

1 SUPREME COURT OF THE STATE OF NEW YORK
2 COUNTY OF KINGS : CIVIL TERM: PART 75

3 - - - - -X
4 RANDY DECAYETTE,

5 Plaintiff,

6 - against - INDEX NUMBER:
7 523486/2018
8 TRIAL

9 50 LEX DEVELOPMENT, LLC and TISHMAN CONSTRUCTION
10 CORPORATION OF NEW YORK,
11 Defendants.

12 - - - - -X

13 Supreme Courthouse
14 360 Adams Street
15 Brooklyn, New York 11201

16 June 18, 2026

17 BEFORE:

18 HONORABLE ANNE J. SWERN,
19 Justice of the Supreme Court
20 (And a Jury)

21 APPEARANCES:

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23 Attorneys for the Plaintiff
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LUCILLE CRAVOTTA
Senior Court Reporter

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1 THE COURT: Trial continued.

2 I am just going defendants have made a motion, an
3 affirmation in support of the of defendant's motion in
4 limine to limit plaintiffs life care planners testimony.
5 And we all got this written motion this morning. So I have
6 given the plaintiffs counsel an opportunity to show this
7 written document to his expert before we go any further
8 and right now he's outside the hearing of the court and
9 everybody else conferring with his expert.

10 MR. FEEHAN: I did mention early on, I
11 mentioned --

12 THE COURT: This is a motion for what, what are
13 you looking for?

14 MR. FEEHAN: I am looking to preclude the doctor
15 from testifying about certain procedures and cost basis for
16 the procedures that he gives in his life care plan due to
17 lack of foundation or knowledge. He has --

18 THE COURT: Okay. You don't have to go into the
19 whole argument, that's what you are looking to do, to
20 preclude the doctor from testifying about procedures and
21 the cost basis and the basis on which he is itemizing some
22 of these things.

23 MR. FEEHAN: Correct.

24 THE COURT: Mr. Panek, shall I assume that you
25 oppose this motion?

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1 MR. PANEK: Your assumption will be correct, your
2 Honor.

3 THE COURT: At this point you don't have to say
4 more because we're going to setup the argument right now.
5 So tell me what the basis of your motion is briefly. I did
6 get it this morning and I did read it, so it's not that
7 long. It's how many pages here, and I can make it a Court
8 exhibit if you like. Would you like me to make it a Court
9 exhibit?

10 MR. PANEK: I would, your Honor.

11 MR. FEEHAN: Sure.

12 THE COURT: It's going to be Court Exhibit 6 and I
13 believe it is, I don't have page numbers here, but let me
14 just --

15 MR. FEEHAN: Four and a half, five.

16 THE COURT: Not quite five pages. Okay. So let's
17 talk about it for a moment. So the basis of your motion
18 is?

19 MR. FEEHAN: The plaintiff has to establish
20 economic damages with reasonable certainty. Right, so the
21 expert under 4515 can't give his opinion without specifying
22 the underlying data, but it must nonetheless supply the
23 data. So it goes into, I want to talk about 4515 and the
24 purpose of the reliability of it and the basis of what the
25 doctor is going to give. So yes, ultimate assertions or

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1 speculative and unsupported by any evidentiary foundation
2 opinions should be given no probative force and then I
3 don't want to read the whole paper.

4 THE COURT: You have to slow down. Just say your
5 legal argument, just say the legal argument is.

6 MR. FEEHAN: So we're not challenging Dr. Kahn's
7 ability to testify whether a procedure is medically
8 indicated. What we are challenging is the -- what were the
9 actual costs and development in the marketplace be with
10 respect to what he's being brought in here to testify
11 about, the actual cost.

12 So he has to establish a reliable foundation for
13 each dollar figure he intends to present to the jury,
14 medical necessity and the market cost are two separate
15 opinions resting on two separate bodies of data. So one
16 half we're not challenging, he can testify it's going to be
17 needed, it's the cost we are challenging.

18 THE COURT: Okay, so let me ask you this, and I am
19 going to assume Mr. Panek for this so we could move it
20 along, you oppose his entire motion and the basis for it
21 and you have legal support to do that. What I want is more
22 of a practical question, how do you propose we do this? Is
23 this a line by line item of something that you previously
24 got in discovery and we're going to go line by line, you
25 know, an x-ray, an ablation, you know, whatever, or do you

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1 want -- how do you propose to address the specifics of your
2 request, Mr. Feehan?

3 MR. FEEHAN: Well, certain categories, he
4 testifies in blocks of categories of treatments and
5 modalities, so the treatments and modality categories in
6 his report can be blocked together so I don't have to talk
7 about X, Y and Z separately.

8 THE COURT: X, Y and Z, let's be specific about
9 what we do and don't want. I am going to hear from
10 Mr. Panek specifically about his objections to it and then
11 we'll figure out our next steps.

12 MR. FEEHAN: Right. I just have to bring my
13 attention he relies, based on his footnotes, his Fair
14 Health system is the basis --

15 THE COURT: That's the source, I want to know the
16 blocks. You're telling me that there are blocks of
17 information and you're telling me modalities, now be
18 specific about which modalities you think are unsupported
19 by the materials supplied or a direct one and one
20 correlation. Meaning, ablation, an ablation is X, Y and Z.
21 An ablation costs X amount and it's either verifiable or
22 not verifiable. If you accept an ablation is a medically
23 appropriate thing then we don't have to deal with that part
24 of it, it's just the cost analysis and the basis for it.

25 That's what I am understanding you're challenging,

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1 so I want specifics, not general.

2 MR. FEEHAN: Special medical care and evaluations,
3 his table one deals with a pain management doctor, spinal
4 epidurals and cervical region, and physicians and
5 physiatrists, he bases the injections on Fair Health. So
6 he doesn't know.

7 THE COURT: Okay, so anything that he based his
8 cost analysis by Fair Health, and I noted in your memo that
9 there is two Fair Healths.

10 MR. FEEHAN: Correct.

11 THE COURT: Why don't you specify what they are.

12 MR. FEEHAN: Judge, there is two Fair Healths that
13 we located Fair Health Consumer.org and there is also
14 Fair Health.org. Hold on a second, your Honor.

15 THE COURT: Okay. I saw your memo that some of
16 them have been impugned by federal courts under Daubert,
17 D-A-U-B-E-R-T, analysis and others are saying that under
18 New York's stricter Frye, F-R-Y-E, analysis it would be
19 further reason that these things are not either appropriate
20 medically, based in science or otherwise impermissible. So
21 you have some things you talked about that are
22 impermissible as procedures, that's the Daubert/Frye
23 analysis.

24 MR. FEEHAN: Correct.

25 THE COURT: Not the cost part of it, the cost part

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1 of it is relying on data that is either not specified or
2 not reliable; am I right?

3 MR. FEEHAN: It's the Daubert/Frye for the cost
4 basis.

5 THE COURT: Okay.

6 MR. FEEHAN: It applies to the cost basis, not the
7 medical necessity. I am not challenging him saying he'll
8 need this, he can say that, that's his purview.

9 THE COURT: Cost.

10 MR. FEEHAN: He doesn't have the experience as an
11 expert to meet even Daubert so he shouldn't meet Frye
12 because he doesn't know what the cost is in the community.
13 He uses the Fair Health, the Fair Health is just -- it's a
14 survey of market prices and he actually sets his survey
15 price at the top 80%, so 80% of --

16 THE COURT: That's a cross examination.

17 MR. FEEHAN: That's cross examination.

18 THE COURT: That's not that he shouldn't be able
19 to testify about it at all.

20 MR. FEEHAN: But the source is it's no different
21 than me Googling it, your Honor. He's Googling it.

22 THE COURT: That's the concern. And do you know
23 which of these costs he relied upon with Fair Health
24 Consumer.org or Fair Health.org, which of these is tied to
25 that particular thing, so we could isolate this in a very

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1 simple way and not be all over the map with this.

2 MR. FEEHAN: Do you know which one is Fair Health?

3 THE COURT: You know what his specific challenge
4 is.

5 MR. FEEHAN: Yes, your Honor. Everything that's
6 footnoted in here so I have epidural steroid injections is
7 Fair Health, needle branch blocks Fair Health,
8 radiofrequency ablations.

9 THE COURT: Slow down. I am writing it down so I
10 can make an informed decision.

11 MR. FEEHAN: Epidurals is Fair Health, he has
12 lumbar and cervical. So he has medial branch blocks, Fair
13 Health. Radio, he knows that one. Then we have footnote
14 seven, I apologize, Judge. These little tiny footnotes, I
15 am sorry for my asides. The injections, Fair Health,
16 corticosteroid injections is Fair Health, visco
17 supplementation or PRP injections he got from Fair Health.

18 THE COURT: By the way, our jury is here. I don't
19 want to spend long on this. You knew he was testifying,
20 you had the 3101(d) quite some time ago. Leaving it until
21 my jury is already here is going to shorten this process
22 tremendously. I am not keeping a jury waiting around for
23 something I could have done. I got the case on Wednesday,
24 we didn't do very much on Wednesday. We didn't do very
25 much on Thursday because of witnesses and motions. Today

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1 is Thursday. So to have a whole week and a half that we
2 could have discussed this is not going to make me spend
3 more time having the jury wait while we're going through
4 this.

5 MR. FEEHAN: In the beginning of the case I made
6 an oral application, I said I'll deal with it closer to the
7 testimony. I apologize that I didn't bring it to your
8 attention before, but I literally just got this last night.

9 THE COURT: The memo.

10 MR. FEEHAN: Yes.

11 THE COURT: That's the law firm's problem, that's
12 not my problem.

13 MR. FEEHAN: Fair Health slap tear and surgical
14 spine region is Fair Health.

15 MR. PANEK: Off the record, your Honor.

16 THE COURT: Yes.

17 (An off the record discussion was held.)

18 MR. FEEHAN: Medications, he goes to Good RX.

19 THE COURT: What Is good RX? That's something
20 that is different than Fair Health?

21 MR. FEEHAN: Good RX is Google, Judge. You go
22 online and it tells you how much medication would cost.

23 THE COURT: Let me tell you this, I don't have any
24 research basis, I am going to tell you this, Googling
25 doesn't trouble me if Google doesn't refer to scientific

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1 journals or scientific information.

2 MR. FEEHAN: We don't know what their opinion is
3 based on. We don't know where he's getting his opinion
4 from. It could be a crazy jackpot in the basement that
5 says this is how much medicine will cost.

6 THE COURT: You have Good RX, then that's it. If
7 you are telling me Good RX is just a website with no
8 scientific underpinnings or this doctor doesn't know. Are
9 you saying that the doctor doesn't know other than the
10 website?

11 MR. FEEHAN: Correct.

12 THE COURT: And he doesn't know the scientific
13 basis?

14 MR. FEEHAN: He knows why he needs it, he doesn't
15 know how much it costs.

16 THE COURT: Okay, tell me, let's ask Mr. Panek for
17 a moment. If we are talking about these things, the
18 epidurals, the lumbar cervical, the branch blocks, the
19 injection, the visco supplementation, the PRP, SLAC tear
20 and medication, all those things, what is the amount of
21 money we're talking about for those things, isolating those
22 things for the moment.

23 MR. FEEHAN: Well, it includes the SLAC tear and
24 the cervical surgery.

25 THE COURT: I just said that. Stop talking to

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1 cocounsel.

2 MR. FEEHAN: I am trying to speed this up.

3 THE COURT: But what I am saying is what is the
4 monetary amount, because this could be much ado about
5 nothing. If he's staying \$8,000,00, or whatever,
6 \$4,000,000 and you are talking about \$100,000 I am not
7 spending a lot of time on eight versus four and you can
8 cross examine on it.

9 MR. FEEHAN: The total is 1.2 to 1.6, so that's
10 everything. The things I am challenging are even like
11 table one is medical care, it's \$322,000 to \$477,000. I am
12 challenging therapeutic modalities, that total is \$235,000.
13 The surgeries are -- the surgeries alone are \$151,000 to
14 \$264,000.

15 THE COURT: Almost half of what the total claim
16 is.

17 MR. FEEHAN: Right.

18 THE COURT: So it's a significant amount of money
19 we're talking about; right?

20 MR. FEEHAN: Yes.

21 THE COURT: That he's challenging, Mr. Panek.

22 MR. PANEK: Essentially I will state for the
23 record counsel is essentially challenging the entirety of
24 the life care planner.

25 THE COURT: I've heard enough to frame the

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1 argument. Mr. Panek, now I will hear from you.

2 MR. PANEK: First your Honor, as you are aware my
3 life care plan was served back in May, May 1st and received
4 by counsel, they had plenty of time to make this
5 application. This application is not simple in that I am
6 not even quite sure how it's targeted. It's jumbled, the
7 papers are not clear, but nonetheless I do want to mark my
8 3101(d) exchange with the doctor's report, his chart, his
9 credentials.

10 THE COURT: Was that filed on NYSCEF?

11 MR. PANEK: So our office does not file medical
12 3101 on NYSCEF to protect the Plaintiff's private health
13 insurance. Defense counsel did eventually file it on
14 NYSCEF.

15 THE COURT: What are we up to, 7? That will be
16 Exhibit 7.

17 MR. PANEK: Counsel is first and foremost in
18 characterizing that Dr. Khan doesn't know what things cost
19 he's ignoring his CV. He's been practicing pain management
20 and rehabilitation doctor for over 40 years at Mount Sinai,
21 double board certified and has an active practice in the
22 hospital.

23 He also failed to mention to the Court that there
24 are not less than 80 sources listed in Dr. Kahn's plan in
25 appendix A which form the basis for the figures that

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1 Dr. Khan is going to deliver. I am trying to drill down
2 what the argument is because Good RX doesn't even appear in
3 the paperwork. It's coming up in oral argument, but
4 Fair Health was brought up in the papers and it was brought
5 up as failing a Daubert standard. That's only partially
6 correct and I again this was drafted last night, I work
7 late nights when I am on trial. I was not provided with
8 this until I walked into the courthouse this morning. I
9 would have appreciated an opportunity to research on the
10 computer instead of my phone. Nonetheless, the only case
11 they cite other than Daubert was a federal case in
12 Louisiana where an expert's opinion who was an economist,
13 not a physician, was challenged where they submitted a
14 report that said that the pay rates for the plaintiff's
15 medical treatment were too high and the economist's only
16 purported source was Fair Health. In lieu of an actual
17 Daubert hearing the defense in that case only submitted the
18 affidavit of that expert who in conclusory fashion said
19 Fair Health is reliable. On that basis and that basis
20 alone the court ruled that that affirmation and that one
21 sentence did not meet the Daubert standard. If you were to
22 read counsel's papers without that context it appears as
23 though its been challenged, its been litigated in a way
24 that the court --

25 THE COURT: There's no Daubert hearing.

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1 MR. PANEK: Correct, there is no Daubert hearing.
2 And things like, you know, I am sure the Court has had
3 these Daubert challenges or Frye challenges on Alpha 3T
4 imaging or the computational models for brain scans, things
5 that have robust litigation. This is an isolated one case
6 in Louisiana where a sentence was found not to meet the
7 Daubert standard in lieu of a hearing.

8 What we have here is a robust life care plan by a
9 certified life care planner who served on the Journal of
10 International Life Care Planning, who generates life care
11 plans as part of his professional practice. The doctor is
12 entitled to rely on sources he finds reliable and that are
13 reliable in the standard of life care planning. Counsel is
14 purporting to say these are not reliable, because I don't
15 think they're reliable. That's insufficient. If counsel
16 thought they were insufficient his job would be to have an
17 expert, a life care planner or someone challenge the report
18 and say this is not the standard of care, this is not how a
19 life care plan --

20 THE COURT: Can I stop you for a moment?

21 MR. PANEK: Sure.

22 THE COURT: I want to point out yet again on the
23 record that counsel asked for after he got the life care
24 plan asked for an adjournment in the form of a TRO, not
25 before me, not in any way related to me. I got this case

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1 after that was denied.

2 So I just am noting for the record that I agree
3 with you, Mr. Panek. I would have loved nothing better to
4 either get this case in May or early June before the jury
5 was picked, before the people were waiting here to actually
6 spend time on what is important to the parties, what is
7 important to the litigation, but that's not the way this
8 worked and I did offer to both parties to disband this
9 jury, spend a little bit of time with a variety of things,
10 not only this, and both of you did not want me to disband
11 this jury.

12 I am just noting for the record that I would have
13 liked more time to do this so I am doing it to the best of
14 my ability, you are doing it the best of your ability and
15 Mr. Feehan is doing it to the best of his ability because
16 of some procedure that preceded me in this courthouse
17 decided this case had to go out without a week or two
18 adjournment to address these things before we had a jury
19 sitting here. Or in the alternative that the jury would
20 have been picked telling them you won't be back here for
21 two weeks on Monday as opposed to sitting here Monday,
22 Tuesday, Wednesday and Thursday before they heard one bit
23 of evidence in this case.

24 So, I am trying to balance what I think is
25 appropriate to the jury that was waiting here almost all

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1 week to what the legal issues are. I will allow you to
2 continue, I want to set that stage, because I agree with
3 you, more time would have been beneficial for everybody.

4 MR. PANEK: And your Honor, plaintiff's position
5 has been and the Court's ruling has been they had
6 sufficient time under the law. These are not unusual
7 circumstance, this is not for example getting a neurologist
8 as I did after jury selection. They had this well over a
9 month in advance of trial which is in our professional
10 practice not unusual at all. I am fully equipped in
11 expecting up until the moment I step into the room to voir
12 dire jurors it is accepted in the professional practice in
13 the courts of the State of New York that you could get an
14 expert disclosure prior to that time.

15 THE COURT: Let me stop you, I bet other courts
16 outside the City of New York don't do things this way. I
17 think this is a New York City volume thing. We are the
18 busiest court in the state, civil court in Kings County I
19 believe it's a function of how busy we are as a court. I
20 wouldn't say it's the practice of the entire state.
21 Believe me, I am a Judge, I am on a million judges'
22 association. After this trial I will ask them what in fact
23 happens in cases like this because I doubt that this is a
24 function around the state. I think it's unique to
25 Brooklyn, perhaps New York City, but please continue.

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1 MR. PANEK: I could represent that it's not
2 uncommon in the First, Second and my experience in the
3 Third Department that this is the prevailing method by
4 which cases are tried. But nonetheless, what we have here
5 is a fully facially sufficient life care plan. What
6 counsel is essentially seeking is either a preclusion order
7 on an opportunity to conduct a cross examination of the
8 expert that is going to fall flat and is going to
9 potentially be damaging to him in front of the jury without
10 a basis to do so. The life care plan itself, your Honor,
11 is supported by the expertise of the expert and what we're
12 seeking to do now, there's been no proof or no evidence
13 before the Court that anything is novel, is you know, would
14 qualify for a Frye hearing. This is ordinary cross
15 examination, where do you get your numbers from, you are
16 using the eightieth percentile.

17 THE COURT: That's what I said, you touched upon
18 it, but I just want to be clear here. That any reasonable
19 cross examination has, so if he wants to cross examine on
20 all these issues he can go right ahead. And if he previews
21 his cross examination through this witness by having this
22 motion and showing the motion to your witness that's
23 litigation strategy and that is what it is.

24 I am inclined based upon what I know so far, based
25 upon the fact that the jury is now waiting 22 minutes, I am

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1 inclined to say I am going to allow cross examination, if
2 there is an appropriate objection at the appropriate time I
3 will do a sidebar as I've done this entire trial, but I am
4 generally going to allow more liberal cross examination
5 than I might have because now I have the basis for saying
6 there is some leeway there.

7 You may disagree with the good faith, you may say,
8 you know, where is he coming from, but if I have caselaw
9 that he can cite to and a motion he can cite to I am going
10 to allow very liberal cross examination.

11 MR. FEEHAN: Thank you, your Honor. Take
12 exception. One more thing.

13 THE COURT: Now get the jury.

14 What, Mr. Feehan?

15 MR. FEEHAN: Yesterday's objection about the
16 exhibit, the doctor's chart going in front of the jury, but
17 the life care plan is chock full of charts. We did some
18 research. Materials prepared solely for litigation cannot
19 satisfy the business records hearsay exception, see
20 People v. Foster 27 NY2d 47 1970. Bayview Loans Servicing
21 v. Chaudhury, C-H-A-U-D-H-U-R-Y, 188 A.D.3d 1126 Second
22 Department 2020. National States Electric vs. LFO
23 Construction 2203 A.D.2d 49 First Department 1994. This is
24 because being prepared for litigation purposes it deprives
25 of the hallmarks of reliability upon which the business

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1 records exception is based. That's a Deutsche Bank --

2 THE COURT: I get your argument. Wait, wait.

3 MR. FEEHAN: It's not routine, it's adversarial
4 it's bolstering and --

5 THE COURT: I get your argument. Yesterday we
6 talked about this a little bit about the bolstering part of
7 it, how it wasn't really a business record, et cetera,
8 et cetera, what we can do is one of two things. I'll hear
9 from you.

10 MR. FEEHAN: We have a proposal, Judge, it was
11 marked for identification, we can show it to the jury, he
12 can testify, but it doesn't go in the room.

13 THE COURT: Stop.

14 MR. FEEHAN: I apologize, your Honor.

15 THE COURT: What I am talking about is yesterday I
16 deal with something that is already in evidence and
17 Mr. Panek and I agree with him, was withdrawing something
18 in evidence in front of the jury may be very prejudicial
19 and I don't like that idea. So I came up with the idea
20 yesterday of having it in evidence, you know, but if they
21 specifically ask for that we come up with something. We
22 don't know what that something is, I don't know if reading
23 from a transcript, I will read from the transcript, Lucille
24 will read from the transcript or some other curative
25 instruction. Both of you agreed, and we talked about it

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1 yesterday, from just leaving it there and dealing with it
2 if they wanted to see it.

3 Now that I have this law, unless you have some law
4 that's contrary, Mr. Panek, I am going to limit to you to
5 documents prepared in preparation for litigation. You
6 could have your witness talk about it, you could ask
7 questions from it. You could put it up on the screen, but
8 don't bother trying to introduce it into evidence because I
9 am not going to allow it into evidence based on that basis.

10 MR. PANEK: I already did stipulated prior to this
11 discussion I would do exactly that with this chart.

12 COURT OFFICER: All rise. Jury entering.
13 (Jury entering.)

14 THE COURT: Please be seated. I must compliment
15 you. Today was an extraordinary travel day in New York, an
16 extraordinary Downtown Brooklyn, Manhattan today that
17 possibly this record couldn't possibly reflect. If anyone
18 looked at this record a year, two years from now they
19 wouldn't realize the extraordinary efforts you did to get
20 here on time. I paid attention this morning. I noted that
21 our remarkable mass transit in New York City stopped, at
22 7:30 stations that were previously open were closed and
23 streets that were previously opened were closed. And so I
24 just want this record to reflect how extraordinarily
25 dedicated to your job you are in this context. So I thank

Stuart Brian Kahn, M.D. - Plaintiff - Direct

1 you and everyone in this courtroom thanks you.

2 Mr. Panek, go ahead.

3 MR. PANEK: Plaintiff calls Dr. Stuart Kahn.

4 THE CLERK: Raise your right hand, sir. Thank
5 you. Do you swear or affirm that the testimony you are
6 about to give this Court will be the truth, the whole truth
7 and nothing but the truth?

8 THE WITNESS: I do.

9 THE CLERK: Thank you. You may be seated. Thank
10 you. In a loud, clear voice state your name, your title
11 and your address of business.

12 THE WITNESS: Sure. Stuart Brian Kahn, M.D.
13 medical doctor, 25 Sutton Place South, ground floor, 1C,
14 New York, New York 10022. S-T-U-A-R-T, B-R-I-A-N, K-A-H-N.

15 THE COURT: Dr. Khan, good morning.

16 THE WITNESS: Good morning.

17 THE COURT: You are already doing job one,
18 speaking loudly into the mike so the back of the jury can
19 hear and the back of the room can hear you.

20 Two, listen to the questions of the lawyers. If
21 you don't understand the question say I don't understand,
22 if you didn't hear it say please repeat it.

23 Finally, lawyers ask questions, they also object
24 to questions. If they object wait for my ruling,
25 sustained, overruled. I'll usually say you may answer it,

Stuart Brian Kahn, M.D. - Plaintiff - Direct

1 don't answer it. Just in case do it slowly, Lucille has to
2 take down every word of the question, every word of the
3 answers and we will go as smoothly as possible; okay?

4 THE WITNESS: That's awesome. Thank you, your
5 Honor.

6 MR. PANEK: Good morning, Judge.

7 DIRECT EXAMINATION

8 BY MR. PANEK:

9 Q Good morning, Dr. Khan.

10 A Good morning, Mr. Panek.

11 Q Dr. Khan, are you licensed to practice medicine in the
12 State of New York?

13 A Yes, I am.

14 Q Would you please explain to these folks your education
15 and background?

16 A Sure. So my education is one where I went to
17 State University of New York at Binghamton upstate. Started in
18 '80, graduated in '84 with a degree in mathematics.
19 Subsequently went immediately to State University of New York at
20 Stony Brook for a medical, for medical school and got an M.D.
21 degree in 1988, four year school, and went immediately on to
22 study physical medicine and rehabilitation with a residency at
23 Columbia University Presbyterian Hospital up at Columbia uptown
24 campus at 165th Street for four years. The first year of which
25 was an outpost internship at Overlook Hospital in New Jersey

1 which made me eligible for licensure in New York and New Jersey.
2 And I got licensed in New York a few months after that first
3 year in '89.

4 Three years later I finished my residency at Columbia
5 itself and was eligible to sit for part one of my boards in
6 physical medicine and rehabilitation which I passed the written
7 test one year later. After practicing you are allowed to sit
8 for the oral examination or part two of the board certification
9 exam and I did and I passed that as well. At that was my
10 education.

11 I also studied during that time, started to study
12 acupuncture which I completed later on in 1995 and studied other
13 things as well.

14 Q Are you currently board certified, Doctor?

15 A Yes, I am. I am board certified in physical medicine
16 and rehabilitation as well as additionally got board certified
17 by the same medical board that governs all of medical education
18 in ACGME, which governs medical training in the United States in
19 pain management.

20 Q Now, we heard from Dr. Kyriakides who is board
21 certified in physical medicine and rehabilitation so I am going
22 to skip ahead to pain management. We heard the names of two
23 pain management doctors who treated Mr. Decayette, Dr. Moyse and
24 Dr. Ullger, can you explain what pain management is as a field
25 medicine to this jury, please?

1 A Sure. So similar to the board certification process
2 you have to study and learn the concepts of treating patients
3 with those pain disorders. Pain disorders can be anything
4 related to musculoskeletal pain disorders like we're dealing
5 with here in the case where we're here to talk about, but it
6 could be anything related to congenital abnormalities that bring
7 about skeletal abnormalities, neurologic abnormalities, treating
8 people with chronic migraine conditions. It could be treating
9 people who have chronic migraine conditions, have spinal cord
10 injuries where they have damage to their spinal cord including
11 the fibers of their spinal cord which affect the pain fibers.
12 It could be treating people such as burn victims who have pain
13 from the burn chronically. It could be treating people with
14 also sorts of pain conditions and part of that is treating the
15 pain condition itself and trying to minimize the actual pain
16 from the tissue damage.

17 It involves medication. It involves what we call
18 interventional pain procedures. Sometimes there is implantable
19 devices that we put in the human body to try to fool the brain
20 into not getting the pain signals so the brain doesn't pick up
21 even though the body is experiencing the pain in the area where
22 the pain is coming from, but if the brain can't feel it that's
23 good enough.

24 Sometimes it's dealing with a psychological fallout
25 that the patient experiences and the dysfunction, and that's why

1 I think rehab and pain management go well, you also have to
2 rehabilitate the person who is suffering from the pain and
3 doesn't function as well. Educating the patient as to what
4 their disease condition is and how to lessen the deterioration
5 from that.

6 Q And have you practiced in this field as a doctor,
7 meaning have patients who you treated personally for pain
8 management as well as physical medicine and rehabilitation over
9 the course of your career?

10 A Yes, so I have had -- I've held basically only four
11 jobs over thirty-one years of full-time practice and in the last
12 three years of part-time practice. The majority of that time,
13 twenty-three years I was director of spine centers at -- if you
14 are New Yorkers you will remember there used to be a Beth Israel
15 Hospital before Mount Sinai took it over. I was the director of
16 the nonoperative components of the orthopedic spine center
17 there. Then when Mount Sinai took over I was promoted to be a
18 director of the orthopedic department's spine centers
19 nonoperative care there.

20 In that capacity I also ran and taught that fellowship
21 program for physical medicine and rehabilitation doctors to
22 learn pain management techniques, meaning they finished their
23 rehab residency and they wanted to go on to additional training
24 to be able to become specialists in pain management. I did that
25 for about 25 years, I ran that fellowship.

1 Q And Doctor, during the course of your career, fair to
2 say you've treated folks with spinal conditions similar to the
3 one that Mr. Decayette presented to you with; is that correct?

4 A Yes. Not only the spinal conditions, but also even
5 though that was my subspecialty area within pain, certainly have
6 treated thousands of upon thousands of patients with, you know,
7 shoulder conditions and disabilities and pain problems and
8 status post fracture and trauma of the hand and wrist as well.

9 Q Doctor, this particular case you were hired by my law
10 firm to prepare something called a life care plan; is that
11 correct?

12 A Yes, I am a certified life care planner as well.

13 Q Would you explain to these folks what a certified life
14 care planner is, what do they do?

15 A Sure. As a certified life care planner it means you
16 have a certificate by one of three of the organizations in the
17 United States that give us a certificate for this particular
18 area of medical -- I would call it medical and social related
19 service that helps determine the future medical and supportive
20 care costs of an individual whether it's related to an injury
21 and an accident, like it is in this case, or if it's just
22 related to someone's health. For example, I might be asked to
23 help a family determine their loved one's future medical costs
24 when they're planning to -- if it's a parent who has a child
25 with special needs and they're planning their will and they want

1 to know what kind of resources they have to leave in order to
2 care for that person if they weren't there or from it's a, you
3 know, children who have elderly parents who is becoming more and
4 more disabled with dementia what kind of resources are going to
5 be needed. You could kind of look into the future so to speak
6 with your -- not only your own medical knowledge and medical
7 experiences, but what the textbooks say about the various
8 conditions that a person has, what the medical literature in the
9 articles and the scientific studies show will happen to a person
10 in the future, not only based on the disease state, but based on
11 the treatment they've had and have failed or have improved from
12 there are statistics that will show you within a reasonable
13 degree of certainty what is going to happen to a person.

14 So in New York State and New Jersey and several other
15 states, Connecticut for example, the northeast rehab doctors are
16 allowed to submit their life care plans without being certified.
17 So for the first several years when I started to do this work I
18 didn't get certified, but about nine years ago I got
19 certification which requires about 500 hours of study and
20 training. It requires six separate tests and submission of
21 reports that have to be approved to show that you have a certain
22 level of expertise. The sixth test is a global test of the
23 whole mount of study. The five first tests are just sections.

24 Since then I've become -- I've started to teach some
25 courses for life care planning for people who have interest in

1 starting out to learn about it. Life care planning and those
2 courses are qualified for those 600 hours of teaching, and I run
3 annual reviews and updates for life care planners to continue
4 their education.

5 So, what I do in a life care plan is try to create an
6 understanding of what the health care needs, supportive care
7 needs, equipment and overall plan for someone's wellness based
8 on what their condition is.

9 Q What is the Journal of Life Care Planning?

10 A The Journal of Life Care Planning, one of those three
11 qualifying organizations, the one that I was involved with
12 called the ICHCC, International Accreditation Health Care,
13 International Accreditation of Healthcare, I don't remember the
14 what the last "C" stands for, I apologize. Has a journal that
15 comes out quarterly and I was asked to sit on the editorial
16 board of their journal to review articles that were submitted to
17 determine if they were enough, high enough quality to go into
18 the journal. And/or send the article back to the author and say
19 we need this to be tweaked or that to be tweaked. I did that
20 for three years from 2017 to 2020.

21 Q Just to be clear, that's an international publication
22 meaning --

23 A Yes.

24 Q -- global?

25 A Life care planning doesn't exist in all the countries

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1 of the world, but it exists in many countries.

2 Q Doctor, have you ever published any textbooks?

3 A Yes, I've published two textbooks, one was about a five
4 hundred page review on musculoskeletal injuries including pretty
5 much from head to toe. It's called a Handbook and it was
6 designed to educate residents in not necessarily subspecialists
7 or specialists, but for primary care doctors and it was geared
8 towards that. And I published a book on acupuncture early on in
9 my career for acupuncturists.

10 I also just recently, not that recently, but in late
11 '24, came out in May of '24, I published a chapter on spine
12 injury and spinal cord injury for the director of the ICHCC
13 organization, Dr. Willie May, who put a handbook out for life
14 care planners.

15 Q Doctor, just are all life care planners also practicing
16 medical doctors?

17 A No. There is one of the certifying organizations for
18 life care planners is specifically for medical doctors who
19 become life care planners. The other two are open to other
20 types of healthcare professionals, could be nursing, nurse
21 practitioners, it could be physical and occupational therapists.
22 You have to have -- it could be rehab counselors and rehab
23 therapists, you have to have some kind of connection to a
24 general view of healthcare.

25 MR. PANEK: Your Honor, at this time I would offer

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1 Dr. Khan to this Court as an expert in the fields of
2 physical medicine and rehabilitation, pain management,
3 treatment of traumatic injuries such as spine injuries,
4 shoulder injuries and wrist and hand injuries, also an
5 expert in the field of life care planning.

6 THE COURT: Any objection, Mr. Feehan?

7 MR. FEEHAN: May we approach, your Honor?

8 THE COURT: Sure.

9 (A bench conference was held.)

10 THE COURT: Do you want to read back the last
11 question?

12 (The record was read back.)

13 THE COURT: Your objection is overruled and he
14 wanted it to be declared an expert and implantable so
15 declaring him an he expert.

16 MR. PANEK: Thank you, your Honor. May I, your
17 Honor?

18 THE COURT: Yes.

19 Q Doctor, you previously stated you were retained by my
20 law firm to prepare a life care plan for Randy Decayette?

21 A Yes, sir.

22 Q To do that were you compensated for your review of
23 records, for preparation of a report and for your testimony here
24 in court today?

25 A Yes, sir.

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1 Q Doctor, what is your rate of compensation for the
2 preparation of a life care plan?

3 A \$600 per hour.

4 Q Does that extend to your testimony here in court?

5 A Yes, it does.

6 Q Doctor, have you ever previously been retained by my
7 firm to prepare a life care plan?

8 A Yes.

9 Q Have you ever previously testified on behalf of a
10 patient or a patient who required a life care plan who then had
11 a trial in court and you came in to testify and I represented
12 them?

13 A Yes, a couple of years ago.

14 Q Now, Doctor, do you have a copy of your actual report
15 in front of you?

16 A I do, sir.

17 Q And what was the date that you prepared that report?

18 A I evaluated and saw him on April 9, 2026, and I create
19 and write the report on the same day because I usually have the
20 medical records before and have some basic history before.

21 Q And Doctor, you can feel free to refer to your report
22 to refresh your recollection as we go forward.

23 A Thank you.

24 Q Just to be clear you actually met with, examined, spent
25 time with Mr. Decayette in order to prepare this report;

1 correct?

2 A On that same day we spoke of. We spent about an hour
3 and a half together.

4 Q Prior to that were you provided materials regarding his
5 medical treatment and care up until that time?

6 A Several, probably several thousand pages of medical
7 records, yes.

8 Q Something that might look a little about like this?

9 A About that, yes.

10 Q And do you --

11 A It was electronic, but it was thousands of pages, yes.

12 Q Do you review those records in order to -- or how did
13 you do your review of those records help you with your life care
14 plan or with your understanding of the patient?

15 A So, not dissimilar from how you evaluate a patient when
16 you are a treating physician, when you are doing an evaluation
17 for a life care plan you want to know not only the direct
18 information from the patient's mouth and hear their story and
19 their perception of their own illnesses, their own pain,
20 problems, their own concerns, their description of what they've
21 been through, their story, their treatment and how they perceive
22 it you also especially when you believe there is going to be
23 litigation involved you want to be particularly careful in how
24 you review the records, not only from getting the information on
25 what that treatment was, what the diagnoses were, what the

1 diagnostic studies show, you also want to look for items across
2 all of the records over years. Because this case when I saw him
3 this case was already seven years old or so, but it was also, I
4 am sorry, eight years old, but it was also multiple physicians
5 treating sometimes the same body part. So you want to look for
6 consistencies in his reporting to each physician, you want to
7 look for consistencies of each physician documenting similar
8 findings, because that talks to credibility of the complaints,
9 of the story, of the findings. And that tells you a lot of
10 whether or not the patient is going to tell me a similar story
11 and present with similar physical findings over years.

12 Now, that doesn't mean one doctor doesn't write down
13 25 degrees of range of motion as 30, or doesn't write down a
14 strength of what we call a level 4 as a 4 plus or 4 minus,
15 because there is going to be variations from person to person
16 and there's from day to day depending on if a patient is having
17 a good day or a bad day or did something the day before that may
18 have aggravated the pain . So for the most part you want to
19 look for reasonable consistency of reporting on each of his pain
20 issues over eight years.

21 And that is what I found as one of the main things
22 throughout all of the records. There was consistency in how his
23 condition got progressively worse. Despite his going back to
24 work he was very insistent throughout the records of wanting to
25 work and provide for his family and wanting to try to stay as

1 quote normal as possible despite the injuries, but it reached
2 points both in his hand and wrist and later on in his neck where
3 he couldn't. And these are all very similar to the information
4 he gave me when we spend about an hour of talking.

5 Q When you met him did you take complaints from him,
6 meaning did you find out what was going on with him, what he had
7 wrong with him?

8 A Yes. So, if in a case that was as old as his and I do
9 this with my patients, I want to know what bothers him presently
10 versus what the condition was at the time. So, those were what
11 a doctor would call a chief complaint, what hurts you now. Even
12 though I am not the treating physician I wanted to know what was
13 still going on with him.

14 Q What were his chief complaints when he saw you?

15 A Certainly the severe neck pain that he was
16 experiencing, later on you go into the treatment, you get a
17 history about it, chief complaint, but headaches that were
18 radiating from the back of his head and neck, his left shoulder
19 was bothering him when he would lift it over his head when he
20 was working, that was something that got a lot worse because he
21 wasn't working. He reported that bothers him when he would try
22 to use it overhead. Constant and continual right wrist and hand
23 pain that would get worse if he tried to use his dominant hand
24 because his left was his dominant side. Weakness of the hand
25 and fingers. Inability to stand and, I am sorry, inability to

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1 function at home and take care of himself and his family in a
2 full manner. Inability to work after the neck surgery due to
3 increased pain, sense of weakness and also because he hadn't
4 been released to go back to work.

5 We talked a lot about the emotional aspects and the
6 social aspects of the accident and how it affected him as a man
7 and he likes to shy away from that, but we did spend some time
8 talking about that.

9 Q Now, when you meet a patient, well, withdrawn.
10 Do you remember talking to him?

11 A Yes, I do.

12 Q What do you remember about Randy as a patient when you
13 met him?

14 A So I don't necessarily remember every detail about
15 every patient, but I was struck by his resolve as a gentleman
16 and his sense of family man and family obligation. I was struck
17 by after his injuries how important it was for him to get back
18 to work even though his doctors kind of if you read all of the
19 reports were not advising that he go back to work to the work
20 that he was doing which was so very heavy physical labor,
21 construction sites. And I think ultimately he got to a point
22 where the pain got so severe that even he pushing through knew
23 he needed the surgeries, I was struck by that.

24 I was struck by when we did talk about his dedication
25 to family about his need to or his willingness to sacrifice some

1 of his own wellness and physicality to continue to be there as a
2 father, not just the provider, but being the father that he
3 wants to be. It stayed with me.

4 Q And you talked with him about his history of the
5 accident and his career as a 926 carpenter as well; correct?

6 A Yes.

7 MR. FEEHAN: Objection. That's leading.

8 THE COURT: No, I'll allow it.

9 You can answer it.

10 A Yes, he discussed not only his -- the actual injury and
11 the ceiling tiles collapsing upon his head, knocking him down,
12 landing on his hand, starting out at City Med with a couple of
13 visits, getting pain meds, then starting with therapy, and then
14 how over time it progressed from there. Getting to a hand
15 specialist, the hand specialist picking up on the neck pain,
16 sending him to neck specialists, pain management specialists,
17 getting shots before surgery, but ultimately pushing through as
18 much as he was able to handle.

19 Q I want to interrupt you, Doctor, when you reviewed the
20 report from Randy as well as the medical records did the
21 narrative so to speak make sense to you, and if so why?

22 A Make sense in what way?

23 Q Did the medical records, the injuries he had, the
24 treatment he had, how he got to you before then, did it make
25 sense? Was there anything where you said this doesn't make

1 sense, I don't understand this?

2 MR. FEEHAN: Objection.

3 THE COURT: Sustained.

4 Don't answer that question.

5 THE WITNESS: You got it.

6 Q Now, Doctor, based on your review of the reports did
7 you come to conclusions about causation, meaning the cause of
8 his injuries?

9 A Yes, I did.

10 Q Did you come to a conclusion within a reasonable degree
11 of medical certainty as to what the cause of his hand fracture,
12 wrist tear and need for surgery was?

13 A Yes, I did.

14 Q What was the cause of that?

15 A In my mind, in my opinion within a reasonable degree of
16 medical certainty there was no doubt that the wrist injuries,
17 the fracture of the his metacarpal, metacarpal and the TFCC tear
18 was without a doubt related to the direct trauma of landing on
19 his hand.

20 Q What about with respect to his neck injury and
21 treatment?

22 A It's my opinion based upon the ceiling tiles that would
23 have fallen upon him on the side that they did and the force
24 with which it would have made his neck go to the side and the
25 fact that the herniations are mostly towards that same side

1 meaning they would have squirted out to that side are also very
2 consistent with the injury and are likely to be related, likely
3 within a reasonable degree of medical certainty to be related to
4 the injury as it's described.

5 Q We've heard the argument that he didn't complain about
6 his neck at City MD when he fractured the bone in his hand; did
7 you review his records?

8 A Yes, I did.

9 Q Okay. What do you have to say if someone were to
10 hypothetically say to you I don't think he sustained a neck
11 injury because he didn't complain about it in City MD
12 initially?

13 MR. FEEHAN: Objection.

14 THE COURT: Sustained.

15 Q Doctor, do you have an opinion as to why the City MD
16 records might not reflect neck pain initially?

17 MR. FEEHAN: Objection.

18 THE COURT: Sustained.

19 Q Doctor, can you talk about the City MD records in the
20 context of the neck injury as you reviewed the medical records?

21 A Sure. It's my opinion that it's not uncommon for
22 someone during an acute phase trauma when they're going directly
23 to, for example, an urgent care center to complain about, A, the
24 thing that hurts the most, B, when you fracture a hand and you
25 have a swollen hand and you are a carpenter and that's your

1 livelihood at stake, to complain about the thing that hurts the
2 most. Number one.

3 Number two, that is kind of what you would call a
4 diffusing injury, something that just takes your mind off the
5 other things. For example, people who have maybe if you have --
6 if you maybe simultaneously stub your toe and burn your hand,
7 like you are walking toward your oven and you hit your toe on
8 the oven, but that forces you to touch a hot pot. You are not
9 going to recognize your toe until the burn stops burning.

10 I also think it's not uncommon that when someone hurts
11 their neck and has acute herniated disk it can take up to days
12 to weeks until the neuro tissue around that starts to become
13 inflamed and irritated and tightens up the muscles of the neck
14 and in the meanwhile he's dealing on a very frequent basis with
15 going to therapy. He was also given pain medications for
16 treatment of inflammation and pain at City Med and that might
17 have slowed down the onset of the neck pain. There is so many
18 reasons, but it is very common for patients to note their most
19 severe pain and the one that concerns them the most initially
20 until -- until reality sets in over time.

21 Q We heard from Dr. Levine the first time he complained
22 about ongoing radiating pain down his left arm was on
23 September 12th, does that surprise you?

24 A No, it does not.

25 Q Now, Doctor, you also took what we call a social

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1 history from Mr. Decayette before you examined him; is that
2 correct?

3 A Yes, I did.

4 Q And can you talk to us about what the social history
5 is, why it's important in the context of a life care plan and
6 what that social history revealed to you?

7 A Sure. So I think it's important in any medical
8 evaluation to have a little understanding or even more than a
9 little understanding of someone's social life, social
10 involvement is and how that might affect the healing of their
11 injuries, the treatment of their injuries, but in a life care
12 plan it's even more so because when someone has multiple trauma,
13 multiple injuries, they're disabled, they're unable to provide
14 for their family it's important to understand who else that's
15 affecting, how it's affecting their life and lifestyle and how
16 it's affecting their emotions and their mind, what other things
17 besides just daily functions they are not able to do. What
18 other financial strains there might be, whatever household
19 things are going on.

20 Q What did you learn about Mr. Decayette's family?

21 A Well, I learned that he has -- he's married, has a
22 wife, has three kids, one with special needs. He's an endearing
23 loving father who is hellbent on making sure his kids and his
24 family succeeds and wants to do the best he can by them. I
25 learned he feels remorse and guilt that he's not able to do

1 better by them right now.

2 I learned that, you know, he has a house that he needs
3 to maintain, but has difficulty doing so. He's not able to
4 perform the chores or maintenance and repairs of the house that
5 he was able to. I learned that he worries about them much more
6 than he used to.

7 Q Doctor, I want to interrupt, he's married; right?

8 A Yes.

9 Q What did he tell you about his wife; does she work?

10 A She works full-time and tries to do extra work to earn
11 more money at the present time.

12 Q And what did he reflect about his relationship with his
13 wife as a result of his injury because of this accident?

14 A He's much more strained than it used to be both
15 emotionally and physically.

16 Q The words intimacy is appears, what does that mean?

17 A So we do talk about that in a life care plan. Intimacy
18 usually implies the physical component or sexual component of a
19 relationship.

20 Q With respect to balancing his work and home life, what
21 did Mr. Decayette report to you in terms of how bad it got in
22 terms of pain and his ability to spend time with his family?

23 MR. FEEHAN: Objection.

24 THE COURT: Sustained.

25 Q What did Mr. Decayette relate to you with respect to

1 how his injuries and his pain affected his relationship with his
2 family?

3 A Sure. So, when he was working full-time even with the
4 pain and before the neck surgery after he had recovered enough
5 from his wrist surgery he had gone back to work, he would have
6 so much pain at the end of the day that he literally withdrew
7 from his family and just kind of got home, would take a shower,
8 a hot shower to try to calm down, take some over-the-counter
9 medication and kind of withdraw and stay in his room because he
10 was too uncomfortable, too grouchy I believe was the word he
11 used, too irritable to kind of spend any time with them. He
12 didn't feel that he was doing his share of caring for the kids
13 and certainly not his share of helping with his child who has
14 special needs.

15 Q And did you also, Doctor, take a review of his systems,
16 meaning the things that were bothering him or the way his life
17 had been affected?

18 A Yes.

19 Q And can you point out anything pertinent with review of
20 systems that we haven't covered yet?

21 A Yes. He definitely reported again, you know, there is
22 some duplication, the depressed mood, the irritability, large
23 amount of weight gain that he reported and it's documented in
24 the literature, in the medical records. Fifty pound weight gain
25 over a six month to year period of time since being unable to

1 work, being unable to exercise and be fit. Poor sleep, unable
2 to sleep through a night because of tossing and turning and pain
3 if his certain body parts turned a certain way. Dropping things
4 out of his left hand. I think I wrote right hand in the report,
5 but that's a typo. Anxiety attacks and, you know, all sorts of,
6 you know, things that just were not normal to him.

7 Q What did you report with respect to where he fractured
8 than hand, his handwriting with his right hand?

9 A He also did not have legible handwriting anymore.

10 Q After taking there history in review of systems, review
11 of medical records, did you perform a physical examination of
12 Mr. Decayette on that day?

13 A Yes, I did.

14 Q And would you please take the jury through your
15 physical exam of Mr. Decayette?

16 A Sure. So, I like to start by looking at a patient's
17 resting posture when they first stand up or even when they're
18 sitting down and how much -- when they do move what are the
19 movements and then I look at range of motion, comparing it both
20 when it's passive and what we call active. Active is when a
21 patient does it themselves, passive is when a physician will
22 guide them through the range of motion.

23 So his resting posture was very abnormal. And still
24 when he sits he has a very bent forward neck. It's consistent
25 with the x-ray findings that he has -- he has reversal of the

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1 curvature of on his plain x-rays. So normally a person has a
2 backward curvature of their neck which helps them rest the
3 weight of their head over their shoulders so that their muscles
4 aren't constantly firing and spasming to keep the head from
5 falling forward.

6 He has a neck that just at rest sits, approximately,
7 15 degrees forward. So the muscles in the back are constantly
8 firing. He also has his head is also nine centimeters, about
9 four inches forward, because he's -- and you could see that
10 forward of his mid shoulders, that x-ray is consistent. I
11 didn't have that x-ray at the time I examined him, but have
12 subsequently seen it.

13 He also has a limited range of motion of loss of about
14 30 percent of the range of motion in almost every direction in
15 his neck. Do you want me to go through each range or --

16 Q No. Fair to say abnormal findings with respect to
17 range of motion?

18 A Yes, he had pain and spasm.

19 Q Sure, I am sorry.

20 His low back, it says WNL, what does that mean?

21 A Within normal limits, meaning his low back, his posture
22 in his low back was normal, his range of motion was normal.

23 Q So the lower back is fine; right?

24 A Yes.

25 Q I want you to assume that there's been testimony and

1 suggestions that working as a carpenter was deteriorating
2 Mr. Decayette's spine, carpenters lifting, bending, up and down
3 ladders, lifting things, was there any deterioration or anything
4 abnormal about this gentleman's lower back?

5 MR. FEEHAN: Objection.

6 THE COURT: Sustained.

7 Q What did you find with respect to his lower back in the
8 context of degeneration or breakdown of his body?

9 MR. FEEHAN: Objection.

10 THE COURT: Sustained.

11 Q Can you speak about the significance of having a lumbar
12 spine or lower back that's within normal limits in the context
13 of the suggestion that this man's spine is breaking down as a
14 result of being a carpenter?

15 MR. FEEHAN: Objection.

16 THE COURT: Sustained.

17 Q Doctor, can you explain to the jury the significance of
18 your findings with respect to his lumbar spine in the context of
19 how his spine was doing for a 38 year old gentleman?

20 A Sure. It's my opinion that having normal range of
21 motion, no muscle spasm in the lower back implied that his back
22 was in good condition, his low back was in good condition. That
23 it wasn't suffering from any abnormalities and even if there
24 were to be some mild, abnormal findings if you were to take an
25 x-ray it would be of no clinical significance.

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1 Q Healthy spine down here?

2 A Yes.

3 MR. FEEHAN: Objection.

4 THE COURT: Sustained. And strike that answer,
5 strike the question. Strike the answer from your mind.
6 Thank you.

7 THE WITNESS: Sorry.

8 THE COURT: Don't worry about it.

9 Q Doctor, can you please move to the left shoulder
10 portion of your examination.

11 A Certainly.

12 Q Can you please move to the left shoulder portion of
13 your examination.

14 A Sure.

15 Q Yes. Please tell us the significance or what you found
16 with respect to his left shoulder?

17 A Okay. So his left shoulder showed moderate loss of
18 range of motion both with active range, active being him lifting
19 it himself, stopping when it hurt and didn't want to go up, but
20 also when I would passively range it for him he couldn't -- it
21 couldn't go past a certain point and that was for forward
22 flexion which is lifting your arm in front of you. Abduction,
23 lifting your arm to the side. Internal rotation which is
24 lifting, rotating your arm behind your back, and for external
25 rotation where your arm is at your side, your elbow tucked into

1 your side, rotating your arm out, which is not a functional
2 motion, but using it out to the side is. And his was decreased
3 by 30 degrees for the forward, by 30 degrees for the abduction,
4 limited by four vertebrae on the internal and limited by
5 20 degrees for external. So somewhere also about a
6 25% diminishment.

7 He experienced moderate, severe pain with any movement
8 about what we call shoulder height, so lifting it up above his
9 shoulder, his head and against resistance.

10 Q Would that be consistent with what is known as a SLAP
11 tear?

12 A Definitely with a SLAP --

13 MR. FEEHAN: Objection.

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

15 MR. FEEHAN: He gave him the answer in the
16 question.

17 THE COURT: I'll allow it.

18 A Yes, it's consistent with a couple of things in the
19 shoulder; impingement sign for lifting your arm up, but it's
20 consistent with a SLAP tear. SLAP tear the labrum is basically
21 a soft tissue structure that basically sticks to the socket of
22 the bone, if you look at the joint as a ball against a socket,
23 it's not really encompassed in a socket, but there is a labrum
24 or a lip that sits around it. The SLAP tear is when that lip
25 pulls away from the bone that it attaches to. So when you lift

1 your arm up it's going to gap a little bit at that tear and
2 that's what creates the pain. So lifting it passed a certain
3 point is going to tug on it and create pain.

4 Q Now, Doctor, would you please turn to the right wrist
5 portion of your examination and explain to the jury your
6 findings there.

7 A Certainly. So in addition to swelling of the wrist
8 measured as circumference wise at the wrist two centimeters
9 greater than the right side and then his forearm being
10 one centimeter less. It sounds like oh, it doesn't make sense.
11 The forearm is not where you would expect swelling for an
12 injured body part, you have swelling at the part that's injured
13 and that does make sense that it's swollen and increased in size
14 and over time when you have arthritic body parts they grow in
15 size so it makes sense that an injured body part focally, focal
16 point, where the injury is, is increased in size.

17 And then if indeed someone is not using a body part or
18 there is neurologic deficit and loss to the musculature, and we
19 haven't gotten to the neurologic component of his pinched nerves
20 where the nerve studies show there is damage to the cervical C6
21 musculature. That's the forearm muscles. So he has wasting of
22 the forearm muscles on that side. It could be from not using
23 his hand and arm as much and it could be from the nerve
24 condition from the neck. Either way, wasting of the forearm
25 muscles and swelling of the wrist.

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1 He has loss of range of motion of the wrist that's
2 substantial and probably enough to affect function. I do have
3 one typo here, where I say the normal range of motion, flexion
4 is 80 when it's really 60 to 70. His goes to about 45 degrees.
5 His extension goes to about 47 instead of the usual 80. His
6 ulna deviation meaning outward deviation only goes about
7 11 degrees instead of the normal 20 and 13 for inward deviation.

8 He can turn his arm upward only about 80 degrees and
9 over only around 60 degrees instead of being able to turn his
10 forearm fully. Those are in my opinion not just limitations,
11 but they're functional limitations and as a carpenter with your
12 dominant hand they're in my opinion not compatible with being
13 able to safely hold items up in your hand.

14 He also had weakness in his hand, all musculature about
15 the hand and wrist.

16 Q And Doctor, before we turn to the actual life care plan
17 and your diagnoses, just a bit about the neurologic examination
18 you performed and what, if anything, the significance of that
19 was, that exam was?

20 A Sure. The main things I found were the weakness in the
21 muscles of the forearm and the hand and the wrist in the four
22 over five range. To reach four over five from five over five
23 it's estimated that you have to lose about 50% of your strength.
24 It sounds like oh, there is five grades of strength. If there
25 is five grades of strength each one should only be 20%, to go

Stuart Brian Kahn, M.D. - Plaintiff - Direct

1 from four to five it's actually estimated it's at 50% loss.

2 Q Were your findings significant for a 37 year old man?

3 A Yes, indeed. Very significant.

4 Q And based on your examination, the time you spent with
5 Randy learning about his condition and the medical records you
6 received did you prepare a life care plan on his behalf to
7 address his problems going into the future?

8 A Yes, I did.

9 Q And Doctor, do you have a copy of your actual life care
10 plan up there n front of you?

11 A I do.

12 Q We have it in marked for identification as Plaintiff's
13 Exhibit 23. I am going to put it up on the screen for you,
14 Doctor.

15 THE COURT: I assume you've seen it, Mr. Feehan?

16 MR. FEEHAN: It's marked for identification, okay.

17 MR. PANEK: T was provided to Mr. Feehan.

18 THE COURT: We don't need. He saw it.

19 Q Doctor, what's a life care plan, what are we looking
20 at, what is the result of this report?

21 A So, a life care plan as I described earlier is a plan
22 of action or plan of potential action for all future medical
23 costs, therapeutic interventions, durable medical equipment,
24 future surgeries that are anticipated, future household support,
25 needs, based on someone's inability to perform certain tasks at

1 home and take care of their household, transportation needs. As
2 it pertains to the condition or illness you're asked to
3 evaluate.

4 It has nothing -- it has nothing to do with the aging
5 process alone. It does have to do with how a condition that you
6 are asked to evaluate will deteriorate with the aging process.
7 So, nothing listed will be there only because he's aging. None
8 of the services listed are there because someone is aging.
9 Because maybe everyone by the time they reach mid eighties or
10 late eighties might need some home care and home assistance.
11 What is listed here is not because of that. Maybe everyone when
12 they reach their eighties is going to need to go to the primary
13 doctor more than once a year. This is not listed there because
14 of that, these are just some examples.

15 Also, what you do is we, meaning life care planners,
16 but my methodology is finding out costs in a methodical way
17 using multiple sources for medical doctors and local visits.
18 You use the prevailing local by zip code private pay rates based
19 on multiple sources being -- one being Fair Health as an
20 organization, one being Context 4, one being Sumhealth, one
21 being just my intrinsic knowledge of what out of network doctors
22 tend to charge in the New York metropolitan area having been
23 seeing patients out of network for several years who don't have
24 insurance and referring to doctors who do not take insurance for
25 several years to decades.

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1 For durable medical equipment using multiple online
2 catalogs to find the least expensive item, the middle priced
3 item and the most expensive of the same item and averaging the
4 three costs for any kind of home care using Empire Blue Cross
5 Blue Shield and Genworth National Data Bank by zip code. So
6 most, if not all of the data, is relevant by multiple sources.

7 Q Now, we have footnotes, I note there is also at the end
8 of the plan --

9 A The end of the plan there is about 90 references. I
10 don't necessarily use every reference in every report, but I use
11 many of those references in each report.

12 Q And just referring to the references here your
13 references in appendix A are listed throughout, I'll attempt to
14 fix this. And how do these references, where do you get costs
15 from when you looked at your life care plan. You explained it a
16 bit, you have all of these footnotes, you have your knowledge as
17 well, but looking at the chart where are the costs that you find
18 actually coming from?

19 A So, like I said, so we could -- do you want me to state
20 each one as I go through it or in general?

21 Q Just generally what is the methodology?

22 A So for example, for physician costs you use a
23 combination of a company called Context 4 and Fair Health, they
24 list private pay data. Fair Health lists what out of network
25 insurance payments pay physicians for what was called reasonable

1 and customary, and Context 4 a company that lists what private
2 physicians who don't accept insurance charge, which tends to be
3 dramatically higher. So, usually the fee would be somewhere in
4 between.

5 I also use my knowledge base of being as I said in
6 practice for decades in Manhattan, working with a lot of doctors
7 who are out of network and what their average fee is.

8 Q Now, Doctor, can you take us through, we're looking at
9 table one, special medical care and evaluations, and rather than
10 going through line by line can you summarize the costs of the
11 care as you go through as best as possible to encapsulate the
12 treatment for Mr. Decayette's future?

13 A Yes, instead of going line by line we'll go by
14 category. So table one is the treatments, special medical care
15 and evaluations applies all of the treatment that Mr. Decayette
16 would require for the remainder of his life by medical doctors
17 or osteopath doctors which is similar to medical doctors. Not
18 including the surgeries that he's going to require in the
19 future.

20 So, a rehab doctor, a doctor such as myself or
21 Dr. Kyriakides who's presently still treating with would
22 reevaluate him upon starting his life care plan four times in
23 the first year, which is not dissimilar to the rate he's seeing
24 him now, and then he would decrease to an average of twice a
25 year for the remainder of his life. The cost of that being,

1 approximately, \$10,850 to \$20,800 over a 40 year life span.

2 Pain management, just the physician fees, not including
3 interventional procedures, also at a rate of four times during
4 the first year and then twice a year for life, which would go up
5 dramatically during times postoperatively when he has monthly
6 prescriptions for a strong medications, but on average it would
7 probably be closer to two per year.

8 Q Doctor, if I may approach, I am going to provide you so
9 that you can actually read from it, Plaintiff's 23.

10 THE COURT: You can give it to Officer Sanchez.

11 MR. PANEK: Officer Sanchez.

12 Q I am going to provide you with Plaintiff's 23 for ID
13 for completeness on the record you can actually read as its
14 being published to the jury.

15 A Okay. You want me to refer to this one, not to the
16 copy I have?

17 Q Correct.

18 THE COURT: Are the same?

19 MR. PANEK: Yes.

20 A Okay.

21 MR. PANEK: Just for the record the Doctor is
22 reading from a document marked for identification as
23 Plaintiff's 23 and is being published to the jury.

24 A So the cost of that physician, it's a little bit lower
25 than the rehab physician because of the ongoing frequency he

1 might have to have it. And when you see a doctor more
2 frequently sometimes the level of the visit is a little lower
3 and less comprehensive. For example, a medication renewal would
4 probably be a level three, a comprehensive pain visit with a
5 doctor would be a level four, closer to \$250 to \$275 range and
6 that's why there is a range in there where there is not the
7 higher block.

8 Q Please continue with table one, Doctor.

9 A Sure. So continuing with pain management procedures,
10 things like epidural injections or things like medial branch
11 blocks, which are nerve blocks in the neck, nerve blocks that
12 become more permanent are called radiofrequency ablations in the
13 neck, these are some of the treatments he's already had that
14 have been successful to give him temporary and partial relief,
15 would be ongoing over his lifetime.

16 Even if he has the expected future cervical surgery
17 would come to, approximately, somewhere between \$140 and I am
18 doing some arithmetic in my head, I apologize.

19 THE COURT: Take your time. You don't have to
20 comment.

21 A And \$220 ish thousand dollars over his lifetime.

22 Q I want to point out here the term cervical dorsal spine
23 simulator trial?

24 A Yes.

25 Q Can you explain to the jury as a pain management doctor

1 what that is and why you are recommending it for Mr. Decayette?

2 A Sure. So, for -- in his case it could be particularly
3 more beneficial than many other types of patients because not
4 only does he have the neck pain and the nerve pain going down
5 his left arm, he has pain from the trauma to his left hand with
6 pain in the wrist and hand and he has left shoulder pain.

7 So, what a dorsal column stimulator does, it's a device
8 that a pain doctor, a pain management doctor would temporarily
9 implants into the spine next to the spinal cord, so through a
10 needle just like an injection, instead of placing liquid you
11 pass a wire like a pacemaker into the spinal canal. You leave
12 it, you take the needle out and you put sterile tape and you
13 would leave it in the patient's body and the device stays in
14 for about five days while the patient goes home and functions
15 and does all of their activities and they report back to the
16 pain doctor as to whether or not they had relief of pain during
17 these five days. If the pain relief was at least 50% then a
18 permanent device can be implanted by a spine surgeon.

19 It's not intended to prevent future deterioration of
20 the bones and disks, but it's just intended to block the pain
21 and create comfort. It might cut down on some of the
22 medications. It might allow them to function better, and it's
23 listed here as the trial. Later on in the surgical charts
24 you'll see that I've listed potential costs which are not
25 included in the totals because we don't know if it would be

1 successful or not.

2 Q Doctor, the sum total for special medical care and
3 evaluation, well move through the chart, can you explain more of
4 what we see here in terms of administration of visco
5 supplementation, cortisone therapy --

6 MR. FEEHAN: I am going to object anyway.

7 THE COURT: Sustained.

8 Q Doctor, can you continue to explain what we're seeing
9 in chart one here?

10 A Yes.

11 Q Doctor, looking at, we're now on page five, I believe,
12 would you please explain what we're looking at, what the
13 modalities are and the costs, please?

14 A Certainly. Because of his ongoing joint pain in the
15 shoulder and the wrist it's estimated based on my experience of
16 31 years, based on recommendations in his records and treatment
17 he's had, based on the medical textbooks and literature, that he
18 will require various injections in his wrist and shoulder over
19 time. Because you cannot have too many steroid shots because it
20 deteriorates the tissue, you have to move on what's called PRP,
21 visco supplementation, V-I-S-C-O, S-U-P-P-L-E-M-E-N-T-A-T-I-O-N,
22 or what is called EMAC injections which he's actually waiting
23 for prior authorization from worker's comp for a BMAC injection
24 right now in his wrist.

25 Q And moving on down the list, I see here psychiatric

1 evaluation, psychiatric follow-up. Can you explain the basis
2 for including that in the life care plan for this gentleman?

3 A Yes, because of the things he discussed with me about
4 mood change, anxiety over his future, irritability at home,
5 feelings of not being able to provide and feeling depressed and
6 sad over that, I think it's important to address that as part of
7 restoring him to the person he could be and getting him as close
8 to the person he was prior to this injury.

9 Q If someone were to say to you hypothetically well, it's
10 been eight years, he hasn't had psychiatric evaluation yet, or
11 he hasn't had an injection of PRP to his wrist yet, why is it in
12 your life care plan?

13 A Well, several reasons. One, he's had other injections
14 into his wrist. He has had other injections in other body parts
15 as well. They have held temporarily, and again, we know we're
16 not going to cure his condition. This is meant to help not only
17 during the times of exacerbations of pain, but also to prevent
18 deterioration. So, it's kind of a given that this is a standard
19 of care when someone has chronic pain and also when we know
20 someone is going to have exacerbation at a certain rate. And if
21 he hasn't had it before it's also partly because the system with
22 which guides his care now is different than the system that's
23 going to guide his care in the future with a plan like this.

24 Q In terms of for table one what is the total
25 projected -- withdrawn.

1 I see here you have total projected costs and then the
2 age and it goes from 38.8 to 79.2, what is the significance of
3 those numbers, Doctor?

4 A The life expectancy, well, that's present age to life
5 expectancy, and that's about 40 plus years, 40.4 years.

6 Q What do you expect the lifetime costs for table one
7 will be for Mr. Decayette?

8 A \$332,352 to \$447,536.

9 Q Just looking above you also have up there modalities
10 like x-rays, MRI's, et cetera?

11 A Yes.

12 Q Why is that in your life care plan?

13 A Well, based not only on the rate at which he's utilized
14 diagnostic studies during these eight years, but based on
15 medical literature and medical scientific knowledge the rate at
16 which he's expected to have exacerbations you are going to need
17 diagnostic studies to help confirm or rule out what those
18 additional exacerbations are caused by.

19 He's going to need to be followed by a spine surgeon,
20 to have an understanding of how the adjacent levels to his fused
21 level are deteriorating, which they do deteriorate at a
22 cumulative level every year, and to know how severe the pressure
23 on the nerve tissue and the spinal cord get and to determine
24 when he's going to need his next probably two surgeries in his
25 lifetime in his neck.

1 Q We heard from Dr. Simela that he's currently pending a
2 new MRI in his neck, is that encapsulated in your chart, in your
3 life care plan?

4 A It would be, yes.

5 Q And again, when the process ends at the end of this
6 case that would convert to your life care plan process as
7 opposed to the prior authorization process Mr. Decayette has
8 been in previously; fair?

9 MR. FEEHAN: Objection.

10 THE COURT: Sustained. Strike that question.
11 Strike that answer. Disregard that from your mind.

12 Q Doctor, please turn to table two. Specialized
13 therapeutic evaluations and therapeutic modalities.

14 A I am there.

15 Q Would you please explain to the jury what this portion
16 of your life care plan encompasses and highlight for us the
17 pertinent portions of the life care plan as they relate to
18 Mr. Decayette's future?

19 A Certainly. So therapeutic specialized therapeutic
20 evaluations and modalities include all of the services and
21 treatments that a licensed healthcare professionals other than
22 medical doctors and licensed para healthcare professionals would
23 provide.

24 Q Doctor, please take us through the chart, table two,
25 and what you think Mr. Decayette will need over the course of

1 his life and why?

2 A Sure. So, treatment of physical therapy at the present
3 time because he hasn't had physical therapy in awhile. Courses
4 of short term physical therapy due to what we've talked about,
5 the aggravations and exacerbations that he's expected to
6 experience over his lifetime. Treatment, these short courses
7 can be used after he has the upcoming expected neck surgeries in
8 his lifetime, after he has these injections which one is already
9 expected and others in the future. You have to rest after you
10 have some of these injections and have no movement for awhile,
11 but afterwards you have to rehabilitate.

12 Occupational therapy, this is the only place in the
13 report where I have duplication of services. I have two types
14 of occupational therapy, one is for hand function and hand
15 rehabilitation, and one is for home ergonomics and home
16 activities of daily living to try to help him improve his
17 ability to perform some of the tasks he needs to do at home.
18 And short courses of those during his lifetime as well.

19 Also, what we call a complimentary integrative pain
20 program utilizing things like acupuncture, biofeedback which is
21 basically using the relaxation body response and using
22 mindfulness and using meditation to try to diminish the pain and
23 improvement. That will also have impact on his mood and it's
24 not all of these services, it's a trial of a few appointments
25 with each one of these types of therapists to see if which one

1 of these would help him the most and then continuing long term
2 with just maintenance of one of these types of therapies that
3 help him the most. This is very commonly done for people with
4 chronic pain condition.

5 Other things on there are restoring him in the best way
6 one can when someone has disabilities in their spine and their
7 dominant arm working with an exertion trainer after the physical
8 therapy is done.

9 So this has a lot of benefits, one of the benefits is
10 you are not doing ongoing constant physical therapy every week
11 for the rest of someone's life at the cost of \$175 to \$200 a
12 session. And you have a cost of a personal trainer that at his
13 local YMCA and we Y's because they tend to be the least
14 expensive gym in people's areas and they almost always have
15 indoor in-ground pools for aquatherapy. His sessions would be
16 about \$48 every other week for the remainder of his life.

17 Other services here would include a vocational
18 therapist and a vocational evaluation because it's highly
19 unlikely in my opinion that he's going to have A, the ability or
20 B, the medical clearance to ever go back to being a carpenter.

21 Q Doctor, I want to pause you there and talk a bit about
22 your evaluation of Mr. Decayette and his career. Do you have an
23 opinion within a reasonable degree of medical certainty as to
24 whether or not this gentleman can ever return to carpentry?

25 A I do have an opinion and I don't think it would be safe

1 or safe from a perspective of him actually being able to hold
2 things safely in his left hand, I also think it will deteriorate
3 his condition at a much more rapid rate than would be wise, and
4 therefore, I don't think he would ever get clearance from his
5 spine surgeon or wrist surgeon.

6 Q Doctor, within a reasonable degree of medical certainty
7 do you think Mr. Decayette is capable of returning to work in
8 some capacity at some point in his life?

9 A I do.

10 Q Could you explain to the jury your opinion, what you
11 think is probable for him or possible for him based on your
12 evaluation of the medical records, based on your knowledge as a
13 life care planner and based on your time spent with Randy
14 himself?

15 A Sure. I think Randy is unique, again I spent an hour
16 and a half with him, it doesn't sound like a lot for doctors in
17 rehab and doctors in general who basically change people's whole
18 life course and life decisions in less time than that, that's a
19 reasonable amount of time to get a general gestalt or general
20 feeling. I think Randy is bright, empathetic, caring, eager to
21 work. I think he can probably work half time in some type of
22 job capacity that is not physical. And such as a youth
23 counselor, or training to become a certified alcohol and
24 addiction counselor. Working with, you know, religious
25 organizations. I know he's involved in his church. Things of

1 that nature. I think he would be uniquely suited due to his
2 level of humanity and empathy. I think he could probably do
3 some kind of, you know, reception work at a building or, you
4 know, a front desk type work part-time. Not because of sitting,
5 because I don't think it's his back, but staring at a computer
6 all day would aggravate and using your hand at a computer more
7 than a few hours a day in my opinion aggravate and irritate the
8 condition.

9 MR. FEEHAN: Judge, I am going to object to the
10 answer. Can we have a sidebar, please.

11 THE COURT: Sure.

12 (A bench conference was held.)

13 THE COURT: Okay, next question.

14 Q Doctor, in terms of the total projected cost for chart
15 two what were the sum totals over the course of Mr. Decayette's
16 lifetime that you came to?

17 A Sure. Over the course of the next four years, here's
18 the total projected \$235,364 to \$274,722.

19 Q Doctor, just to be clear for the record, these sum
20 totals, are they all within a reasonable degree of medical
21 certainty as a certified life care planner?

22 A Yes. Everything in my plan is medically needed and
23 necessary for the purposes of this life care plan as needed and
24 necessary to help bring about the best outcome for
25 Mr. Decayette.

1 Q We heard some testimony and some questions about Peyton
2 Manning, a famous football player and the medical care that he
3 received following an injury he had, is this a life care plan
4 that you would give to like a Peyton Manning, for example?

5 THE COURT: Objection sustained. I am objecting
6 to that. Sustained.

7 Q Who is this for and what part of the modalities in this
8 life care plan, we heard about \$100,000,000 medical treatment,
9 et cetera, what do you take into account when you are delivering
10 a life care plan for Mr. Decayette in this context and this
11 setting?

12 MR. FEEHAN: Objecting to the middle portion of
13 that.

14 THE COURT: Yes. I object to the form of the
15 question. Sustained.

16 Q What do you take into account when you getting these
17 life care plan, getting these numbers and putting everything
18 together, Doctor?

19 A Well, I take into account so many things. I take into
20 account first and foremost what are the injuries that the person
21 has, which what are the tissue injuries would be what we call
22 impairments, the actual injuries to the body. What have those
23 impairments led to, what are the disabilities those impairments
24 have led to, what treatments has he had for those impairments,
25 have they been successful, and has he had more or fewer

1 disabilities because of those treatments. Do those treatments
2 themselves have future known complications that you have to
3 address in the life care plan. What are his handicaps and
4 handicaps are similar to disabilities except they're specific to
5 a person's given situation and their individual identity.

6 So, someone with a left hand injury if they weren't
7 left hand dominant and if they did a job that didn't require any
8 hand use wouldn't even be out of work, but he has a handicap
9 specifically because he's a carpenter and he has a left dominant
10 hand injury, so that has to be taken into consideration.

11 Q Doctor, what I am asking is this, you have him doing
12 aquatherapy at the YMCA, correct? I am pretty sure Equinox in
13 Manhattan also has pools, why are you choosing the YMCA?

14 A It's the -- A, it's in his neighborhood. B, it's the
15 least expensive gym that has a pool accessible to him.

16 Q And why would Mr. Decayette benefit from aquatherapy?

17 A Okay, several reasons. You get exercise for your upper
18 extremities through your hand and your shoulder. If he is able
19 to go under water once he learns how to do that in a safe
20 aquatherapy environment, he could get strengthening for his neck
21 and neck muscles and try to restore function of his neck, work
22 on his posture, if he does certain strokes in the water, certain
23 exercises in the water.

24 Q Turning to table three, can you tell us what this chart
25 is about, Doctor, and what your conclusions are?

1 A Certainly. So these are anticipated and expected
2 surgical procedures and/or complications based on previous
3 treatments in his lifetime. It is anticipated that he's going
4 to require a shoulder surgery in the future to repair the SLAP
5 tear because it's now going on for over eight years and even
6 though the pain is manageable when he doesn't use his arm it is
7 moderately painful and disrupts function when he uses his arm
8 overhead.

9 SLAP tear, the labrum is a tissue that just does not
10 heal on its own, it doesn't scar over, it doesn't reconnect, it
11 doesn't have a blood supply of its own, so tissues without
12 bloods supply just don't heal and its been going on for a long
13 time and its my opinion at some point he will need a surgery to
14 repair that.

15 Q And what is the anticipated cost of that surgery?

16 A Including OR fees, anesthesia, surgery, postop, rehab,
17 \$56,979 to \$64,554.

18 Q The next category here is cervical spine surgery, now
19 this jury heard from Dr. Simela, he believed within a reasonable
20 degree of medical certainty Randy will have to undergo the next
21 spine procedure at the level above within a time interval of
22 two years. I heard you say earlier in your testimony he could
23 have two spine surgeries in the future, can you explain what you
24 are talking about?

25 MR. FEEHAN: Objection.

1 THE COURT: Sustained.

2 Q Doctor --

3 THE COURT: Next question.

4 Q What was the basis of your testimony earlier that Randy
5 Decayette could be looking at two spine surgeries in the future?

6 A Certainly I could explain that easily. So, because
7 Mr. Decayette has substantial pain already in his neck radiating
8 to the left arm and shoulder, he has positive neurologic
9 findings on his exam consistent with those coming from a pinched
10 nerve of the neck. The last MRI done already showed an abnormal
11 finding in the disc above at cervical 6-7. He already had an
12 EMG test or a nerve test that showed ongoing nerve damage to the
13 C6 and C7 level. So it would not surprise me that he needs a
14 neck surgery sooner than later.

15 If he has a neck surgery before the next 20 years then
16 he's more likely than not statistically speaking to require a
17 third one in his lifetime. So the reason I can say that with
18 great certainty is it's very commonly known that when you have a
19 cervical fusion that you have a 2% to 3% chance every year
20 cumulatively, meaning it adds up every year of having a
21 breakdown that requires a surgical repair at the level above or
22 below that fusion for the rest of your life. So if you just do
23 simple arithmetic and he's going to have one in the next several
24 years, let's say in the next five years, not the next two years,
25 it still gives him 35 years times 2, 70% risk, 35 times 3 would

1 be 105% risk of requiring a surgery in his lifetime in the neck.
2 And medically, reasonable degree of medical certainty is
3 anything at 51% and up.

4 Q And Doctor, what allocation did you make for cervical
5 spine surgery over the course of Mr. Decayette's life?

6 A Again, including hospitalization and/or outpatient, but
7 more cervical spine surgery, that's adjacent level would
8 probably be at least one night in the hospital, anesthesia and
9 surgical fees would be \$95,000 to \$200,000.

10 Q Looking at the next page, we heard about a cervical
11 spine stimulator, but here we see the word "potential" next to
12 the cost, why is potential there and how does it play into the
13 life care plan?

14 A I stated earlier, and I don't want to waste your time,
15 we don't know if that will help when he has the trial which I do
16 think will be indicated and is included, so I can't include a
17 cost if I don't know the outcome and whether or not he'll ever
18 get it, so that's not included in the total.

19 Q So these are potential costs because they depend on a
20 trial that you don't know the outcome of?

21 A Correct, sir.

22 Q Are those sums reflected in your total projected costs?

23 A Definitely not.

24 Q And what is your total projected cost for future
25 surgical intervention for Mr. Decayette?

Stuart Brian Kahn, M.D. - Plaintiff - Direct

1 A \$151,979 to \$264,554.

2 Q Doctor, would you turn to the next chart which is
3 durable medical equipment, adapted assistive aids, ambulation
4 devices and pharmaceuticals.

5 A Certainly. And I do not think he will need ambulation
6 devices, but all the other things he will need. This is
7 everything from neck brace after a surgery, to a resting wrist
8 splint at night, to a more advanced device after he has an
9 injection, if he gets the BMAC injection in his wrist in the
10 near future or if he gets it down the road, to reachers and
11 grabbers to be able to reach things on higher shelves. Simple
12 household equipment that makes his life a little more easy, to
13 having an ergonomic tabletop, you know, a desktop that tilts,
14 help saves his neck from bending and twisting in abnormal ways,
15 to having modified kitchen tools, things of that nature.

16 It allows for an electrified or motorized bed to help
17 find a comfortable position at night to help him restore sleep.

18 Q I want to point out you also have here for
19 pharmaceuticals Wegovy?

20 A Correct.

21 Q What is that and why is that in your life care plan?

22 A Two year course of Wegovy because of the weight gain
23 that is associated with the accident and due to complications of
24 the accident. It's a two year course because that's usually
25 what is recommended for people who don't have greater -- so he

1 has greater than 15% weight gain of his original body weight and
2 he's already started to lose some weight on his own, so this
3 would assist to get him back to his pre-accident body weight.
4 And then maintenance on chart two there was a dietician twice a
5 year to help with lifelong maintenance which is much less
6 expensive than the maintenance Wegovy.

7 Q What's the total projected cost of table four, Doctor?

8 A \$32,587 to \$49,656.

9 Q Doctor, can you turn to be table five and explain what
10 we're looking at here and the significance of this chart?

11 A Sure. So table five is all of the supportive care
12 services that he would require from other human beings to help
13 restore the level of activities and level of support that he was
14 able to provide for his household, his family. Certainly not
15 back to the level that he was doing, but able to help him do
16 some of the things that he can't do now and be able to do a
17 little bit more around the household.

18 Q Why would someone who is 38 require a home health aid
19 for the rest of their life for four hours a week?

20 A So, he cannot do some of the simple tasks, such as,
21 simple things such as doing grocery shopping easily, cannot chop
22 food and cannot prepare food and meals and he was doing that and
23 as the -- presently as the parent who is staying home and
24 providing at least supervision and responsibility for the
25 household he is not able to do a lot of that. His wife has

1 taken up the role of working more hours and providing in that
2 regard and this household aid would basically help with things
3 like shopping and preparing certain items, in putting them away
4 in Tupperware and things like that. She would help him arrange
5 some of the kids' clothes after they're washed and laundered,
6 especially for his special need kid than the 16 year old, I
7 don't think the 16 year old would need additional assistance.
8 Just to make it more organized more palatable so he's able to
9 function better in the household after he has procedures and
10 surgeries or on bad days when he can't really use his arm, at
11 all. He will need some help. Four hours a day, sorry,
12 four hours a week does not go very far. It's a minimum amount
13 to do really organizational tasks.

14 Q So do you increase it, for example, as he gets older or
15 do you increase it when you are anticipate he's going to have
16 surgery; what does this look like?

17 MR. FEEHAN: Objection.

18 THE COURT: Sustained.

19 Q What does the four hours reflect over the course of his
20 lifetime?

21 A It reflects an understanding that even after another
22 surgery, even with treatment he's going to go through periods
23 that are a little better and a little worse and that there will
24 be times where he's -- I think he's always going to need the
25 four hours, I think there will be times when he needs more than

1 four hours, since those times are probably short periods it's
2 hard to allot for that.

3 Q Doctor, what is the sum total of chart five?

4 A Well, chart five becomes the most expensive because
5 it's human, you know, it's human workers who have to get paid at
6 the going rate. So it comes over his entire lifetime. It comes
7 to \$522,785 to \$570,700.

8 Q And Doctor, turning to chart six, which is the final
9 chart, can you explain what we're looking at here and what its
10 significance is?

11 A I certainly can. So, covering the transportation costs
12 only to appointments that this plan generates his expected
13 medical appointments, his expected therapy appointments, would
14 not be costs or expenses that he would have to have, should he
15 not have had this accident.

16 Q I want to interrupt you. So for example, the gas that
17 you have to put into the car to get to a therapy appointment is
18 not gas that he would have to pay for if he was never hurt;
19 correct?

20 MR. FEEHAN: Objection.

21 THE COURT: Sustained.

22 Q Doctor, why is it appropriate to anticipate the cost of
23 travel associated with medical care and reimbursements for
24 Mr. Decayette for those?

25 MR. FEEHAN: Objection.

1 THE COURT: Sustained.

2 Q Doctor, why do you have travel costs in your plan
3 associated with the care that Mr. Decayette requires?

4 A It's my opinion and it is one of the things we're
5 taught when we do life care, when we're learning how to prepare
6 life care plans that these are costs that a person wouldn't have
7 should they not have become injured and these costs are real and
8 can add up; such as, gasoline, wear and tear on cars, parking
9 expenses. Public transportation is now \$3.00 each way or
10 greater than \$3.00 each way, should you use it. If you are not
11 able to access public transportation at the time it is taxis
12 roundtrip on days when you are having increased pain or
13 postoperatively when you are not able to access it. Or he does
14 live in New York, so it is available but for my patients where
15 it's not available, things like that.

16 Q What is the total amount for future transportation
17 costs related to medical therapeutic and community based
18 services?

19 A Sure. I used a ratio of 70% that he would drive
20 himself to these appointments using street parking, so no
21 parking costs, and 30% using car service and ride share and we
22 used distances as low as 1.2 miles from his house all the way to
23 8 miles to his house. And the total cost over 40 years comes to
24 \$17,000 all the way to \$75,000. The big range being because
25 some of the rides round trip, that are round trip that are

1 8 miles in a ride share could be as high as I think it was \$40.

2 Q Doctor, putting it together can you please tell these
3 folks in your opinion within a reasonable degree of medical
4 certainty as the certified life care planner what you believe
5 the total projected cost of medical care over the course of
6 Mr. Decayette's life will be?

7 A Yes, it's my opinion to a reasonable degree of medical
8 certainty that the life care plan needs of Mr. Randy Decayette
9 come to a total of \$1,282,134 to \$1,682,425 over the next
10 40 years.

11 Q Doctor, do you have an opinion within a reasonable
12 degree of medical certainty as to whether or not Mr. Decayette's
13 conditions are progressive, meaning they'll get worse over the
14 course of his life?

15 A I do have an opinion and I do believe they will over
16 time.

17 Q And Doctor, do you have an opinion within a reasonable
18 degree of medical certainty as to whether or not the treatment
19 that Mr. Decayette has received up to date has been reasonable
20 and medically necessary as a result of his July 12, 2018
21 accident?

22 A I definitely do think he's had reasonably good
23 treatment and its been reasonable and appropriate as a result of
24 his accident.

25 MR. PANEK: No further questions, your Honor.

Stuart Brian Kahn, M.D. - Plaintiff - Cross

1 Thank you.

2 THE COURT: How you guys doing? You need a break?
3 We're going to come back at 12:00. Thank you.

4 COURT OFFICER: All rise. Jury exiting.
5 (Jury exiting.)

6 THE COURT: You are instructed not to discuss the
7 case with anyone.

8 (A recess was taken.)

9 COURT OFFICER: All rise. Jury entering.
10 (Jury entering.)

11 THE COURT: Please be seated.

12 Mr. Feehan, you may continue.

13 MR. FEEHAN: Thank you, your Honor.

14 CROSS EXAMINATION

15 BY MR. FEEHAN:

16 Q Doctor, good afternoon.

17 A Good afternoon, sir.

18 Q My name is Dave Feehan. I represent the defendants in
19 this case.

20 A Nice to meet you, Mr. Feehan.

21 Q Doctor, just a couple of questions with respect to your
22 work. When you do prepare a life care plan you do that almost
23 exclusively for plaintiffs and plaintiff's counsel?

24 A The majority of my life care plan work is for
25 plaintiffs, yes.

Stuart Brian Kahn, M.D. - Plaintiff - Cross

1 Q You get compensation for drafting the plan; correct?

2 A Yes. Yes, I do.

3 Q Reviewing the medicals?

4 A Yes, I do.

5 Q And the interview?

6 A Yes.

7 Q And you are testifying here today, how often do you
8 testify in court?

9 A On average, three times per year.

10 Q With respect to your retention in this case, you
11 weren't approached by any of Mr. Decayette's treating
12 physicians; were you?

13 A No I was not.

14 Q Dr. Levine?

15 A No.

16 Q Dr. Kyriakides?

17 A No.

18 Q Or Dr. Simela; correct?

19 A No.

20 Q Your examination was one time, one examination,
21 April 9th, just a couple of months ago; right?

22 A Correct.

23 Q That's the only time you met Mr. Decayette; correct?

24 A Yes, sir.

25 Q With respect to a life care plan, it's more of a

1 projection of future care rather than a diagnostic or a medical
2 record, would you agree it's a projection of what you are
3 proposing what should be the medical care in the future?

4 A Yes, sir.

5 Q And it might be needed, it might not be needed;
6 correct?

7 A I believe and based on not just projection of what
8 might or might not be needed, that it's based on a lot of
9 experience, it's based on what is recommended or not
10 recommended, but it's based on what is likely to occur with his
11 conditions, with the treatments he's had, in the medical
12 literature, in medical texts and patients previously treated
13 like him. And then treatments that those patients would need to
14 both maintain the best health possible, prevent duration and
15 treatment of the complications of the conditions over time.

16 Q And it's not a record of the actual care that
17 Mr. Decayette had; correct?

18 A Well, in it contains a synopsis of the records that --
19 of the treatments he already --

20 Q Your life care plan, Doctor, I am asking you your life
21 care plan doesn't discuss the care that he had; is that correct?
22 Yes or no?

23 A Again, it's in there and it does discuss the treatment
24 that he already had and his history discusses the treatment that
25 he's already had.

1 Q I believe the life care plan, what was what shown up on
2 the screen, the tables and projections --

3 A To me the whole thing is the life care plan, the tables
4 and projections do not discuss --

5 Q The report, I believe the report, the plan was tables,
6 so let me back up now. Your plan of your six tables of
7 projected future life care plan, that's not a history of the
8 care that Mr. Decayette had; yes or no?

9 A Some of it pertains to previous history and treatments
10 he's already had, but that itself is not, no.

11 Q Now, you have likely for some and potential for others;
12 correct?

13 A Yes.

14 Q And the potential you are saying that you did not
15 include that in the sum of money; correct?

16 A Correct, sir.

17 Q And why include the potentials in there, Doctor?

18 A Well, because there are things that are more likely to
19 occur for him than any other layperson who doesn't have his
20 condition or situation, but it -- so it rises greatly above
21 statistics, the statistical likelihood for someone who is not
22 injured in his condition, but it doesn't reach the likelihood of
23 51% or a statistical likelihood where I could state that it's
24 reasonable to a reasonable degree of medical certainty likely to
25 occur and therefore unreasonable in my opinion to include the

1 costs in a life care plan.

2 Q With respect to Mr. Decayette's condition, presently
3 you testified that he has an injured left hand; correct?

4 A Right hand. I realized as I -- when we took the break
5 I believe, realized I was saying left hand, that was my error,
6 it is the right hand and I've been meaning the right hand the
7 whole time, but I mean the left. I apologize to the jury and
8 the Court.

9 Q And that's a realization you came to yourself?

10 A Yes, in my note --

11 THE COURT: Wait. Wait. Answer the question.

12 That realization came to you?

13 Q That you came to yourself?

14 THE COURT: We don't need more commentary, let's
15 move along here.

16 Q Talking about the medical right now, you mentioned the
17 recent EMG test, you also testified that it was a C6-C7,
18 correct, that was your testimony?

19 A I believe so. I would have to refresh my memory on the
20 note.

21 Q Would it surprise you that the EMG test was discussed
22 with Dr. Simela and he confirmed the positive finding was in the
23 C5-C6 level, the surgical level?

24 A It wouldn't surprise me, there is overlap at C6.

25 Q With respect to your methodology of pricing , some

1 things you go online for?

2 A Yes, sir.

3 Q Like Task Rabbit; correct?

4 A Yes.

5 Q Good RX --

6 A Yes.

7 Q -- another one? And then you rely heavily on Fair
8 Health; correct?

9 A Yes.

10 Q And --

11 A Not heavily, but in part Fair Health, yes.

12 Q Which Fair Health do you use, there is two Fair
13 Healths, which one did you rely on?

14 A I use the community data.

15 Q So that's not specific for -- is that specific for the
16 medical community or is that anyone can go on Fair Health and
17 look it up?

18 A Anyone can go on there and look it up.

19 Q So, was your pricing gauged specifically for the
20 New York City area?

21 A Yes, it's by zip code.

22 Q And which zip code did you utilize?

23 A 11229. His zip code.

24 Q With respect to your testimony just before you said
25 that the out of network pricing is dramatically higher; correct?

1 A Dramatically higher than what might be reimbursed by
2 various insurers, yes.

3 Q So there is a cost and then there's actually what is
4 provided with receipts; correct?

5 A It's much more complex than just that.

6 Q I understand about more complexity, but if you want to
7 boil it down to there is a medical cost and then what is
8 received --

9 MR. PANEK: Objection.

10 THE COURT: Overruled. You can answer.

11 A You can't boil it down to that. I can't answer yes to
12 that question.

13 Q I am using your word, dramatically higher, dramatically
14 higher is the actual cost of the care out of network than care
15 in network?

16 A No, that's not what I was referring to. When I said
17 dramatically higher I was referring to multiple things, but we
18 can get into that if you would like me to explain.

19 Q With respect to Fair Health, Fair Health is a cost
20 aggregator; correct?

21 A That is correct.

22 Q They collect costs all over and they just list them
23 out; right?

24 A They list different types of data point for different
25 zip codes, for different CPT codes, CPT codes being the actual

1 procedure or the medical -- or the medical work that is being
2 done.

3 Q And you chose to go to the 80 percentile for your
4 pricing on the Fair Health pricing; correct?

5 A And you say that because that's not true?

6 THE COURT: Wait. Wait a minute. Yes or no?
7 That's not an answer.

8 A No, that's not correct.

9 THE COURT: Wait a second. This is a question.
10 You could say yes, no, I don't understand the question, or
11 I can't answer the question, all his explanation is not
12 responsive to the question so I am going to limit your
13 answers to those four things if he asks a yes or no
14 question, not all of these discussions.

15 Q Doctor, looking at your life care plan, the tables,
16 they refer to Fair Health and you use the eightieth percentile
17 on the Fair Health projection; is that correct? Yes or no?

18 A Some of the numbers refer to and some of the footnote
19 refer to eightieth percentile of Fair Health, but that's not the
20 number that is always listed in there. Fair Health lists the
21 eightieth percentile.

22 Q Doctor, I apologize, but I am asking you a yes or no
23 question. So you heard the Judge's admonition if you can just
24 follow what the Judge told you.

25 MR. PANEK: Objection to admonishing the witness,

1 your Honor.

2 THE COURT: Right, I admonish the witness.

3 MR. FEEHAN: I said the, Judge.

4 THE COURT: Preface your question, Doctor, answer
5 this please yes or no and then ask the question and then
6 he's -- you are not admonishing him, you are prefacing your
7 question with that. So let's preface the question with
8 Doctor, answer yes or no please and then do your question.

9 Q Doctor, yes or no, some of your projections in your
10 life care plan were based on the eightieth percentile of the
11 Fair Health? Yes or no?

12 A Yes, a few are.

13 Q And the eightieth percentile is -- at the eightieth
14 percentile means 80% of the people cost less than the price that
15 you picked; correct?

16 A That's not a question. That's not a correctly phrased
17 question.

18 THE COURT: Don't tell him what is correctly
19 phrased, Doctor.

20 A I can't answer that question.

21 THE COURT: Yes, no, I can answer that or please
22 rephrase it.

23 A Please rephrase the question.

24 Q The eightieth percentile is based on 100%; correct?

25 A Correct.

Stuart Brian Kahn, M.D. - Plaintiff - Cross

1 Q And 100% is the most expensive treatment; correct?

2 A No.

3 Q For Fair Health treatment?

4 A No, you --

5 Q So the eightieth percentile is more expensive than a
6 large percentage of the rest of the aggregator; correct?

7 A That is correct.

8 Q So you chose a more expensive cost basis for your
9 projections; correct?

10 A More expensive than what?

11 Q Than the rest of this below it?

12 A Not more expensive than the other 20%, but the
13 eightieth percentile for those things that I listed at the
14 eightieth percentile.

15 Q Much of the history in your report is his pain levels,
16 Mr. Decayette's pain levels, his activities of daily living, his
17 weight gain, this all came from the interview with
18 Mr. Decayette; correct?

19 A As well as medical records that were reviewed.

20 Q Did you independently verify his weight against other
21 medical records around that time?

22 A I reviewed the records that showed his weight to be in
23 the same range he provided, yes.

24 Q Did you review it to show where, what the weight was
25 before initially?

Stuart Brian Kahn, M.D. - Plaintiff - Cross

1 A Yes, I did.

2 Q What was the weight gain?

3 A It was either 50 pounds shown from when he first
4 started to get treatment to shortly thereafter. I don't
5 remember the actual record. I could bring that up. It's
6 recorded in the medical records.

7 Q And do you recall what record you saw that in?

8 A I believe it's City Med he might have been weighed and
9 I believe several months later in Dr. Levine's office he was
10 weighed or when he first went, about six months. I don't
11 remember specifically, I know there was 50 pound difference in
12 the records, 50, 51 pounds. He was 201 and then 251.8 rings a
13 bell. I remember it being quite consistent.

14 Q And while we're talking about the weight gain let's
15 talk about the Wegovy.

16 A Sure.

17 Q Just the price for Wegovy, where did you get that price
18 from?

19 A That one was Good RX, that is one third of the usual
20 price because Good RX was offering at the time this was done
21 Good RX was offering a coupon which often doesn't exist and most
22 life care planners wouldn't include. I find it more practical
23 and including things like that is reasonable.

24 Q Are you aware at the present day the manufacturer's
25 self-pay price for that same medication is \$349 month?

1 A You have to jump through hoops and pay their physicians
2 and pay their physician's fee to get that, I am aware of that.

3 Q You are aware that that's directly from the
4 manufacturer; correct?

5 A I am aware. Yes, I just stated and what you need to do
6 to that price.

7 THE COURT: Okay, that's it.

8 Now ask the next question.

9 Q For just that alone, your plan, your projection is 40%
10 higher than what the manufacturers --

11 A Not if you add the cost of seeing their physician
12 online to that.

13 Q Thank you for your cooperation, Doctor.

14 So with respect to the psychological and psychiatric
15 care. You're not a psychiatrist; correct?

16 A No, I am not.

17 Q You are not a psychologist; correct?

18 A No, I am not.

19 Q You never treated Mr. Decayette for any mental health
20 condition; correct?

21 A No, I have not.

22 Q To your knowledge, has any psychiatrist or psychologist
23 treated Mr. Decayette in connection with this accident ever?

24 A To my knowledge, no.

25 Q Your plan calls for psychiatric evaluation and then a

1 quarterly site visits for two years, twenty-six visits,
2 counseling; correct?

3 A Yes, it does.

4 Q And that's the cost of treatment even though in the
5 past eight years he's had none of this treatment; correct?

6 A That is correct.

7 Q Mr. Decayette testified last Friday and he confirmed
8 he's never seen a psychological counselor since the accident,
9 you have no information to contradict that; correct?

10 A I just answered that, that's correct.

11 Q And he's never been prescribed any psychiatric
12 medicine; correct?

13 A To my knowledge, that's correct.

14 Q With respect to the cervical spine, Mr. Decayette, did
15 you review MRI films or reports?

16 A Both.

17 Q And the September, 2019 cervical spine showed
18 herniations in three levels; correct?

19 A Correct.

20 Q And would a three level herniation be more indicative
21 of degenerative changes rather than an acute trauma?

22 A When there is an acute trauma that is consistent with
23 his history with objects falling on his neck and his neck
24 butting to the side and the herniations coming out on the same
25 side it is very consistent with that trauma. He has no history

1 of having prior neck injuries, prior neck pain. Even if he did
2 have some pre-existing cervical disc abnormalities, I am not
3 stating that he did, it would be impossible to know whether or
4 not the herniations got larger or they just developed at that
5 time.

6 Q Someone can have a herniated disk and be asymptotic;
7 correct?

8 A There are studies that show that, yes.

9 Q Can someone have a herniated disk at the age of 30?

10 A Yes, they can.

11 Q Can someone have a herniated disk at the age of 30?

12 A Yes, they can.

13 Q With respect to Mr. Decayette's testimony last week,
14 are you aware that he testified that his pain is localized, not
15 shooting down his arm; are you aware of that; yes or no?

16 A It might be at the present time, at the time I saw him
17 he was having pain into the left arm.

18 Q Yes or no, Doctor, are you aware of his testimony --

19 THE COURT: Go back to that question. Yes or no,
20 strike everything after that. If she needs to repeat this
21 again, Doctor, she can repeat it again. I told you, yes,
22 no, I don't understand the question, I can't answer yes or
23 no, those are your four options.

24 Read the question and so Mr. Feehan doesn't have
25 to repeat it again, and your answer could be whatever you

1 want to answer truthfully; okay?

2 THE WITNESS: Yes.

3 (The record was read back.)

4 A No, I was not aware of that.

5 THE COURT: Next question.

6 Isn't that simple?

7 Q Your plan calls for cervical epidural steroid
8 injections every two years for the rest of his life; correct?

9 A Yes, it does.

10 Q That's 20 or 40 more over his remaining lifetime,
11 approximately?

12 A Yes, it is.

13 Q So you are recommending also medial branch blocks every
14 three years for the rest of his life; correct?

15 A Yes, I am.

16 Q And radiofrequency ablation every three years for life
17 as well; correct?

18 A Yes, I am.

19 Q You are aware that he's had exactly one epidural
20 steroid injection in the last eight years, Doctor?

21 A Yes, I am.

22 Q You are aware he's had one medial branch block in the
23 last eight years, Doctor?

24 A Yes, I am.

25 Q Are you aware he's had zero radiofrequency ablations in

1 the last eight years, Doctor?

2 A Yes, I am.

3 Q With respect to his shoulder he's also had no
4 injections in the shoulder; are you aware of that?

5 A I am aware of that.

6 Q Now, your plan calls for a paid home health aid
7 four hours a week for the rest of his life; correct?

8 A Correct.

9 Q That single line item alone is one of the biggest ones
10 in your plan; right?

11 A Yes, it is.

12 Q It's over \$300,000; right?

13 A That is correct.

14 Q And Mr. Decayette testified last week that he has never
15 had a home health aid since the date of the accident, and only
16 has family helping him out when needed; are you aware of that?

17 A I wasn't aware that he testified to that, but he did
18 allude to that during the examination, any history and physical.

19 Q And with respect to the home health aid, that's a cost
20 of, someone who's paid to hire than someone than a chore person;
21 correct?

22 A Could you --

23 Q A home health, the rate of pay for a home health aid is
24 based on what?

25 A The rate of the home health aid is based on Genworth,

1 an insurance company's local data for the New York City and the
2 Brooklyn area by his zip code of what home health aid agencies
3 are paid in the area and it's updated every three months.

4 Q And according to your plan this home health aid would
5 start next week?

6 A I think it's indicated and needed.

7 Q And it's needed because of his localized pain in his
8 neck?

9 A Not only.

10 Q Now, with respect to your plan recommends the YMCA
11 membership?

12 A Yes, it does.

13 Q And a personal trainer?

14 A Yes, it does.

15 Q The personal trainer alone adds up to \$100,000;
16 correct?

17 A I have to look at that line item. Yes, close to that.

18 Q Now, did you ask Mr. Decayette about his gym habits
19 before the accident?

20 A Yes. He used to exercise, but wasn't a member of a gym
21 at the time.

22 Q He was a member of the gym?

23 A He was not to my knowledge.

24 Q Right. Mr. Decayette testified he's never belonged to
25 a gym in years, so his testimony is consistent with your

1 interview; correct?

2 A Correct.

3 Q He's also -- he's never participated in aquatic therapy
4 either; are you aware of that?

5 A I am completely aware of that, yes.

6 Q Now, you recommend a comprehensive vocational
7 evaluation; correct?

8 A Yes.

9 Q Are you aware that Mr. Decayette testified last week he
10 said he can work; are you aware of that?

11 A I am not aware of his testimony.

12 Q You are aware his other doctor said he can work?

13 A I am not aware of what they testified to, no.

14 Q With respect to your testimony here, you listed a
15 certain number of jobs that he can do just now; correct?

16 A I listed jobs that he might be able to do and that was
17 why there is a need for vocational therapists to try to help
18 sort that out.

19 Q With respect to you are not a vocational rehabilitation
20 expert or therapist; correct?

21 A I am a rehabilitation doctor and we have insight and
22 input into what people do for future work when they are
23 disabled, but that is correct, yes, I am not a licensed
24 vocational therapist.

25 Q For the purpose of my question applies to yes or no.

1 Doctor, now, you've never performed an evaluation on
2 Mr. Decayette, correct, for vocational services?

3 A Wells, I performed the questions, that's not correct,
4 no.

5 Q All right. Now, are you aware that Mr. Decayette
6 testified in his own words that I am not disabled; are you aware
7 of that?

8 A No, I am not aware of that.

9 Q Would you classify him as disabled?

10 A Absolutely, as do his treating physicians.

11 Q You listed some jobs, Doctor, some of those jobs are a
12 couple out of thousands of jobs that are available in a
13 workforce; correct?

14 A I think in the United States in the workforce there are
15 probably thousands of different types of jobs available,
16 correct.

17 Q And this is why you recommend someone else to evaluate
18 him to figure out what jobs he can do; correct?

19 A No, that's -- that's a stretch of logic.

20 THE COURT: That's a yes, no, I can't answer it.

21 Please repeat it.

22 A No, that's not correct.

23 THE COURT: Let's go. Keep going.

24 Q With respect to table three of your plan you have
25 cervical revision, you listed as like likely; correct?

Stuart Brian Kahn, M.D. - Plaintiff - Cross

1 A Yes, it's likely. Discussed by his --

2 THE COURT: Do you need water, Mr. Feehan?

3 MR. FEEHAN: I think I got it now.

4 Q Now, the pricing value is based on the Fair Health.org;
5 correct?

6 A That's one of the few that are specifically the 80% of
7 fair market health numbers.

8 Q What about the suggested likely left shoulder surgery;
9 is that Fair Health as well, Doctor?

10 A Yes, sir.

11 Q You mention a permanent spinal cord stimulator implant,
12 a potential, that is not included in the price; correct?

13 A That is correct.

14 Q Your plan calls for a cervical MRI every two years for
15 the rest of his life; correct?

16 A Correct.

17 Q You aware that Mr. Decayette has not had an MRI since
18 2023?

19 A No, but he has one ordered at the present time.

20 Q With respect to Dr. Khan, with respect to the life care
21 plan, this represents an array of services that could be
22 provided; correct? It's a menu option of things that he can do,
23 not necessarily things that he has to do? It's not a
24 prescription; correct?

25 A No, I am not a treating physician, I cannot prescribe

1 or make the prescription for these treatments. This is a plan
2 laid out to help him with a plan to help him bring about the
3 best outcome for his care.

4 Q The projections that you gave, the big number at the
5 bottom, that assumes every single item happens at the frequency
6 you project and for the next 40 years generally; correct?

7 A Close to correct, there is a range.

8 Q Some things are narrowed for a couple?

9 A Right. The reason there is such a large range --

10 THE COURT: Wait, wait. We don't need an
11 explanation for every question. And guess what? Mr. Panek
12 is going to be able to ask you more questions. Just answer
13 Mr. Feehan's questions, and then Mr. Panek will go and we
14 can move this thing along.

15 Q So Doctor, if the psychiatric care has never been
16 sought in eight years doesn't get sought that doesn't get paid
17 for; correct?

18 A That's theoretical question, but yes, theoretically if
19 he doesn't get the service it wouldn't need to get paid for.

20 Q Same for the home health aid?

21 A Same for each item if he doesn't use it, but that's
22 not -- but that's not for you to decide and that's not for me to
23 decide, that's for the jury to side.

24 THE COURT: Please, please, please, stop with the
25 commentary. Just answer the questions, please.

Stuart Brian Kahn, M.D. - Plaintiff - Redirect

1 Q Doctor, I appreciate your time. Thank you.

2 MR. FEEHAN: I have no further questions.

3 THE COURT: Mr. Panek, let Mr. Feehan sit down.

4 Please inquire, Mr. Panek.

5 REDIRECT EXAMINATION

6 BY MR. PANEK:

7 Q Mr. Feehan is laughing while he's asking questions
8 about Mr. Decayette's care; correct?

9 A He was.

10 MR. FEEHAN: Objection. I am laughing at the
11 responses.

12 THE COURT: I don't even understand the question.
13 What was the question?

14 Q Did you hear Mr. Feehan laughing while he was asking
15 questions?

16 THE COURT: Objection sustained.

17 Q Do you think Mr. Decayette thinks this is funny, sir?

18 MR. FEEHAN: Objection.

19 THE COURT: Sustained. Just ask questions.

20 Q He hasn't had psychiatric treatment yet; correct?

21 A Correct.

22 Q What is your opinion concerning psychiatric treatment?

23 MR. FEEHAN: Objection.

24 THE COURT: Sustained.

25 Q Why is it in your life care plan if he has not had it,

1 Doctor?

2 A My opinion that he's suffering for quite some time from
3 anxiety over his condition, sadness and depression over his
4 loss, his disability, his inability to care for his family and
5 just because someone doesn't have a treatment that might not
6 might be accessible to them under the resources they are offered
7 covered under doesn't mean they wouldn't need or don't need it
8 and would access if available.

9 Q The same goes for aquatherapy, he hasn't had it, why is
10 it in your life care plan?

11 MR. FEEHAN: Objection.

12 THE COURT: Sustained.

13 THE WITNESS: I can answer?

14 THE COURT: No, sustained means you can't answer.

15 When his objection is sustained you can't answer his
16 question. You can't answer if I sustain, overruled you can
17 answer.

18 Q You were asked questions about whether or not your
19 review of records was in the chart that was published to the
20 jury as Plaintiff's Exhibit 23 for identification; do you
21 remember that?

22 A Yes, I do.

23 Q Okay. In addition to that that chart accompanies a
24 21 page typewritten report; is that correct?

25 A Yes, it does.

Stuart Brian Kahn, M.D. - Plaintiff - Redirect

1 Q And that typewritten 21 page report contains your
2 synopsis of the records, your impression, your physical
3 examination?

4 THE COURT: Is this direct examine or cross exam?

5 MR. PANEK: This is redirect, your Honor.

6 THE COURT: I know, it has to be redirect, not
7 recross, okay? Let's change the form and start again. My
8 objection is sustained by me.

9 MR. FEEHAN: I was also objecting.

10 Q What does this 21 page typewritten report that was not
11 published to the jury contain, Doctor?

12 MR. FEEHAN: Objection.

13 THE COURT: We don't need commentary. Just ask a
14 question.

15 Q What does your typewritten report contain?

16 A It contains a history from the patient, it contains a
17 synopsis of all of the medical records I reviewed. It contains
18 a physical examination and it contains a narrative explaining
19 why my life care plan recommendations are needed in pros form.

20 Q How many pages is your report, Doctor?

21 A Twenty-one pages and that is part of the life care
22 plan.

23 Q Can you explain when you are referring to a life care
24 plan what documents are you referring to?

25 A When I refer to my life care plan I am not only

1 referring to the tables and charts I a also referring to the
2 report format as well including that 21 page report.

3 Q Doctor, you were asked questions about Wegovy; correct?

4 A Correct.

5 Q Can you explain the price difference that would
6 actually occur if you took Mr. Feehan's suggestion with respect
7 to receiving that medication?

8 A Certainly. Although many of us will see commercials on
9 television for prices that are available to patients who want to
10 order it directly from the pharmaceutical or manufacturer
11 company, you have to quote what I said jump through hopes is the
12 term I used, you have to actually sign up, you have to go
13 through their doctors to be able to receive it and you have to
14 pay for those services separately. So the ultimate cost is
15 actually more or greater than the cost that I put down.

16 Q Did you put down costs of seeing those doctors that are
17 required to get the discounts?

18 MR. FEEHAN: Objection.

19 THE COURT: No, I'll allow.

20 A No, because that would be included --

21 THE COURT: No, next question.

22 A No.

23 Q What is the reason? What is the reason?

24 A Because he's already seeing -- I already included in
25 the cost an additional visit per year to a doctor who would

Stuart Brian Kahn, M.D. - Plaintiff - Recross

1 manage the complications of his condition, such as obesity being
2 one of them and that's listed in table one.

3 Q His suggestion would require additional costs; correct?

4 A Yes.

5 Q And you didn't include those?

6 A No.

7 MR. PANEK: Thank you.

8 MR. FEEHAN: Real quick.

9 RECROSS EXAMINATION

10 BY MR. FEEHAN:

11 Q Doctor, I want you to go to that line item of Wegovy on
12 table four.

13 A Okay.

14 Q Now, Doctor, is it correct that based on your own life
15 care plan you are using the manufacturer's savings program;
16 correct? Yes or no?

17 A Through if you look lower down it's three --

18 Q Yes or no?

19 THE COURT: Yes or no. If he says yes or no you
20 have to do that; okay?

21 A One of them, yes.

22 MR. FEEHAN: Thank you. No further questions.

23 THE COURT: Anything further?

24 MR. PANEK: Yes.

25 REDIRECT EXAMINATION

Stuart Brian Kahn, M.D. - Plaintiff - Redirect

1 BY MR. PANEK:

2 Q Complete the answer, Doctor. What is below it that
3 he's not telling us?

4 MR. FEEHAN: Objection.

5 THE COURT: Sustained. We don't need those
6 comments and I keep telling you that. You can't comment.
7 You have to ask direct questions. Commentary is meant to
8 inflame the jury and I am not allowing that to happen.
9 Strike that question.

10 Don't answer that.

11 Ask an appropriate question.

12 Q What's below that?

13 A Sure. In the footnote it explains that that is through
14 a coupon through Good RX and you could get it directly through a
15 coupon with your own prescription.

16 THE COURT: Anything else?

17 MR. PANEK: That's it, your Honor.

18 MR. FEEHAN: Nothing, your Honor.

19 THE COURT: You are excused, Doctor.

20 THE WITNESS: Thank you so much, your Honor.

21 THE COURT: Have a nice afternoon.

22 So, anything further, Mr. Panek?

23 MR. PANEK: No, your Honor.

24 THE COURT: Do you rest?

25 MR. PANEK: Subject to some of the records that I

Stuart Brian Kahn, M.D. - Plaintiff - Redirect

1 did discuss with Mr. Feehan prior to now plaintiff rests.

2 THE COURT: So. Are you moving to introduce them
3 and publish them to the jury?

4 MR. PANEK: No, your Honor. This is private
5 courtroom work to do.

6 MR. FEEHAN: Yes, we have to talk about this.

7 THE COURT: So you are resting though, right?

8 MR. PANEK: Correct, your Honor.

9 THE COURT: I am not forcing you to and I am not
10 moving in advance of your decision, and I am just trying to
11 frame the issue.

12 MR. PANEK: Plaintiff rests subject to the
13 stipulation that we just discussed.

14 THE COURT: Anything, Mr. Feehan?

15 MR. FEEHAN: Real quick, I want to remind the
16 Court and counsel --

17 THE COURT: I don't need reminding. This is not
18 my first rodeo.

19 So as predicted you will have your afternoon.
20 Don't form an opinion. Don't talk to each other about the
21 case. Don't do outside research. We had a lot of the
22 research, don't go to the internet and do outside research
23 because you haven't heard the whole case. You haven't
24 heard each other. You haven't heard my instructions on the
25 law. Please don't form an opinion and don't do research.

Stuart Brian Kahn, M.D. - Plaintiff - Redirect

1 You are excused to 9:30 or a quarter to 10:00 on
2 Monday?

3 MR. PANEK: Quarter to 10:00 is fine.

4 THE COURT: Juror number three and alternate
5 number one, shall we keep them now?

6 MR. PANEK: Yes, your Honor.

7 MR. FEEHAN: Yes, please.

8 THE COURT: Just for a moment. Juror number
9 three, alternate number one, please stay for a moment.

10 COURT OFFICER: All rise. Jury exiting.

11 (Jury exiting.)

12 THE COURT: Juror number three, please be seated.
13 Everybody.

14 I promised you that we wouldn't interrupt your
15 plans. Are your plans still the same? Are you supposed to
16 go on vacation?

17 JUROR NUMBER THREE: Yes.

18 THE COURT: See, that yes or no thing.

19 THE WITNESS: We'll work on that.

20 THE COURT: Do the lawyers have anything you wish
21 to ask juror number three?

22 MR. PANEK: No. Just thank you for your service.

23 MR. FEEHAN: No, your Honor. Thank you for your
24 service.

25 THE COURT: Okay. As we said to you are excused

Stuart Brian Kahn, M.D. - Plaintiff - Redirect

1 from service. Thank you. He'll go downstairs at some
2 point and get proof of service, I think it's eight years
3 you don't have to come back and do service. That doesn't
4 mean the Federal Court won't call you. Keep proof of your
5 service, take a picture on your phone.

6 Thank you for your service, being on time and
7 being willing to serve with attention and an open mind even
8 though you knew you might not get to the end. Thank you.

9 Hello alternate number one, do the lawyers have an
10 application?

11 MR. PANEK: Yes, your Honor. Application as
12 designated alternate number one, alternate one would take
13 juror number three seat.

14 MR. FEEHAN: Join the application.

15 THE COURT: You understand that now you are moving
16 from the alternate position to juror number three's
17 position. On Monday when you come in you are juror number
18 three.

19 ALTERNATE NUMBER ONE: Yes.

20 THE COURT: Thank you so much for your attention.
21 We did say that in the instructions, that alternates need
22 to pay the same amount of attention as the six, you see why
23 we say that?

24 Okay. Have a nice weekend. Have a great trip.
25 Safe travels.

Stuart Brian Kahn, M.D. - Plaintiff - Redirect

1 Anything further?

2 MR. FEEHAN: Just we had -- there's a document
3 number 16 records from City MD, the subpoena went back to
4 Mr. Panek's office. It's on its way to the courthouse, so
5 we have an agreement that it makes to the courthouse.

6 MR. PANEK: Yes, I just didn't want to delay
7 having to rest, but one piece of medical evidence, I do
8 have the tracking number, it actually might have been
9 delivered today, but there was a hiccup. There is a
10 third-party vendor. I am moving it in subject to
11 connection and then once we get the actual record here I'll
12 replace it with the certified copy.

13 THE COURT: As long as you both agree about that.

14 MR. FEEHAN: That's fine.

15 THE COURT: I see it already has a sticker on it
16 and make sure it's properly marked and that the clerk who
17 happens to not be in the courtroom right now is aware what
18 you two are discussing so our records are completely
19 accurate.

20 MR. PANEK: I will make the application to have
21 Plaintiff's Exhibit 16 be deemed in evidence subject to
22 connection upon receipt of that record.

23 THE COURT: Okay. Thank you.

24 MR. FEEHAN: Real quick, this is real quick. At
25 the close of plaintiff's case I am moving pursuant to

Stuart Brian Kahn, M.D. - Plaintiff - Redirect

1 CPLR 4401 to dismiss the case as failure to prove a prima
2 fascia case of causation as to the damages.

3 THE COURT: Mr. Panek.

4 MR. PANEK: Plaintiff verily believes that more
5 than a prima fascia case has been met with respect to
6 causation on the claimed injuries. Plaintiff has had
7 thorough testimony from doctors explaining causation from a
8 medical and mechanical standpoint, in terms of mechanism of
9 injury as well as treatment of the injuries.

10 The jury has now heard from four doctors that have
11 causally related all of the claimed injuries in this case.
12 Save for Dr. Levine did not comment on the shoulder, but
13 with respect to all three claimed body parts, meaning the
14 right hand and wrist, the neck and the left shoulder, there
15 were three doctors who agreed on causation and gave
16 opinions within a reasonable degree of medical certainty
17 and plaintiff obviously opposes the application.

18 THE COURT: Okay. Standard on the evidence
19 presented in the light most favorable to the nonmoving
20 party there is no operational process on which the trier of
21 fact could base a finding in favor of the nonmoving party
22 and I am denying it as a matter of law without any
23 weighing credibility of witnesses or finding and it is a
24 requirement and it is a higher standard. So in light of
25 all of that and I am denying the defendant's motion.

Stuart Brian Kahn, M.D. - Plaintiff - Redirect

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MR. FEEHAN: Thank you, have a good weekend.

CERTIFIED TO BE A TRUE AND ACCURATE TRANSCRIPT OF THE ORIGINAL
STENOGRAPHIC MINUTES TAKEN OF THIS PROCEEDING.

Lucille Cravotta

LUCILLE CRAVOTTA
Senior Court Reporter

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