3 MR. O'MEARA: No, just on the screen.

4 MS. SCARIA: Okay. So it's the charts that are
5 listed in the report that were emailed yesterday?

6 MR. O'MEARA: Yes.

7 MS. SCARIA: All right.

8 THE COURT: They are just marked for identification
9 right now anyway. Are they on the list?

10 MR. O'MEARA: Not yet, Judge.

11 THE COURT: Okay, what is it, the life care plan?

12 MR. O'MEARA: The life care plan.

13 THE COURT: I'm going to mark that as Exhibit I,
14 Defendants's Exhibit I for identification.

15 MS. SCARIA: Okay, thank you.

16 Q And can you describe what the tables are?

17 A The tables are divided into different categories to
18 help clump together the different treatment recommendations that
19 are recommended in a life care plan, and as you'll see when we
20 get them up on the screen there, there's an indication, a
21 duration of treatment, which is his life expectancy, and life
22 expectancy based on his current age and National Vital Table
23 Statistics, it has been determined that he has a life expectancy
24 of 38 years, and so based upon his life expectancy of 38 years,
25 following treatments have been recommended, then the cost for

1 the treatment, and then at the end of all of the charts is a
2 summary of each chart and the total calculation of the lifetime
3 cost of treatment.

4 Q Is that 38 more years?

5 A Is that what?

6 Q Is that 38 more years, not just 38 years?

7 A 38 additional years, correct.

8 Q And can you explain what the life, what the -- how you
9 came up with that number?

10 A There are charts, the life care plan is a lot of
11 research that's done --

12 Q I was asking about how his life expectancy?

13 A There's something called the National Vital Statistics
14 based on age, race, that lists from the time of your current age
15 what your life expectancy would be, and that's what I used to
16 reference.

17 Q Do you have a copy of your charts in front of you?

18 A Yes, I do.

19 Q Can I take a look at them?

20 A Yes (Handing.)

21 MR. O'MEARA: These are the ones (Handing.)

22 (Pause in the proceedings.)

23 MR. O'MEARA: Thank you.

24 Q Handing back to the doctor.

25 And when do you make those charts?

1 A After I review the medical history, all of the medical
2 records, the diagnostic studies, and I do consultation, and then
3 I do research, and then I do the charts at the end.

4 Q Is that a true and accurate copy of your life care plan
5 tables in front of you?

6 A Yes.

7 Q Did you prepare them yourselves?

8 A Yes.

9 MR. O'MEARA: Your Honor, I move them into evidence
10 as Plaintiff's Exhibit 2.

11 THE COURT: Any objection?

12 MS. SCARIA: No objection, your Honor.

13 THE COURT: So the life care plan is going to be I
14 in evidence.

15 MR. O'MEARA: It might be Plaintiff's Exhibit 2,
16 your Honor.

17 I'm sorry, your Honor, I apologize.

18 THE COURT: Which is Plaintiff's Exhibit 1.

19 MR. O'MEARA: I'm sorry, are we starting from
20 scratch or continuing from the last trial?

21 THE COURT: Starting from scratch.

22 MR. O'MEARA: Then it's 1, the life care plan
23 charts are Plaintiff's Exhibit 1.

24 THE COURT: This is Plaintiff's Exhibit 1.

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

Dr. Seidenberg - Plaintiff - Direct

1 MR. O'MEARA: Your Honor, can we approach briefly?

2 THE COURT: Yes.

3 (Whereupon, an off the record bench discussion was
4 held.)

5 THE COURT: Let the jury go out for a few minutes.

6 COURT OFFICER: All rise, jury exiting.

7 (Whereupon, the jury exited the courtroom.)

8 (Whereupon, a short break was taken.)

9 (Pause in the proceedings.)

10 MS. SCARIA: The other thing that the Defendants
11 request be redacted since Plaintiff is not alleging a wrist
12 injury is the recommendations for future wrist treatment.

13 MR. O'MEARA: Okay.

14 THE COURT: Okay. It's on a separate chart.

15 MS. SCARIA: No, your Honor, it's part of the same
16 chart.

17 THE COURT: I mean it's a separate page.

18 MS. SCARIA: It's on every page.

19 THE COURT: I'm sorry.

20 MS. SCARIA: There's commentary about wrist
21 recommendations on every page.

22 THE COURT: So we won't --

23 MR. O'MEARA: I will take it out.

24 MS. SCARIA: This has to be on the record, in light
25 of the fact that Plaintiff's Counsel is not alleging a wrist

1 injury and is redacting the wrist injury from the chart, the
2 numbers are going to be impacted, so, the witness.

3 THE COURT: We will leave the numbers the way they
4 are.

5 MS. SCARIA: That would be completely improperly,
6 respectfully the numbers are based on calculations for
7 lifetime of wrist treatment, which is not alleged in this
8 case.

9 MR. O'MEARA: Your Honor, I can tell the Court and
10 ask her if we're taking away the wrist, then it can be taken
11 away, and I'm sure they're very good at math.

12 MS. SCARIA: Your Honor, I object to any
13 calculations being made on the fly, on the stand.

14 THE COURT: Well, she's an expert.

15 MS. SCARIA: That doesn't mean she can immediately
16 calculate off the top of her head how to deduct.

17 THE COURT: Let's hear the evidence, when she gets
18 up to the part when she has to come to a figure, we will
19 take a break and give her a chance to look at the report.
20 She's not going to be testifying to the wrist until it comes
21 to the end.

22 MS. SCARIA: Right, she should be.

23 THE COURT: So we will stop at that point, and then
24 we will let her change the calculations, if necessary.

25 MS. SCARIA: I suppose to the extent it's possible,

1 it's certainly necessary.

2 THE COURT: We have to get this started.

3 MS. SCARIA: I understand that, but I also don't
4 need the witness testifying.

5 THE COURT: Would you like her to do it now?

6 MS. SCARIA: That's fine, it doesn't matter to me.

7 THE COURT: Okay. Do you have a calculator, your
8 phone can do the trick?

9 (Pause in the proceedings.)

10 THE COURT: So we're going to have the expert
11 recalculate the figures leaving out the injury to the wrist,
12 and Counsel is redacting the charts right now.

13 Counsel, if you can later, print for tomorrow,
14 print it out, so we can actually have the one we're using in
15 evidence, so if we have to give it to the jury during
16 deliberations, they can have the chart that we're actually
17 going to be working with.

18 MS. SCARIA: That would mean, your Honor, just to
19 clarify page 20 of 20, of the chart that Mr. O'Meara intends
20 to present is the list of the numbers, so that entire chart
21 would have to be removed and recalculated.

22 THE COURT: The doctor is recalculating it right
23 now.

24 MS. SCARIA: Thank you, your Honor.

25 THE COURT: So her chart is not going to go into

1 evidence, she's recalculating it, and, you know, we're going
2 to put the rest of it is going to go on the screen when she
3 makes the calculation, she will make the calculation without
4 it.

5 MS. SCARIA: Okay, that's why we will get the new
6 exhibit for tomorrow or Thursday.

7 (Pause in the proceedings.)

8 MS. SCARIA: Your Honor, hopefully, to save some
9 time I ask that Plaintiff's Counsel also ensure that his
10 economist recalculates her numbers to the extent that the
11 economist relied on it.

12 THE COURT: None of the comments that you asked to
13 be excluded are going to go into evidence, she's sitting
14 here with her chart.

15 MS. SCARIA: No, your Honor, I'm talking about a
16 different witness, the Plaintiff is calling an economist to
17 testify later on.

18 THE COURT: An economist, I thought you said
19 comments, sorry, pull microphone a little closer.

20 MS. SCARIA: So if we can preemptively before
21 Plaintiff's economist takes the stands, I forgot what day,
22 ensure that Plaintiff's Counsel works with his economist to
23 make sure that the numbers that were.

24 THE COURT: I don't think we'll have a problem with
25 that; correct, counsel?

Dr. Seidenberg - Plaintiff - Direct

1 MR. O'MEARA: Yes.

2 MS. SCARIA: We request an updated 3101(d).

3 THE COURT: You don't need a 3101, you need the
4 report.

5 MS. SCARIA: Right, because I never received any
6 report from an economist.

7 THE COURT: So he will send you the new report,
8 3101 isn't really going to help you at this point.

9 MS. SCARIA: I would like it before the day of
10 testimony.

11 THE COURT: You did it?

12 THE WITNESS: Yes.

13 THE COURT: The doctor is done, do you have that
14 are amounts? Counsel can take a look at it.

15 THE WITNESS: It's the same essentially, it's
16 \$10,000 less than the, give or take.

17 MS. SCARIA: If you wouldn't mind giving me one
18 moment.

19 THE COURT: Yeah, yeah.

20 MS. SCARIA: Thank you.

21 (Pause in the proceedings.)

22 THE COURT: You might as well hear the number.

23 THE WITNESS: Do you want the new numbers?

24 THE COURT: Let her finish doing her calculations.
25 Off the record.

Dr. Seidenberg - Plaintiff - Direct

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

2 THE WITNESS: All right I have a calculation.

3 THE COURT: What is your calculation, doctor?

4 THE WITNESS: \$416,523.

5 MS. SCARIA: 523?

6 THE WITNESS: Yes.

7 MS. SCARIA: Thank you.

8 THE COURT: Okay, counsel.

9 MS. SCARIA: Yes, thank you, your Honor.

10 THE COURT: Let's finish waiting for Plaintiff's
11 Counsel to redact.

12 MS. SCARIA: So rather than enumerating the various
13 costs and to the totals as listed on page 20 of 20, the
14 Dr Seidenberg is just going to testify as to --

15 THE COURT: As to that final number, then there
16 will be an updated chart.

17 MS. SCARIA: Thank you, your Honor.

18 THE COURT: Which I think counsel is working on
19 right now.

20 THE WITNESS: I have the specific numbers that were
21 changed if you want to add it.

22 THE COURT: Do you want that for the last page?

23 THE WITNESS: Brendan?

24 THE COURT: She has the figures on the last page,
25 would you like to have that last page so you can put it in

Dr. Seidenberg - Plaintiff - Direct

1 there?

2 MR. O'MEARA: Please, thank you.

3 THE COURT: Officer, just give counsel the page,
4 thank you.

5 COURT OFFICER: (Handing.)

6 Which page is that?

7 THE WITNESS: 20 of 20.

8 MR. O'MEARA: May I see your chart?

9 THE WITNESS: (Handing.)

10 (Whereupon, a short break was taken.)

11 COURT OFFICER: All rise, jury entering.

12 (Whereupon, the jury entered the courtroom.)

13 THE COURT: Okay, everybody sit down, we're going
14 to continue with the direct examination of the doctor.

15 Go ahead, doctor.

16 Q Doctor, are all of your opinions to a reasonable
17 degrees of life care planning certainty?

18 A Yes.

19 Q Let's go through the life care plan, shall we?

20 A Yes.

21 Q Can you describe what resources use you used to come up
22 with this particular plan?

23 A So after review of the medical records, review of the
24 therapy notes, review of the operative reports, the diagnostic
25 studies, the treating physician recommendations, also based upon

1 my history of being a physiatrist, and I treat patients with
2 these kind of disorders, Mr. Ribeiro had sustained injuries to
3 his right shoulder, his left knee, his left ankle, and his low
4 back as the result of a work-related injury.

5 He was evaluated by a physician, who ordered some
6 diagnostic testing, referred him for therapy and referred him to
7 additional specialists. He was seen and treated by pain
8 management and underwent injections cortisone injections into
9 his left knee, and what we call a lumbar epidural injection,
10 which is an injection into the spine.

11 When he did not get improvement after extensive
12 conservative care, he was referred for surgery, he did undergo
13 left knee surgery, right shoulder surgery, and lumbar fusion,
14 multilevel fusion in the low back, based upon his history and
15 his diagnosis, his treating physicians, his ongoing
16 symptomatology, and my knowledge is not only as a planner, but
17 also as a board certified physiatrist, we come up with the
18 following charts.

19 The first chart is broken down into medical care and
20 based upon his life expectancy of 38 years, we discussed that
21 prior, it's based upon his current age, his ethnicity, and a few
22 other things, there are charts we use, we come up with a life
23 expectancy.

24 So for the next 38 years, I have allotted him to see a
25 physiatrist and pain management specialist, the second column is

1 the indication, this is to assess his function, assess for any
2 secondary issues, joint restrictions, muscle weakness, and
3 physiatrist also will prescribe medications, muscle relaxers and
4 is also the pain management specialist who does injections for
5 pain management, and diagnostic testing.

6 Over his lifetime, 30 visits, cost for each visit is,
7 what we call median costs, it's not the highest cost, it is not
8 the lowest cost, it is not what insurance pays or what Medicare
9 pays, I use multiple references to come up with a number, and
10 what I do is I have a median cost as a frequency of 30 visits
11 over 38 years, the total cost for the physiatrist is \$7500.

12 Next line down --

13 Q \$7500 is not per year, that's --

14 A Over his lifetime, over his lifetime.

15 Q What is the next one?

16 A The next one is to visit the spine specialist, he had a
17 multilevel fusion that involved screws and hardware putting into
18 his back, he's at risk for secondary complications, loosening of
19 the hardware and in addition because his back is fused, he's now
20 at risk for developing disease above and below the level of the
21 fusion, and you have to monitor for that, and visits with a
22 spinal surgeon over 38 years.

23 I have allotted for 20 visits over his lifetime, each
24 visit is \$350, the final cost over his lifetime with the spinal
25 surgeon is \$7,000.

1 Next is joint orthopedist for his ongoing right knee --
2 right shoulder and left knee pain, 20 visits over his lifetime,
3 250 per visit, total cost over his lifetime is \$5,000.

4 Next is with a podiatrist, who is a foot and ankle
5 specialist, ten visits over his lifetime, \$250 per visit, \$2500
6 over 38 years, and then for symptomatic care of his ongoing back
7 pain, visits with a chiropractor for massage, myofascial release,
8 potentially during acupuncture and different pain modality,
9 interventions, over 38 years, for symptomatic care, I have
10 allotted 200 visits.

11 It's not at one time, he can go one year for ten
12 visits, he cannot go for two years and then he might need 20
13 visits, but over his lifetime 200 visits to help maintain and
14 manage his ongoing radicular back pain.

15 Next chart is the diagnostic studies, they're divided
16 into X-rays and MRIs, and first is X-rays of the lumbar spine,
17 X-rays look at bone, they look at bone alignment, look at the
18 X-rays between the bone, they do not look at soft tissue, they
19 do not look at the spinal cord, so that's why you have to get an
20 X-ray, and then you have to get an X-ray, MRI, they look at two
21 different things.

22 Over his lifetime, ten X-rays to make sure that the
23 spine is still in alignment, there hasn't been any shift, any
24 new bone that's formed, any loosening of the hardware, ten
25 X-rays over 38 years, total cost individual cost \$450 including

1 the radiographic interpretation of the X-ray, \$4500 over the
2 lifetime, over his lifetime.

3 Next line is the MRIs, again, MRIs look at the
4 spinal cord, they look at the nerves coming off the spinal cord,
5 and five MRIs of his lumbar spine, \$2,025 per MRI, total cost
6 over his life, \$11,125.

7 Moving down to his right shoulder, five X-rays over his
8 lifetime, \$280 per X-ray, total cost over his lifetime is \$1400.

9 MRI of the shoulder, that, MRI of the joint looks at
10 the tendons, the ligaments, the cartilage, two MRIs of his right
11 shoulder over his lifetime \$1,790 per MRI, total cost of \$3,580.

12 The same thing with the left knee, five X-rays of his
13 left knee over his lifetime, \$1400 in total, and MRI of his left
14 knee, two MRIs of his left knee, \$1,790 per MRI, total cost
15 \$3,580 over his lifetime.

16 X-rays of his ankle, five X-rays over his lifetime,
17 \$325 per X-ray, total cost of \$1,625.

18 MRI of his ankle, two MRIs of his ankle over his
19 lifetime, total \$2,650 per MRI, to the calendar cost is \$5,300.

20 Then lastly is electrodiagnostic studies, so EMG, nerve
21 conduction studies are a test that physiatrists do and
22 neurologists do look at how a nerve is functioning and also to
23 help assess the level and the extent of nerve damage very
24 important tool we use for diagnosis and determined what we call
25 nerve degeneration.

1 Two EMGs over his lifetime, \$2,165 per test, total cost
2 of \$4,330 over his lifetime.

3 The next chart is what I -- is labeled invasive
4 procedures, these are pain management treatments that we use for
5 patients with chronic pain, first one is a series of lumbar
6 spine epidurals. So an epidural injects cortisone into the
7 spinal column and helps bathes the spinal column, and the nerves
8 that come off of the spinal column, cortisone is
9 antiinflammatory. You've all heard of NSAIDS, which is
10 nonsteroidal antiinflammatory medication, cortisone is a
11 steroidal antiinflammatory medication, these are medications we
12 use to inject into the joint or into the spine, in this case to
13 help relieve the inflammation in the joint, or on the nerve.

14 So I have allotted for two series of epidurals over his
15 lifetime, total cost is \$25,000 and \$50, and second, pain
16 management injections are something we call facet injections.
17 So back pain is multifactorial, you can't look through a
18 microscope and look at one thing, there are joints in the spine
19 just like you have a hip joint or a knee joint. So when the
20 vertebrae that are stacked on top of each other come together,
21 there's a joint that's formed, those are called facet joints.

22 So when the space between the vertebrae gets more
23 narrow, the joints get narrower and they rub and they rub and
24 they rub, now what holds everything up together the muscles and
25 ligaments attached to the bone and that makes up your body, your

1 skeleton and your musculoskeletal system.

2 So when somebody gets inflamed, it causes a snowball
3 effect, there's inflammation in the joint, inflammation in the
4 nerve, the muscle goes into spasm, it causes more stress on the
5 spine, because that's where it's attached to, so it's pulling on
6 one side, causing muscle imbalance, it leads to weakness,
7 spasms, and a whole bunch, you know, the knee bone is connected
8 to the shin bone, you can't stub your toe without it affecting
9 your spine, because when you turn your ankle in, it translates
10 up the leg and into the spine and into the pelvis which is
11 attached to the spine, so everything is attached.

12 So as a pain management specialist, you have to treat
13 everything, you cannot just put a Band-Aid on one thing and
14 expect the whole thing to improve, so that's what we do, a facet
15 joint injection is an injection into the joints in between the
16 vertebrae in the spine. Total cost of that over his lifetime is
17 \$29,310.

18 The -- last kind of injections are injections into the
19 muscle, these are called trigger point injections, myofascial
20 trigger point injections. Everybody has had at some point had
21 those knots in your neck, you can't get rid of the knot. The
22 knot are adhesions that develop in the muscle, and trigger point
23 injections are used to inject numbing medication and actually
24 sterile water, but actually effect the needle into the muscle to
25 break up the adhesions in the muscle, stimulate blood flows and

1 decrease the toxins in the area to help the mobility of the
2 muscle return, so these are some things that are used for
3 patients with chronic back pain.

4 For ten trigger point injections over his lifetime, I
5 could do ten trigger point injections in a day in a patient
6 sometimes, because you have to inject multiple areas, because,
7 like I said, it's not just one muscle, it's multiple muscles, I
8 allotted for ten trigger point injections over 38 years, at a
9 total cost of \$12,000.

10 Moving on the next two -- next three injections are
11 cortisone injections into the joint. Again, we're injecting
12 medication directly into the area that is inflamed, right
13 shoulder cortisone injection \$2,375, three injections over his
14 lifetime, total cost of \$7,125.

15 Next is an injection into his knee, three injections
16 over his lifetime, total cost over his lifetime for the knee
17 injections is \$3,750.

18 Lastly, injections into his left ankle, three
19 injections into his left ankle, and total cost is \$6,405.

20 The next chart is labeled Projected Evaluations and
21 Therapeutic Modalities, this is physical therapy, that is
22 recommended for future care to maintain muscle strength, prevent
23 muscle imbalance, work on his gait, maintain joint range of
24 motion, and when a joint gets stiff, you can develop something
25 called adhesive capsulitis, particularly in the shoulder, where

1 you then you're -- your shoulder doesn't move at all, then you
2 need another kind of surgery to kind of move the shoulder under
3 anesthesia, but that's a whole another thing.

4 You want to prevent any secondary complications, 100
5 visits over his lifetime for physical therapy, \$38,000 in total
6 cost.

7 Next are medications, he continues to take medications
8 on a regular basis, and these are some over-the-counter
9 medications, Extra Strength Tylenol Ibuprofen. I allotted for
10 six bottles per year at a total cost of \$3,192, Flexeril is a
11 muscle relaxant, it's used for muscle spasms, also aids in helps
12 patients sleep, particularly, patients with ongoing muscle pain
13 and muscle spasms, four bottles over -- four bottles per year
14 over his lifetime, total cost of \$2,736.

15 All medications are generic unless they're not
16 available at generic, these are the least expensive prices that
17 are available.

18 Cymbalta is a medication used for patients with chronic
19 pain, also used for sleep, 12 bottles per year, total cost is
20 \$13,680, the last line is for postsurgical pain medication,
21 which relates to the next chart, four bottles, for the next two
22 surgical interventions, the cost of the pain medication \$180.

23 Lastly, we do have surgical interventions. So based
24 upon his diagnosis and his ongoing symptoms, and the
25 recommendations from the treating physicians, he's at risk for

1 the following two procedures; one would be a revision of the
2 lumbar spine, and the second would be the procedure to the left
3 ankle. Prior to each surgery, he needs to be evaluated by a
4 physician for medical clearance, the cost of each visit is \$350
5 for a total cost of \$700 for the two procedures.

6 Preoperative testing, everybody has to go, anybody
7 undergoing anesthesia has to be cleared with blood work, CBC,
8 chemistry profile, EKG to check make sure your heart is okay.
9 Chest X-ray, cost of that is \$525 for all of those diagnostic
10 testing per procedure, total cost \$1,050.

11 Revision surgery for the lumbar spine, that includes
12 the hospital stay and the surgeon, as well as the radiology
13 fees, \$100,000 -- \$105,345 for the procedure, and left ankle
14 arthroscopy, \$21,300 per procedure.

15 The next two lines are for postoperative care after the
16 surgical interventions, so this is different than the visits
17 that were in the initial chart, these are for wound, wound
18 checks, suture removals, and to prescribe any braces or physical
19 therapy he might need after the surgery. I have allotted for
20 physical therapy immediately in the postoperative period.
21 Again, this is different than the maintenance physical therapy,
22 this is the immediate postoperative physical therapy, and then,
23 the last line is durable medical equipment.

24 So things that he needs in his house, to keep him safe,
25 and he's at risk for falling in the shower, he needs a chair in

1 the shower, because he had back surgery or ankle surgeries, so
2 that's a one time fee of \$2500 for durable medical equipment.

3 The last chart is a summary of all of the other charts,
4 the medical care total cost over his lifetime is \$77,000, the
5 diagnostic studies, the MRIs, X-rays and EMG studies total
6 \$36,840.

7 Pain management procedures, joint injections, epidurals
8 total cost \$83,640.

9 Physical therapy over his lifetime, \$38,000.

10 Medications over his lifetime, \$19,788.

11 Future surgical intervention \$161,255.

12 The grand total is \$416,523.

13 Q Doctor, are there subjective or objective findings to
14 support your life care plan?

15 A Yes.

16 Q Can you describe what the differences is between
17 subjective and objective findings?

18 A Subjective is what a patient tells you what he's
19 complaining of, I have chronic pain, I have numbness and
20 tingling, I have weakness.

21 Objective findings are the findings on physical
22 examination, as well as the diagnostic testing that supports
23 those findings.

24 Q Are you certain that all of this medical care is going
25 to happen?

1 A I don't have a crystal ball, this is what would be
2 usual and customary for somebody who has had these surgeries who
3 remains symptomatic, who has ongoing medical issues and would
4 require ongoing medical care and follow-up for somebody who has
5 had a spinal fusion, surgery on his knee, surgery on his
6 shoulders, got instability, and multiple tendon tears in his
7 ankle.

8 These are the medical recommendations based upon my
9 knowledge as a board certified physiatrist and a certified life
10 care planner.

11 Q Even if he had maximum medical improvement?

12 A Maximum medical improvement does not mean that somebody
13 does not needs treatment. If somebody is paralyzed as a result
14 of a spinal cord injury, from the waist down, there's going to
15 be a time where they're not going to get any improvement in the
16 neurological examination in their lower extremities, they have
17 reached maximal medical improvement in regard to the spinal cord
18 injury, that does not mean they're not at risk for medical
19 complications related to that injury, skin breakdown, urinary
20 tract infection, et cetera, et cetera, joint contracture, a
21 hundred different things.

22 So the term "maximal medical improvement" does not mean
23 that somebody does not require ongoing care, it means they're
24 not 100 percent, and usually after surgery, and multitrauma
25 nobody is --

1 Q And what is degeneration?

2 A Degeneration is kind of a generic term that's used in
3 to describe joints, sometimes the spine, on radiographic
4 findings, so it's kind of like a wear and tear of a joint, it's
5 not a diagnosis.

6 If I scanned everybody in this room right now, you will
7 all have degenerative findings, in your back in your neck, as a
8 result of the fact that we just age, and as we age, the joint,
9 the cartilage starts to dry out, the joint space get closer,
10 there's friction that leads to new bone formation, that's
11 degenerative changes, that's also arthritis. Arthritis in and
12 of itself is not an exact diagnosis. It's a term used to
13 describe certain findings that we see on diagnostic studies.

14 Q And in relation to that, can you describe what
15 asymptomatic symptoms are?

16 A Meaning?

17 Q They're --

18 A No symptoms.

19 Q And then can they become symptomatic?

20 A Of course.

21 Q Through a trauma?

22 A Yes, of course.

23 Q And to the best of your recollection, when he went to
24 the ER for the first time, was it during Covid?

25 A Yes, I believe so.

1 Q And he is not getting physical therapy right now;
2 correct?

3 A I have to refer back to my report, I believe he did
4 receive some treatment recently, but I don't know exactly the
5 date. He did report that he still follows up with a pain
6 management doctor and does periodically receive physical
7 therapy.

8 I don't have the exact time when was the last visit.

9 Q Does he, should he be, well getting the physical
10 therapy that you suggest in your report, does he need that or
11 how will that help him?

12 A Yes, physical therapy is used to prevent joint
13 contracture, improve muscle balance, muscle weakness, and help
14 prevent secondary problems.

15 The goal particularly as a physiatrist, the goal is to
16 prevent secondary complications that lead to worsening symptoms,
17 and potentially future surgery, so everything we do is to
18 postpone or prevent secondary complications.

19 Q And will the PT help with a patient who has reached
20 maximum medical improvement?

21 A Yes.

22 MR. O'MEARA: Nothing further your Honor.

23 THE COURT: Okay. Cross cross-examination.

24 MS. SCARIA: Yes.

25 THE COURT: Let's take a short five-minute break,

1 give everybody a chance to take a breath, and we will start
2 in 25 after or so.

3 COURT OFFICER: All rise, jury exiting.

4 (Whereupon, the jury exited the courtroom.)

5 (Whereupon, a short break was taken.)

6 COURT OFFICER: All rise jury entering.

7 (Whereupon, the jury entered the courtroom.)

8 THE COURT: Everybody have a seat.

9 Okay, we're going to have counsel cross-examine the
10 witness.

11 CROSS EXAMINATION BY

12 MS. SCARIA:

13 Q Good afternoon, doctor.

14 A Good afternoon.

15 Q My name is Susan Scaria, I represent the Defendants in
16 this case, we have never before; correct?

17 A Never.

18 Q Have you heard of my firm, Fullerton Beck?

19 A No.

20 Q And try to get close to the mic.

21 If you can't get it up there, just try to get close to
22 it, I know, you're not, you can knock it over, I think it's
23 easier like this.

24 Dr Seidenberg, you were hired to provide your opinions
25 in this case; correct?

1 A I was hired to do the life care plan, correct.

2 Q And you know what, I apologize, I should have started
3 off with this, I'm going to be asking you a series of questions,
4 they should be, for the most part, only require a yes-or-no
5 answer, so I would like you to answer with a yes or no or let me
6 know if you can't?

7 A Okay.

8 Q You've testified in court before; right?

9 A A few times, yes.

10 Q You're familiar with the process of cross-examination?

11 A Yes.

12 Q And you were hired, you said to provide a report in
13 this matter?

14 A Yes.

15 Q And you weren't hired by Mr. O'Meara's law firm; is
16 that correct?

17 A I wasn't what?

18 Q Hired by Mr. O'Meara's law firm the Law Offices of
19 Michael Lamonsoff?

20 A Yes.

21 THE COURT: Excuse me, off the record.

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

23 Q When you first interviewed Mr. Ribeiro, that was in
24 2022; correct?

25 A Yes.

1 Q And that was via Zoom or something like that?

2 A Yes, I believe so.

3 Q And at that time, do you recall that Mr. Ribeiro was
4 being represented in this lawsuit by a different law firm?

5 A Okay.

6 Q Does the law firm of Wingate Russotti, Shapiro, Moses &
7 Halperin, does that sound familiar?

8 A Yes.

9 Q Do you recall now that the Wingate law firm was the one
10 that hired you to provide a report in this matter back in 2022?

11 A Yes.

12 Q And subsequently Mr. Ribeiro switched attorneys, that's
13 why you thought you were hired by Mr. O'Meara's office; is that
14 correct?

15 A Yes, correct.

16 Q Got it.

17 You've testified for the Wingate firm previously?

18 A I believe so, yes.

19 Q When was the last time that you testified for the
20 Wingate firm?

21 A I don't recall.

22 Q How many life care plans have you generated for the
23 Wingate law firm, let's say, in the last year?

24 A I have no idea.

25 Q Is it too many to remember, or is it more like three or

1 four?

2 A No, I do work for them, probably a few a month.

3 Q Okay. When was last time, I'm sorry, that you
4 testified on behalf of the Wingate law firm in court?

5 A I think the last time I testified in the beginning of
6 this year was for that firm, yes, I believe so.

7 Q Meaning the beginning of 2026?

8 A Yes.

9 Q So this is the second time that you're testifying in
10 court, or have you testified more than that in 2026?

11 A This is the second time.

12 Q Okay, and how many times did you testify on behalf of
13 the Wingate firm in 2025?

14 A I've only testified about a dozen times, and I've
15 testified for several different firms, so I don't know
16 specifically how much for that particular firm.

17 Q Were most of the firms that you testified for the
18 Wingate law firm?

19 A I can't really say.

20 Q Okay. And you're here today to provide your opinions,
21 within a really degree of medical certainty or psychiatry
22 certainty; did I say that right?

23 A Very good, yes.

24 Q And so that means your opinions to this jury are being
25 given at -- withdrawn.

1 That means when you opine to the jury about the various
2 types of treatment, medications, things of that nature, that
3 you've testified to on direct, your opinion to the jury is that
4 it's more likely than not, that Mr. Ribeiro will require this
5 \$416,000 worth of treatment for the rest of his life; correct?

6 A Yes.

7 Q When you examined Mr. Ribeiro, the first time in 2022,
8 when you were hired by the Wingate law firm, you couldn't
9 perform a physical examination, right, you were doing it by
10 Zoom; correct?

11 A Correct.

12 Q You weren't able to examine whether he had any swelling
13 in his ankle or shoulder or back or anything like that?

14 A Correct.

15 Q You weren't able to palpate him, meaning touch his
16 body, feel if he had any muscle spasms in his back?

17 A Correct.

18 Q As a board certified physiatrist, doctor, can we agree
19 that your goal is to try to provide treatment for patients in an
20 effort to avoid surgery?

21 A Yes.

22 Q And your approach would be to try to provide
23 conservative treatment; correct?

24 A Yes.

25 Q And you're not a surgeon; right?

1 A I am not.

2 Q So you've never performed any arthroscopic procedures?

3 A No.

4 Q You've never performed any spine surgeries?

5 A No.

6 Q But in your life care plan that you've testified to,
7 you recommended two different surgeries; isn't that right?

8 A The recommendations for surgery were based upon review
9 of medical records, and treating physician recommendations, and
10 review of diagnostic studies, and extensive research based upon
11 his previous injuries and surgeries.

12 Q So the answer is yes, you recommended surgery?

13 A They are included in the life care plan, yes.

14 Q And you wouldn't recommend any surgical consultations
15 to a patient if you didn't have a reasonable expectation that
16 the surgery would alleviate their pain; right?

17 A I frequently have patients undergo consultations with
18 surgeons, so I'm not sure of your question.

19 Q When you recommend -- withdrawn.

20 When you recommend to your patients that they consult
21 with a surgeon, that's because, in your opinion, surgery may be
22 warranted; corrected?

23 A Possibly, yes.

24 Q And you're making that recommendation in an effort to
25 alleviate pain symptoms that the patient has; correct?

1 A Or improve function, yes.

2 Q So you wouldn't recommend surgery if the patient wasn't
3 having pain symptoms in a particular part of their body;
4 correct?

5 A It's not -- it's not really a yes-or-no answer.

6 Q Okay. Well, if a patient was functioning in their
7 everyday activities without any limitations in their daily
8 activities, you wouldn't recommend that they undergo surgery,
9 would you?

10 A No, if a patient is not having any symptoms, no, you
11 wouldn't recommend surgery to somebody whose asymptomatic, and
12 not having any limitations.

13 Q By "symptoms," you mean complaints of pain and problems
14 with their physical limitations; is that right?

15 A Correct.

16 Q You met Mr. Ribeiro or rather you interviewed him a
17 second time more recently?

18 A Yes.

19 Q Was it like a couple of weeks ago?

20 A Yes.

21 Q Was that by Zoom as well?

22 A Yes.

23 Q At that time you also didn't have the opportunity to
24 actually perform a physical examination; correct?

25 A Correct.

1 Q As a part of your opinions, were you also, as part of
2 the opinions you're providing to the jury today, were you also
3 provided additional treatment records for treatment that
4 Mr. Ribeiro underwent since your first interview with him in
5 2022?

6 A Yes, I believe so.

7 Q So in addition to -- withdrawn. When you recently
8 reviewed -- withdrawn.

9 How long ago did you review additional treatment
10 records?

11 A Probably about a month or so ago.

12 Q Okay, so included in those additional treatment records
13 were various exam notes from different providers, diagnostic
14 testing; correct?

15 A Yes.

16 Q And one of those tests was an MRI of the left ankle
17 that was done in December of 2023; is that right?

18 A I'm going to refer back to my report.

19 Q I am directing you to page six if that helps.

20 A MRI of the left ankle was done in 2024.

21 Q Okay.

22 A I'm sorry, that's the left knee, I apologize, the 2023
23 MRI of the left ankle.

24 Q That's December 12, 2023; correct?

25 A Yes.

1 Q You reviewed that MRI report of the left ankle;
2 correct?

3 A Correct.

4 Q And the MRIs, how many MRIs did Mr. Ribeiro undergo of
5 his left ankle so far, is it two?

6 A That I personally reviewed, I believe it was two.

7 Q And based on your review of the entirety of
8 Mr. Ribeiro's treating records your review included the
9 treatment records of his podiatrist, Dr. A-Z-Z-I-O-L-I-N-E?

10 A Yes.

11 Q And that was a doctor he started seeing in 2020; right?

12 A Correct.

13 Q And Dr. Azzioline, he recommended reconstruction
14 surgery on his first visit with Mr. Ribeiro on September 14,
15 2020; correct, I don't believe that's in your report, doctor?

16 A It is -- it is in my report.

17 Q Okay.

18 A He was placed in an air cast referred for physical
19 therapy, had --

20 Q Just asking about the surgical recommendation.

21 A I don't have it in the report that on that date
22 surgical intervention was recommended.

23 Q Well, if I were to tell you that the exam note from
24 September 14, 2020, created by Dr. Azzioline indicates in the
25 plan section a recommendation for ankle reconstruction surgery,

1 do you have any reason to doubt that?

2 A No, but my -- in my review of the medical records from
3 Dr. Azzioline, it was documented to continue therapy with future
4 intervention, recommended if he failed to continue.

5 If he remained symptomatic despite ongoing conservative
6 care, so I'm not sure exactly, I didn't see exactly when those,
7 what you're referring to, so I can't comment on that.

8 Q Based on your review of the records, do you know why
9 Dr. Azzioline listed that he recommended ankle reconstruction
10 surgery on September 14, 2020?

11 A Number one, the patient remained symptomatic. Number
12 two, he had instability on physical examination with evidence of
13 swelling and effusion. Number three, he had MRI findings that
14 showed tears of multiple ligaments and tendons, as well as fluid
15 in the ankle, so I would assume based upon the fact that he
16 didn't get better with conservative care, and he remained
17 symptomatic, that he recommended surgery.

18 Q Is that your opinion or that's what you understood by
19 reviewing Dr. Azzioline's recommendation for surgery?

20 A It is both based upon the review of the records, and my
21 opinion.

22 Q And you are aware then that the ankle surgery that was
23 recommended was to remove scar tissue in the ankle; correct?

24 A I presume that he would also repair the ligaments that
25 were torn, but removing scar tissue particularly if it's

1 postponed for a long period of time is usually part of the --
2 when you clean out the joint.

3 Q The recommendation to remove scar tissue was made on
4 the first visit that Mr. Ribeiro went to with Dr. Azzioline, a
5 week after the accident; is that right?

6 A I don't know about that.

7 Q If I were to tell you that the September 14th, 2020,
8 note from Dr. Azzioline one week after the accident, indicates
9 that the recommendation, that the recommendation was to remove
10 scar tissue, would you have any reason to doubt that?

11 A No, I mean that's certainly a possible part of the
12 procedure.

13 Q Okay, and you also mentioned that the Dr. Azzioline
14 talked about some tears at that initial visit; correct?

15 A I have that he was diagnosed with left ankle sprain
16 with tenosynovitis, in my notes, so I don't -- he had
17 instability, and he had diagnostic testing and subluxation on
18 examination to suggest tears, but I don't have it written in my
19 notes that he said there was a tears.

20 Q Is it your understanding based upon your review of the
21 records that Dr. Azzioline diagnosed Mr. Ribeiro with, among
22 other things, ankle sprain?

23 A Initially, yes.

24 Q And ankle sprain is the result of a type of tear?

25 A There are different degrees of sprains, so yes, a

1 sprain is essentially a tear in the fiber, but depends on the
2 grade, grade one, grade two, grade three or complete tear.

3 Q What grade did Mr. Ribeiro have?

4 A I don't have it documented as to what grade he said.

5 Q When you reviewed the additional treatment records that
6 you were provided, I think you said about a month ago, you
7 reviewed, and reviewed the MRI report for the left ankle, that
8 was taken in December of 2023, so three years after the first
9 MRI?

10 A Correct.

11 Q And in preparing to provide your opinions to the jury,
12 within a reasonable degree of medical certainty, did you take
13 note of the fact that the December 2023 MRI revealed that the
14 sprain had resolved?

15 A That's not what it shows, it shows that there's partial
16 tears of the anterior tibiofibular ligaments, possible tears of
17 the flexors hallucis longus and peroneus longus tendons
18 associated with fluid, which is fluid in the joint, that does
19 not indicate that it has healed.

20 Q Those are unrelated to the accident from three years
21 earlier, isn't that true?

22 A I don't know it to be unrelated.

23 Q You don't know it to be related then?

24 A If he initially had tears after the accident, he still
25 has tears. I would assume it would be related to the accident.

1 Q We don't need you to assume, doctor, we need you to
2 provide your opinion to a reasonable degree of medical
3 certainty, your opinion?

4 A Okay.

5 Q Towards that end, isn't it true that tear can heal
6 without surgery?

7 A Sometimes.

8 Q And isn't it true that the tear, one of the tears in
9 the ankle did, in fact, heal over time without surgery?

10 A The tears that were found in the initial MRI of the
11 left ankle right after the accident are still present, still
12 present three years later on the MRI.

13 Q Are you aware of the fact that you are the only doctor
14 who as of today is recommending a left ankle surgery as a result
15 of the accident of September 8, 2020?

16 A The --

17 Q Yes or no, doctor, please?

18 A I don't know who else is testifying and recommending
19 anything.

20 Q Nobody has testified, but you reviewed all medical
21 records; right?

22 A And the surgeon, the foot specialist recommended
23 surgery, so that's based upon the fact that the surgeon
24 recommended, and the tears persist, the patient remains
25 symptomatic, and yes, the surgery is recommended.

1 Q Yes, and the doctor who recommended the left ankle
2 surgery that was on the first visit; correct?

3 A If you say so, I didn't document that in my records,
4 so.

5 Q Did you review all of the records, doctor?

6 A I did.

7 Q You would agree that the initial visits are probably
8 the most important in assessing causation; correct?

9 A Yes.

10 Q And with respect causation, I mean whether a specific
11 injury is related to a specific accident; correct?

12 A Yes.

13 Q So it would be important for you to know what
14 Dr. Azzioline reviewed, opined and recommended at that first
15 visit, isn't that right?

16 A I did document.

17 Q Yes or no, doctor, please?

18 A I'm sorry.

19 Q Yes or no, please?

20 A Yes.

21 Q When you interviewed Mr. Ribeiro by Zoom in September
22 of 2022, were you aware of the fact that a few months earlier in
23 June, doctors at Hudson Pro had told him that he was capable of
24 returning to work?

25 A Can you repeat that question?

1 MS. SCARIA: Your Honor, may I have the reporter
2 read back the question for the doctor?

3 THE COURT: Go ahead, read back the question.

4 (Whereupon, the requested portion of the record was
5 read back.)

6 A Truthfully, I don't recall.

7 Q When you interviewed Mr. Ribeiro very recently, this
8 month, in fact, were you aware of the fact that his orthopedic
9 surgeon, Dr. Isaac, who performed the right shoulder surgery,
10 had already recommended that he was capable of returning to
11 work?

12 A I'm not aware, but that's possible.

13 Q Are you aware of the fact that his other orthopedic
14 surgeon, Dr. Ashraf, who performed the surgery to his left knee,
15 has already told, had told Mr. Ribeiro back in 2022, that he was
16 capable of returning to work?

17 A That's possible, I don't recall.

18 Q And are you aware of the fact that Mr. Ribeiro's spine
19 surgeon, Dr. Okubadejo, O-K-U-B-A-D-E-J-O, that Dr. Okubadejo
20 back in 2024, also told Mr. Ribeiro, or recommended Mr. Ribeiro
21 he's capable of returning to work?

22 A That's possible, but that doesn't mean somebody doesn't
23 require treatment for symptomatic care.

24 Q Okay. But he's certainly able to resume his normal
25 life according to his doctors?

1 A I don't know what the restrictions are, that they put
2 on him.

3 Q Well, I just told you.

4 A I don't know that they didn't restrict his lifting or
5 modify his job. Usually after spine surgery, somebody has to go
6 back with limitations, so if they recommended he go back, I
7 would presume that they had some limitations on his lifting and
8 things like that.

9 Q So you're not aware of the fact that Dr. Isaac and
10 Dr. Ashraf, the orthopedic surgeons, said he could resume work
11 full duty in 2022?

12 A I'm not aware.

13 Q When you interviewed Mr. Ribeiro recently, were you
14 aware of the fact that none of his treating physicians to date
15 over the past six years have recommended that he undergo a
16 lifetime of MRIs, and X-rays?

17 A I'm aware that he continues to have symptoms, and
18 that --

19 Q Doctor, that wasn't my question. I ask that you
20 answer, if you can't answer in a yes or no, please let us know?

21 A Yes.

22 Q I will ask the question again.

23 In your recent review, interview with Mr. Ribeiro, were
24 you aware of the fact that none of the -- none of the providers
25 he's been treating with, nurses, doctors, specialists over the

1 past six years, have recommended that Mr. Ribeiro will require
2 X-rays and MRIs of his back, his shoulder, and his ankle for the
3 rest of his life; yes or no?

4 A No, I don't believe that's true.

5 Q Can you tell the jury in what exam note or record what
6 doctor recommended that Mr. Ribeiro undergo X-rays of his lumbar
7 spine for the rest of his life?

8 A He was seen in July of 2024, by a spine specialist.

9 MS. SCARIA: Objection, your Honor, your Honor.

10 THE COURT: Grounds?

11 MS. SCARIA: May we approach?

12 THE COURT: Yes. Can we have the jury step out,
13 we're going to break here for lunch and come back at
14 2 o'clock, all right.

15 COURT OFFICER: All rise, jury exiting.

16 (Whereupon, the jury exited the courtroom.)

17 THE COURT: Doctor, can you step out also.

18 THE WITNESS: Should, can I leave?

19 THE COURT: You're still testifying, you can leave.

20 MS. SCARIA: I mean the doctor can go to lunch.

21 THE COURT: Yes, you don't have to stand outside.

22 MS. SCARIA: You can go to lunch.

23 THE COURT: Come back at 2 o'clock.

24 Leave your papers there.

25 MS. SCARIA: Remind the witness she's not

1 permitted --

2 THE COURT: You cannot talk to anybody.

3 THE WITNESS: Yes.

4 MS. SCARIA: Thank you.

5 THE COURT: Not about your testimony and if you
6 have a computer or anything like that, don't leave it here.

7 THE WITNESS: Nope.

8 (Whereupon, Dr Seidenberg exited the witness
9 stand.)

10 MS. SCARIA: Thank you, doctor.

11 THE COURT: My first thought when you asked that
12 question, was that you opened the door, so I'm trying to
13 understand, can we have that last question read back?

14 (Whereupon the question was read back by the
15 reporter.

16 MS. SCARIA: Your Honor, maybe we should put the
17 objection on the record first or the issue on the record.

18 THE COURT: Let me hear the question, and then we
19 will deal with the objection afterwards.

20 MS. SCARIA: Got it.

21 THE COURT: So let's go through this slowly.

22 MS. SCARIA: Sure.

23 THE COURT: What was the objection?

24 MS. SCARIA: The objection was I had asked the
25 doctor for a response about any specific recommendations,

1 the answer is yes or no.

2 The doctor contrary to what your Honor had already
3 ordered, whether the doctor knew it or not, I don't know,
4 the doctor started to testify about an examination in July
5 of 2024, which is the exact record that your Honor precluded
6 the witness from testifying about, a record from a report by
7 Dr. M-I-K-E-L-I-S, and also I don't have the records,
8 because I have never provided them or an authorization,
9 nowhere in the doctor's summary of the record that she
10 reviewed, does it say anything about recommendations for any
11 type of testing, or treatment for the rest of his life.

12 THE COURT: But then didn't you ask her open
13 questions whether or not there were any recommendations?

14 MS. SCARIA: I'm sorry.

15 THE COURT: According to the read back, you asked
16 her a question were there any recommendations.

17 MS. SCARIA: No, your Honor, I did not. I said did
18 any doctor make any recommendations for diagnostic testing
19 for the rest of your life, I asked a very specific question,
20 and the doctor was going well beyond the question and beyond
21 the scope of your Honor's order.

22 MR. O'MEARA: Your Honor, I think when you say
23 "any" in a question, you're really leaving a lot of room in
24 relation to the response.

25 Your Honor, as I indicated, I told her we're not

1 going anywhere near that, we're not discussing it. What
2 she's going to respond to direct questions in regard to
3 future treatment, I don't know future treatment, I don't
4 know.

5 MS. SCARIA: Your Honor, that's --

6 THE COURT: You want to withdraw the question and
7 narrow it down?

8 MS. SCARIA: Your Honor, I can't narrow it down any
9 more than were there any specific recommendations for
10 diagnostic testing for the rest of your life, how much more
11 narrow can I make it?

12 THE COURT: How is she supposed to respond if she
13 heard diagnostic testing from one of the doctors even if
14 it's not in the report?

15 MS. SCARIA: Then she's making it up, if she says
16 there was diagnostic testing.

17 THE COURT: Or she's doing it from memory, I can't
18 tell that.

19 MS. SCARIA: She can put her report down.

20 THE COURT: You can ask her if there's anything in
21 the report.

22 MS. SCARIA: Your Honor, I can read from the report
23 right now, and there's no mention. I will read it into the
24 record according to the report that's not in evidence that
25 was provided to the Defendants last night, on page 5 of 20,

1 Dr Seidenberg in her continuation of summaries of medical
 2 records, notes, "on 7/8/24, Mr. Ribeiro was seen in
 3 consultation with spine specialist, Dr Mikelis, he presented
 4 status postlumbar fusion with persistent low back pain
 5 associated with numbness and tingling into his lower
 6 extremities.

7 Examination noted tenderness and spasm of the
 8 paralumbical muscles with painful restricted range of
 9 motion. Motor weakness graded four/five, was seen in the
 10 left hip flexors, quadriceps, hamstring, tibialis anterior
 11 and EHL muscles. Sensation was diminished in the left L3
 12 through S1 distribution, and MRI studies were reviewed, and
 13 treatment options included nonsurgical modality, such as
 14 chiropractic care, physical therapy, and additional pain
 15 management with steroid injections and medications versus
 16 further surgical interventions were discussed.

17 At this time" --

18 THE COURT: So surgical interventions were
 19 discussed.

20 MS. SCARIA: That's what this says. My question
 21 has nothing to do with surgical interventions, your Honor.

22 "At this time, he elected to continue with
 23 chiropractic care and physical therapy, and return to pain
 24 management for additional injections.

25 Future surgical intervention would be discussed

1 upon his response to continued conservative management."

2 Then it goes on to say, "he returned on 8/7/24, and
3 was seen by Dr. Shah who referred him for a CT of the lumbar
4 spine" --I'm sorry, "for a lumbar CT scan," is how it reads.

5 THE COURT: So what is objectionable in that?

6 MS. SCARIA: Your Honor --

7 THE COURT: Based on the question that you asked,
8 what was objectionable?

9 MS. SCARIA: There is no recommendation in this
10 note for diagnostic testing for the rest of his life, I can,
11 how about if I do it this way, isn't it true that not a
12 single medical provider has recommended that Mr. Ribeiro
13 undergo --

14 THE COURT: Further surgical treatment?

15 MS. SCARIA: -- ten X-rays of the lumbar spine over
16 the next ten years.

17 THE COURT: Yes, you can ask it.

18 MS. SCARIA: I will do it.

19 THE COURT: Each item she testified to, but if
20 you're going to open it up with an open question, and she
21 remembers it, even if it's not in the report, she can
22 testify that she remembers it.

23 MS. SCARIA: Your Honor respectfully, she can't
24 make stuff up, there's nothing like that.

25 THE COURT: Listen, I'm not saying she is.

1 MS. SCARIA: But she is, if she says that, she is.

2 THE COURT: Well, I, again, I'm not the judge of
3 the facts here, so you just have to be careful in how you
4 ask the question, you want to withdraw the question,
5 rephrase the question and go through the items in the
6 report.

7 MS. SCARIA: No, your Honor.

8 THE COURT: I don't have any problem with you doing
9 that.

10 MS. SCARIA: Actually, I'd rather you sustain the
11 objection, and then I can ask the other question.

12 THE COURT: I will sustain the objection and ask if
13 you want to rephrase it.

14 MS. SCARIA: I won't rephrase it, I will ask a new
15 question.

16 THE COURT: I don't have a problem with that.

17 Mr. O'Meara, you don't have a problem with that
18 either.

19 MR. O'MEARA: No.

20 THE COURT: We will do that after lunch, alright.
21 You have to be careful, because if she remembers something
22 without the report, she can testify she remembers somebody
23 telling her something.

24 MS. SCARIA: I was very careful, and the doctor did
25 not speak to anybody.

Dr. Seidenberg - Plaintiff - Cross

1 THE COURT: It doesn't make a difference.

2 MS. SCARIA: It does, if she's saying she
3 remembered something that's not in a report, your Honor,
4 that's not a memory, that's making something up.

5 THE COURT: Well, you can ask her that question
6 too.

7 MS. SCARIA: Sure.

8 THE COURT: So we will come back at 2 o'clock.

9 MS. SCARIA: Thank you, your Honor.

10 THE COURT: I will sustain the objection, and then
11 you will go through the report with her.

12 MS. SCARIA: Okay.

13 THE COURT: Ask the questions you like, Mr. O'Meara
14 doesn't have an objection to you doing that. I think that's
15 the best way of handling the issue, the doctor can't say,
16 oh, yeah, I remember being told that, it's not in the
17 report.

18 MS. SCARIA: Thank you, your Honor.

19 THE COURT: Enjoy lunch, at least it's not zero
20 degrees today.

21 (Whereupon a lunch break was taken.)

22 THE COURT: Let's start with the trial, let's get
23 the trial, doctor, can you take the stand.

24 (Whereupon, Dr Seidenberg resumed the witness
25 stand.)

Dr. Seidenberg - Plaintiff - Cross

1 COURT OFFICER: All rise, jury entering.

2 (Whereupon, the jury entered the courtroom.)

3 THE COURT: Everybody have a seat, I apologize,
4 there was a matter on the calendar, we had to deal with the
5 Court, we took care of those as quickly as we could.

6 You were here at 2 o'clock, don't think we went
7 doing anything. We will continue now. Counsel, go back.

8 MS. SCARIA: Thank you, your Honor.

9 THE COURT: You may question the witness, there was
10 an objection placed on the record right before lunch, we're
11 going to sustain the objection.

12 Continue, counsel.

13 MS. SCARIA: Thank you, your Honor.

14 CONTINUED CROSS-EXAMINATION BY

15 MS. SCARIA:

16 Q Dr Seidenberg, I will remind you so we can get through
17 the rest of this quickly, I will ask you questions that require
18 a yes-or-no answer, and if you can't answer it either yes or no,
19 please let me know; okay?

20 THE COURT: Doctor, remember you're still under
21 oath.

22 THE WITNESS: Yes, thank you.

23 A Yes.

24 Q Dr Seidenberg, you are aware of the fact that
25 Mr. Ribeiro underwent physical therapy at a place called Airon

1 PT?

2 A Yes.

3 Q And were you aware of the fact that he continued
4 physical therapy at that facility through 2023?

5 A I don't have the exact date, but that sounds correct.

6 Q And did Mr. Ribeiro also tell you when you interviewed
7 him, either in 2022 or 2026, that back in 2022, after he had
8 started physical therapy, Mr. Ribeiro applied for jobs as a
9 waiter, a cashier and a delivery driver?

10 A No.

11 Q Were you aware of the fact that Mr. Ribeiro tell you
12 that he, in fact, got a job as a delivery driver?

13 A No.

14 Q You are aware of the fact -- withdrawn.

15 The last time Mr. Ribeiro saw the spine surgeon who
16 performed his back surgery, Dr. Okubadejo, that was in February
17 of 2024; correct?

18 A I believe so.

19 Q And at that last visit with Dr. Okubadejo, in February
20 of 2024, Dr. Okubadejo did not recommend that Mr. Ribeiro
21 undergo any surgery; correct?

22 A Not that I'm aware of.

23 Q And at that time, February of 2024, Dr. Okubadejo did
24 not recommend that Mr. Ribeiro undergo an epidural steroid
25 injection; is that right?

1 A Not that I'm aware of.

2 Q And he did not recommend epidural steroid injections
3 for the rest of his life at that visit; is that correct?

4 A Correct.

5 Q And at that visit with his treating spinal surgeon, Dr.
6 Okubadejo, did not recommend facet injections, lumbo myofacial
7 trigger point injections for the rest of his life?

8 A Correct.

9 Q And are you aware of the fact -- well, let me withdraw.
10 I trust that you are aware of the fact that Mr. Ribeiro
11 hasn't undergone any epidural pain injections for the
12 lumbar spine since he had his back surgery in February of 2021;
13 correct?

14 A Yes.

15 Q So since his back surgery in 2021, his treating spinal
16 surgeon has not recommended the facet injections, myofacial
17 trigger point injections; correct?

18 A Two other doctors have.

19 MS. SCARIA: Your Honor, that's not the answer --

20 THE COURT: What is your application?

21 MS. SCARIA: Sorry.

22 THE COURT: You have an application.

23 MS. SCARIA: Objection, and move to strike that
24 portion of the witness's testimony.

25 THE COURT: Strike that portion of the witness's

1 testimony.

2 MS. SCARIA: Thank you.

3 Q And even without the invasive procedures, as you
4 described them in your chart of the facet injections and the
5 myofacial trigger point injections, you're aware of the fact
6 that in the last, that Mr. Ribeiro has been able to drive
7 himself to and from his doctors' appointment?

8 A Yes.

9 Q He's able to drive his kids to and from school?

10 A I'm not aware, but he's able to drive.

11 Q He's able to, and now you know that he was able to
12 return to the workforce even without those injections; correct?

13 A I'm not aware if he's working, but if you say he's
14 working, then that does not negate the need for treatment.

15 Q The need for treatment that you've recommended, that's
16 to maintain his current functional status?

17 A Or improve it, yes.

18 Q Well, didn't you testify on direct that maximum medical
19 improvement doesn't mean that Mr. Ribeiro can't have
20 complications later; right?

21 A Yes.

22 Q But maximum medical improvement does mean that there
23 are no -- there's no medical treatment that would improve the
24 patient's condition; isn't that right?

25 A He can have deterioration despite maximum medical

1 improvement that requires treatment.

2 MS. SCARIA: Move to strike as not responsive.

3 THE COURT: Sustained.

4 Q Let's try that question again.

5 Isn't it true that when the doctors told Mr. Ribeiro
6 that he had achieved maximum medical improvement for his knee,
7 his ankle, his shoulder, and his back, that that means, in your
8 expert opinion, that those doctors believed that there's no
9 additional treatment that he could undergo that would improve
10 his condition?

11 A No, I don't believe that.

12 MS. SCARIA: That's all I have, thank you doctor.

13 THE COURT: Any redirect?

14 MR. O'MEARA: Briefly.

15 REDIRECT EXAMINATION BY

16 MR. O'MEARA:

17 Q Doctor, do surgeons usually plan out a patient's care
18 over 40 years?

19 MS. SCARIA: Objection, your Honor, beyond the
20 scope, the witness is not a surgeon.

21 THE COURT: Sustained.

22 MR. O'MEARA: Your Honor, there was, the door was
23 opened, she asked.

24 THE COURT: Just rephrase it.

25 MR. O'MEARA: Okay.

1 Q In your experience, what type of doctors plan medical
2 care over 40 years?

3 A Well, a life care plan determines treatment over a
4 patient's lifetime.

5 MR. O'MEARA: Nothing further, your Honor.

6 THE COURT: Any recross?

7 MS. SCARIA: No thank you, your Honor.

8 THE COURT: Thank you, doctor, we appreciate it.

9 (Whereupon, Dr Seidenberg exited the witness stand
10 and the courtroom.)

11 THE COURT: I believe the Plaintiff is going to
12 testify now.

13 MR. O'MEARA: Yes. And we have the interpreter.

14 THE COURT: Do we need both interpreters?

15 MS. SCARIA: Just the Portuguese.

16 THE COURT: Okay, what about the Spanish?

17 MS. SCARIA: The Spanish will be on cross.

18 THE COURT: Call your witness.

19 (Whereupon, Mr. Ribeiro took the witness stand.)

20 THE CLERK: Raise your right hand. Do you affirm
21 that the testimony you're about to give is the truth?

22 THE WITNESS: Yes.

23 THE CLERK: State your name and address for the
24 record, and address?

25 THE WITNESS: Denis Leandro Moeira Ribeiro, 61

1 Walwick Street, Newark, New Jersey, 07105, zip code.

2 THE INTERPRETER: I need to be sworn.

3 THE CLERK: Do you affirm you will truly interpret
4 7from Portuguese to English and from English to Portuguese
5 accurately to the best of your ability?

6 THE INTERPRETER: I swear.

7 THE CLERK: State your name for the record?

8 THE WITNESS: Karen Figueroa.

9 THE COURT: Move microphone closer to whoever needs
10 it.

11 THE INTERPRETER: Yes.

12 DIRECT EXAMINATION BY

13 MR. O'MEARA:

14 THE COURT: Go ahead.

15 Q What year were you born?

16 A December 11th, of 1985.

17 Q And when did you first move to the United States?

18 A 2016.

19 Q And are you married?

20 A Yes.

21 Q And how many children do you have?

22 A Three.

23 Q And have you always worked prior to September 8, 2020,
24 did you always work in construction?

25 A Yes.

1 Q And when did you start work?

2 A 11 years old.

3 Q When did you finish school?

4 A I didn't finish it, I only have sixth grade.

5 Q Did you start working in construction when you were
6 that young?

7 THE INTERPRETER: In when?

8 Q When you were that young?

9 A No, at 11, I just started cleaning up the backyards of
10 people, so I could just get a little money.

11 Q Did you eventually leave, where were you born?

12 A In Belo Horizonte, and the state is Minas Gerais.

13 Q Where is that?

14 A In Brazil.

15 Q Did you eventually leave Brazil?

16 A Yes.

17 Q When was that?

18 A 2019.

19 Q 2019?

20 A Correct.

21 Q When did you first move to the United States?

22 A Oh, no, 2019, no, 2006, six.

23 Q And where did you go in 2006?

24 A To Spain.

25 Q And how long were you in Spain?

1 A Six years.

2 Q Where did you go after Spain?

3 A To Belgium.

4 Q And then where did you go, how long were you in
5 Belgium?

6 A Five months.

7 Q And where did you go after Belgium?

8 A Brazil.

9 Q And do you remember how long that was for?

10 A I stayed four years in Brazil.

11 Q After Brazil, where did you go?

12 A I came to the United States.

13 Q And do you remember when you first started working in
14 construction?

15 A When, yeah, since Brazil.

16 Q Do you know how old you were?

17 A 21.

18 Q And did you have a prior foot injury?

19 MS. SCARIA: Objection, relevance.

20 A Yes.

21 THE COURT: Overruled.

22 Q When did that happen?

23 A I worked in textile company, the machine, pressed my
24 foot where I had it on a boot with a -- with a tip with a steel
25 tip, and then, that split my foot.

1 Q And did you ever prior to September 8, 2020 --

2 THE INTERPRETER: Sorry, that's split my toe,
3 sorry.

4 Q Prior to September 8, 2020, did you ever get, did you
5 have to take days off of work for your back?

6 A For your back?

7 Q For your back?

8 A Yes.

9 Q Do you remember when that was?

10 A 2017.

11 Q How many times did you take off for work?

12 A Three days.

13 Q Did you have to get an MRI?

14 A No, just an X-ray.

15 Q What happened?

16 A No, nothing important, just a nerve was pressed.

17 Q And did you go to a doctor?

18 A No.

19 Q And now I want to bring your attention to the date of
20 the accident, September 8, 2020.

21 A Okay.

22 Q Can you describe immediately afterwards what happened
23 after the accident?

24 A They brought me to the lower level.

25 Q Who brought you to the lower level?

1 A The people that were working with the rebar.

2 Q How did they get you to the lower level?

3 A They mobilized me on a plywood, and then they lowered
4 me through the hole of the stairs.

5 Q And immediately after the accident, what part of your
6 body hurt?

7 A Exactly, exactly it was my back, just on that day, it
8 was just my back that was hurting.

9 Q And did your shoulder hurt immediately after the
10 accident?

11 MS. SCARIA: Objection, leading.

12 THE COURT: Overruled.

13 A No, that was already in the evening.

14 Q What about your knee?

15 A My knee and my ankle was all.

16 Q Do you know how many people had to carry you down?

17 A Just one person got me, got me and then lowered me to
18 the lower level.

19 Q And how did they lower you?

20 A Carrying me.

21 Q And do you remember who that was?

22 A No, I just remember that he worked with the metals,
23 with the rebars.

24 Q And what happened next?

25 A Supervisors of the company was there, Felix, and he

1 asked me to be put on his car and then take me to the clinic,
2 that was close to work.

3 Q And how much, can you describe the pain in your back at
4 that time?

5 A Well, from a zero to ten, like a nine/ten.

6 Q And immediately after you fell, did you, where did your
7 knee land, did it hit anything?

8 MS. SCARIA: Objection, your Honor, leading.

9 THE COURT: Sustained.

10 Q I just want to go back immediately after you fell.
11 Did you feel your knee hit any part, what did your knee
12 hit, if anything?

13 A Where I hit the knee on the rebar and my shoulder with
14 the motor on the helicopter.

15 Q Did eventually somebody take you to the emergency room?

16 A Yes.

17 Q And who was that?

18 A Felix, the supervisor.

19 Q And when you got to the emergency room, what happened?

20 A Well, they asked me to wait, then they did an X-ray for
21 my back.

22 Q And did you tell them that about any other part of your
23 body hurt other than your back?

24 A No, not that day, no.

25 Q And was it during Covid that you went to the ER?

1 A Yes.

2 Q And were people wearing masks?

3 A Yes, they were.

4 Q And was the ER crowded?

5 MS. SCARIA: Objection.

6 THE COURT: I didn't hear the end of the question,
7 your voice dropped off.

8 MR. O'MEARA: Crowded.

9 Q Was the ER crowded?

10 A Yes.

11 MS. SCARIA: Objection, your Honor, relevance.

12 THE COURT: Don't answer the question. Go ahead.

13 Q And did anybody at the ER speak Portuguese?

14 A No, no, Felix spoke Spanish, English and Spanish.

15 Q And do you remember what you told the ER doctors?

16 A Yes, I told him that I had a lot of pain on my back.

17 Q Alright, and do you know how long you were in the ER
18 that day?

19 A Like an hour, almost waiting.

20 Q Alright, and then after the ER, where did you go?

21 A Well, they left me there and then they sent a car to
22 come get me back to work, so I could get my things and then I
23 could go home, because I had taken medicine, I was a little bit
24 dizzy, then they sent me home.

25 Q Is that when you filled out the incident report?

1 A Yes.

2 Q And at that time, do you know what time that was at?

3 A I don't remember very well.

4 Q Do you know where you went after you filled out the
5 incident report?

6 A I went home.

7 Q And was anybody home when you got there?

8 A Yes, my wife.

9 Q And did eventually other parts of your body start
10 hurting?

11 A Yes, that was later on in the afternoon, in the
12 evening.

13 Q And what part of your body started to hurt?

14 A My knee and my shoulder, my right shoulder.

15 Q And what about your ankle?

16 MS. SCARIA: Objection leading.

17 THE COURT: Sustained.

18 Q Was there any other part of your body that hurt?

19 A No, just those parts.

20 THE INTERPRETER: Sorry. It's -- he's speaking
21 after he's not when you speak, I just have to let him know
22 he's not supposed to when you sustain.

23 Q Do you know when the next time you seen a medical
24 professional was for your injuries?

25 A It was Friday no -- no, Monday, Monday after the

1 incident.

2 Q Do you know how many days after the incident it was?

3 A Three days after because the accident was on a
4 Thursday.

5 Q And do you know where, what doctor you went to?

6 A The first doctor that I went to was Dr. Azzioline.

7 Q And from the day of the incident until you've seen
8 Dr. Azzioline, did the pain get better or worse or something
9 else?

10 A It would come and go, come and go.

11 Q Where were you feeling the most pain in the first few
12 days?

13 A Well, I went to physical therapy on Friday.

14 Q No, what parts of your body hurt the most the first few
15 days.

16 A My spine, my knee, and my ankle.

17 Q Did you eventually go to a doctor to have those parts
18 of your body checked out?

19 A Yes.

20 Q Do you know the names of the doctors that you have
21 seen?

22 A Yes.

23 Q Who did you see for your neck?

24 A Dr. Azzioline, Dr. Ashraf and Okubadejo.

25 Q And did you hire, at some point did you hire an

1 attorney?

2 A Yes.

3 Q And when was that?

4 A Monday, itself.

5 Q What kind of doctor did you first go to?

6 A For the ankle, Dr. Azzioline.

7 Q What happened, do you remember what your diagnosis was?

8 A He said that I had ruptured two tendons on my foot.

9 Q And what kind of recommendation did he give you?

10 A Physical therapy -- well, physical therapy, and until I
11 would get better and if not, then surgery.

12 Q Did you start doing physical therapy?

13 A Yes.

14 Q And how long did you do physical therapy for your
15 ankle?

16 A I don't remember very well.

17 Q Was it for a couple of years, a couple of months or
18 something else?

19 A No, a couple of months, months.

20 Q And do you remember when you first seen a doctor for
21 your spine?

22 A It was on a Monday after the accident.

23 Q And did he give you a diagnosis for your back?

24 A Yes.

25 Q What was it?

1 A Well, that, this the disc had moved, and that he was
2 going to give an injection to see if it would get better, in
3 eight weeks. Then if it didn't get better, then I should return
4 and see what can be done after.

5 Q Did he also send you for an MRI?

6 A Yes.

7 Q And do you remember when that was?

8 A Not very well.

9 Q And did eventually, did you go to physical therapy for
10 your back?

11 A Yes.

12 Q And for how long did you go to physical therapy?

13 A Until when I did the surgery for my knee, that was my
14 first surgery.

15 Q Do you remember when your surgery was for your knee?

16 A I do not remember the day, but I remember it was in
17 November.

18 Q When you first went to the doctor, did you, did they
19 diagnose your knee?

20 A Yes.

21 Q Did they tell you what was wrong with your knee?

22 A The meniscus and the tendon had torn.

23 Q Did they, did they give you a treatment plan?

24 A Yes.

25 Q What was the treatment plan?

1 A Gave me injection and physical therapy as well.

2 Q Did eventually you have a surgery on that knee?

3 A No, just in November.

4 Q In November, did you have surgery on that knee?

5 A Yes, yes.

6 Q Who performed that surgery?

7 A Dr. Ashraf, the same, the same doctor for the shoulder,
8 the same that did the shoulder surgery.

9 Q And do you know, can you best describe what they did to
10 your knee?

11 THE INTERPRETER: For your shoulder?

12 MR. O'MEARA: For the knee.

13 A Not exactly.

14 Q Did it, and prior to the surgery, how was your knee
15 feeling?

16 A Well, a lot of pain, and I had no trust like when I
17 would put my foot down.

18 Q And was that the same from the day of the accident,
19 September 8th, 2020, until the day of the surgery?

20 A Yes.

21 Q Did the physical therapy help?

22 A A little bit, it did.

23 Q And was the surgery for your knee, were you in the
24 hospital overnight?

25 A No, I came back home the same day.

1 Q Do you know, do you know where you had the surgery?

2 A Wood Johnson Hospital, Jersey City, Wood Johnson.

3 Q Prior to the accident on September 8, 2020, did you
4 ever have any issues with that left knee?

5 MS. SCARIA: Objection.

6 THE COURT: Sustained, rephrase.

7 Q Prior to September 8, 2020, what medical treatment had
8 you ever received for your left knee?

9 A September 8th, sorry, can you repeat that question?

10 Q Prior to the date of the accident on September 8, 2020,
11 can you tell the jury what type of medical treatment you've had
12 on your left knee?

13 A Oh, the electrical shocks that they put on your knee,
14 cold compresses, and the hot, hot.

15 Q Was that the treatment that they gave you after the
16 accident occurred?

17 A Yes, at physical therapy that's what it was as well, it
18 was on Friday.

19 Q Did you ever have any treatment before this accident
20 occurred?

21 A No, no, not before, because before I didn't have any
22 accidents.

23 Q After the surgery, how did your knee feel?

24 A Weak.

25 Q And did it start getting better?

1 A A little bit.

2 Q And did you have to stay in bed for a while after the
3 surgery?

4 A Well, at rest, yes.

5 Q Did eventually the knee get better?

6 A It got better.

7 Q When were you able to start walking on it?

8 A After two, three months, more or less.

9 Q Were you able to go to physical therapy after that
10 surgery?

11 A Not right after, but I did go back like after five/six
12 months, five months, I think.

13 Q Did you have any other surgeries after that?

14 A Yes.

15 Q Where was your next surgery?

16 A On the lumbar.

17 Q Can you describe, to the best of your ability, what
18 type of surgery was performed on your lumbar?

19 A Fusion.

20 Q And do you remember when that surgery was performed?

21 A I can't remember the day, but the month, yes, it was
22 February of '21.

23 Q And did you have to go to the hospital for that
24 surgery?

25 A Yes.

1 Q And did you have to stay overnight?

2 A Yes, yes, the surgery was five hours, and I lost a lot
3 of blood, and then I had two cardiac arrests, so I had to stay
4 in the intensive unit for a day.

5 Q How long did you have to stay in the hospital for that
6 surgery?

7 A Five days.

8 Q What type of pain were you having in your lower back
9 prior to the surgery?

10 A The same, you mean from zero to ten?

11 Q I mean, can you describe where you were having the
12 pain.

13 A On the lumbar, on the lower back.

14 Q Did you feel anything in your legs?

15 MS. SCARIA: Objection, leading.

16 THE COURT: Sustained.

17 Q Other than your back, did you feel any other
18 sensations?

19 A Yes, the pain would go down, travel down the legs until
20 to my feet.

21 Q How long after the hospital, where did you go?

22 A I went home.

23 Q And were you able to walk around right away?

24 A No, with a walker, with the help of a walker.

25 Q How long did you have to use the walker?

1 A Three to four months.

2 Q Did -- eventually, did that leave scars?

3 A Yes.

4 Q Where did it leave your scars?

5 A Lumbar and on my shoulders, and on my knee.

6 Q For the lumbar surgery, where did it leave your scars?

7 A Here in the back, it's three cuts (indicating), you
8 want me to show it?

9 Q Sure.

10 A (Indicating.)

11 Q Okay. Did eventually some of the pain go away after
12 the surgery?

13 A It didn't go away, but it helped diminish it.

14 Q Prior to the surgery on a scale of zero to ten, how
15 much pain were you having in your lumbar area?

16 A Eight to a nine.

17 Q Then immediately after the surgery, what kind of pain
18 did you have?

19 A Well, it was still high, like a nine.

20 Q Did it eventually get lower?

21 A It went down.

22 Q And how long did it take to go down?

23 A More than a year.

24 Q After a year, what level pain were you at?

25 A For a six, a five.

1 Q And during that year, were you going to physical
2 therapy?

3 A Yes.

4 Q How often were you going to physical therapy?

5 A Three times a week.

6 Q Was the physical therapy just for your back or other
7 parts of your body?

8 A For other parts of the body as well.

9 Q Did you also have another surgery?

10 A Yes.

11 Q And where was your next surgery?

12 A On my right shoulder.

13 Q And do you know when that surgery occurred?

14 A I don't remember very well when it was.

15 Q Was it after the back surgery?

16 THE INTERPRETER: Of the what?

17 MR. O'MEARA: Back surgery.

18 A Yes, it was after the back surgery.

19 Q And to the best of your ability, do you know what type
20 of surgery they did to your shoulder?

21 A Reconstruction of the tendons.

22 Q Did you have to go to the hospital for that surgery?

23 A Yes.

24 Q Did you stay overnight?

25 A No, I came back all on the same day.

1 Q And prior to the accident --

2 A Because of Covid.

3 Q Prior to the accident on September 8, 2020, have you
4 ever received any treatment for your left shoulder -- I'm sorry,
5 your right shoulder?

6 A No.

7 Q Prior to 9/8/2020, had you ever had pain in your right
8 shoulder?

9 A No.

10 Q Prior to 9/8/2020, had you ever had any pain in your
11 left knee?

12 A No.

13 Q Did the pain in your knee ever disappear all together
14 after the surgery?

15 A No.

16 Q Did it ever get better?

17 A It got better.

18 Q Do you still have pain in your left knee today?

19 A Yes.

20 Q Is it every day?

21 A Yes.

22 Q And what could you do for the pain in your knee?

23 A I take medicine and do some compresses.

24 Q And?

25 A And some exercises that I was already doing at physical

1 therapy, then I just do it at home.

2 Q And did you ever complete or stop going to physical
3 therapy?

4 A Yes, there was a time that I did stop.

5 Q How long did you stop for?

6 A Well, when the insurance stopped paying.

7 Q Do you recall when that was?

8 A I think like three years after the accident.

9 Q Is the pain better than it was right after the
10 accident?

11 A It's better.

12 Q And what about your shoulder, do you still have pain in
13 your shoulder?

14 A Yes.

15 Q And is that every day?

16 A Every day.

17 Q Is it better than when you first had the accident?

18 A Yes.

19 Q And can you show the jury the scar on your shoulder?

20 A Yes, (indicating) I don't know if you can see it very
21 well.

22 MR. O'MEARA: He's showing his right shoulder area,
23 your Honor.

24 THE COURT: Okay.

25 A It's okay?

1 Q Denis, have you ever gone back to work in construction?

2 A No.

3 Q Did anybody tell you that you should now limit how much
4 you pick up?

5 MS. SCARIA: Objection, leading.

6 THE COURT: Sustained.

7 Q Has anybody told you that you have any limitations now?

8 A Yes.

9 Q What are those limitations?

10 A Get less weight.

11 Q Can you embellish on what "get less weight" means?

12 MS. SCARIA: Objection to "embellish".

13 THE COURT: Overruled.

14 A Well, in construction, you just get weights all the
15 time, and what Dr. Okubadejo said was maximum 20 pounds that I
16 could lift.

17 Q Prior to the accident, how much could you lift?

18 A A lot, 150, 100, 150 pounds.

19 Q Are there times when you knee hurts more than other
20 times?

21 A Yes, yes, when there's weather change or when it rains
22 or when it changes from hot to cold or cold to hot, it hurts
23 move.

24 Q Is that the same for your back?

25 A For the back, that's even more.

1 Q What about your shoulder?

2 A The shoulder as well.

3 Q Did you try to get jobs after the accident occurred?

4 A Yes.

5 Q What kind of jobs did you try to get?

6 A It was a job of delivering packages called TEMU,
7 it's -- it was a part-time.

8 Q Are you currently able to walk?

9 A Yes.

10 Q Have you ever told anybody that you cannot walk?

11 A No.

12 Q Do you think you will be able to work again?

13 A Well, not in construction.

14 Q And do you have any computer skills?

15 A No.

16 Q Have you ever taken any courses in college?

17 A No, I always worked with physical work, like in
18 construction.

19 Q Do you have any secretarial skills?

20 A No.

21 Q Are you able to drive?

22 A Yes.

23 Q And are you able to lift your -- are you able to lift
24 your right arm above your shoulder?

25 A Without weights, yes.

1 Q What about with weights?

2 A No.

3 Q Would you be able to work a job where you had to lift
4 your arms over your shoulder for extended periods of time?

5 A No.

6 Q What about repetitive lifting?

7 THE INTERPRETER: About what?

8 MR. O'MEARA: Repetitive lifting.

9 A No.

10 Q Can you work long physical activities without pain?

11 MS. SCARIA: Objection, leading.

12 THE COURT: Overruled.

13 A No.

14 Q Do you have to be careful when you carry groceries?

15 MS. SCARIA: Objection, leading.

16 THE COURT: Sustained.

17 Q Are there some household difficulties that are more
18 difficult for you now?

19 MS. SCARIA: Objection, leading.

20 THE COURT: Overruled.

21 A No.

22 Q Has this affected your ability to interact with your
23 children?

24 A A lot.

25 Q Can you describe how?

1 A Well, I couldn't get my son at the time, I had the
2 accident, he was two, I couldn't get out to go to the park with
3 my daughter, and nor play soccer with the oldest.

4 Q How old were your children when the accident occurred?

5 A Well, the youngest was two, and she was two, and then
6 the other one was five or six, and the oldest was 15.

7 Q Are there any activities that you can no longer do now
8 because of the accident?

9 A Yes.

10 Q Can you tell us what some of those are?

11 A Well, play soccer, which was one of the things I would
12 do the most.

13 Q Was there any other sports or outdoor activities you
14 enjoyed prior to the accident?

15 A Swimming.

16 Q And, did you ever get surgery on your ankle?

17 A No, I didn't want to do the surgery.

18 Q Why not?

19 A Well, cause he told me that my foot would -- wouldn't
20 stay without moving, mobilized due to the screws, and I didn't
21 want that.

22 Q Do you remember when you had that conversation?

23 A No, I don't remember.

24 Q When you injured your back in 2017, did you sue
25 anybody?

1 THE COURT: I didn't hear the end of the question?

2 MR. O'MEARA: Did he sue anyone.

3 A No, no, that was just a move, a bad move I did when I
4 lowered myself down.

5 Q Were you aware that private investigators were
6 following you some days?

7 A No.

8 Q But you are aware that happened; correct?

9 A Yes, yes, I saw the video.

10 Q Did they follow you while you were dropping your kids
11 off to school one day?

12 A Yes.

13 Q Were they waiting for you outside of your house some
14 mornings?

15 A Yes.

16 MR. O'MEARA: I will play the video.

17 (Whereupon, the video played.)

18 Q Is that you Denis?

19 A Yes.

20 (Whereupon, the video played.)

21 Q Is that you walking, Denis?

22 A Yes.

23 Q And did any doctor ever tell you that you that walking
24 was good for you?

25 A Yes.

1 Q And do you often go for walks?

2 A I do.

3 Q Why do you go for walks?

4 A Due to the lumbar for the lumbar.

5 (Whereupon, the video played.)

6 Q Do you go for walks ever day?

7 A Yes.

8 (Whereupon, the video played.)

9 A That day they called me to say that there was like this
10 medicine for me to go and get it at CVS, and that was just for
11 filming me purposes.

12 MS. SCARIA: Objection, your Honor.

13 THE COURT: Overruled.

14 MS. SCARIA: That's pure speculation.

15 THE COURT: I'll sustain the objection, yes.

16 (Whereupon, the video played.)

17 Q Sometimes is there a slight limp in your gait when you
18 walk?

19 MS. SCARIA: Objection, objection, leading.

20 THE COURT: Overruled.

21 A Yes.

22 Q Can you notice the difference when you watch the videos
23 on how, compared to how you used to walk?

24 A Yes, yeah, it just looks like one leg is like bigger
25 than the other.

1 Q And after you walk for a while, does it get better?

2 MS. SCARIA: Objection, vague.

3 THE COURT: Sustained.

4 Q If you go walking for a while, do you start to feel the
5 tightness or the pain reduced?

6 MS. SCARIA: Objection, vague and leading.

7 THE COURT: Overruled.

8 A Yes.

9 Q Is that one of the reasons you go for walks every day?

10 MS. SCARIA: Objection, leading.

11 THE COURT: Overruled.

12 A Yes.

13 (Whereupon, the video played.)

14 A When I got there, there was no medicine for me.

15 MS. SCARIA: Objection, move to strike, your Honor.

16 THE COURT: Overruled.

17 Q Did you ever realize somebody was following you?

18 A No, never.

19 (Whereupon, the video played.)

20 Q This is the second video from March 27, 2025.

21 Do you sometimes drive your kids to school, Denis?

22 A Yes.

23 Q Did you know they were videotaping you during this one?

24 A No.

25 Q Are those your kids?

1 A Yes.

2 (Whereupon, the video played.)

3 Q Do you remember where you were dropping them off?

4 A Yes, at school.

5 (Whereupon, the video played.)

6 Q Now we're watching March 13, 2025.

7 (Whereupon, the video played.)

8 Q Is that your wife?

9 A Yes.

10 Q Did she know they were videoing?

11 A No.

12 (Whereupon, the video played.)

13 Q Do you recognize what's that in your hand here?

14 A Medicine that I went to buy at the pharmacy.

15 Q Do you know if that's pain reliever medicine?

16 A Yes, and melatonin.

17 Q Did you have trouble sleeping?

18 A That's for my kids.

19 Q Have you had trouble sleeping since the accident?

20 THE INTERPRETER: I didn't finish.

21 A But the doctor always, also prescribes medicine for me
22 to sleep.

23 Go ahead your last question was?

24 (Whereupon, the video played.)

25 Q Do you know if there were any other days they were

1 outside of your house?

2 A No.

3 Q Are you still on some prescription medication?

4 A Yes.

5 Q What are you taking?

6 A Meloxicam, Dulocitin (sic), ibuprofen, 600 milligrams,
7 and Diazepam, five milligrams.

8 Q And what are those meds for?

9 A For pain and muscle relaxant, and chronic pain.

10 Q Any one for sleeping?

11 A Diazepam.

12 MR. O'MEARA: Nothing further, your Honor.

13 THE COURT: Any cross?

14 MS. SCARIA: Your Honor, may we approach?

15 (Whereupon, an off the record bench discussion was
16 held.)

17 CROSS-EXAMINATION BY

18 MS. SCARIA:

19 Q Good afternoon, Mr. Ribeiro.

20 A Good afternoon.

21 Q Can we, sir, those videos that your attorney just
22 showed you, those were from 2025; correct?

23 A Yes.

24 Q And back at that time, in March of 2025, you were
25 undergoing physical therapy?

1 A Once every 15 days.

2 Q Back at that time, were you also taking pain
3 medication?

4 A Yes.

5 Q At that time, you weren't undergoing any kind of pain
6 injections; correct?

7 A No.

8 Q And none of your doctors last year told you that you
9 would have to have injections for the rest of your life;
10 correct?

11 A No; medicine, yes and physical therapy.

12 Q So you were able to go walking and pick up your
13 children and do your routine activities with the help of a
14 little bit of physical therapy?

15 (Whereupon, the video played.)

16 A No, I mean I wouldn't get, I wouldn't get my kids.

17 Q What do you mean you wouldn't get your kids?

18 A No, I mean, I wouldn't get them, I mean I wouldn't
19 carry them.

20 Q Well, they were a little too big to be carried in March
21 of 2025, don't you agree?

22 A Yes.

23 Q And the car that we saw you get into, was a red car;
24 right?

25 A Yes.

1 (Whereupon, the video played.)

2 Q Whose car was that?

3 A My wife's.

4 Q Is that the same car that you were using to drive to
5 your doctors' appointments?

6 A No.

7 Q What cars did you use to drive to your doctors'
8 appointments?

9 A I would go on a Lyft, Uber Lyft.

10 Q Isn't it true that you would told your doctors you
11 would drive yourself to your doctors' appointments?

12 A No.

13 Q Do you remember going to the physical therapy place
14 called Spine Synergy Spine Care and Rehabilitation?

15 A I would go in, well, and at that time, so I'm not
16 understanding your question.

17 Q When you were -when you were going to therapy at
18 Synergy Spine Care, you would drive yourself to therapy, isn't
19 that right?

20 A Yes.

21 Q And moving on, Mr. Ribeiro, when you went, you went to
22 the emergency room on the date of your accident; right?

23 A Yes.

24 Q And you, you were there for what, about three hours and
25 received treatment for your back?

1 A Like an hour.

2 Q Isn't it true that you told the hospital that you
3 wanted to leave before they discharged you?

4 A No.

5 Q If I were to tell you that the emergency room records
6 from the medical -- from Interfaith Medical Center in the triage
7 note states that "patient wanted to leave," do you have any
8 reason to believe that the medical records are incorrect?

9 A Yes, yes, the supervisor spoke English, and I didn't
10 know what he was talking about, with the personnel.

11 Q Sir, you speak Spanish; correct?

12 A Yes, Spanish, yes.

13 Q And in fact, you speak Spanish well enough to have a
14 translator at your medical appointments speak to you and
15 translate your appointment in Spanish; isn't that correct?

16 A Yes.

17 Q So you could have had someone speak to you in Spanish
18 at the Interfaith Medical Center in Brooklyn, New York; correct?

19 A Yes, but the person I was speaking with him, was
20 speaking English.

21 Q Did you ask for someone to speak to you in Spanish so
22 you could understand what they were saying?

23 A No.

24 Q Isn't it true that you understood many of any questions
25 in English before they were even translated to you in

1 Portuguese?

2 A Very little.

3 Q You have been able to answer some of the questions
4 without translation; isn't that right?

5 A Not all of them.

6 Q Okay, that's fair.

7 At the emergency room, did anybody ever tell you that
8 they reported you could return back to work in three days?

9 A Four days, yes.

10 Q So when you were discharged at the emergency room at
11 Interfaith, you weren't referred, recommended to go see a spine
12 surgeon; correct?

13 THE INTERPRETER: You were?

14 MS. SCARIA: You were not.

15 THE INTERPRETER: You were not.

16 A No, I wasn't, and they just told me to come back in
17 four days.

18 Q Did somebody at the emergency room tell you that you
19 could go back to work in four days?

20 A Yes, they did.

21 Q After the emergency room, you went back to the job site
22 to fill out the accident report; is that right?

23 A Yes, and get my tools.

24 Q So you were, what, at the job site for about
25 20 minutes?

1 A Yes, more or less.

2 Q So then Marco -- withdrawn.

3 After you filled out the accident report, did you
4 collect your tools?

5 A No, Marcos came down so he could fill out that form as
6 well, because he was with me on the day of the accident, and the
7 one that was in charge there, I asked him if he could drive me
8 home, because I couldn't drive home because I was a little bit
9 dizzy and with pain.

10 Q So because you were dizzy with pain, Marco drove you
11 home?

12 A Yes.

13 Q When you got home, you were still in pain?

14 A Yes.

15 Q And when you got home, your wife gave you some creams
16 to address your pain?

17 A Well, I called her and then she helped me to get up in
18 a home, and then put hot and cold compressions on my back.

19 Q What is your wife's name?

20 A Nubia De Andrade.

21 Q Does she ever go by the nickname Orchid, like the
22 flower?

23 A No.

24 Q Mr. O'Meara's law firm, Michael Lamonsoff, his office,
25 they weren't your first attorneys in this case; correct?

1 A Who?

2 Q Do you know the name of the law firm Mr. O'Meara works
3 for?

4 A No.

5 Q Well, you had another law firm representing you before
6 Mr. O'Meara's law firm; right?

7 A Yes.

8 Q And do you remember the name of that law firm was
9 Wingate, Russotti, Shapiro & Halperin?

10 A Yes, Wingate Shapiro.

11 Q Can I call it the Wingate firm; is that okay?

12 A Yes.

13 Q Did you meet an attorney by the name of Eric Horn
14 there?

15 A It's the one I signed the contract with, him and his
16 wife Orkilla.

17 Q Orkilla, can we have the spelling of Orkilla?

18 A O-R-K-I-L-L-A, Orkilla.

19 Q Did you know Mr. Horn before you signed the agreement
20 you just said?

21 A No.

22 Q What time on the day of the accident did you sign the
23 agreement with Mr. Horn and his attorneys' firm of Wingate
24 Russotti?

25 A Oh, I don't remember, it's been many years ago.

1 Q But you signed the agreement with Wingate's office for
2 them to represent you on the day of your accident; correct?

3 A No, no, I don't remember, it wasn't on the same day.

4 Q If I were, withdrawn.

5 MS. SCARIA: Your Honor. May I show the witness a
6 document please?

7 THE COURT: The officer will show it.

8 COURT OFFICER: (Handing.)

9 Q Sir, I would like you to take a look at that document,
10 on the bottom, does your signature appear there?

11 A Yes.

12 Q And at the top of the document, is your name
13 handwritten in there?

14 A Yes.

15 Q Is that your handwriting?

16 A Yes.

17 Q Is that the agreement that you signed with the Wingate
18 law firm?

19 A Yes.

20 Q And is that dated September 8, 2020?

21 A Yes, I remember, this was it.

22 Q Does this document now that you're looking at it,
23 refresh your recollection that you hired Wingate's firm on the
24 day of the accident?

25 A Yes.

1 Q Where did you go to sign this agreement with the
2 Wingate firm?

3 A This was at a restaurant.

4 Q Who told you to go to the restaurant?

5 A Eric (in English), with his wife Orkilla.

6 Q Is that Eric Horn?

7 A Yes.

8 Q Did he tell you to go to the restaurant before you
9 signed this form?

10 A Yes, for us to meet at the restaurant.

11 Q How did Eric get in touch with you?

12 A Because a friend of mine passed him the phone after the
13 accident.

14 Q Were you on the job site when your friends passed you
15 the phone to speak with Eric Horn?

16 A No.

17 Q Is the friend a client of, or was the friend a client
18 of Eric Horn's back on the day of your accident?

19 A No, but he knew people from there.

20 THE COURT: Counsel, do you want the page back?

21 MS. SCARIA: No, I have a copy, thank you, your
22 Honor, maybe we should mark it as Defendants' Exhibit A?

23 THE COURT: We have A through H.

24 MS. SCARIA: I then.

25 THE COURT: Do you want it mark it as Defendants'

1 Exhibit I?

2 MS. SCARIA: Sure.

3 THE COURT: Okay.

4 MS. SCARIA: If he can mark the witness's copy,
5 that would be great.

6 THE COURT: Is that a retainer agreement, counsel?

7 MS. SCARIA: Power of attorney.

8 THE COURT: A what?

9 MS. SCARIA: Power of attorney.

10 THE COURT: Okay. Any objection to it going into
11 evidence?

12 MR. O'MEARA: No.

13 THE COURT: Exhibit I is evidence.

14 Q Why did your friend tell you to speak with Mr. Horn?

15 A Well, since I have no studies -- well, for him to
16 represent me, on the accident.

17 Q So did you speak to the attorney before or after they
18 got medical treatment?

19 THE INTERPRETER: Having what treatment?

20 MS. SCARIA: Medical treatment.

21 A Before.

22 Q Did you hire Mr. Horn as your personal injury attorney
23 before you sought medical treatment in this case?

24 A Yes.

25 Q Did you receive referrals for what medical providers to

1 go to for your attorneys?

2 A No.

3 Q Were you friends, did you know Eric or his wife Orkilla
4 before the day of the incident?

5 A No.

6 Q Is there a reason why you listed his wife as your
7 emergency room contact at Surgicore, the surgical center?

8 A Because she was Brazilian, she spoke Portuguese and he
9 was Jewish, he did not speak Portuguese.

10 Q Normally, you list your wife as an emergency room
11 contact on medical records; right?

12 A Yes, but the name of my wife was there as well.

13 Q So you named your wife and your attorney's wife as your
14 emergency contact people in your medical records after this
15 accident?

16 A Yes.

17 Q After you went to the emergency room, was the next
18 medical provider you saw a physical therapist?

19 A Yes.

20 Q And was that physical therapist Dr. Eliseu?

21 A Yes.

22 Q His last name as Simiento (phonetic)?

23 A Yes, he referred me to the doctors, he is the one that
24 referred me to the doctors.

25 Q Does he speak Portuguese?

1 A He's Brazilian.

2 Q So when you communicated with him, you spoke to him in
3 Portuguese?

4 A Yes.

5 Q And Dr. Eliseu?

6 A Eliseu.

7 Q Dr. Eliseu, is his physical therapy facility in the
8 same place where you treated with other doctors?

9 A No.

10 Q Where was Dr. Eliseu's office?

11 A At the physical therapy itself.

12 Q What other doctors did you -- withdrawn.

13 Did you see any other doctors at that same place for
14 the where the physical therapy office was?

15 A Doctor, Dr. Ashraf and Dr. Okubadejo.

16 Q That's Dr. Ashraf, A-S-H-R-A-F?

17 A Well, I don't know how to speak it.

18 Q Okay, the doctor you're talking about is that the
19 doctor that performed your shoulder surgery -- I'm sorry, your
20 knee surgery?

21 A Well, for the shoulder and the knee.

22 Q Well, wasn't there a different doctor that performed
23 your shoulder surgery?

24 A No.

25 Q Did you treat with a Dr. Roman Isaac?

1 A Yes, oh, yes, yes.

2 Q Did Dr. Isaac do your shoulder surgery?

3 A Oh, I didn't even remember anymore.

4 Q So you had two different surgeons, two different
5 orthopedic surgeons; right?

6 A Yes.

7 THE COURT: We're going to stop here right now, is
8 that okay?

9 MS. SCARIA: Sure.

10 THE COURT: I see some of the jurors have reached
11 their exhaustion rate. We will end here at the end of the
12 day, and we will start tomorrow at approximately ten o'clock
13 in the morning.

14 MS. SCARIA: Did you say nine a.m.?

15 THE COURT: Te.

16 MR. O'MEARA: Tell him I can't talk to him.

17 THE COURT: You can't talk to your attorney about
18 the case where --

19 MS. SCARIA: Or anybody from their office.

20 THE COURT: Or anybody else.

21 MS. SCARIA: Or anybody from his office. Or
22 anybody from the law firm of Michael Lamonsoff.

23 THE COURT: You can't talk to any lawyer about the
24 case from any office.

25 THE WITNESS: Okay.

Proceedings

1 (Whereupon, Mr. Ribeiro exited the witness stand.)

2 (Whereupon, the trial was adjourned to February 11,

3 2026, at ten a.m.)

4 *****
5 CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT OF THE ORIGINAL
6 MINUTES TAKEN OF THIS PROCEEDING.

6

7

LAURA DELVAC
SENIOR COURT REPORTER

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