

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF BRONX: CIVIL TERM: PART IA-26

-----X
TAFFANY BAILEY,

Plaintiff,

-against-

Index No.
810231/2022e

2732 BAINBRIDGE ASSOCIATES, LLC,

Defendant.
-----X

Motions in Limine

851 Grand Concourse
Bronx, New York 10451
July 29, 2026

B E F O R E:

HON. PAUL L. ALPERT,
Justice of the Supreme Court

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

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Valerie E. Monaco
Senior Court Reporter

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1 THE CLERK: Taffany Bailey, plaintiff versus 2732
2 Bainbridge Associates, LLC. Index No. 810231 of 2022e.

3 THE COURT: Appearances.

4 MS. MING: Maritza Mahia Ming, for the plaintiff
5 on behalf of Harris, Keenan & Goldfarb.

6 MR. STEINBERG: Jason Steinberg also on behalf of
7 the plaintiff from Harris, Keenan & Goldfarb.

8 MR. SANDS: Joseph Sands of the Law Offices of
9 Leon Kowalski for the defendant.

10 THE COURT: Okay. Good afternoon.

11 Before me are, I believe, six or seven motions in
12 limine.

13 Before we begin I believe that some of them are
14 probably not relevant any more; is that correct?

15 MR. SANDS: Let me say this about the ones other
16 than the main motion about Ali Guy. I'm not officially
17 withdrawing any of them.

18 THE COURT: Can you speak into that microphone?

19 MR. SANDS: I'm sorry, Judge. Is that better?

20 THE COURT: Yes.

21 MR. SANDS: Okay. I'm not officially withdrawing
22 any of them but I do realize that the material in a number
23 of them relate -- would relate the issues more of
24 liability. However, I think at least most, if not all of
25 them there, are also issues that would relate to damages.

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1 I understand there's no really -- at this stage there's
2 really no need to argue them because that's really for
3 issues in summation. And I'm sure Your Honor will keep
4 track of that at the appropriate time.

5 MS. MING: So counsel stated that he was
6 withdrawing all the motions except for Dr. Guy since he was
7 conceding liability. In fact, he told the jury that the
8 client should get money, we just disagree as to how much.
9 So that is news to me. So I did ignore the other motions
10 as he said he was withdrawing them. If he's not
11 withdrawing them, then I would like to respond to them.
12 I'll do that.

13 But I think the Court said he was familiar with
14 those motions as well, that they are standard boilerplate
15 motions, so I can respond to those today and submit papers
16 but he did say he was withdrawing the rest of the motions
17 except for Dr. Guy.

18 THE COURT: Okay. So I'll make things easier.
19 At least two of these motions, defendant's pretrial motion
20 in limine to prohibit arguments in precluding community
21 safety, goes to liability.

22 MR. SANDS: Okay. I would concede that.

23 THE COURT: That's withdrawn.

24 MR. SANDS: I'll concede that.

25 THE COURT: Defendant's pretrial motion to

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1 preclude improper failure to accept responsibility,
2 commentary or questions also as to liability.

3 MR. SANDS: I'll concede that.

4 THE COURT: So as to those two motions they are
5 deemed withdrawn --

6 MR. SANDS: Okay.

7 THE COURT: -- as the defendant has conceded
8 liability in this case.

9 Let me just go through these quickly.

10 There is a motion in limine and this deals with,
11 again, closing arguments. It's defendant's motion to
12 preclude improper questions, send a message, commentary or
13 questions. Again, I don't need to hear argument on that.
14 That's at my discretion. I think counsel is well versed in
15 trial law and how to conduct a trial that I believe she
16 doesn't need my ruling on that. And if that does occur,
17 you know what my ruling is going to be, so that's really
18 not necessary. I don't need to hear argument on it,
19 counsel.

20 MR. SANDS: No, I would agree with that.

21 THE COURT: Okay. Motion in limine to preclude
22 improper anchoring and to require disclosure of the
23 anchoring. I'm not going to ask counsel to tell me how
24 much she's going to ask this jury for, that's improper. I
25 know improper amounts when I hear it. I'm hoping that

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1 counsel does not do that. If she does, I'll deal with it
2 at the time. I'm not going to tie counsel's hands as to
3 the amount of money she asks.

4 MR. SANDS: Okay.

5 THE COURT: There is a motion in limine to
6 preclude improper golden rule arguments. And that motion
7 again, counsel should know how to conduct herself. I'm not
8 going to tell her how to conduct herself during summations.
9 Again, subject to any objection you make at closings, I
10 will deal with it. So at this point that motion -- any
11 motion is reserved for a closing.

12 And, again, defendant's pretrial motions to
13 preclude mention of insurance or wealth, again, if it does
14 come up, again, you have a reservation of rights to make
15 your application. And I assume, again, I will say I don't
16 anticipate counsel mentioning anything about insurance or
17 anything about the wealth of the defendants in this case.
18 I assume counsel is going to stick just to the facts and
19 the damages to her client.

20 So again, at this point, they're denied without
21 prejudice those particular motions and, again, you have
22 your rights reserved to make your application --

23 MR. SANDS: Yes, we do. We do.

24 THE COURT: -- if it does occur.

25 The main motion that we're really here to deal

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1 with is the motion in limine to preclude or limit the
2 testimony of plaintiff's experts Dr. Ali Guy and Dr. Debra
3 Dwyer.

4 I'll hear you on that counsel.

5 MR. SANDS: Okay. Your Honor, if I may, before I
6 even address the substance of that, it's come to our
7 attention upon review of the certified records that there
8 are no records from Dr. Brisson here. There are no records
9 from Dr. Gallina and there are no pain management records.

10 Now, the reason I bring that up is in reading the
11 opposition to our motion, it states that they intend to
12 claim at trial that there is ongoing pain management
13 treatment. They also say that Dr. Guy will discuss the
14 plaintiff's visits to Dr. Gallina and Dr. Brisson, this is
15 in their opposition. None of those records are here in
16 court as records that would go into evidence.

17 THE COURT: You ever get an authorization for
18 records from Dr. Brisson?

19 MR. SANDS: Yes, I was at the time but they're
20 not here in court as certified records.

21 THE COURT: Okay.

22 MR. SANDS: So without those records being in
23 evidence, and for them to try and have Dr. Guy rely upon
24 them, I believe would be grounds for a mistrial.

25 THE COURT: Well, if you get -- if you got

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1 authorization for the records, I can get the records
2 tomorrow. The fact the very records aren't here before the
3 trial starts is of no moment to me. The fact that you were
4 given authorization for those records and had access to
5 those records is sufficient. If they're not here in
6 certified form, that may be a problem for the plaintiff.
7 But those records the fact that they're not here today are
8 not a reason for any kind of mistrial.

9 So let me hear you on this motion.

10 MR. SANDS: Okay, Your Honor. And just, again, I
11 just want to note for the record that the motion is
12 contained in NYSCEF filing No. 58 and have that deemed as
13 Court Exhibit A, so.

14 THE COURT: I'm going to have a hard copy printed
15 out and marked after we're done here. I just didn't bring
16 it down.

17 MR. SANDS: That's fine.

18 But let me start with point one which is the
19 untimeliness.

20 We were -- there was a filing on NYSCEF on
21 July 7th, less than 30 days before the trial. There was
22 a filing of a supplemental Bill of Particulars on
23 July 10th. Now, as for the supplemental Bill of
24 Particulars, the CPLR specifically states that supplemental
25 Bill of Particulars must be filed more than 30 days before

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1 trial which under no circumstances will this be -- will
2 that have been filed. The sup BP is the legal document
3 containing the allegations of all the future medical care
4 claims. So by statute, the sup BP is untimely not having
5 been filed within more than 30 days before trial.

6 The other thing that's interesting, I would like
7 to point out, is that although this document was filed --
8 Dr. Guy's expert exchange was filed on July 7th, it
9 references the fact that he did his visit examination of
10 the plaintiff on May 6th. So that's a two-month delay
11 with no explanation of why it took two months to prepare
12 and exchange a report which indicates some degree of bad
13 faith. So we obviously initially would argue that it's
14 untimely and should be precluded as such.

15 Now, to get into the merits of it. I think the
16 case law is clear that in looking at the admissibility of
17 any plan for future medical treatment, the courts look to
18 past medical treatment. I mean, we have cited numerous
19 cases to that effect. I don't need to go through all of
20 them. We've cited numerous ones and I don't think anyone
21 would even dispute that, that that is the gold standard is
22 what has the plaintiff done before, because the plaintiff
23 has the burden of proof on this. This can't just be
24 alleged. There's a burden of proof that this treatment
25 will more than likely take place. Okay. You can't just

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1 say out of the blue it will, whether she had in the past.

2 And if you look at Dr. Guy's report, he -- first
3 of all, he doesn't even reference Dr. Brisson in his
4 report. And obviously he's going to have to be held to his
5 report when he testifies. In his report he does not
6 reference any medical care after 2023. That's in his
7 report. Okay. So there is no basis for him to say that
8 she is going to need all -- and we'll get to the specific
9 treatment, there's no basis for him to say that.

10 Now, I note in the opposition that was filed last
11 night it deals with the issue of surgery, and we'll get to
12 that. In the opposition there is no mention -- they don't
13 oppose, or least not in writing, whether plaintiff will
14 need any physiatrist care, whether she'll need any physical
15 therapy, whether she'll need any steroid injections,
16 whether she'll need any MRIs, whether she'll need any EMGs,
17 whether she'll need any pain management care, whether
18 she'll need any ablations or whether she'll need a home
19 health aide. That is not addressed in the opposition in
20 any respect. So all of those items should be precluded on
21 that basis because there's no opposition.

22 Again, I mean, even if the Court wants to ignore
23 the fact there's no opposition, I think, again, for the
24 reasons other -- already stated, that she has not had any
25 of these things in the last three years, is speculative.

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1 Okay.

2 Now, as for the issue of the surgery, which I
3 suppose is the biggest item here. If you look at
4 Dr. Brisson's records -- if you look at his record, which I
5 have seen, he says quite specifically, I don't think anyone
6 can dispute this, I mean, they can address this. I
7 don't -- he says quite specifically that the plaintiff was
8 not a candidate for surgery in 2023 due to uncontrolled
9 issues with her blood sugar levels. Okay. That's words to
10 that effect. I don't think I'm quoting him directly. But
11 words -- glycemia is I think the term he used, uncontrolled
12 glycemia.

13 Okay. Now, apparently there's a claim that she
14 still may go forward with the surgery. Although again, I
15 would also point out if you look at Dr. Guy's report he
16 uses terms like will, you know, probably. He's very
17 equivocal. Again, he does not say unequivocally she will
18 have these. And, again, for that reason, alone I think it
19 should be precluded.

20 He uses speculative language in his own report in
21 describing whether she will have these procedures. But as
22 for the surgery, there is no evidence at this time that's
23 being presented, or apparently will be presented, that
24 plaintiff's diabetes or blood sugar level, her glycemia is
25 now under control. We don't have an affirmation or any

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1 record from an endocrinologist. In fact, there's no
2 reference in any records to an endocrinologist saying that
3 her blood sugar levels are now under control, that she can
4 go forward with the surgery.

5 So, for them to say now she's going to have the
6 surgery, well, what has changed in the last three years
7 that she can now have surgery? There's been no -- there's
8 no evidence presented to this Court in terms of the fact
9 that her diabetes is now under control. I mean, if they --
10 you know, if, in fact, it was under control, there should
11 be an affirmation from an endocrinologist or an
12 endocrinologist should be brought to this court to say
13 that. But we don't have that.

14 So there is no reason to believe that the issues
15 identified by Dr. Brisson in 2023 as to why she couldn't
16 have surgery have changed. There is no evidence before
17 this Court of that. So, for those reasons it has to be
18 precluded.

19 Now, finally, we have an issue of the costs.
20 Again, conceding, which obviously I don't, that any of
21 those -- that she needs any of this treatment, Dr. Guy
22 assigns -- obviously assigns costs to all of them.

23 If you look in his report, he does not give the
24 basis for any of those costs. He just says this, this is
25 what it costs, this is what -- this costs this, this cost

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1 that, this costs that. Okay. No basis cited by him for
2 any of the costs, none at all, for surgical costs, MRI
3 costs, home health aide costs. He cites an hourly rate for
4 home healthcare. Does not say where he got that rate. He
5 cites a cost for a surgery. Does not state where he got
6 that figure.

7 And this is interesting because these figures are
8 widely available. It's not like they're difficult to find.
9 Medicare has a list which you can find on the internet of
10 what they pay for every medical procedure known to man.

11 Okay. And now you could argue well, you know,
12 maybe the doctor doesn't accept Medicare, or doesn't accept
13 Medicaid. But at least there will be a standard for what
14 these procedures cost, instead Dr. Guy just picks figures
15 apparently out of the blue with -- and you can read his
16 report. This is what it costs. Says who that's what it
17 costs? Says who? Says what? Says what authoritative text
18 that that's what the procedures cost? We don't know. We
19 really don't know where he got these figures.

20 So again, I mean, the fact that he uses cost
21 figures that -- by the way, I've cross examined him. When
22 I've cross-examined him, he says I consulted with other
23 doctors. He's doesn't give better answers on cross
24 examination. These figures are made up. I would submit to
25 the Court these figures are absolutely made up. Okay.

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1 Now, so, you know, when you add it all up, it is
2 nothing but speculation of the worst kind. And we cite,
3 again, in our papers, I don't need to go through all the
4 citations, the Lopez I think is the leading case from the
5 First Department where he has been precluded, he's been
6 precluded. So it's not like we're asking this Court to do
7 something that the appellate divisions have not sustained
8 on appeal. It has been sustained on appeal. I believe a
9 number of times it's been sustained on appeal his
10 preclusion. Okay.

11 So now, obviously in the interest of
12 completeness, if he is precluded, it will go without saying
13 that Dr. Dwyer, the economist, will be precluded as well
14 because she merely takes his numbers and runs them through
15 a mathematical formula. So if he's precluded, she's
16 precluded.

17 So that's what we submit to the Court. Thank
18 you.

19 THE COURT: Thank you.

20 Counsel, I'll hear you.

21 MR. STEINBERG: Hi, good afternoon. Your Honor,
22 my name is Jason Steinberg. This is the first time I'm
23 appearing on it. I handled the papers with respect to this
24 motion. So thank you for listening to what I have to say
25 today.

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1 I want to start by telling you about my client's
2 treatment. All right. So immediately after the accident
3 March 22, 2022, she's transported by ambulance to the
4 emergency room. She immediately in the emergency room
5 reports ten out of ten neck and back pain, immediately
6 after this accident. She gets medication, she's
7 discharged. Two days later she goes to CitiMed, March 24,
8 2022. And then she does about nine to ten months straight
9 of treatment consisting of physical therapy, chiropractic
10 treatment. We're talking about 40 physical therapy visits,
11 30 chiropractic visits. She has cervical and epidural
12 injections as part of her treatment, she's sent for MRIs.
13 After that conservative treatment failed, she goes and sees
14 Dr. Gallina for a surgery recommendation or an evaluation
15 rather. And Dr. Gallina determines she needs a three-level
16 fusion surgery in her spine.

17 She testified at her deposition three-years ago
18 in September of 2023 that she was scared when she heard
19 that. Not uncommon for a person to be scared to have a
20 surgery and have hardware inserted in their body.

21 But she does see Dr. Gallina again in May of 2023
22 and he says all right, look, you need the surgery and why
23 don't you get a second opinion or even a third opinion.
24 That's in his records. As far as the records not being
25 here yet, they'll be here. So I'm not concerned about that

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1 part. And they have all these records from the
2 authorization we provided over the years.

3 Anyway, she then gets that second opinion with
4 Dr. Brisson. She sees him about I want to say four to five
5 times. And he also recommends the cervical fusion surgery.
6 We're talking treatment 2023 all the way to 2025 with
7 Dr. Brisson. And at that point she's having some issues
8 with her diabetes and some other issues. But the diabetes
9 seem to be the main problem. She has to get it under
10 control. So she hasn't been able to do the surgery.

11 That being said, during that time she's also
12 treating with Dr. Sibicerva, another authorization of which
13 was provided, and she's a pain management specialist who
14 from 2023 up until at least April of 2026 has been
15 prescribing her pain medications. And as of April of 2026
16 she's taking oxycodone.

17 That's her treatment. I've just given you that
18 treatment in what? Less than a minute?
19 A minute-and-a-half? Because that's the entire basis upon
20 which Dr. Guy's opinions are based. He is giving an
21 opinion in this case that is consistent entirely with every
22 single treatment modality she has undergone since the
23 inception of the case, or better yet, since the accident
24 occurred. That's physical therapy, she's got to keep doing
25 it. That's what Dr. Guy says in his report. She's got to

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1 keep taking medication. That's what he says in his report
2 and that's going to cost money. She's got to have this
3 surgery. That's what two other doctors during treatment
4 specifically stated or concluded.

5 So he's providing a treatment plan that is nearly
6 identical, word for word, with everything she has done for
7 the last three years consistently without fail. The need
8 for the surgery is well documented and that costs money.
9 And he's outlining that as part of his case. There's no
10 reason to preclude him on substantive grounds because his
11 opinions, there is a foundation for them, that is the Lopez
12 case in the First Department that specifically says a
13 significant and weighty factor that the courts consider
14 when there's a foundation issue is can Dr. Guy substantiate
15 his opinions. Absolutely. Every single records that they
16 have that will be before this Court that will be certified
17 will substantiate everything. He's basically just saying
18 she's just got to keep doing what she's doing. That's it.

19 As far as the cost of the treatment, in the
20 disclosure, it's very specific. His research analysis and
21 knowledge of the cost for certain medical treatment --
22 sorry, his research in our expert 3101(d) and all we're
23 required to do is specify the basis for the opinion. We
24 don't have to provide a whole factual substantiation.
25 There's no requirement for anything more specific than what

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1 we do in the disclosure, which is his research analysis and
2 knowledge of the cost for certain medical treatment in the
3 New York City metropolitan area. That's where he gets the
4 costs from on top of the fact that he administers much of
5 this treatment as part of his medical practice.

6 And as the defense lawyer just said a minute ago,
7 I've crossed this guy many times, I know what he's going to
8 say. So if he already knows the answer to that question,
9 do I really need to justify the costs since he knows what
10 he is going to say?

11 That being said, the standard here is to preclude
12 an expert is whether there's been a willful and
13 contumacious failure to disclose the expert and it's their
14 burden to make that showing. It's not my burden to defend
15 it. If they don't make the showing, you really shouldn't
16 be precluding an expert, okay, especially one whose
17 opinions are well grounded in all the medical records that
18 are going to be before the Court.

19 So, he examines my client on May 6th, he's
20 disclosed two months later. He's got to prepare his
21 report. We got to do the sup BP. We got to get it to the
22 economist. There's been no proof of any willful or --
23 we're not holding on to it. It's not like he examined her
24 in 2023 and we've been waiting three years and just spring
25 it upon the defense. We've been upfront about it. He was

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1 examined -- excuse me, she was examined May 6th, the
2 report was disclosed when we got it. The sup BP was
3 provided, end of story.

4 Now, if there's no willful and contumacious
5 conduct which there has not been any in this case, the real
6 question is are they prejudiced by this. I didn't hear him
7 say one thing in that argument or in the papers as to how
8 they're prejudiced. I'm trying to figure that out right
9 now. When all the medical records I've just read to -- I
10 just summarized the medicals in less than a
11 minute-and-a-half in this case. I just got assigned this
12 yesterday. What's the prejudice to them who's been
13 preparing this case for trial? It's not going to be
14 tried -- we're not doing openings, from my understanding,
15 until Monday or Tuesday, I forget what day it is. At that
16 point it will be 30 days since the disclosure of the
17 supplemental Bill of Particulars. So they've had plenty of
18 time to prepare.

19 I want to point out some other things here. If
20 you look at their website, this is Kahana Feld who prepared
21 these papers in this case siting right next to the trial
22 counsel here. On their website they have a transcript -- a
23 list of transcripts for all the plaintiff's experts they
24 can get their hands on including Dr. Guy. They have these
25 transcripts at their disposal. They have many motions in

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1 limine on there, samples that they've served in the past.
2 They know how to prepare this case and they know how to
3 defend against Dr. Guy and his claims. And according to
4 their papers, he's the go-to expert for life care plans.
5 So to sit here and say we're prejudiced or we can't
6 prepare, there's no substantiation for that whatsoever,
7 nothing at all. The medical records are very simple and
8 they can question Dr. Guy about his expenses, his costs,
9 whatever he says, on cross examination. But all that stuff
10 that was identified in the argument goes to the weight of
11 Dr. Guy's opinions, not the admissibility. Admissibility
12 is completely different from weight. They will have every
13 opportunity to use those transcripts that they have on
14 their website to cross-examine Dr. Guy.

15 And, of course, as defense lawyer said a minute
16 ago, I know what he's going to say. What is the prejudice
17 here? There is none. And if there's no prejudice, the
18 First Department case that we've cited to specifically
19 states there's to reason to preclude Dr. Guy.

20 Now, every case is case-by-case basis. I agree
21 with that. And I'm not going to sit here and tell you that
22 Dr. Guy hasn't been precluded. But that goes for every
23 single expert in the state of New York. Sometimes they're
24 precluded, sometimes they're not. It depends on each case.

25 For example, in the Federal Court case that they

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1 cited through this Bermudez case, Dr. Guy was partially
2 precluded because there was certain procedural problems
3 with the disclosure. And in federal court we know it's a
4 little more difficult to satisfy the requirements for
5 expert disclosure. But in the end -- in the end the
6 Federal Court did say when considering the admissibility of
7 Dr. Guy's opinions, she said -- the Federal Court said in
8 quote unquote he could testify quote as to his personal
9 observations and findings on his examination of plaintiff,
10 the conduct of that examination, plaintiff's condition on
11 that day, and a treatment plan he would recommend. That's
12 the Federal Court case they relied upon and I'm quoting
13 directly from the case.

14 So now, he also mentioned that there are certain
15 portions of Dr. Guy's report where there's
16 some un-equivocality. I'm not really sure what he's
17 talking about. But to the extent that there's some
18 unequivocal reporting, again, weight of the report, not
19 admissibility. Don't just strike an expert report because
20 there is some unequivocal stuff in there.

21 So I haven't -- they have not justified or they
22 have not satisfied the burden of showing that there's been
23 willful contumacious conduct or prejudice. And as the
24 court and cases say, prejudice is one, when you change your
25 theory in the case. That's one indication of prejudice.

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1 We didn't change any theory. As I said before, Dr. Guy is
2 recommending all the same treatment that Ms. Bailey
3 underwent since 2023. So there's theory change. He's not
4 saying she should have a brain surgery or that her ankle
5 needs to be reconstructed. He's saying she's got to do the
6 back surgery. She's got to keep doing the PT and get films
7 every year because she has herniations. That's all he's
8 saying. They can still challenge that.

9 Dr. Wiener -- this is important also, I forgot to
10 mention this, their orthopedist who evaluated our client
11 said she doesn't need any surgery. So how are they
12 prejudiced? Their orthopedist is going to go on the stand
13 and say she doesn't need surgery. Dr. Guy says no, she
14 does. Two of her treating doctors says she does, I
15 examined her, she needs it. Dr. Wiener can say no, she
16 doesn't need surgery, and the jury will have to say do we
17 believe Dr. Wiener, do we believe Dr. Guy? Is Dr. Guy's
18 opinion substantiated or is it not? But there's no basis
19 legally on this record to preclude Dr. Guy from testifying
20 at all.

21 So that's another issue that they have is their
22 own orthopedist already examined Ms. Bailey and said that
23 she does not need surgery. And of course that doctor I
24 can't imagine wouldn't be able to at least testify as to
25 the cost of treatment or refute Dr. Guy.

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1 So I am trying to think of what else that I would
2 want to say here.

3 Oh, yeah, yeah, yeah and Dr. Brisson did treat
4 her until 2025 at least, right? So when he keeps saying
5 that the treatments stopped in 2023, it's not accurate.
6 And in their papers they say she stopped treating for
7 years. That's not accurate. They've had the
8 authorizations for Dr. Sibicerva who's been doing pain
9 management religiously up until at least April of 2026. So
10 there's a lot of misrepresenting in their papers as well
11 but I'm not going to get involved with that.

12 So again, I don't know what else to say other
13 than there's no prejudice and there's no willful or
14 contumacious conduct here. And they should be more than
15 prepared to cross examine Dr. Guy especially given their
16 access to the transcripts they have on him, the very
17 limited medical records in the case.

18 And I think I have said all I need to say unless,
19 Missy, you want to add anything?

20 MS. MING: I will just add that in addition to
21 providing timely trial authorizations in this case, we
22 exchanged all of the records that Mr. Steinberg just cited
23 to with defense counsel and we have FedEx tracking for that
24 exchange.

25 MR. SANDS: Okay. In terms of the prejudice,

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1 first of all, even if the trial starts Monday, the sup BP
2 wouldn't have been filed within 30 days of the start of the
3 trial. And we have been prejudiced. Because the sup BP
4 alleges that treatment is ongoing and we were not provided
5 with those records. The last authorization was served on
6 June 3, 2026. So we were not provided with records for
7 treatment beyond 2023. The 20 -- there was one visit, and
8 we were aware of this, one visit with Dr. Brisson in 2025.
9 So what we had seen, the only treatment after 2023 was one
10 medical visit, one, with Dr. Brisson in 2025. So there has
11 been prejudice. There absolutely has.

12 Now, counsel said that both their doctors say
13 that she should have the surgery. That's simply not true.
14 Dr. Brisson said she can't have the surgery due to her
15 diabetes. It's in his report in 2023. That's what he
16 says. So nothing appears to have changed. We have no
17 medical records indicating any change in that, that she's
18 now a candidate for surgery. Nothing.

19 Presumably, one would presume, since she has
20 Type 1 diabetes that she is seeing an endocrinologist.
21 We've never gotten any records from an endocrinologist.
22 There's been no affirmation submitted from an
23 endocrinologist that her diabetes is now under control and
24 she's a candidate for surgery. So, I mean, I think there's
25 a reason why we don't have such records of such an

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1 affirmation because she's not a candidate for surgery and
2 probably never will. There are notations in Dr. Brisson's
3 record that she doesn't use the insulin as prescribed and
4 she's a drinker which, of course, someone with no -- with
5 Type 1 diabetes should not be. She will never be a
6 candidate for surgery.

7 Now, they say she's had all this treatment.
8 Since 2023, she's had no MRIs, she's had no EMGs, she's had
9 no ablations, she's not seen a physiatrist. She's had some
10 pain management treatment. She most certainly has not had
11 any home health aide. So for the significant majority of
12 the care that -- she's never had a home health aide,
13 period. So -- and by the way, in terms of dollars, that's
14 the biggest item in Dr. Guy's report. That's the single
15 most biggest item.

16 So when they say she's had this treatment
17 ongoing, some of it, home healthcare, she has never had
18 from the day of the accident going forward. She has never
19 had that. For the rest of it, Dr. Guy himself concedes in
20 his report that his recommendations are not based on any
21 prior treatment the patient may have had. It's in his
22 report. Okay.

23 So, he says -- he does have one line in this
24 report that her condition is getting worse. It's a
25 throwaway line. Not supported by any evidence. He did no

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1 new MRIs, he did no EMGs, he did a range of motion test.
2 He does not compare it to prior range of motion tests. If
3 you look in his report, there is nothing in his report that
4 compares the range of motion that he observed in May of
5 this year with the range of motion from three-years ago.
6 There's no evidence she's getting any worse or he does not
7 cite to any at least, and you think he would if he could.

8 So for him to say well, maybe she hasn't had this
9 treatment so far but she's getting worse, there is nothing
10 in his report that objectively demonstrates she's getting
11 worse, not a shred of medical evidence whatsoever. Not new
12 MRIs; not new EMGs; not any range of motion getting worse
13 than was observed previously. Nothing.

14 But yet now there's a claim that she needs
15 millions of dollars. I believe the home healthcare aide is
16 well into the seven figures alone; well into the seven
17 figures. There's no basis for that. None at all. It's
18 total speculation unsupported by any of the evidence in
19 this case.

20 So, you know, Your Honor, I mean, at the very
21 least the home healthcare should be precluded. We would
22 argue it should all be precluded. Again, it is not true
23 that Dr. Brisson said she's a candidate for surgery. In
24 fact, he said just the opposite. They have not addressed
25 that. They can't address it. To address it you would need

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1 an affirmation of reports from an endocrinologist. They
2 don't have it. There is no proof she's a candidate for
3 surgery. So, I don't want to repeat myself but, I mean,
4 this is all speculation, Your Honor.

5 THE COURT: Thank you, counsel.

6 For far too long in this court, any others, and
7 not just plaintiff's firm, but it happens far too often,
8 that expert reports are dropped on the defendant on the
9 very eve of trial. And very often the arguments made to
10 me, there's no prejudice, Judge, they know about this case.
11 And, unfortunately, and too many times, the Appellate
12 Division has seemed to have rubber stamped this argument.
13 I understand this case may at some point reach the
14 Appellate Division so I'd like to give my rationale for my
15 ruling.

16 In this case a Note of Issue was filed in this
17 case in November of 2023, two-and-a-half-years ago. And
18 counsel himself has said to me it's easy, Judge, these
19 records are really easy. There's not much here. So why
20 did it take nearly three years to produce an expert report
21 from Dr. Ali Guy 17 days before this case was scheduled to
22 go to trial? That I don't know. I understand why. I know
23 why plaintiffs do it. No one wants to spend the money on
24 experts until the eve of trial, and I understand that.
25 That's not a legal reason. That's a financial reason.

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1 This question of prejudice this burden shifting.
2 It is fundamentally unfair, I believe, for a defendant or
3 for a plaintiff to submit an expert report and an expert on
4 the eve of trial and then say well, show me prejudice, you
5 knew all along what's going on. Well, in this case a
6 supplemental Bill of Particulars was filed seeking
7 \$5.4 million in future damages 17 days before they're
8 supposed to go to trial. And the plaintiff simply says
9 well, they can find somebody. They've got enough time.
10 Well, maybe they don't and maybe that's unfair for a
11 defendant now to have to scramble to find their own life
12 care specialist, their own economist to review the records,
13 to issue a report, to see if they're available for trial
14 all in that short period of time simply because the
15 standard has been what's the prejudice, they know about
16 this. Well, I disagree.

17 I think this burden shifting to a defendant to
18 say show us the prejudice rather than have the plaintiff
19 come in and explain to the court why we waited to give this
20 report. I would submit that any report, any expert that is
21 supplied less than 30 days prior to trial should require a
22 plaintiff's explanation to show some exceptional
23 circumstance as to why that disclosure was not made at an
24 earlier date.

25 This case has been pending four years. They knew

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1 in September of '25, based on your own statements to me,
2 that she would need this surgery. They needed it earlier
3 you even said to me. So what was the surprise? What was
4 the wait other than to now drop this on them on the eve of
5 trial and say hey, you know, we have a valuation of
6 \$5.4 million and that's without the pain and suffering,
7 Judge.

8 So for a timeliness aspect I find that this
9 report and this disclosure is untimely.

10 With respect to his report, I have read the
11 report and reviewed the report. And I also read the
12 decision from my colleague Judge Kraus in Mendez Meza
13 versus Dutch Vortex, LLC, 2025 West Law 4675429, also with
14 Dr. Ali Guy as a proposed life care specialist or life care
15 planner. And she rejected plaintiff's attempt to have him
16 testify as to future costs and necessity for medical
17 treatment.

18 And I'll quote from her decision, Dr. Guy is
19 neither a pain management specialist nor a life care
20 planner. The report he provides is entirely conclusory and
21 his projections are unsupported. And I looked through his
22 report. And his report throws numbers out without any
23 context for the defendant to even look at that and say how
24 are you getting these numbers? Even if they gave that to
25 an economist, the economist couldn't even look at that and

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1 say how do you arrive at these numbers? They have to have
2 some basis if they're going to rebut that to know where
3 it's coming from. There's nothing in there.

4 Your attempt to include Dr. Guy as an expert
5 witness, and I understand that, as a way to bolster the
6 value of the case, and I don't blame plaintiff's counsel
7 for that, that's your job. But in this instance I find
8 that given the late disclosure, the late submission of a
9 supplemental Bill of Particulars and the fact that I find
10 that the report is unreliable, and conclusionary, I'm going
11 to grant the motion to preclude Dr. Guy and the economist
12 Ms. Dwyer from testifying.

13 You have your exception.

14 I will see everybody on Monday.

15 MR. SANDS: Thank you.

16 MR. STEINBERG: I mean, there's an exception of
17 course.

18 THE COURT: You have your exception. I've noted
19 it for the record. Thank you.

20 MR. SANDS: Thank you.

21 MR. STEINBERG: Thank you, Your Honor.

22 THE COURT: Thank you.

23 So I'm just going to mark this as Court's
24 Exhibit I which is defendant's motion in limine and the
25 opposition. I'm going to mark it collectively as Court

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1 Exhibit I.

2 (Whereupon, defendant's motion in limine and
3 opposition were marked as Court's Exhibit I.)

4 (Whereupon, Court is recessed and the case
5 adjourned to Monday , August 3, 2026.)

6 * * * *

7 I, Valerie E. Monaco, certify that the within
8 proceedings are a true and accurate transcript of the
9 original stenographic record.

10
11 Valerie E. Monaco
12 Valerie E. Monaco
13 Senior Court Reporter
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