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

FAFFANY BATTY,

Plaintiff,

against-

Index No.
813031/2019e

2732 DAINBRIDGE ASSOCIATES, LLC,

Defendant.

Motions in Limine

851 Grand Concourse
Bronx, New York 10451
July 29, 2025

B E F O R E:

HON. PACO L. ADFERI,
Justice of the Supreme Court

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

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Valerie E. Mercado
Senior Court Reporter

THE CLERK: Taffany Bailey, plaintiff versus 2732 Baincridge Associates, LLC. Index No. 8 0231 of 2022e.

THE COURT: Appearances.

MS. MING: Ve-lize Mahia Ming, for the plaintiff on behalf of Harris, Keenan & Goldfarb.

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

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

THE COURT: Okay. Good afternoon.

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

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

MR. SANDS: Let me say this about the ones other than the main motion about A'l Cay. I'm not officially withdrawing any of them.

THE COURT: Can you speak into that microphone?

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

THE COURT: Yes.

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

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

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

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

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

MR. SANDS: Okay. I would concede that.

THE COURT: That's withdrawn.

MR. SANDS: I'll concede that.

THE COURT: Defendant's pretrial motion to

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

MR. SANDS: I'll concede that.

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

MR. SANDS: Okay.

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

Let me just go through these quickly.

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

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

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

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

MR. SANDS: Okay.

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

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

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

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

THE COURT: -- if it does occur.

The main motion that we're really here to deal

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

I'll hear you on that counsel.

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

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

THE COURT: Did you ever get an authorization for records from Dr. Rawlson?

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

THE COURT: Okay.

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

THE COURT: Well, if you get -- if you go

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

So let me hear you on this motion.

MR. SANDS: Okay, Your Honor. And just, again, I just want to note for the record that the motion is contained in NYSCEF Filing No. 38 and have that deemed as Court Exhibit A, so.

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

MR. SANDS: That's fine.

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

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

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

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

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

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

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

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

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

Okay.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Thank you.

Counsel, I'll hear you.

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

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

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

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

part. And they have all those records from the authorization we provided over the years.

Anyway, she then gets that second opinion with Dr. Brisson. She sees him about I want to say four to five times. And he also recommends the cervical fusion surgery. We're talking treatment 2023 all the way to 2026 with Dr. Brisson. And at that point she's having some issues with her diabetes and some other issues. But the diabetes seem to be the main problem. She has to get it under control. So she hasn't been able to do the surgery.

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

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

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

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

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

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

And as the defense lawyer just said a minute ago, I've deposed this guy many times. I know what he's going to say. So if he already knows the answer to that question, I don't really need to justify the costs since he knows what he is going to say?

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

So, he examines my client on May 6th, he's disclosed two months later. He's got to prepare his report. We got to do the sup DP. We got to get it to the economist. There's been no proof of any willful or -- we're not holding on to it. It's not like he examined her in 2022 and we've been waiting three years and just sprung it upon the defense. We've been upfront about it. So was

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

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

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

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

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

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

For example, in the Federal Court case that they

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

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

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

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

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

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

So I was trying to think of what else that I would want to say here.

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

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

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

MS. MING: I will just add that in addition to providing timely for all authorizations in this case, we exchanged 9 of the records that Mr. Steinbach just cited to with defense counsel and we have FedEx tracking for that exchange.

MR. CANTO: Okay. In terms of the prejudice,

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

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

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

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

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

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

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

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

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

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

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

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

THE COURT: Thank you, counsel.

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

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

This question of prejudice this burden shifting. It is fundamentally unfair, I believe, for a defendant or for a plaintiff to submit an expert report and an expert on the eve of trial and then say well, show me prejudice, you knew all along what's going on. Well, in this case a supplemental Bill of Particulars was filed seeking $3.4 million in future damages 17 days before they're supposed to go to trial. And the plaintiff simply says well, they can find somebody. They've got enough time. Well, maybe they don't and maybe that's unfair for a defendant now to have to assemble to find their own life care specialist, their own economist to review the records, to issue a report, to see if they're available for trial all in that short period of time simply because the standard has been what's the prejudice, they know about this. Well, I disagree.

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

This case has been pending four years. They know

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

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

With respect to his report, I have read the report and reviewed the report. And I also read the decision from my colleague Judge Kraus in Mendez Meza versus Dutch Venture, LLC, 2025 West Law 4675423, also with Dr. Ali Guy as a proposed life care specialist or life care planner. And she rejected plaintiff's attempt to have him testify as to future costs and necessity for medical treatment.

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

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

Your attempt to include Dr. Guy as an expert witness, and I understand that, as a way to bolster the value of the case, and I don't blame plaintiff's counsel for that, that's your job. But in this instance I find that given the late disclosure, the late submission of a supplemental 9-1 of Particulars and the fact that I find that the report is unreliable, and conclusionary, I'm going to grant the motion to preclude Dr. Guy and the economist Ms. Dwyer from testifying.

You have your exception.

I will see everybody on Monday.

MR. SANDS: Thank you.

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

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

MR. SANDS: Thank you.

MR. STEINBERG: Thank you, Your Honor.

THE COURT: Thank you.

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

Exhibit I.

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

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

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

Valerie E. Monaco

Valerie E. Monaco
Senior Court Reporter