

Proceedings

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK: CIVIL TERM: PART 39

-----X
LAINEY HOWARD,

Plaintiff,

- against -

INDEX #
159388/2021

COSTIKYAN, INC. and GATAK GATAK,

Defendants.
-----X

Jury Trial

October 7, 2026
60 Centre Street
New York, New York 10007

B E F O R E: THE HONORABLE JAMES G. CLYNES,
Justice of the Supreme Court

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Senior Court Reporter

mlp

Proceedings

1 THE COURT: Okay. Are we ready for the jury?

2 MS. LUDLAM: Yes, Judge.

3 MR. ZILBERG: Yes, Your Honor.

4 THE COURT: Okay. Thanks.

5 COURT OFFICER: All rise. Jury entering.

6 (Whereupon, the jury entered the courtroom.)

7 THE COURT: Okay. Be seated.

8 Good morning. Welcome back. We will now
9 continue with the trial.

10 MR. ZILBERG: Your Honor, at this time the
11 plaintiff calls Dr. Ali Guy.

12 THE COURT: Okay.

13 (Whereupon, the witness took the stand.)

14 COURT CLERK: Please raise your right hand, sir.

15 A L I G U Y, after having first been
16 duly sworn was examined and testified as follows:

17 COURT CLERK: Please state your name and address
18 for the record.

19 THE WITNESS: Yes. My name is Dr. Ali Guy
20 A-L-I, last name is G-U-Y M.D. Office address is 7
21 Gramercy Park West, Suite 1-A, New York, New York 10003.

22 COURT CLERK: Thank you. You may be seated.

23 THE WITNESS: Thank you.

24 MR. ZILBERG: May I inquire, Your Honor?

25 THE COURT: Yes.

Guy - by Plaintiff - Direct

1 MR. ZILBERG: Thank you.

2 DIRECT EXAMINATION

3 BY MR. ZILBERG:

4 Q Good morning, Dr. Guy.

5 A Good morning, sir.

6 Q Doctor, are you duly licensed to practice medicine
7 within the State of New York?

8 A Yes, I am licensed to practice medicine and surgery
9 in the state of New York since 1985.

10 Q And can you please go over your educational
11 background?

12 A Yes. My undergraduate I went to Queens College,
13 Flushing, New York for three and a half years. I finished last
14 semester in medical school, Dominican Republic.

15 I graduated from University of North East, June of
16 1981.

17 Thereafter, I did three separate residencies. I did
18 18 months of internal medicine at Mount Sinai School of
19 Medicine; Mount Sinai Medical Center. I did one year of
20 general surgery at Cabrini Medical Center, Manhattan, New York.
21 I completed a three-year residency training program in the
22 field of physical medicine and rehabilitation.

23 I am board certified in the field of physical
24 medicine and rehabilitation.

25 I was the former Director of the Department of Rehab

Guy - by Plaintiff - Direct

1 Medicine at Maimonides Medical Center, Brooklyn, New York for
2 five years. My duties were to teach the orthopedic surgical
3 residents; the internal medicine residents; and supervise the
4 work of ten other doctors. Teach the physical therapist;
5 occupational therapist; and render consultations to other
6 doctors in the hospital.

7 From 1990 until 2006 I was the Director of NYU's
8 neuromuscular equipment clinic. My duties were to teach the
9 residents from NYU and to take care of the patients. There
10 would be patients with birth defects, spinal cord injuries, all
11 kinds of traumatic injuries. My duties were to take care of
12 the patients and teach the residents from NYU, prepare them for
13 the boards, parts one and two.

14 And I am currently the Director of the pain service
15 at the North Queens Surgicenter, where my duties are to
16 supervise the work of approximately 50 other doctors that do
17 interventional pain management procedures, such as epidurals,
18 nerve blocks, microsurgeries of the spine.

19 I teach. I review records. I discipline where it is
20 needed. And I check the billing, make sure the billing
21 correlates with the procedures that were performed.

22 I am also the Director of the Department of Rehab
23 Medicine at Med Alliance in the Bronx, which is an Article 28
24 facility. Article 28 is like a small hospital. We have about
25 35 other doctors. We have four operating rooms. My duties are

Guy - by Plaintiff - Direct

1 to take care of patients, teach, discipline. And I am also in
2 charge of morbidity and mortality at the same facility, where
3 any mistake that is made is brought to my attention. I
4 investigate, I teach, discipline.

5 And I am also an official physician mentor for the
6 New York State Education Department, Office of Professional
7 Medical Conduct. To get this position you have to be under no
8 investigation; have to have a perfect complete medical record;
9 you have to be board certified; you have to be affiliated with
10 a major teaching hospital as either a clinical instructor or
11 assistant professor or professor.

12 I am also a clinical instructor at NYU Hospital for
13 Joint Disease -- Hospital -- NYU Medical Center. And I was
14 promoted from clinical instructor to assistant professor in
15 2019.

16 And I also have private practices in Manhattan, New
17 York; Westbury, Long Island; and in the Bronx.

18 Q Doctor, you mentioned that you were board certified
19 in physical medicine/rehabilitation, can you please first tell
20 us, what is physical medicine and rehabilitation?

21 A Yes. Physical medicine and rehabilitation is a
22 medical specialty that was founded by Dr. Howard Rusk shortly
23 after World War II. It deals with traumatic injuries that
24 covers the whole body from head to toe.

25 Initially it was called orthopedic medicine and

Guy - by Plaintiff - Direct

1 rehabilitation, but because of all of the chaos and the
2 confusion between orthopedic surgery and this specialty, the
3 name was changed to physical medicine and rehabilitation.

4 It deals with traumatic injuries covering the whole
5 body from head to toe. It deals with orthopedic surgical
6 issues; neurosurgical issues; neurology issues; training in
7 interpretations of x-rays, MRIs, CT scans; interventional pain
8 management procedures; chronic pain management both
9 pharmacological and non-pharmacological. It deals with
10 disability and impairment evaluation, which means we have
11 training to evaluate a patient to see if that patient is
12 disabled, if that disability is partial or total, and what the
13 future holds for the patient in terms of future medical needs
14 and expenses. We also have training in electrophysiology, EMG
15 testing to check to see if there is any muscle or nerve
16 injuries present. And that's basically the field of physical
17 medicine and rehabilitation.

18 Q Now, Doctor, in mentioning that you are board
19 certified in that field, can you please explain to us what that
20 means?

21 A Yes. Board certification in this specialty means you
22 have been recognized as an expert by the elite doctors that do
23 research, that write textbooks. In order to become board
24 certified you have to have, first, training in the field other
25 than physical medicine and rehabilitation. Preferably, at

Guy - by Plaintiff - Direct

1 least one year of general surgery and one year of internal
2 medicine. That was met.

3 You then have to pass the monthly examinations given
4 by your teachers at the physical medicine rehabilitation
5 residency training program. You have to sit and take the
6 annual exams given by your department once a year.

7 And once you finish your training program, you have
8 to sit and take your boards part one, which is a written
9 examination which is about eight to nine hours long. You get
10 tested on orthopedic surgery, neurosurgery, neurology,
11 interpretations of x-rays, MRIs EMGs; pain management
12 pharmacological interventional. You get tested on
13 electrodiagnostics. Tested on disability and impairment
14 evaluation and cardiac and pulmonary rehabilitation.

15 Once you pass that exam, which I did the first time
16 around, you have to be in private practice a minimum 18 months,
17 be sponsored by two other doctors that know your work closely.
18 You then fly to the Mayo Clinic in Minnesota where all of the
19 elite doctors that do research test you orally for half a day
20 on similar topics. And if you prove to these doctors your
21 knowledge is up to par, they pass you.

22 And they get all of your records from college,
23 medical school, residency and review everything. If everything
24 is up to par, they give you a title of a diplomate of the
25 American Board of Physical Medicine and Rehabilitation.

Guy - by Plaintiff - Direct

1 That was obtained in May of 1989, and to this date it
2 stands in good standing.

3 And that's essentially it.

4 Q Okay. Doctor, you indicated earlier that you are
5 involved in teaching?

6 A Yes.

7 Q Can you please tell us, what are the requirements to
8 be a clinical instructor at a major hospital?

9 A You have to be board certified. You have to pass a
10 rigorous credentials committee to make sure you are up to par.
11 There is no medical disciplinary proceedings against you. You
12 get evaluated by one or two other doctors, and they put you on
13 probation for one year and they ask for a reviews from your
14 students. And God help you if your students know more than you
15 do, you will be asked not to continue.

16 That has never happened.

17 So that's basically the requirements.

18 Q Doctor, are you a member of any professional
19 organizations?

20 A Yes. I am a Diplomate of the American Board of
21 Physical Medicine and Rehabilitation. I was one of the
22 founders of the New York State Pain Society where I conducted
23 teaching that involved medical debates with different topics;
24 and there are over approximately 300 doctors in attendance, and
25 basically teaching and reviewing the work of other doctors that

Guy - by Plaintiff - Direct

1 were members and giving commentaries on their work.

2 Q Doctor, do you give lectures?

3 A Yes. I give lectures. I love to teach. I give
4 lectures to all walks of life: Doctors, medical students, I
5 have international doctors that rotate through my offices;
6 doctors that rotate from NYU through my offices; so, attorneys
7 as well.

8 Q And do you receive any monetary compensation for
9 these lectures?

10 A No. No.

11 Q Do you publish peer-reviewed papers in the area of
12 your medical specialty?

13 A Yes, I have published over 35 different articles in
14 peer-reviewed journals, various topics.

15 Q Have you won any special awards in your field of
16 medicine?

17 A Yes. I won an award from the President of Maimonides
18 Medical Center for creating an elite Department of Physical
19 Medicine Rehabilitation. I was the first doctor in Brooklyn to
20 open up therapeutic pool therapy for patients that were
21 disabled. And I also was a Captain with New York National
22 Guard. I got two citations from the General for exemplary
23 work. I was the Chief Resident at Mount Sinai; and I got
24 special rewards for exemplary work there as well.

25 Q Doctor, does physical medicine and rehabilitation

Guy - by Plaintiff - Direct

1 differ from neurology and orthopedics?

2 A Slightly, yes. How it differs is, similar to
3 orthopedic surgeries, we try to avoid surgery; and then we get
4 involved after. The orthopedic surgeon does joint replacement
5 surgeries or joint surgeries such as shoulder replacements,
6 shoulder surgeries; hip replacement; knee replacement. The
7 patient comes under our care and we continue until the patient
8 is fully rehabilitated.

9 And how it differs from neurology. Neurologists
10 concentrate more on central neurology. That would be diseases
11 such as Lou Gehrig's Disease, cluster headaches, migraine
12 headaches, Parkinson's disease, so on and so forth. We
13 concentrate on neurology of the spine, disc herniations, disc
14 pathologies, the nerves in the arms, the legs. And we do
15 electrodiagnostics. Not every neurologist does
16 electrodiagnostics. I get referrals from neurologists for this
17 procedure. And we all work together. We refer patients to one
18 another as well.

19 Q Now, Doctor, as part of your training, do you receive
20 formal training in neurology, orthopedics, internal medicine,
21 general surgery, pain management, and the interpretation of
22 diagnostic studies?

23 A Yes, extensively so. And we get tested on our boards
24 on all of these topics.

25 Q And does your field of medicine deal with traumatic

Guy - by Plaintiff - Direct

1 injuries?

2 A Yes, sir, it does.

3 Q Does your field of medicine deal with pain
4 management?

5 A Extensively so, yes.

6 Q What is the relationship between the fields of
7 physiatry and pain management?

8 A Well, physiatry deals with disability, impairment and
9 traumatic injuries. Where there is traumatic injuries, there
10 is pain. And some of the patient's painful conditions do not
11 go away with just physical therapy and conservative treatments,
12 then we have to go to the next phase. That would be
13 interventional pain management procedures, which are epidurals;
14 nerve blocks; facets; radio frequency ablation procedures,
15 where you burn the sensory nerve; and microdiscectomies of the
16 spine, percutaneous discectomy as one this patient had.

17 Q Now, Doctor, does your field of medicine deal with
18 disability and impairment evaluations?

19 A Yes, sir, it does.

20 Q And how so?

21 A Well, I get requests from patients to do a special
22 report rendering their current status, whether they are
23 partially disabled, totally disabled. And also doctors ask me
24 for such reports as well. And attorneys ask for such reports
25 as well.

Guy - by Plaintiff - Direct

1 Q Are these reports commonly referred to as future
2 medical needs reports?

3 A Yes or life care reports.

4 Q Or life care plans?

5 A Yes, sir.

6 Q Do you maintain -- well, I think you have already
7 said that you do maintain a private practice?

8 A I do, yes, sir.

9 Q Can you please generally describe your private
10 practice?

11 A My private practice is mixed. I treat patients from
12 all walks of life from age six to age 110. And I treat people
13 that get hurt on the job; stenographers that keep typing get
14 carpal tunnel syndromes. I take care of people that get
15 injured on the job; car accidents; sports injuries; people that
16 have severe arthritic conditions that require certain
17 interventional pain management procedures. I get referrals
18 from other doctors in just about every walk of life for
19 electrodiagnostics, treatments and interventional procedures.
20 So, it is a very mixed practice.

21 Q And how long have you maintained your medical
22 practice?

23 A Since 1986.

24 Q And in the course of your regular practice, do you
25 treat patients who sustain traumatic injuries?

Guy - by Plaintiff - Direct

1 A I do. Yes, sir.

2 Q How many victims of traumatic injuries do you treat
3 in a given week?

4 A In a week? Very, very mixed. I would say anywhere
5 from 100 to 150; could be more, could be less.

6 Q How many victims of traumatic injuries have you
7 treated in the course of your career?

8 A Tens of thousands.

9 Q And do you regularly treat patients with traumatic
10 lumbar or lower back injuries?

11 A That's one of the most common injuries. That's the
12 second cause of -- reason that brings a patient to a physician
13 after the common cold. So it is a very common problem.

14 Q How many traumatic victims of lumbar or lower back
15 injuries do you think you treat in a given week?

16 A In a given week, again, approximately 150, maybe 200;
17 could be more, could be less.

18 Q The life care plans that you referred to earlier, can
19 you please tell us what that process entails putting together a
20 life care plan?

21 A Okay. First of all, a life care report is a special
22 report provided by two experts: A certified life care planner.
23 They take a two-week course and pass a certified exam. They
24 are not medical doctors. They cannot give opinions about
25 future medical needs. They get their opinions off other

Guy - by Plaintiff - Direct

1 treating physicians.

2 And the other expert that does life care plans is a
3 board certified physiatrist, like myself, who have more than
4 ten years training in these areas, that can do treatments.
5 They can do surgery, order any diagnostic studies. So, you
6 take a pertinent history, a pertinent physical examination;
7 review pertinent medical records, x-rays, MRIs, surgical
8 procedure notes and other doctors' reports. You give an
9 opinion as to whether or not the patient needs physical
10 therapy, medications, future MRIs, EMG studies and what the
11 cost would be. And any future surgeries and how long each
12 future surgery lasts for. If they need any special devices,
13 like dorsal column stimulation implant, as this patient has
14 had. And you give the frequency and the fees for these
15 procedures over a patient's lifetime.

16 Q Now, how many such life care reports would you say
17 you create in a given week?

18 A It varies. Sometimes five, sometimes ten. Sometimes
19 none.

20 Q And how many such life care reports have you created
21 and authored and constructed over the course of your career?

22 A A good estimate would be over a thousand.

23 Q Now, as part of your practice as a doctor and a
24 physiatrist, do you refer your patients to orthopedic surgeons
25 for surgical evaluations?

Guy - by Plaintiff - Direct

1 A When medically indicated, yes, sir.

2 Q And as part of your practice as a doctor and
3 physiatrist, do you refer your patients to spinal surgeons for
4 surgical evaluations?

5 A I do. I myself do spinal surgeries. I do
6 microdiscectomy of the spine. When a patient requires a more
7 extensive surgery, I refer them to the appropriate spinal
8 surgeons.

9 Q Are you familiar with what are the indications for
10 surgical intervention?

11 A Absolutely, I teach these indications. And I review
12 other doctors reports as required by the New York State
13 Education Department Office of Professional Medical Conduct. I
14 go into doctor's offices, I review their records and I match
15 them against the billing records to make sure everything is
16 appropriate. And if it is not, my duties are to teach and
17 report this to the New York State Education Department.

18 Q Now, Doctor, being that you regularly treat people
19 who are victims of trauma, and because you regularly perform
20 disability and impairment evaluations and life care reports, do
21 you find yourself from time to time called upon to come to
22 court to testify as a medical expert witness?

23 A Yes, sir.

24 Q When you find yourself in court, do you mostly
25 testify on behalf of plaintiffs, or defendants?

Guy - by Plaintiff - Direct

1 A Mostly for my patients. The legal system calls them
2 plaintiffs, I call them patients.

3 Q Now, are you being compensated for your time here
4 today?

5 A For canceling my office, yes, sir, I am.

6 Q At what rate?

7 A 5,000 for half a day.

8 Q If you were not in court this morning, what would you
9 be doing?

10 A I would be in my office taking care of patients.

11 Q And what percentage of your medical practice is
12 devoted to treating patients and teaching?

13 A The vast majority is devoted to taking care of
14 patients, over 90 percent. Out of that 90 percent I would say
15 30 percent is devoted to teaching.

16 Q Have you ever been deemed an expert in your specialty
17 in any Supreme, Federal or other Courts?

18 A Every single time I have testified, I have come to
19 court to give my credentials, approximately 300 times, could be
20 slightly less or slightly more, never turned down once I
21 presented my credentials.

22 Q Have you ever been turned down as an expert?

23 A One time on a federal matter before Judge Osimato.
24 (ph.) I was not present. The plaintiff attorney wanted to
25 bring me in as a psychiatrist. I am not a psychiatrist, I am a

Guy - by Plaintiff - Direct

1 physiatrist, so the Judge respectfully declined. He goes the
2 doctor can come, give his opinions and I'll see, but he is not
3 coming in as a psychiatrist.

4 MR. ZILBERG: Your Honor, at this time I offer
5 Dr. Guy as an expert in physiatry, physical medicine and
6 rehabilitation.

7 THE COURT: Any objection?

8 MS. LUDLAM: Yes, Judge. We object. I am not
9 going to consent to him being admitted as an expert. It
10 is not typically done in New York Supreme Court, so I
11 am --

12 THE COURT: Ultimately it is for the jury to
13 consider.

14 MR. ZILBERG: Thank you, Your Honor.

15 Q Now, did my office retain you to evaluate
16 Ms. Howard's medical chart and create a future medical needs
17 plan or a life care report?

18 A Yes, sir.

19 Q And when did we retain you?

20 A The first time I saw -- evaluated the patient records
21 was on May 17, '26. And then I did a full examination a month
22 later on June 18, '26.

23 Q Okay. And what records -- what medical records did
24 you review?

25 A Good Lord, there were over 1,000 pages, maybe two,

Guy - by Plaintiff - Direct

1 3,000. I reviewed records from City M.D.; Lenox Hill
2 Radiology; Fifth Avenue Surgicenter; Midwest Orthopedics at
3 Rush; reports of Dr. Jill Moran; records of Dr. Richard Radna;
4 records of Dr. Sarah Pachtman; defense IME report of Dr. Ira
5 Chernoff; among other reports of the lumbar spine; sacral spine
6 from Lenox Hill Radiology; records of Dr. Diwan, pain
7 management doctor; records from Fifth Avenue Surgicenter,
8 various x-rays, reports from the thoracic and the lumbar spine;
9 percutaneous discectomy procedure, performed by Dr. Diwan; and
10 a dorsal column stimulation implant that was performed on the
11 patient. And I believe that was it.

12 Q Now, Doctor, based upon the medical records that you
13 reviewed, what were the significant takeaways from these
14 records?

15 A Well, she had L5-S1 disc protrusion. She had an L5
16 pars defect, which is a fracture of part of the spine, the
17 vertebra. She had lumbar radiculopathy. She had pain syndrome
18 that did not subside to conservative treatments, and did not
19 subside to the percutaneous discectomy surgery. She had to
20 have a dorsal column stimulation implant. And she still has a
21 disability and is still getting physical therapy, despite
22 having had more than 600 sessions of physical therapy, multiple
23 interventional pain management procedures.

24 Q Now, Doctor, having reviewed these voluminous
25 records, did you create a -- I am sorry. Did you create a life

Guy - by Plaintiff - Voir Dire

1 care plan?

2 A I did.

3 MS. LUDLAM: I am going to object, Judge, as to
4 the testimony of a life care plan. And we can discuss
5 this as sidebar.

6 THE COURT: Okay.

7 (Whereupon, there was an off the record
8 discussion between the Court and counsels.)

9 THE COURT: You can be seated.

10 We will continue.

11 MS. LUDLAM: Judge, at this time may I -- may
12 the defense voir dire the doctor?

13 THE COURT: Yes.

14 MS. LUDLAM: Thank you, Judge.

15 VOIR DIRE EXAMINATION

16 BY MS. LUDLAM:

17 Q Good morning, Doctor.

18 A Good morning, ma'am.

19 Q My name is Margot Ludlam. We haven't met before,
20 correct?

21 A That's correct, yes.

22 Q Doctor, I am just going to ask you a couple of
23 questions. First, you prepared a report dated May 17 of 2026,
24 correct?

25 A Yes, ma'am. That's correct.

mlp

Guy - by Plaintiff - Voir Dire

1 Q And at the time you prepared that report, you
2 reviewed various medical records and reports concerning
3 Ms. Howard, correct?

4 A That is correct.

5 Q When you -- as of the time that you prepared the
6 report of May 17, 2026, you had not yet met Ms. Howard,
7 correct?

8 A That is correct.

9 Q And you hadn't performed a physical evaluation of her
10 at that time, correct?

11 A That is correct.

12 Q And in that report of May 17, 2026, you provided
13 various treatments for the future with some costs associated
14 with those treatments, correct?

15 A That is correct.

16 Q And when you prepared that -- those future costs,
17 that list of future costs, again, that was -- you had not yet
18 had an opportunity to see and evaluate, in-person, Ms. Howard,
19 correct?

20 MR. ZILBERG: Objection.

21 THE COURT: Overruled, you can answer.

22 A That is correct, yes.

23 Q Now, Doctor, is it fair to say that in your report of
24 May 17, 2026, you did not cite to any sources for where you
25 obtained the costs for each of those recommended treatments,

mlp

Guy - by Plaintiff - Voir Dire

1 correct?

2 A That is correct. Those are professional opinions.

3 Q Okay. So you didn't call any orthopedic surgeons
4 when you prepared that plan, correct?

5 A That is correct, I did not need to do so.

6 Q Well, you are not an orthopedic surgeon, correct,
7 Doctor?

8 A I am not.

9 Q In your review of the medical records concerning
10 Ms. Howard, you didn't in any of those medical records, you did
11 not see any bills, correct?

12 A I did not.

13 Q All right. So were there no bills from Dr. Bitan,
14 the orthopedic surgeon, correct?

15 A I saw no medical bills from any of those physicians.

16 Q And it is also fair to say that when you estimated a
17 cost for physical therapy, you didn't cite to where that cost
18 came from, correct?

19 A I am familiar with the costs.

20 Q All right. But you didn't put in your report what
21 the source of that cost was, correct?

22 A The source is Dr. Ali Guy.

23 Q Okay. But you are not a physical therapist, correct?

24 A I have physical therapists work for me. I bill for
25 their services. I am familiar with the billing fees. And at

Guy - by Plaintiff - Voir Dire

1 Med Alliance in the Bronx I am the Chief of Physical Medicine
2 Rehabilitation. I review the physical therapy billings. I
3 review the reports, et cetera. I am familiar with the medical
4 billing of such services.

5 Q Okay. Now, Doctor, when you say you are familiar
6 with the medical billing for physical therapy services; it is
7 fair to say that's for New York, correct?

8 A That is correct.

9 Q And in particular downstate, New York City area,
10 correct?

11 A In the prevailing New York City area, yes.

12 Q And you are aware, Doctor, that Ms. Howard is
13 actually a resident of Virginia, correct?

14 A That's correct. But she still gets some treatments
15 in New York.

16 Q Right. But you are also aware that living in
17 Virginia, that there would be different costs associated with
18 medical services in Virginia, correct?

19 A That is correct, yes.

20 Q And your plan didn't include potential costs for
21 treatment in Virginia, correct?

22 A That is correct.

23 Q And you also cited to -- well, referred to different
24 types of radiology studies in your plan, correct?

25 A That is correct.

Guy - by Plaintiff - Voir Dire

1 Q And that includes CT scans, MRIs, correct?

2 A That is correct.

3 Q I don't think you mentioned x-rays, correct? Just CT
4 scans and MRIs, correct?

5 A That is correct.

6 Q Now, you yourself are not a radiologist, correct?

7 A I am not a radiologist, but you don't need to be a
8 radiologist to know the medical indications. I teach these
9 things.

10 Q Doctor, I am not talking about what the medical
11 indications are at this point for having a patient have certain
12 type of diagnostic tests. My only question, sir, is you do not
13 perform those particular type of tests, correct?

14 A I do not. That is correct.

15 Q In fact, what you -- in your own patients you refer
16 your patients out to have -- you give them a prescription and
17 you refer them out to have MRIs, CT scans, x-rays, et cetera,
18 correct?

19 A That is correct, yes.

20 Q And when you -- as a referring physician you would
21 receive reports from the radiologist that you referred your
22 patients to, correct?

23 A Reports and the actual films themselves, which I
24 review myself.

25 Q Correct. But you do not receive their bills,

Guy - by Plaintiff - Voir Dire

1 correct? You just receive the reports and the films? Correct?

2 A I do not receive the bills unless I specifically ask
3 to do so.

4 Q Okay. But typically when you receive a report from a
5 radiologist where you send your patient to, and the films, it
6 is typically not accompanied with their bill, correct?

7 A That is correct.

8 Q It is fair to say the bill is either taken care of by
9 the patient at the office or through some other source,
10 correct?

11 A That is correct.

12 Q So, in fact, in your report you don't cite to where
13 you obtained the amount that it would cost for -- to have a CT
14 scan or an MRI performed? That's a yes or no, Doctor.

15 A The answer is yes, with an explanation.

16 Q Well, there is no citation in your report as to where
17 you obtained the -- your proposed fee for any of the films,
18 correct?

19 A Those are professional opinions based on my knowledge
20 of the cost of MRIs.

21 Q Right, but you don't actually charge for an MRI or a
22 CT scan?

23 A I do not.

24 Q Right. So when you say it is based upon your
25 professional knowledge, well, you don't cite to where that

Guy - by Plaintiff - Voir Dire

1 knowledge came from, correct?

2 A My 35 year-plus experience in reviewing numerous
3 medical billings of many different charts and patients' records
4 that I have reviewed. And I am also familiar with the cost of
5 MRIs. The inventor of the MRI, Dr. Damadian, the inventor of
6 the MRI, his son is my patient. I always ask him what is the
7 fee for this, for this, for that. I am familiar with the fees
8 for MRI in the Tristate area.

9 Q Okay. But Doctor, you mentioned that you obtained
10 this information from another source, in this case the son of
11 the inventor of the MRI, correct?

12 A Correct.

13 Q But that's not cited to in your report, is it?

14 A It does not have to be cited.

15 Q Doctor, is it fair to say when someone is -- you
16 prepare your plan with the intention of someone reviewing it,
17 correct?

18 A Yes.

19 Q So the person, is it fair to say that the person who
20 is reviewing your plan wouldn't have any idea where you
21 obtained the proposed cost from, would they?

22 A I explained everything earlier this morning.

23 Q That's --

24 A My professional opinion and my knowledge of the fee
25 schedule for all of the procedures that I have mentioned.

Guy - by Plaintiff - Voir Dire

1 Q But that's what you told the jury from your mouth,
2 correct?

3 A That is correct.

4 Q But that is not written in your report, is it,
5 Doctor?

6 A It is a professional opinion.

7 Q I understand, Doctor. This is a yes or no question.
8 It is not written in your report where you obtained these costs
9 from, correct?

10 A It is not written. And it does not need to be
11 written.

12 Q Well, Doctor, if somebody is reviewing the report and
13 needs to ask you questions about where those numbers come from,
14 they would have no idea before hearing for the first time what
15 you are telling the jury, correct?

16 MR. ZILBERG: Objection.

17 THE COURT: Overruled.

18 You can answer.

19 A I explained all of this earlier, and I am explaining
20 to you again, I have been doing this for a long time. I am
21 familiar with the fee schedules. In my bag I even have copies
22 of some of the bills; if you would like I can show them to you.

23 Q Right. But you don't put in the report --

24 A Again --

25 Q -- where these bills came from, correct?

Guy - by Plaintiff - Voir Dire

1 A Again, I don't need to do that. These are my
2 professional opinions.

3 Q I understand, Doctor. But if you are preparing a
4 report, and no one has an opportunity to speak to you, they
5 wouldn't know where these figures came from, correct?

6 MR. ZILBERG: Objection.

7 THE COURT: Overruled.

8 You can answer.

9 A If they want to ask where I got them from they can
10 call me. My information is on top of the report. My phone
11 number is on top of the report. They can call me.

12 Q Well, Doctor, isn't it fair to say that because you
13 don't list the sources of where you obtained the knowledge
14 concerning all of these costs, there is -- there is -- it is
15 impossible for us to determine whether those are accurate costs
16 for today, other than from hearing it from your mouth?

17 MR. ZILBERG: Objection.

18 THE COURT: Overruled.

19 You can answer.

20 A You can verify, calling some of the major facilities
21 and you can confirm them. These are the actual New York City
22 prevailing fee schedules.

23 Q Doctor, we can't call those facilities if you don't
24 list those facilities in your report.

25 A You can call me. Thirty-five years I am doing this,

mlp

Guy - by Plaintiff - Direct

1 you are the first one, first one has ever asked me these
2 questions.

3 Q All right. Well, Doctor, if you don't list where
4 those facilities -- which facilities those are that you obtain
5 these figures, I would have no way of knowing what those
6 facilities are, correct, without -- just by looking at the
7 report, correct?

8 A The way you phrased the question, that is correct.

9 Q All right.

10 MS. LUDLAM: Judge, I don't have anymore
11 questions. Thank you.

12 THE COURT: Okay.

13 MS. LUDLAM: And my objection remains, Judge,
14 about the report.

15 THE COURT: All right.

16 CONTINUED DIRECT EXAMINATION

17 BY MR. CERTAIN:

18 Q Now, Doctor, before we get to the life -- to the life
19 care report, after having received the records you created a
20 life care report, correct?

21 A I did.

22 Q Okay. And then after having created that report, did
23 you then have an opportunity to meet with and evaluate
24 Ms. Howard?

25 A I did, a month later, yes.

Guy - by Plaintiff - Direct

1 Q Okay. And at that point in time did you perform a
2 clinical examination?

3 A I did.

4 Q And can you please tell us what were the significant
5 findings of the clinical examination?

6 A The chief complaint was the lower back. The back was
7 tender to touch. There was spasm, which is defined as a
8 prolonged involuntary contraction of a muscle. There was a
9 surgical scar in the lower back. There was another surgical
10 scar in the left lower flank right above the hip area from the
11 dorsal column stimulation implant. There was a one and a half
12 inch midline lumbar surgical scar. The muscle power testing
13 for both legs was diminished to two grades weaker than normal,
14 four out of five. Sensation was diminished to pinprick and
15 touch, left foot. The gait was slow and antalgic. Antalgic
16 means she walked with a limp. And she could not sit, she
17 would -- she could only stand. So the whole thing was done in
18 standing, with some partial sitting; mostly standing.

19 Q Okay. Now, Doctor, you mentioned radiculopathy. Can
20 you please tell us, what is radiculopathy?

21 A Radic means nerve root. Opathy means damage to, and
22 nerve root. So, if we say radiculopathy it means damage to a
23 nerve root. If we say lumbar, lumbar means the lower back.

24 Q Now, Doctor, based upon your review of the records
25 and your examination of Ms. Howard, did you form a diagnosis?

Guy - by Plaintiff - Direct

1 A I did.

2 Q And what is that, Doctor?

3 A Diagnosis was the patient has chronic pain syndrome.
4 L5-S1 disc protrusion, with lumbosacral radiculopathy. Status
5 post multiple epidural steroid injections. Status post L5-S1
6 percutaneous lumbar discectomy surgery. Status post placement
7 of a dorsal column stimulation implant. And status post
8 fracture of the L5 pars interarticularis on the left side.

9 Q Doctor, at this point I would like to present you
10 with a hypothetical.

11 A Okay.

12 Q I would like you to assume that Ms. Lainey Howard
13 testified in court that prior to March 17, 2021, she was a
14 fully active and functioning DEA agent, who was otherwise very
15 healthy, very athletic, ran on a regular basis, played sports,
16 and engaged in many, many activities that required -- that
17 required strength and agility.

18 I would like you to further assume that Lainey Howard
19 testified in court that on March 17, 2021 she was in the course
20 of her employment as a DEA agent. She was standing next to her
21 colleague's vehicle. And a Sprinter van that was parked
22 directly behind her started moving, squeezed and crushed her
23 against her colleague's vehicle and then dragged her cross the
24 vehicle before letting go of her body.

25 I would like you to assume that Ms. Lainey Howard

Guy - by Plaintiff - Direct

1 testified that there was some onset of pain, but she was hoping
2 that she would be better, and decided not to seek medical
3 attention immediately because she did not want to interfere
4 with the ongoing investigation at the time.

5 She testified that her pain got progressively worse
6 over the coming days. And that on March 23 she sought medical
7 attention for the first time, approximately six days later, at
8 City M.D.

9 Following her visit to City M.D., Lainey Howard
10 testified that two days later, on March 25, she went to see a
11 spinal orthopedic surgeon by the name of Dr. Bitan.

12 I would like you to assume that Dr. Bitan's records,
13 which are in evidence, reference that on that day she was in
14 severe pain, that she had trouble transferring chair to chair.
15 She had trouble transferring room to room. That the patient
16 was sensitive to the last two segments and sacroiliac maneuvers
17 caused extreme pain.

18 I would like you to further assume that Dr. Bitan
19 immediately sent her for MRIs at Lenox Hill Radiology, which
20 was just a few blocks away. She went to get the films done.
21 She went to get her MRI done of her lower back. Came back to
22 his office.

23 I would like you to further assume that Lainey Howard
24 testified that when she returned to Dr. Bitan's office she laid
25 down on one of the examining tables and Dr. Bitan used either

Guy - by Plaintiff - Direct

1 his own phone or the phone of one of his staff to create an
2 immediate video call with pain management doctor, Dr. Diwan, so
3 that Lainey Howard could have an immediate consultation with
4 him.

5 I would like you to assume that during that video
6 session Dr. Diwan immediately scheduled Lainey Howard for an
7 epidural injection; which was scheduled for March 30.

8 I would like you to further assume that Lainey Howard
9 testified that when she showed up on March 30, she was not able
10 to get that injection because it had not yet been approved.
11 But Dr. Diwan's records and Dr. Diwan did get to examine her on
12 that day, and his records indicate that she was in tears and in
13 severe pain.

14 I would like you to further assume that the next day,
15 March 31, she actually did get that epidural injection.

16 I would like you to further assume that Dr. Radna
17 came to court and testified on Monday, that he went through all
18 of the films from beginning up until now from 2021 through 2026
19 and he -- and he diagnosed her and explained to us that she had
20 sustained an L5 pars fracture on March 17, 2021.

21 I would like you to further assume that after the
22 March 17, 2021 accident, Lainey Howard was unable to work at
23 all, whether on site or remotely, at all, for five consecutive
24 months from late March up until very late August.

25 I want -- I would like you to further assume that

Guy - by Plaintiff - Direct

1 during that time she had trouble sleeping; she had trouble
2 dressing herself; she couldn't put on her shoes; she had
3 trouble showering; she needed help getting on and off the
4 toilet. She did not leave her apartment, except to go to
5 medical visits. She could not cook. She could not clean. Her
6 father had to take off from work -- had to take a leave of
7 absence from work in Massachusetts to travel and help take care
8 of her. I would like you to further assume that she had
9 trouble taking care of her hygiene and that she had to rely on
10 colleagues, friends and family to bring her meals.

11 I would like you to further assume that her husband
12 wasn't with her that entire time because he was assigned in
13 Chicago at the time, so also had to travel periodically to help
14 take care of her. So she was living alone at the time in New
15 Jersey.

16 I would like you to further assume that Ms. Lainey
17 Howard testified that she never returned to field duty with the
18 DEA. And starting around August 25, Dr. Diwan finally
19 permitted her to return to light duty, and she remained on
20 light duty for the remainder of her time with the DEA. And
21 every job she has had since she has worked with accommodations,
22 specifically in the standing position only, as she has through
23 all of these years had trouble sitting.

24 MS. LUDLAM: Judge, at this point I am going to
25 object to the hypothetical because it has turned into more

mlp

Guy - by Plaintiff - Direct

1 of a summation and --

2 THE COURT: It sounds like it. Can you limit it
3 at all? Maybe ask two separate questions?

4 MS. LUDLAM: It is also not citing accurately
5 the testimony.

6 THE COURT: All right. Sustained.

7 Q Now, Doctor, on the hypothetical that I have --

8 MR. ZILBERG: Actually I have just one more
9 thing to add, Your Honor, to the hypothetical.

10 Q Doctor, I would like you to assume that between then
11 and now Lainey Howard has undergone 14 injections; five
12 radiofrequency ablations; a percutaneous discectomy; an
13 implantation of a neurostimulator, which has been implanted
14 since 2022, which she has to run twice a day for 30 minutes
15 every single day.

16 MS. LUDLAM: Judge, I am going to renew my
17 objection.

18 THE COURT: All right. Overruled.

19 Q Now, based on the hypothetical, your review of Lainey
20 Howard's medical records and your medical examination of
21 Ms. Howard, did you make a determination as to whether the
22 March 17, 2021 accident was a substantial factor in causing
23 Ms. Howard's lower back injuries, symptoms and limitations?

24 A Yes, sir, I did.

25 MS. LUDLAM: Objection.

Guy - by Plaintiff - Direct

1 THE COURT: Overruled.

2 Q Please explain.

3 A Yes. Based on the history, the physical exam, review
4 of voluminous medical records, MRIs, CT scans, I felt that she
5 has sustained a severe permanent partial disability, causally
6 related to the accident of 3/17/21. That these injuries were
7 permanent and progressive. And will require lifetime
8 treatments as a result.

9 Q Doctor, I would like to present you with another
10 hypothetical.

11 I would like you to assume that while working in
12 Chicago, after having transferred to Chicago in very late
13 August and working light duty, while traveling to work on
14 October 12, 2021, Ms. Howard was involved in a car accident
15 where somebody -- where another car hit her car from the rear.

16 A Mm-Hm.

17 Q I would like you to assume that immediately following
18 that accident she went to Rush Medical Center ER.

19 I would like you to further assume that she made
20 complaints of neck pain, back pain, hip pain and head pain.

21 I would like you to further assume that after that
22 accident she missed three days of work, and then returned to
23 work with the same limitations as she had before.

24 I would like you to assume that there were no new
25 restrictions after the October 12, 2021 accident that differed

Guy - by Plaintiff - Direct

1 in any way from the restrictions before the October 12, 2021
2 accident.

3 Based upon the hypothetical that I just gave you,
4 does that in any way change the opinion that you just gave?

5 MS. LUDLAM: Objection.

6 MR. ZILBERG: I am sorry. I didn't finish my --
7 I withdraw and I will restart.

8 Q I would like you to assume everything that I have
9 listed thus far.

10 A Right.

11 Q But I would like you to also assume that after the
12 October 12, 2021 accident, there were MRIs done two days later,
13 and the MRIs did not show any new injury.

14 A Mm-Hm.

15 Q I would like you to further assume that Dr. Diwan,
16 her treating doctor, never diagnosed with any new condition.

17 I would like you to assume that Ms. Lainey Howard
18 did, in fact, complain of some increased pain to her lower
19 back, but there were no new injuries and no new diagnoses by
20 either the doctors at Rush or by Dr. Diwan.

21 Does this hypothetical that I have just presented to
22 you in any way change the opinion that you gave to the last
23 question?

24 A No.

25 MS. LUDLAM: Objection, Judge.

Guy - by Plaintiff - Direct

1 THE COURT: Overruled.

2 You can answer.

3 A No. No, sir.

4 Q Why not?

5 A Already you have the diagnosis before this accident.
6 You already had a lot of the major treatments, and the MRIs did
7 not show any new pathology. And it just showed an aggravation
8 of whatever she had from before, that's all.

9 Q Now, Doctor, based on the first hypothetical that I
10 gave you, which specifically regards and includes the
11 five-month time period that Ms. Howard was out of work, based
12 on that hypothetical, do you have an opinion within a
13 reasonable degree of medical certainty as to whether Ms. Howard
14 sustained an injury as a result of the March 17, 2021 accident
15 that stopped her from doing substantially all of her usual
16 daily activities for at least 90 of the first 180 days
17 immediately following the March 17, 2021 accident?

18 MS. LUDLAM: Objection.

19 THE COURT: Overruled.

20 You can answer.

21 A Yes, sir.

22 Q What is that opinion?

23 A That it prevented her from doing all of her usual
24 activities of work and/or most of the ADLs, activities of daily
25 living.

Guy - by Plaintiff - Direct

1 Q Doctor, do you have an opinion within a reasonable
2 degree of medical certainty as to whether Ms. Howard sustained
3 a significant limitation of use, specifically of the lumbar
4 spine, as a result of the accident of March 17, 2021?

5 A Yes, sir.

6 MS. LUDLAM: Objection.

7 THE COURT: Overruled.

8 Q What is that opinion?

9 A The answer is yes. And later on with the use of the
10 models I will confirm my answer.

11 Q Would you -- Doctor, would you like to use the models
12 now to explain to the jury -- to elaborate on your answer?

13 A Yes. With the Judge's permission.

14 MR. ZILBERG: Your Honor, may I?

15 THE COURT: Sure.

16 THE WITNESS: Judge, may I step down?

17 THE COURT: Yes.

18 (Whereupon, the witness stepped down from the
19 stand.)

20 MS. LUDLAM: Judge, may I relocate?

21 THE COURT: Yes.

22 THE WITNESS: May I begin, Your Honor?

23 THE COURT: Yes.

24 A So in the human spine we have three segments to the
25 spine: We have the neck, is referred to as the cervical spine.

Guy - by Plaintiff - Direct

1 It has seven vertebrae. The mid back is referred to as the
2 thoracic spine; there are 12 vertebrae. The lower back is
3 referred to as the lumbar spine; there is five vertebrae.
4 Between each vertebra we have a shock absorber called a disc.
5 A disc has two segments. The outer portion, it has 100 rings
6 of a fibrocartilage material called the annulus fibrosus.
7 That's the outer rings. Inside we have a gelatinous material
8 called the nucleus pulposus.

9 It is this nucleus pulposus, the jelly material, that
10 gives us our ability to bend forward, bend backwards, move
11 sideways. It is this structure that prevents bones from
12 hitting each other when we jump up and fall down. If we didn't
13 have this structure bone would hit bone and break.

14 Now, right behind the disc we have the spinal cord
15 that comes from the brain, goes all the way down the neck, it
16 ends somewhere between the first and second lumbar vertebra.
17 It then continues with branches of nerve roots that resembles a
18 horse's tail, called a cauda equina.

19 This is the L5. L4. L3. L2. L1. Each vertebra is
20 numbered according to its anatomical location.

21 This is the sacrum.

22 The little bone at the end is the coccyx.

23 And this is the canal where a lot of epidurals are
24 performed, which we will go into later on. And each level
25 there is nerve roots coming off. They give rise to two

Guy - by Plaintiff - Direct

1 branches. One is for motor, movement. The other is for
2 sensation.

3 And we have three pathological conditions to a disc.
4 A bulge, is in layman's term, a partial tear of a disc. What
5 you are looking at, this is the axial view, this is the spinous
6 process. This is the transverse process, here and here. If
7 you take your fingers, touch the back of your necks, you are
8 touching the spinous process. Bulge. Bulge. Herniation.

9 Herniation is defined as a complete tear of the disc,
10 complete tear of the disc; when a disc material which is inside
11 leaks out and passes the disc margin.

12 So, a protrusion is a complete tear where the disc
13 material does not pass the disc margin, but it is a complete
14 tear. Herniation is when it goes past the disc margin.
15 Normal, protrusion, herniation. Normal, protrusion,
16 herniation. Normal, protrusion, herniation.

17 Now, what happens to a disc once it gets injured? It
18 becomes a tear. You have the release of the water content
19 inside the disc. The disc begins to shrivel up or desiccate.
20 So, this is a normal disc. Look at the height of the disc.
21 This is where it is already torn. The disc material is
22 becoming dessicated. The body tries to stabilize the injured
23 area by forming these bony projections called osteophytes. And
24 this is an end-stage disc where the water content has leaked
25 out completely. The body has formed a lot of osteophytes.

mlp

Guy - by Plaintiff - Direct

1 There is crowding of the nerve root. And the function of a
2 disc and the nerve root is being compromised. That's why this
3 condition is permanent and progressive.

4 Once we go to the microscopic level, we have
5 microscopic bleeding in the outer portion of the disc. We have
6 a release of over 100 chemicals that irritate the nerve root
7 causing radiculopathy. You can have radiculopathy by direct
8 compression of the disc material on the nerve root; or by the
9 chemicals that are released causing chemical irritation to the
10 nerve root; or the rotational forces on the spine from a
11 forcible flexion and extension or rotational injury.

12 MS. LUDLAM: At this point I am going to object
13 that this is way beyond the scope of the question that he
14 was asked.

15 THE COURT: Sustained.

16 MR. ZILBERG: I will ask a new question.

17 Q Doctor, can you please explain to the jury what
18 the -- what the injury as diagnosed to the plaintiff is?

19 A Yes. The patient has an L5-S1 disc protrusion. This
20 is the side-view of the spine. L5 is the last vertebra in the
21 lower back. S1 is the first vertebra of the sacrum. So this
22 disc, the last disc is torn. Like so. When it is torn it hits
23 the nerve root, the chemicals released causes a chemical
24 radiculopathy, and the pain shoots into the hip, the buttocks,
25 down the legs. And she also had a pars defect of the L5

Guy - by Plaintiff - Direct

1 vertebra. This is the L5 vertebra. It is a break over this
2 area where I am pointing to.

3 (Indicating.)

4 Okay? And that's basically it.

5 Did you want me to explain the injections she had
6 while I am up here?

7 MS. LUDLAM: Judge, objection.

8 MR. ZILBERG: Yeah, I will continue.

9 THE COURT: Sustained.

10 MR. ZILBERG: At this point, no.

11 (Whereupon, the witness resumed the stand.)

12 Q Doctor, do you have an opinion within a reasonable
13 degree of medical certainty as to whether Ms. Howard suffered a
14 serious injury of her lumbar spine as a result of the accident
15 of March 17, 2021?

16 MS. LUDLAM: Objection.

17 THE COURT: Overruled.

18 You can answer.

19 A Yes, sir, she did.

20 Q Doctor, do you have an opinion within a reasonable
21 degree of medical certainty as to whether Ms. Howard suffered a
22 permanent consequential limitation of her lumbar spine as a
23 result of the accident of March 17, 2021?

24 MS. LUDLAM: Objection.

25 THE COURT: Overruled.

Guy - by Plaintiff - Direct

1 You can answer.

2 A Yes, sir, she did, for a variety of good reasons.

3 Q Can you please tell us?

4 A Yes. I saw her approximately five years after the
5 accident. She failed to respond to physical therapy,
6 conservative treatments, multiple interventional injections.
7 She failed to respond to percutaneous discectomy. She failed
8 to respond completely to a dorsal column stimulation implant.
9 She got some temporary partial relief. She still has
10 significant weakness in her legs. She still has significant
11 loss of range of motion in her spine. She still has a
12 neurological deficit in the lower extremities. She still has a
13 gait disfunction as well. These conditions are permanent and
14 progressive, which means they get worse over the years. There
15 is no cure for this condition.

16 Q Now, Doctor, for my next question I would like you to
17 assume that based upon the records from Dr. Diwan, which are in
18 evidence, Ms. Lainey Howard, in addition to the percutaneous
19 discectomy and in addition to the implant of the
20 neurostimulator, has undergone trigger point injections; has
21 undergone lumbar interlaminar -- interlaminar steroid
22 injections under fluoroscopic guidance. Has undergone caudal
23 epidural steroid injections under fluoroscopic guidance. Has
24 undergone sacrococcygeal joint and ligament injections under
25 fluoroscopic guidance. Has undergone sacroiliac joint

mlp

Guy - by Plaintiff - Direct

1 injections under fluoroscopic guidance. And has undergone
2 lumbar -- has undergone lumbar transforaminal epidural steroid
3 injections under fluoroscopic guidance; as well as
4 radiofrequency ablations. Doctor, are you familiar with these
5 types of procedures?

6 A I performed them. I teach them. I have done over
7 35,000 of such procedures.

8 Q Have you had experience in doing every single
9 procedure that I have just named?

10 A Yes, including the percutaneous discectomy. But not
11 the -- doing the dorsal column stimulator. I have assisted on
12 a lot of those procedures, but that I don't do myself.

13 Q Now, Doctor, can you please tell us, what are the
14 medical indications for such procedures?

15 A Okay. Step by step. The indication for a steroid
16 epidural injection is when you have radiculopathy, pain in the
17 back shooting down the legs, that has not responded to more
18 than six weeks of physical therapy; six weeks of pain
19 medications; six weeks of home exercise program; and behavioral
20 modification. If the pain persists, then you do the epidural
21 injection. The purpose of the epidural injection is to give
22 the patient significant relief of pain so that they can build
23 the body back together better and faster, strengthen the
24 muscles. If your muscles are strong and flexible, less
25 pressure goes on the discs.

Guy - by Plaintiff - Direct

1 When you give medication into the epidural space, for
2 example morphine, 1 milligram of morphine into the epidural
3 space equals 11 milligrams of morphine by mouth. If a
4 physician gives a patient 100 milligrams of morphine by mouth,
5 they will be handcuffed and go to jail because the patient will
6 die. But 1 milligram into the epidural space does not cause
7 any damage, it gives significant relief of pain.

8 Same with steroids and Lidocaine, which is what is
9 injecting into the epidural space. The Lidocaine numbs the
10 area, the steroid gives significant relief of pain and reduces
11 inflammation around the nerve roots caused by the disc
12 protrusion.

13 Q Now, Doctor, can you please describe to the jury how
14 these procedures are performed?

15 A Yes. May I be allowed to stand?

16 THE COURT: Yes.

17 THE WITNESS: Thank you.

18 (Whereupon, the witness stepped down from the
19 stand.)

20 A This is a typical epidural needle that is used. It
21 is used under fluoroscopy. Fluoroscopy is x-ray, so that you
22 can pinpoint exactly where your needle is going to, you don't
23 miss the spot.

24 When we do epidural injections they can be done in
25 three places: In the midline, is called interlaminar. That's

mlp

Guy - by Plaintiff - Direct

1 when the ladies who are pregnant get epidural injections for a
2 painful delivery. This area is very dangerous to give an
3 epidural because you can have leakage of the spinal fluid and
4 have pounding headaches for life. That's interlaminar.

5 Then we have transforaminal. Transforaminal goes two
6 fingers away from midline. Two fingers. It goes right around
7 the transverse process. It can -- it can be done here or below
8 here (Indicating.) That is called transforaminal.

9 The patient had all of the above. Had the
10 interlaminar, transforaminal; and then the caudal, which is
11 done through the tailbone.

12 I like the caudal the best because there is no
13 structure to hit. The spinal cord ends between L1 and L2. L5,
14 L4, L3 L2, ends up somewhere up here. So there is no chance
15 of hitting the spinal cord.

16 The nerves end up here, so you just put the tip of
17 your needle right into this space (Indicating.) Right into
18 this space. And under fluoroscopy you confirm where you are
19 going. You give a little contrast to confirm you are in the
20 right place. Then you give 40 milligrams of methyl
21 prednisolone, which is a long-acting steroid derivative. Or
22 you can use short-acting dexamethasone. So, you do the
23 epidural and so, interlaminar, transforaminal, caudal.

24 Next, the patient had facet injection. The facet is
25 the joint here (Indicating.) That's the facet. The function

mlp

Guy - by Plaintiff - Direct

1 of the facet is to move you forwards, backwards, sideways. If
2 the patient has significant pain bending backwards or sideways,
3 it is a facet disfunction.

4 When you have a disc herniation, the pain comes from
5 five sources:

6 The muscle, number one.

7 The disc, number two.

8 The nerve root, number three.

9 Sacroiliac joint, number four.

10 And the facets, number five.

11 The medial branch block is the nerve that comes right
12 out of here. It is a very small sensory nerve. Radiofrequency
13 ablation, which is what the patient had, is basically you are
14 burning the nerve that comes out of here. It grows back. It
15 regenerates after six months to nine months.

16 And I think I covered all of the procedures. I
17 covered the sacroiliac. I covered the sacrococcygeal joint
18 injection, which is right over here. From the fluoroscopy, you
19 see this area, you bring your needle straight down and inject
20 this whole area.

21 I believe that covers it.

22 Q Doctor, can you please discuss the risks and efficacy
23 of these procedures?

24 A So any time you do an epidural injection risks are:

25 Number one, paralysis.

mlp

Guy - by Plaintiff - Direct

1 Number two, nerve injury.

2 Number three, side effects from the steroids, which
3 can make you gain weight, which can affect the heart rate. If
4 you take too much of them, if it is a female, it can cause hair
5 growth on the face and different body parts and can make you
6 gain a lot of weight if you do too many of those.

7 And the efficacy is, it is designed for short term
8 relief. It is not a cure. It is not a cure. It is designed
9 to give you significant short-term relief so you can build your
10 body, you can build up your muscles, abdominals, your back
11 muscles, leg muscles, put yourself into a better shape and get
12 rid of that persistent pain spasm, pain spasm cycle. It
13 disrupts it and it gives you a better quality of life, even
14 though it is temporary, it is better than nothing. So, that's
15 basically it.

16 Q Doctor, can you please, while you are up here,
17 describe for the jury how a percutaneous discectomy is
18 conducted?

19 A Yes. So a percutaneous discectomy is performed as
20 follows. The physician -- patient is sleeping. Under
21 anesthesia. You make a small incision in the lower back. You
22 have this device, you insert it inside the disc. At the end it
23 has a scissor, and it has a scope at the end. You look and see
24 where the disc is sticking out. With the scissors you remove
25 it. You send the disc material generally to the lab for

mlp

Guy - by Plaintiff - Direct

1 confirmation, that general disc material.

2 And then you have another device, it is called the
3 annuloplasty and the nucleoplasty. You are burning the outer
4 portion and the inner portion of the disc. You are burning the
5 nerves. If you are burning the nerves, there is no nerve
6 there, patient is not going to have too much pain, is going to
7 have much, much less.

8 Before you can do this, you have to confirm that the
9 patient had, minimum, two facet or medial branch block
10 injections and they each worked. If they did not work, this
11 will not work. If those worked, this will work.

12 Q Doctor, what is the clinical indication for such a
13 procedure?

14 A When you failed all conservative treatments, physical
15 therapy, trigger point injections, pain medications, all of the
16 different interventional pain management procedures, then you
17 have two types of surgeries. You have the open surgery, which
18 is very, very long, time consuming, recovery rate from the open
19 surgery is six months to 12 months.

20 From this, two to three weeks. I do this procedure,
21 my patients are pain free after one week; and this typically
22 takes about 40 minutes.

23 Q And Doctor, what are the risks and efficacy of this
24 procedure?

25 A The risks with any surgery is infection; nerve

Guy - by Plaintiff - Direct

1 damage; spinal cord injury from anesthesia. You can have
2 seizure. You can have -- your heart can change rhythms. The
3 heart can stop. These are some of the common risk factors. It
4 may work, it may not work. It may work for a short period of
5 time, and the symptoms can come back.

6 This is not for a permanent cure or longterm relief,
7 again, for short term relief. Some similar, months, to maybe
8 one to two years, but then the symptoms may come back.

9 Q Does a percutaneous discectomy cure radiculopathy?

10 A It is never designed to cure. It is designed to give
11 you some significant relief because of all of the steps that I
12 explained.

13 Q Doctor, can you please resume the stand?

14 A Yes.

15 (Whereupon, the doctor resumed the stand.)

16 Q Now, Doctor, as we referred to earlier -- sorry.

17 You created a life care report in this case, correct?

18 A Yes, sir. I did.

19 MS. LUDLAM: Note my objection, Judge.

20 THE COURT: Overruled.

21 Q Now, Doctor, can you please take us through the life
22 care report that you created for Ms. Howard?

23 A Yes. Quick summary, a life care plan is the medical
24 indications for the procedure based on the standard of care and
25 the medical indications.

Guy - by Plaintiff - Direct

1 And second, has the fees attached to it.

2 So, because the patient's condition is permanent and
3 progressive, and she would need medical care for the rest of
4 her life, this is what she'll need based on optimal level of
5 care. Optimal means the best that she could have. Not
6 everybody is able to have optimal level of care. But in a
7 medical field, if a person is seriously injured, they are
8 entitled to optimal level of care.

9 So, the first thing I put down is that the patient
10 should see a spinal surgeon at least three times per year to
11 monitor the patient's overall spinal injuries. And the cost
12 for each visit is \$300.

13 These are all based on New York City prevailing
14 rates.

15 The patient should see a physiatrist, like myself,
16 doesn't have to be me, anybody, at least eight to ten times per
17 year to monitor the patient's overall musculoskeletal injuries,
18 assess the need for physical therapy. Because physical
19 therapists will need a prescription from an M.D., from a
20 doctor, ideally once a month to assess the patient's progress
21 and to indicate exactly what the patient will need: Heat,
22 electrical stimulation, manual massage, special therapeutic
23 exercises and/or ultrasound, infrared rays, or any other
24 medically indicated procedure. And also the physiatrist will
25 assess the patient's need for MRIs, EMGs, x-rays, pain

mlp

Guy - by Plaintiff - Direct

1 medications. This will be eight to ten times per year; and the
2 cost for each visit is \$200.

3 The patient should have at least one physical therapy
4 session from a skilled licensed physical therapist. The
5 purpose of physical therapy is to diminish pain; diminish
6 spasm; improve range of motion; improve muscle power; and most
7 importantly, to prevent the condition from getting
8 progressively worse. So if the patient has any of these
9 deficits, the patient is entitled to having physical therapy.
10 She has all of the above. And the cost for a four modality
11 comprehensive physical therapy session is \$200 per session.

12 Q Doctor, let me interrupt you for a second. You said
13 one session. Is it one session per week?

14 A One session per week.

15 MS. LUDLAM: Objection.

16 Q I just wanted to clarify that.

17 THE COURT: Overruled.

18 MS. LUDLAM: Objection.

19 Q Please, go on.

20 A Next the patient should have a CT scan of the lumbar
21 spine every two to three years to assess the bony areas,
22 especially the pars defect, to see if that fracture is getting
23 worse or staying the same. And the cost for a CT scan is about
24 \$900. The patient should have MRI of the lumbar spine at least
25 two times per year to look for progression of the pathology,

mlp

Guy - by Plaintiff - Direct

1 the L5-S1 disc protrusion, to see if there is any adjacent
2 segmental pathology, meaning the level above or the level below
3 getting more damaged; so you want to keep a very close eye on
4 this. The cost for each MRI is 1,500.

5 Since the patient has shooting pain down the legs
6 with weakness and a sensory deficit, the patient needs an EMG
7 to confirm the extent of nerve damage. And that would be
8 indicated every two years. The cost is 2,500.

9 The patient will need medications for pain, spasm,
10 inflammation, both orally and topical. Right now she is taking
11 Celebrex. She is taking Percocet, which is a narcotic,
12 5 milligrams/325 milligrams, taking that twice a day. The cost
13 for Celebrex is 3 to \$4 per pill. The cost of Percocet is one
14 dollar for each milligram. So if she is taking 5 milligrams,
15 \$5 per pill twice a day; that's \$10 for the Percocet.

16 She would need medication for the neuropathic pain
17 that's the shooting pain down the legs. Lyrica,
18 100 milligrams, twice a day. The cost is, again, 3 to \$4 per
19 pill.

20 She would need cyclobenzaprine, 5 or 10 milligrams,
21 twice a day for muscle spasm. Cost is \$35 each.

22 Q Thirty-five cents?

23 A Thirty-five cents each. That would be a lot of
24 money.

25 She would need topical compounding cream medications

Guy - by Plaintiff - Direct

1 to give the patient synergistic response with the least amount
2 of side effects. Typical usual five compounding cream
3 medications are: Capsacin; methyl salicylate; Gabapentin; and
4 Lidocaine. This will be applied to the back twice a day. The
5 cost will be approximately \$600 to \$900 per month depending on
6 the frequency and usage.

7 The average longevity of a dorsal column stimulation
8 implant is about seven years. There is a battery in the left
9 buttock area that has to be changed. We change the whole
10 entire device. And the cost is about 20,000 to \$25,000,
11 including the surgeon's fee and the cost of the device. The
12 surgical facility fee to give her the anesthesia and supervisor
13 during the procedure is \$6,000.

14 The patient should have a home health aide at least
15 25 hours per week to assist with shopping, cooking, cleaning,
16 and all of the things that she should not be doing. And the
17 cost is \$35 per hour.

18 She would need a future open decompression surgery
19 with neurolysis and removal of the distending facets and a
20 staged fusion at L5-S1. That cost is as follows: The surgeons
21 fee is 100,000. Surgical assistant fee is \$10,000. One to
22 two-day hospital stay is about 200,000 to 250,000. Anesthesia
23 fee is \$4000. Neuromonitoring fee to monitor the spine during
24 surgery is \$3,000. Postsurgical bracing is 1,000. And
25 physical therapy afterwards is three times a week for six

Guy - by Plaintiff - Direct

1 months at a cost of \$200 per session.

2 Q Now, Doctor, is this -- are these opinions being
3 given to a reasonable degree of medical certainty?

4 A They are. Yes, sir. And based on appropriate
5 standard of care and appropriate medical indications.

6 MR. ZILBERG: No further questions, Your Honor.

7 THE COURT: Okay. Any cross?

8 MS. LUDLAM: Yes, Judge. May we have five
9 minutes, please?

10 THE COURT: Yes.

11 MR. SMITH: Thank you.

12 MS. LUDLAM: Thank you.

13 THE COURT: So we will take a restroom break.

14 You can use the restrooms on this floor or go upstairs if
15 you wish.

16 COURT OFFICER: All rise. Jury exiting.

17 (Whereupon, the jury exited the courtroom.)

18 (Pause in the proceeding.)

19 THE COURT: Is everybody ready for the jury?

20 MR. ZILBERG: Yes.

21 MS. LUDLAM: Yes.

22 THE COURT: Let's keep them here until the
23 13th.

24 MS. LUDLAM: Do you need the e-mail back, Judge?

25 THE COURT: Yes. We will mark it as a Court

Guy - by Plaintiff - Direct

1 Exhibit.

2 (Whereupon, the document referred to was marked
3 for evidence as Court's Exhibit I by the Court
4 Reporter.)

5 THE COURT: The court officer also has something
6 to say.

7 Juror number?

8 COURT OFFICER: James, formerly number six, so I
9 guess number five now. Remember we let one juror leave so
10 they all slid over.

11 THE COURT: James. So juror number five?

12 COURT OFFICER: Yes.

13 MR. CERTAIN: It was an alternate that left, so
14 no one slid onto the six.

15 COURT OFFICER: So they kept the same number?

16 MR. SMITH: The main six are still --

17 MR. ZILBERG: The main six are still the main
18 six.

19 THE COURT: Juror number five Nancy Nazzario?

20 COURT OFFICER: No, James Moresco.

21 THE COURT: And he has said the following.

22 COURT OFFICER: Wednesday has to be his last
23 day. He actually has to catch a flight on Wednesday, the
24 14th.

25 THE COURT: Wednesday the 14th? Okay.

mlp

Guy - by Plaintiff - Direct

1 MR. SMITH: The 13th and 14th are the two
2 days my doctors are scheduled.

3 MS. LUDLAM: We did discuss this.

4 THE COURT: Are we going beyond the timeframe
5 that you said the trial would last? I am not faulting
6 you, it happens. But I thought we were under the two and
7 a half weeks.

8 MR. CERTAIN: We said two and a half weeks from
9 when we started. So we are still on that timeline.
10 Exactly.

11 THE COURT: Yeah. You know what, what I always
12 say to attorneys, whatever you think it is going to be,
13 double it. Double it. Why not?

14 Also, there is no such thing as a one-day trial.
15 Never. There is never a one-day trial.

16 So what would you like to do? Question the
17 jurors maybe to see if they can change their plans or --

18 MR. SMITH: Maybe we could finish with the
19 doctor?

20 THE COURT: We will do it this afternoon.
21 We will address it. Yes.

22 MR. CERTAIN: Thank you, Your Honor.

23 MR. SMITH: Thank you, Judge.

24 THE COURT: Everybody ready for the jury?

25 MR. ZILBERG: Yes, Your Honor.

Guy - by Plaintiff - Cross

1 MS. LUDLAM: Yes.

2 COURT OFFICER: All rise. Jury entering.

3 (Whereupon, the jury entered the courtroom.)

4 THE COURT: Okay. Welcome back. Be seated.

5 We will now continue.

6 MS. LUDLAM: Judge, may I inquire?

7 THE COURT: Yes.

8 MS. LUDLAM: Thank you.

9 CROSS-EXAMINATION

10 BY MS. LUDLAM:

11 Q Good afternoon, Doctor.

12 A Good afternoon, ma'am.

13 Q Doctor, before today you have testified in court,
14 correct?

15 A Many times. Yes, ma'am.

16 Q And is it fair to say that when you have testified in
17 court it has been either as a treating physician or as an
18 expert, as you have been called on today?

19 A Yes, ma'am.

20 Q Doctor, can you tell us approximately when you first
21 started testifying in court as either a treating physician or
22 been called upon as a non-treating physician?

23 A The first time I testified I believe it was around
24 1991 was my first time. I was shaking like a leaf. The Judge
25 thought I was having a seizure.

Guy - by Plaintiff - Cross

1 Q Doctor, is it fair to say you have continued
2 continuously since 1991 up to the present time in court?

3 A Yes, ma'am; that is correct.

4 Q Now, Doctor, we are now in October of 2026, let's
5 just first focus on 2026. Approximately how many times have
6 you appeared in court to testify, either as a treating
7 physician on behalf of a plaintiff who is your patient or as a
8 non-treating physician?

9 A This year?

10 Q Yes.

11 A Approximately eight times; it could be slightly less,
12 slightly more.

13 Q Okay. I am going to wait a second, Doctor.

14 (Siren passing by outside of the courtroom)

15 MS. LUDLAM: This happens a lot we have found in
16 this courtroom.

17 Q Okay. And Doctor, each time you have testified on
18 those approximately eight times, and I understand that's an
19 approximate, you charged a fee for your appearance in court on
20 those last eight times this year, correct?

21 A Yes.

22 Q Okay. And Doctor, can you tell us approximately how
23 much you charge for each of those appearances?

24 A In the beginning it was much, much less. It was
25 2,500 or 3,000 for half a day. Now it is 5,000 for half a day.

Guy - by Plaintiff - Cross

1 Q Okay. And Doctor, you said in the beginning it was
2 2,500 a day. I am assuming that goes back to the 1991 time
3 period, correct?

4 A That is correct, yes.

5 Q Just focusing on the 2026 court appearances,
6 approximately eight times, and again, I understand that's an
7 approximate, how much did you charge for each of those
8 appearances?

9 A 5,000 for half a day.

10 Q Okay. And in addition to your appearance -- your
11 appearances in court to testify, again, let's just focus on
12 2026, you have also reviewed records for the -- of the people
13 that you have testified on behalf of, correct?

14 A Yes, ma'am.

15 Q All right. And do you also charge a separate fee for
16 your review of records?

17 A If I treat the patient, I don't charge. If I don't
18 treat the patient, I do charge anything above 100 pages, I
19 charge \$2 a page.

20 Q Right. And Doctor, again focusing on this year of
21 2026, approximately how many of those approximate eight times
22 you have testified, has been as a non-treating physician?

23 A A small percentage. I can't give you an exact
24 number. If you want me to take a guess, I can take a guess.

25 Q Well, Doctor, we would rather you not guess. But if

Guy - by Plaintiff - Cross

1 you can give an approximation?

2 A Maybe two to three.

3 Q Okay. And Doctor, is it fair to say that when you
4 have testified on behalf of patients, those patients have been
5 plaintiffs in a personal injury lawsuit?

6 A That is correct.

7 Q And is it also fair to say most of those patients
8 that have come to you have been referred to you by their
9 attorneys?

10 A That is correct.

11 Q Now, Doctor, other than during the pandemic period
12 when we did not have in-person court appearances, is it fair to
13 say that you have testified in court either as a treating
14 physician or a non-treating physician continuously since 1991
15 up until the present?

16 A Well, during the COVID period there was literally
17 very little, if any, office hours.

18 Q Right. So that's what I am saying. Putting aside
19 that, and we understand the circumstances during that time.

20 A Right.

21 Q But putting aside the period from, say, the first
22 quarter of 2020 up until maybe the end of 2021, putting that
23 period aside, it is fair to say you have testified continuously
24 from 1991 up until the present in court, correct?

25 A Shortly after COVID it was much less.

Guy - by Plaintiff - Cross

1 Q Right. As cases were building -- as the progress was
2 building back up to get back inside the courts, correct?

3 A Right. Yes.

4 Q So let's say in 2025, so last year, you appeared in
5 court to testify, correct?

6 A Yes, that is correct.

7 Q And approximately how many times did you appear in
8 court to testify in 2025?

9 A Again, eight to ten times per year.

10 Q And again, is it a similar split between testifying
11 in 2025 as a treating physician and as, well, as a non-treating
12 physician; correct?

13 A That's correct, yes.

14 Q And is it fair to say essentially the same for 2024
15 where you have appeared in court approximately eight to ten
16 times to testify on behalf of plaintiffs?

17 A Yes.

18 Q And we will say 2023 as well, correct?

19 A That is correct.

20 Q 2022 I understand that we are still trying to build
21 back up in court, correct?

22 A That is correct.

23 Q But is it fair to say that you did appear in court to
24 testify for some -- on some occasions in 2022?

25 A I think so. I am not 100 percent sure, but I think

Guy - by Plaintiff - Cross

1 so, yes.

2 Q Okay. And again, Doctor, on each of those court
3 appearances from 1991 up until the present, you have charged a
4 fee to appear in court, correct?

5 A Yes.

6 Q And again, if it is a non-treating patient, in other
7 words not your patient, the plaintiff is not your patient, you
8 also charge for review of the medical records, correct?

9 A If it is less than 100, no, if it is more than 100,
10 yes.

11 Q And Doctor, before testifying, is it fair to say that
12 you also meet with counsel to prepare for your testimony?

13 A Generally speaking, yes.

14 Q And you charge a fee for that as well?

15 A No, no.

16 Q Is that included in your 5,000 half day fee, or
17 something else?

18 A It is a courtesy not to charge.

19 Q Doctor, is it fair to say a percentage of your annual
20 income comes from appearing in court testifying on behalf of
21 plaintiffs? Correct?

22 A A small percentage, yes. When I come to court I lose
23 from my office, so it is a wash.

24 Q Well, Doctor, when you say you lose from your office,
25 you say you had to cancel appointments for, say, Wednesday

Guy - by Plaintiff - Cross

1 October 7, correct?

2 A Correct.

3 Q But is it fair to say that those patients reschedule
4 their appointments for another day when you are available,
5 correct?

6 A Not all of them, no.

7 Q But at some point those patients come back to you for
8 treatment, correct?

9 A If it is a new patient, they are in a lot of pain, I
10 am not there, they go see another doctor.

11 Q Right. But there are patients, you have continuing
12 patients scheduled, correct?

13 A Some do come back, some do not come back.

14 Q And Doctor, is it also fair to say that when you are
15 not in court, that you have a regular schedule of appointments
16 that there are certain patients that call ahead of time and end
17 up canceling?

18 A A small percent, yes, that's correct.

19 Q And those patients may or may not come back, correct?

20 A That is correct.

21 Q Now, Doctor, you were retained for purposes of
22 reviewing certain medical records provided to you,
23 performing -- preparing a report, and eventually performing an
24 examination of Ms. Howard for purposes of testifying in court,
25 correct?

Guy - by Plaintiff - Cross

1 A Yes.

2 Q You are not Ms. Howard's treating physician, correct?

3 A I am not.

4 Q In fact, you have only seen her that one time, which
5 was around June 17 of 2026, correct?

6 A That is correct.

7 Q And Doctor, is it fair to say that you were hired to
8 perform these -- this evaluation and examination in
9 anticipation of testifying at trial in June of 2026, correct?

10 A I don't know if it was in June, but it was in
11 anticipation of having to come to court if and when it went to
12 court.

13 Q Right. But Doctor, are you aware that there was
14 actually a trial scheduled to commence in June of 2026?

15 A How would I know that?

16 Q Doctor, you performed an initial medical review and
17 report on May 18 or May 17 of 2026, correct?

18 A Correct.

19 Q Right. And that was in anticipation of a trial
20 coming up in June of 2026, correct?

21 A Again, you keep saying that. How do I know it was
22 coming up in June? I don't know that. That's not something
23 that I ask anybody about.

24 Q Well, Doctor, were you told that there was going to
25 be a trial in June of 2026?

Guy - by Plaintiff - Cross

1 A I never said that.

2 Q No, I am asking you that.

3 A Nobody ever told me a trial was coming up in June of
4 '26. It doesn't matter. It doesn't matter.

5 Q Right. And Doctor, you actually saw Ms. Howard on
6 June -- I think it was June 18 of 2026, correct?

7 A That's correct, yes.

8 Q And is it fair to say, Doctor, that on that same day
9 Ms. Howard actually saw her treating physician, Dr. Diwan?

10 A Okay.

11 Q Well, you wrote that in your report, correct?

12 A Yes, I do -- I did, correct.

13 Q So when Ms. Howard saw you on June 18 of 2026, you
14 didn't actually perform any treatment, correct?

15 A I did not.

16 Q Right? So Ms. Howard had treatment and then saw you
17 afterwards, correct? On that same day?

18 A Yes.

19 Q Now, Doctor, is it fair to say that all of the
20 records that you have reviewed are those that have been
21 provided to you by plaintiff's counsel, Ms. Howard's counsel?

22 A That is correct.

23 Q You, on your own, didn't obtain records from other
24 sources, correct?

25 A I did not.

Guy - by Plaintiff - Cross

1 Q Ms. Howard didn't personally provide you with records
2 when she saw you on that one time on June 18 of 2026, correct?

3 A Correct. That is correct.

4 Q Doctor, you had mentioned before, you had discussed
5 before on direct examination some of your diagnoses. Do you
6 recall that?

7 A I do.

8 Q You had mentioned one of the diagnoses was a
9 fracture, correct?

10 A That is correct.

11 Q It is fair to say when you reviewed Dr. Diwan's
12 records that Dr. Diwan did not find a fracture in March of
13 2021, correct?

14 A He did not mention any fracture, that is correct.

15 Q And is it -- in terms of the timeline, if you will,
16 Doctor, it is fair to say that the first time Ms. Howard had
17 any treatment concerning this incident of March 17, 2021, was
18 six days later on March 23, 2021, correct?

19 A That is correct, yes.

20 Q And that was actually a City M.D. a walk-in clinic?

21 A That is correct.

22 Q That was not -- she did not go to the hospital
23 following this accident, correct?

24 A That is correct.

25 Q She did not go to the emergency room after this

Guy - by Plaintiff - Cross

1 accident, correct?

2 A Correct.

3 Q Right. And then after her City M.D. visit, the first
4 doctor she sees is an orthopedic surgeon by the name of
5 Dr. Bitan, correct?

6 A That is correct.

7 Q And Dr. Bitan, are you aware, Doctor, that Dr. Bitan
8 is the director of spine surgery at Lenox Hill Hospital?

9 A I was not aware of that.

10 Q Okay. So will you accept that I am telling you that
11 he is the Director of Spine Surgery at Lenox Hill Hospital?

12 A Okay.

13 Q So the first doctor after City M.D. that Ms. Howard
14 sees is the Director of Spinal Surgery at Lenox Hill,
15 Dr. Bitan, correct?

16 A Correct.

17 Q And then that same day Dr. Bitan sends Ms. Howard
18 over to Lenox Hill Radiology, correct?

19 A Correct.

20 Q So Ms. Howard has films taken at Lenox Hill, correct?

21 A Correct.

22 Q I should say Lenox Hill Radiology so not to be
23 confused.

24 A I understood. I understood.

25 Q And Ms. Howard on that same day after she has films

Guy - by Plaintiff - Cross

1 taken goes directly back to Dr. Bitan's office, correct?

2 A I believe that is correct.

3 Q On the same day, correct?

4 A Correct.

5 Q All right. And you reviewed Dr. Bitan's records,
6 correct?

7 A Correct.

8 Q And is it fair to say that on March 25, 2021
9 Dr. Bitan, the director of spinal surgery at Lenox Hill, said
10 that she -- that Ms. Howard does not have a fracture?

11 A I don't remember seeing that.

12 Q You did not look at Dr. Bitan's records?

13 A There is over a thousand pages here. Just because I
14 looked at it doesn't mean I remember everything. So if you
15 have a record you want to show me to refresh my memory, I would
16 be happy to comply.

17 Q Well, before we get to that, Doctor, do you recall
18 that Ms. Howard only saw Dr. Bitan on two to three times?

19 A That's about right.

20 Q A short period of time, correct?

21 A Yes.

22 Q And that was between March 25 of '21 until about May
23 of 2021, correct?

24 A Correct.

25 Q And you also reviewed the Lenox Hill records from

Guy - by Plaintiff - Cross

1 March of 2021?

2 A Lenox Hill Radiology?

3 Q I am sorry. You are right, Doctor. I should clarify
4 what we are talking about. So, Lenox Hill Radiology?

5 A Yes. I thought you were trying to trick me.

6 Q I am not trying to trick you, Doctor. I'll let you
7 know.

8 So it is fair to say that on March -- again, what we
9 discussed is on March 25, 2021, Ms. Howard went to Lenox Hill
10 Radiology for the films?

11 A Correct.

12 Q Is it fair to say those films from Lenox Hill
13 Radiology -- let me withdraw that question.

14 Is it fair to say, Doctor, that at Lenox Hill
15 Radiology, similar to other radiology facilities, there is a
16 technician that actually takes the film, whether it is a -- the
17 diagnostic study, whether an x-ray, CT scan or MRI, correct?

18 A Correct.

19 Q And then that film is sent over to a radiologist that
20 works within that facility and reviews the film, correct?

21 A Correct.

22 Q And then after reviewing the film, the radiologist
23 then prepares a report based on what they view -- what they
24 viewed in the film, correct?

25 A That is correct.

Guy - by Plaintiff - Cross

1 Q Right. And is it fair to say that Lenox -- the
2 radiologist from Lenox Hill Radiology, concerning the films
3 taken on March 25, 2021, did not find a fracture?

4 A That is correct.

5 MR. ZILBERG: Objection.

6 THE COURT: Overruled.

7 Q And Doctor, is it also fair to say that an MRI was
8 taken of the lumbar spine without contrast on March 25, 2021 at
9 Lenox Hill Radiology, correct?

10 A Correct.

11 Q Okay. And the radiologist was -- am I correct in
12 saying that the radiologist was Dr. David Milbauer?

13 A Yes.

14 Q And are you familiar with Dr. Milbauer?

15 A I am, yes.

16 Q All right. And is it fair to say that based upon the
17 MRI taken at Lenox Hill Radiology of the lumbar spine of
18 Ms. Howard on March 25, 2021, again, the lumbar spine is the
19 lower back, correct?

20 A Uh-huh.

21 Q Dr. Milbauer found that Ms. Howard sustained a disc
22 bulge at L5-S1?

23 A That's correct.

24 Q And he did not find a herniated disc? Correct?

25 A That's correct.

Guy - by Plaintiff - Cross

1 Q And he did not find a protrusion, correct?

2 A You don't say contusion on an MRI.

3 Q No, protrusion.

4 A Oh, protrusion. That is correct.

5 Q I have to say it correctly, my diction is not the
6 best doctor. I apologize.

7 It is fair to say Dr. Milbauer did not find a disc
8 protrusion at L5-S1 or any part of the lumbar spine, correct?

9 A That is correct.

10 Q All Dr. Milbauer found was the posterior disc bulge
11 at L5-S1 and straightening of the lumbar lordosis, correct?

12 A That is correct.

13 Q Right. And there is no other findings on that MRI
14 found by Dr. Milbauer from the MRI taken of the lower back on
15 March 25, 2021, correct?

16 A None that was reported. That is correct.

17 MR. ZILBERG: Your Honor, objection to reading
18 MRI reports into evidence which are not admissible as
19 admissible records. This is improper.

20 THE COURT: Sustained.

21 Q Now is it fair to say, Doctor, that most of
22 Ms. Howard's treatment following March 17, 2021 has been
23 performed by Dr. Diwan?

24 A That is correct.

25 Q And Dr. Diwan is a pain management specialist,

Guy - by Plaintiff - Cross

1 correct?

2 A That is correct.

3 Q And at any time from the time that you first started
4 reviewing the records in this case in May of this year up until
5 today, have you ever called Dr. Diwan to discuss your
6 respective findings concerning Ms. Howard?

7 A Nope, not needed.

8 Q Now, on March 25 of 2021, which is the same day that
9 the Lenox Hill Radiology studies were performed.

10 A Correct.

11 Q Did you see in the records that Ms. Howard had a
12 telehealth visit or a telephone call with Dr. Diwan?

13 A I did, yes.

14 Q And I don't remember if it was a telephone call or a
15 video chat, but it was a telehealth visit, correct?

16 A Telehealth means it was a telephone call.

17 Q Okay. And then at some point after that initial
18 March 25, 2021 telehealth visit with Dr. Diwan, Ms. Howard
19 actually saw Dr. Diwan in-person, correct?

20 A That is correct.

21 Q And at that time Dr. Diwan performed an evaluation,
22 correct?

23 A That is correct.

24 Q And you read Dr. Diwan's records which are in
25 evidence?

Guy - by Plaintiff - Cross

1 A I did.

2 Q Correct?

3 A Yes.

4 Q And is it fair to say that Dr. Diwan, eight days
5 after this accident, found Ms. Howard neurologically intact?

6 A That is correct.

7 Q Is it also fair to say eight days after this accident
8 Dr. Diwan found that Ms. Howard's motor strength was normal?

9 A That is correct.

10 Q Is it also fair to say that eight days after the
11 accident of March 17, 2021, Dr. Diwan found that Ms. Howard's
12 sensation was normal, correct?

13 A Neurologically he found her to be normal; for a very
14 good reason.

15 Q Okay. Well, is it fair to say that Dr. Diwan found
16 that Ms. Howard was, as you said, neurologically normal at the
17 eighth day after this accident of March 17, 2021? Correct?

18 A That is correct, yes.

19 Q Now, Doctor, you also noted from the medical records
20 in your review --

21 THE COURT: I am sorry, it is 1:00 o'clock so we
22 will have to break for lunch.

23 MS. LUDLAM: Sure, Judge.

24 THE COURT: Please come back at 2:15.

25 COURT OFFICER: All rise. Jury exiting.

Guy - By Plaintiff - Cross

1 (Whereupon, the jury exited the courtroom.).

2 (Whereupon, a luncheon recess was taken at this
3 time.)

4 * * *

5 A F T E R N O O N S E S S I O N

6 * * *

7 THE COURT: Is everybody ready for the jury?

8 MR. ZILBERG: Yes, Your Honor.

9 THE WITNESS: Judge, may I?

10 THE COURT: Yes.

11 (Whereupon, the witness resumed the stand.)

12 THE COURT: Okay. Call in the jury.

13 COURT OFFICER: All rise. Jury entering.

14 (Whereupon, the jury entered the courtroom.)

15 THE COURT: Be seated. Welcome back. We will
16 now continue with the trial.

17 MS. LUDLAM: Judge, may I continue with my
18 cross?

19 THE COURT: Yes.

20 MS. LUDLAM: Judge, I believe I was in the
21 middle of a question when we broke. So I'll withdraw the
22 question since I don't recall the exact words and I'll
23 start over.

24 THE COURT: Mm-Hm.

25 Q Good afternoon, Doctor.

Guy - By Plaintiff - Cross

1 A Good afternoon, ma'am.

2 Q Okay. Doctor, I want to go through some of the
3 treatments of Ms. Howard that you discussed earlier on direct
4 examination, if that's okay with you?

5 A Yes, that's fine.

6 Q So you mentioned I believe on direct examination,
7 based on your review of the medical records in evidence, that
8 Ms. Howard underwent a series of trigger point injections in
9 the lumbar paraspinal muscles on March 31, 2021, correct?

10 A Correct.

11 Q And that was actually her first in-person visit with
12 Dr. Diwan, correct?

13 A I believe.

14 MR. ZILBERG: Objection. March 30 was the
15 first.

16 THE COURT: Whatever. Okay.

17 MS. LUDLAM: Thank you.

18 Q That was the first day that Dr. Diwan performed a
19 treatment, correct?

20 A I believe that's correct.

21 Q And then Dr. Diwan performed a series of three
22 interlaminar epidural steroid injections at L5-S1, correct?

23 A Correct.

24 Q Right. The first epidural steroid injection was
25 March 31 of 2021, correct?

Guy - By Plaintiff - Cross

1 A Let me just check and make sure it is correct.

2 That is correct, yes.

3 Q The second interlaminar epidural steroid injection
4 performed by Dr. Diwan was on April 27 of 2021, correct?

5 A That was a caudal, not interlaminar, caudal epidural.

6 Q I am sorry?

7 A It was a caudal epidural, not interlaminar.

8 Q But it was an epidural steroid injection, correct?

9 A That is correct, yes.

10 Q And then on May 25 of 2021 Dr. Diwan performed a
11 third epidural steroid injection in the lumbar spine, correct?

12 A Correct.

13 Q Right. And is that an interlaminar?

14 A Caudal.

15 Q Caudal. Okay.

16 And Doctor, based upon what we just reviewed thus far
17 in terms of those types of treatments, were any of those
18 treatments -- did any of those treatments involve a facet
19 injection?

20 A No.

21 Q Of those -- between the trigger point injections and
22 the three epidural steroid injections, did any of those
23 injections involve medial branch injections?

24 A Well, facet is the same as medial branch, so the
25 answer is no.

Guy - By Plaintiff - Cross

1 Q Okay. All right. And then on July 20, 2021, is it
2 fair to say that Dr. Diwan performed the percutaneous
3 discectomy at L5-S1?

4 A That is correct.

5 Q Now, we will get into the procedure in a second
6 Doctor, but isn't it true you testified earlier on direct
7 examination that before proceeding to a percutaneous discectomy
8 one must have undergone two facet injections?

9 A I did say that, yes.

10 Q But that did not happen in this case, correct?

11 A That is correct.

12 Q Okay. Now, Doctor, the percutaneous discectomy is a
13 pain management procedure, correct?

14 A It is.

15 Q And that is performed -- that is typically performed
16 by a pain management specialist?

17 A Or the spinal surgeon, both can do it.

18 Q All right. And Doctor, is it fair to say that a
19 percutaneous discectomy is not a spinal surgery?

20 A Anytime you interrupt the spinal integrity it is
21 called spinal surgery. So, it is a minimally invasive spinal
22 surgery.

23 Q Doctor, I want you to assume that there was testimony
24 earlier this week by Dr. Radna, who is a neurosurgeon.

25 A I know him well.

Guy - By Plaintiff - Cross

1 Q And I want you to assume that Dr. Radna testified
2 that neurosurgeons do not consider percutaneous discectomy
3 surgery, but rather pain management procedures. Would you
4 disagree with that statement made by the neurosurgeon?

5 A That is --

6 MR. ZILBERG: Objection.

7 THE COURT: Overruled.

8 You can answer.

9 A That is his opinion.

10 Q And you are, as you said, you are familiar with
11 Dr. Radna?

12 A I am.

13 Q Right. And you know him to be a neurosurgeon,
14 correct?

15 A I do. We work together. We refer patients to each
16 other.

17 Q All right. And you, yourself, do not perform the
18 invasive spinal surgeries, correct?

19 A Which ones? The open surgery?

20 Q The open surgeries.

21 A I do not do the open surgeries.

22 Q And Doctor, you just mentioned that you refer -- you
23 and Dr. Radna refer patients to each other. So let me just ask
24 you a couple of questions about referrals, generally speaking.
25 It is fair to say that there comes -- that time to time you

Guy - By Plaintiff - Cross

1 refer your patients to a spinal surgeon like Dr. Radna,
2 correct?

3 A Past tense. He doesn't do spinal surgeries anymore.

4 Q Dr. Radna does not perform spinal surgeries anymore?

5 A No.

6 Q Okay. So let's take Dr. Radna out of the equation
7 and speak more generally in terms of your referrals to your --
8 when you refer your patients to spinal surgeons. It is fair to
9 say that there comes -- from time to time you will refer some
10 of your patients to see or to consult with a spinal surgeon,
11 correct?

12 A That is correct.

13 Q Right. And it is fair to say that every time you
14 refer your patients to a spinal surgeon, the spinal surgeon
15 doesn't necessarily perform spinal surgery, correct?

16 A In 99.9 percent that I refer, they did spinal
17 surgery. Because I know the medical indications and it is the
18 same -- it is a universal medical indication.

19 Q But it is fair to say that not all the time,
20 100 percent of the time that when you refer a patient to a
21 spinal surgeon the spinal surgeon is going to perform the
22 surgery, correct?

23 A 99 percent, yes.

24 Q Now, continuing with Ms. Howard's treatment if you
25 will, Doctor. So you are aware, Doctor, that initially,

Guy - By Plaintiff - Cross

1 between March and August of 2021, that Ms. Howard lived in the
2 Tristate area, in New Jersey, correct?

3 A Correct.

4 Q Right. And are you also aware that in the end of
5 August of 2021 Ms. Howard relocated to Chicago?

6 A Yes.

7 Q Right. Doctor, you are aware that on October 12,
8 2021, Ms. Howard on her way to work was involved in a hit in
9 the rear motor vehicle accident?

10 A It was mentioned this morning, yes.

11 Q You saw that in the records, correct?

12 A That is correct.

13 Q Right. In fact, you reviewed some of the Rush
14 Orthopedic Midwest records from Chicago?

15 A That is correct.

16 Q And those records referred to an October 12, 2021
17 accident, correct?

18 A That is correct.

19 Q Now, prior to the October 12, 2021 accident,
20 Ms. Howard was still continuing with her physical therapy
21 through Resurgence Physical Therapy, correct?

22 A That is correct, yes.

23 Q And is it your understanding, Doctor, that once
24 Ms. Howard moved to Chicago that she was doing those physical
25 therapy treatments virtually?

Guy - By Plaintiff - Cross

1 A I don't know if it was virtually or not, but she was
2 still doing some sort of a physical therapy.

3 Q Okay. And you reviewed the physical therapy records,
4 correct?

5 A I did.

6 Q Okay. Now, Doctor, it is fair to say prior to the
7 October 12, 2021 motor vehicle accident Ms. Howard was actually
8 improving in her symptoms, correct?

9 A Improving, but not fully asymptomatic; that's
10 correct.

11 Q But she was improving, correct?

12 A Yes.

13 Q So Doctor, I would like to go over some of those
14 records with you.

15 MS. LUDLAM: Judge, if I can show the doctor
16 what's in evidence as Defendant's Exhibit A, which is part
17 of Dr. Diwan's records in evidence. And I can hand the
18 page up to the officer, if that's okay.

19 (Handing)

20 Q All right. Doctor, do you have in front of you what
21 has been marked as Defendant's Exhibit A, which is a page out
22 of the Advanced Spine of Park Avenue records, which are
23 Dr. Diwan's records?

24 A I do, I have it.

25 Q Okay. And if you see, Doctor, on the top portion of

Guy - By Plaintiff - Cross

1 the record it notes the patient information and the doctor in
2 the upper left-hand corner, correct?

3 A Correct.

4 Q Right. And this is a note from a visit that
5 Ms. Howard had with Dr. Diwan on July 28, 2021, correct?

6 A That is correct.

7 Q And that was before the accident that occurred in
8 Chicago on October 12, of 2021, correct?

9 A I am sorry, I didn't hear the last question.

10 Q Sure. And this visit occurred before the accident?

11 A Yes.

12 Q Occurred in Chicago on October 12 of 2021, correct?

13 A That is correct, yes.

14 Q And Doctor, starting on the third line under history
15 of present illness, the record, am I correct in stating that
16 the record states that Ms. Howard reported significant
17 difference, greater than 70 percent in her pain with improved
18 range of motion and functional status, correct?

19 A Correct.

20 Q Does the record then go on to state that the pain was
21 not radiating anymore?

22 A That's what it says, yes.

23 Q And then continuing on, on the fifth line first
24 sentence it starts -- does it also state that Ms. Howard does
25 not feel spasms anymore, correct?

Guy - By Plaintiff - Cross

1 A That is correct.

2 Q And it also states on the next sentence, if I am --
3 am I correct in saying that overall Ms. Howard was very happy
4 with the outcome of the procedure, correct?

5 A That is correct.

6 Q And that's referring to the percutaneous discectomy?

7 A That's correct.

8 Q All right. Doctor, I don't need you to look at that
9 report anymore. Put that aside.

10 MS. LUDLAM: And Judge, may I now show the
11 Doctor what is in evidence as Defendant's Exhibit B, which
12 is Dr. Diwan's note of September 22, 2021?

13 THE COURT: Yes.

14 MS. LUDLAM: Thank you.

15 (Handing)

16 Q Doctor, do you have in front of you Dr. Diwan's note
17 of September 22, 2021?

18 A I do, yes.

19 Q Again, is it fair to say that that note is from prior
20 to the October 12, 2021 accident that occurred in Chicago?

21 A That is correct.

22 Q Okay. And on the second -- second line, the second
23 sentence, does it state that Ms. Howard does not report any
24 procedure related complications?

25 A That is correct.

Guy - By Plaintiff - Cross

1 Q Right. She also, is it fair to say that Ms. Howard
2 also reported significant difference, greater than 80 percent,
3 in her pain with improved range of motion and functional
4 status, correct?

5 A That is correct.

6 Q Does the report also state that Ms. Howard did not
7 have radiating pain?

8 A That is correct.

9 Q Does the report also say that she does not feel
10 spasms anymore?

11 A That is correct.

12 Q And does it state in the report on line six, does it
13 state in the report that Ms. Howard stated that overall she was
14 very happy with the outcome of the procedure?

15 A That is correct.

16 Q Okay. I don't need you to look at that report
17 anymore, Doctor.

18 MS. LUDLAM: May I show the doctor what is in
19 evidence as Exhibit D?

20 THE COURT: Yes.

21 MS. LUDLAM: Thank you.

22 (Handing)

23 Q Doctor, I am going to show you what is now in
24 evidence as Defendant's Exhibit D, which is a page out of the
25 Resurgence Physical Therapy records.

Guy - By Plaintiff - Cross

1 A Okay.

2 Q Now, did you review all of the Resurgence Physical
3 Therapy records?

4 A I did.

5 Q Okay. Was this one of the pages that you reviewed?

6 A Yes.

7 Q Okay. And this is a note taken on October 12 of
8 2021, correct?

9 A That is correct.

10 Q Okay. And is it fair to say that based upon this
11 note in the Resurgence Physical Therapy records that Ms. Howard
12 reported that she has been making steady progress over the
13 course of PT?

14 A That is correct.

15 Q Okay. Does it also state in the report that
16 Ms. Howard states that her sitting tolerance significantly
17 improves week to week?

18 A That is correct.

19 Q Does the physical therapy note also indicate that
20 Ms. Howard reported she had less muscle spasms, sensations and
21 pain radiating to her left lower extremity?

22 A That is correct.

23 Q And does the report also state that Ms. Howard was
24 able to get to and from work with less pain and was able to
25 complete her light duty work activities?

Guy - By Plaintiff - Cross

1 A Correct.

2 Q Now, we are done with that report, Doctor.

3 A Okay.

4 Q Now, that note that I just showed you was from
5 October 12 of 2021, correct?

6 A That's correct.

7 Q Okay. Which is the same day as the motor vehicle
8 accident in Chicago, correct?

9 A That's correct.

10 MS. LUDLAM: Judge, may I now show the doctor
11 what is in evidence as Exhibit E?

12 THE COURT: Yes.

13 MS. LUDLAM: Thank you.

14 (Handing)

15 Q Doctor, I am now showing you what is in evidence, a
16 page from the Rush University Medical Center emergency room
17 records, correct?

18 A That is correct.

19 Q And Doctor, did you have an opportunity to look at
20 the emergency room records from Rush University Medical Center?

21 A That is correct.

22 Q Okay. And Doctor, this is a note -- Doctor is this a
23 note from October 12, 2021?

24 A That is correct.

25 Q Okay. And you see where it says, chief complaint,

Guy - By Plaintiff - Cross

1 about three quarters of the way down on the page? It says cc?

2 A I do.

3 Q And it is back pain, correct?

4 A That is correct.

5 Q And Doctor, this is a note from an emergency room
6 where Ms. Howard went immediately after the accident, correct?

7 A Correct.

8 Q Okay. All right. Doctor, we don't need to look at
9 that record anymore.

10 A Okay.

11 MS. LUDLAM: Judge, may I now show the doctor
12 what is in evidence as Exhibit F?

13 THE COURT: Yes.

14 (Handing)

15 Q Doctor, do you have in front of you a page from
16 Resurgence Physical Therapy, the records of which are all in
17 evidence?

18 A I do.

19 Q Okay. And that's a report dated October 12 of 2021,
20 correct?

21 A That is correct.

22 Q And that is the day of the Chicago motor vehicle
23 accident, correct?

24 A That is correct.

25 Q Right. And is this a note written by the -- someone

Guy - By Plaintiff - Cross

1 in the physical therapy office at Resurgence Physical Therapy?

2 A Yes, by Ryan Goodell.

3 Q And to your knowledge, is that Ms. Howard's physical
4 therapist?

5 A That is correct.

6 Q And Dr. Goodell, is he a doctor of physical therapy?

7 A Yes.

8 Q Okay. Do you see on the first line, Doctor, under
9 the notes, where it says patient called PT office?

10 A I do.

11 Q Okay. And is it fair to say that the -- Ms. Howard
12 called the PT office or the physical therapy office in the
13 evening after having been seen in that physical therapy office
14 that morning? Correct?

15 A That is correct.

16 Q Right. And is it fair to say that the -- that
17 Ms. Howard reported to the physical therapy office that she was
18 on her way to work and she was in a car accident, being rear
19 ended, correct?

20 A That is correct.

21 Q And does the report also state that Ms. Howard
22 reported she had an immediate onset of pain and went directly
23 to the emergency room where she was evaluated?

24 A That is correct.

25 Q Right. Does the physical therapy report then go on

Guy - By Plaintiff - Cross

1 to say that Ms. Howard reported increased pain in the lumbar
2 spine?

3 A That is correct.

4 Q We don't need to look at that record anymore, Doctor.

5 MS. LUDLAM: Judge, may I now show the Doctor
6 what is in evidence as Defendant's Exhibit C?

7 THE COURT: Yes.

8 (Handing)

9 Q Now, Doctor, do you have in front of you Dr. Diwan's
10 report from October 18, 2021?

11 A I do.

12 Q Okay. And this is also a report that you reviewed
13 that was part of Dr. Diwan's records which are in evidence?

14 A That is correct.

15 Q Okay. Doctor, is it fair to say under the section
16 entitled History of Present Illness, that Ms. Howard appeared
17 for a telehealth visit for acute back pain after a motor
18 vehicle accident on October 18, 2021?

19 A That is correct.

20 Q And Doctor, what is "acute"?

21 A Acute means recent, less than three months.

22 Q And Doctor, in the third line down of this report
23 under History of Present Illness, midway into that line, does
24 the report state that Ms. Howard reported that her back pain
25 has increased and is radiating to her left lower extremity?

Guy - By Plaintiff - Cross

1 A That is correct.

2 Q Okay. All right. Doctor, thank you. I am done with
3 that record. Thank you.

4 Now, continuing on with Dr. Diwan's treatments.

5 Based upon your testimony and what you reviewed and what is in
6 the medical records, is it fair to say that on June 7, 2022,
7 Ms. Howard underwent implantation of a neurostimulator?

8 A Correct.

9 Q Right. And that was after the accident of October 12
10 of 2021 that occurred in Chicago, correct?

11 A That is correct.

12 Q Right. And Doctor, you reviewed all of Dr. Diwan's
13 records, correct?

14 A I did.

15 Q And did you see anything in Dr. Diwan's records from
16 March 25 of 2021 up until the morning of October 12 of 2021
17 where he indicated or he stated that she needed a
18 neurostimulator?

19 A Give me a minute. What was the date again?

20 Q Let's say -- and what I will -- Doctor, I'll rephrase
21 the question for you.

22 A Okay.

23 Q Is it fair to say that Dr. Diwan did not put in his
24 records between March 25 of 2021 up until October 12 of 2021
25 that Ms. Howard needed a spinal cord stimulator?

Guy - By Plaintiff - Cross

1 A That is correct.

2 Q We talked about some other -- Doctor, you talked
3 about some other procedures that Dr. Diwan performed during the
4 course of his treatment with Ms. Howard.

5 A Correct.

6 Q And you mentioned at some point that Ms. Howard --
7 that he performed a procedure called a sacrococcygeal joint and
8 ligament injection?

9 A Correct.

10 Q Did I pronounce that correctly?

11 A Almost.

12 Q Almost. All right. And that was performed, the
13 first one -- Dr. Diwan performed multiple of those, correct?

14 A Correct.

15 Q And the first one was performed, Doctor -- was the
16 first one performed on April 3 of 2023?

17 A Let me make sure that's correct. 4/3/23, that is
18 correct.

19 Q That was the first time he performed that
20 sacrococcygeal joint and ligament injection, correct?

21 A That is correct.

22 Q And is it fair to say, Doctor, that that was
23 performed after the October 12, 2021 motor vehicle accident?

24 A Obviously, yes.

25 Q Okay. And Doctor, you also discussed some

Guy - By Plaintiff - Cross

1 radiofrequency ablations?

2 A Correct.

3 Q That Dr. Diwan had performed on Ms. Howard, correct?

4 A Correct.

5 Q And it is fair to say that Dr. Diwan performed

6 several of those, correct, about five?

7 A Yes.

8 Q Is that correct, about five of them you said?

9 A Approximately, that's correct.

10 Q Is it fair to say, Doctor, that the first ablation,
11 radiofrequency ablation that Dr. Diwan performed was on May 22,
12 2023?

13 A That is correct.

14 Q And Doctor, is it also fair to say that that would
15 have been after the motor vehicle accident of October 12 of
16 2021?

17 A Obviously, yes.

18 Q All right. Doctor, I want to review a little bit of
19 your reports. If that's okay?

20 A That's fine.

21 Q All right. Doctor, as you testified to earlier in
22 the day, this morning, you prepared two reports, correct?

23 A Three.

24 Q You prepared three reports?

25 A Yes. One is -- the last one is a small addendum.

Guy - By Plaintiff - Cross

1 Q Right. So Doctor, I have a report of yours dated
2 May 17 of 2026.

3 A Correct.

4 Q Right. And that was the first report you prepared,
5 correct?

6 A That is correct.

7 Q Well, you mentioned three reports. What date do you
8 have in front of you for the --

9 A May 17, June 18, May 22, '26.

10 Q All right. Well, we will put the May 22 aside for a
11 second, Doctor, if that's okay.

12 A Okay.

13 Q The May 17, 2026 report, it is fair to say that that
14 was prepared entirely on your review of the medical records
15 that were provided by Ms. Howard's counsel?

16 A That is correct.

17 Q You had not had an opportunity to see Ms. Howard --

18 A That is correct.

19 Q -- as of the time you prepared that report, correct?

20 A That is correct.

21 Q All right. So, all of your ev -- all of your
22 opinions that you have rendered in this report were not based
23 upon your evaluation of her, correct?

24 A That is correct.

25 Q Now, I am going to start on page two of your -- page

Guy - By Plaintiff - Cross

1 two of your May 17, 2026 report.

2 A Okay.

3 Q And you note that after -- let me just so it is
4 easier for you to focus on where I am going. The first part of
5 your second page you are still continuing with what you
6 reviewed to prepare this report, correct?

7 A That is correct.

8 Q All right. So let's talk about the first paragraph
9 after you finish off with your list of various reports that you
10 reviewed for preparation of this report. And that starts with:
11 According to the MRI report.

12 A Okay.

13 Q Okay. And you wrote that: According to the MRI
14 report of the sacrum and the coccyx from Lenox Hill
15 Radiology -- the study was performed on April 1, 2025, correct?

16 A That is correct.

17 Q And you noted that there was a L5-S1 disc protrusion?

18 MR. ZILBERG: Objection to reading what was in a
19 radiological report, which is not proper --

20 THE COURT: Sustained.

21 MR. ZILBERG: -- to be read, to be read into
22 evidence.

23 Q You reviewed an April 1 of 2025 MRI, correct?

24 A The report, yes.

25 Q That was an MRI that was performed four years

Guy - By Plaintiff - Cross

1 after -- almost four and a half years after the October 12,
2 2021 accident, correct?

3 A Yes, that is correct.

4 Q Doctor, you also reviewed a report from May 7, 2026,
5 correct?

6 A That is correct.

7 Q And that, again, was a -- of an x-ray that was done
8 after the October 12, 2021 accident, correct?

9 A That is correct.

10 Q Now, Doctor, I want to discuss a little bit with you
11 the -- your page three, which is where you start your plan.

12 A Okay.

13 Q Okay? Number one in your plan is that you indicate
14 that, am I correct in stating that you indicate that Ms. Howard
15 should see a spinal surgeon, correct?

16 A That is correct.

17 Q Right. And you wrote "should," correct?

18 A That is correct.

19 Q So you are not sending her to the spinal surgeon,
20 correct?

21 MR. ZILBERG: Objection, he is not a treating
22 doctor.

23 THE COURT: Overruled.

24 You can answer, if you can.

25 A No, I am not sending the patient anywhere. I am not

Guy - By Plaintiff - Cross

1 a treating physician. I am just rendering a life care plan.

2 Q Right. Now Doctor, at the time that you prepared
3 this report of May 17, 2026, Ms. Howard wasn't actually
4 treating with a spinal surgeon, correct?

5 A Yes.

6 Q In fact, the last time she treated with a spinal
7 surgeon was Dr. Bitan, which as we established was in the
8 spring of 2021, correct?

9 A Correct.

10 Q Right. Which was about five years before you
11 prepared this report, correct?

12 A That is correct.

13 Q Your next item, number two, is that Ms. Howard should
14 see a physiatrist, correct?

15 A Yes.

16 Q Right. And that's someone of your specialty,
17 correct?

18 A That is correct.

19 Q Right. And as of the time that you prepared this
20 report, May 17 of 2026, Ms. Howard was not seeing a
21 physiatrist, correct?

22 A That is correct.

23 Q In fact, the only doctor she was seeing, the only
24 doctor she was seeing was Dr. Diwan, the pain management
25 specialist?

Guy - By Plaintiff - Cross

1 A And physical therapy.

2 Q And the physical therapy, the doctor of physical
3 therapy, correct?

4 A That is correct.

5 Q Right?

6 A That is correct.

7 Q And is it fair to say from March 17 of 2021 up until
8 May 17, 2026, Ms. Howard had not treated with a physiatrist?

9 A That is correct.

10 Q Then Doctor, in point number three you indicated that
11 Ms. Howard should have at least one physical therapy -- I am
12 assuming you meant session -- from a skilled licensed physical
13 therapist, correct?

14 A That's correct. Once per week, yes.

15 Q You didn't put any once per anything, correct?

16 A I did not. That's where the third report comes in.

17 Q Doctor, we never --

18 MS. LUDLAM: I am going to object to a third
19 report; and I'll get to that.

20 MR. ZILBERG: It was served. You have it.

21 Q But it is fair to say, Doctor, that at the time you
22 prepared this report Ms. Howard was undergoing physical
23 therapy, correct?

24 A That is correct.

25 Q And she is still currently treating with Dr. Goodell

Guy - By Plaintiff - Cross

1 in his physical therapy facility, correct?

2 A That is correct.

3 Q And you also discussed in point four that you are
4 recommending CT scan of the lumbar spine, correct?

5 A That is correct.

6 Q Right. But Ms. Howard has not had a CT scan in the
7 last year or so, correct?

8 MR. ZILBERG: Objection. She did. Dr. Radna
9 testified about it.

10 THE COURT: Overruled.

11 Q Are you aware?

12 A Dr. Radna did one.

13 Q But did you see that in your notes?

14 A There is a lot of notes here.

15 Q Okay. All right.

16 A One second, let me see. One second.

17 Yes, he did one on 5/8/26.

18 Q Okay. And Doctor, is it fair to say that that CT
19 scan performed in May of 2026 was after the October 12, 2021
20 motor vehicle accident? Correct?

21 A Of course.

22 Q Right. And Doctor, you also mentioned EMGs?

23 A That's correct.

24 Q Correct? Is it fair to say that Ms. Howard has not
25 had EMGs over the last two or three years, correct?

Guy - By Plaintiff - Cross

1 A That's correct.

2 Q EMGs, is it fair to say, Doctor, are typically
3 performed by a neurologist?

4 A No, physiatrist or neurologist.

5 Q Either or?

6 A Yes.

7 Q Is it fair to say we have established, correct,
8 Ms. Howard hasn't been treating with a physiatrist?

9 A That's correct.

10 Q Is it also fair to say Ms. Howard has not been
11 treating with a neurologist?

12 A I never said she should see a neurologist, but that's
13 correct.

14 Q You don't have records of her seeing a neurologist,
15 correct?

16 A I do not.

17 Q Okay. Doctor, you also had recommendations
18 concerning surgery, correct? A surgery?

19 A Surgery, yes.

20 Q Recommendations for surgery?

21 A Yes.

22 Q In your review of Dr. Bitan's records, the spinal
23 surgeon that she did treat with, he never -- it is fair to say
24 that he never made a recommendation for spinal surgery,
25 correct?

Guy - By Plaintiff - Cross

1 A At that time, five years ago. This is five years
2 later.

3 Q Okay. So five years ago would you agree with me that
4 was before the October 12, 2021 accident, correct?

5 A That is correct.

6 Q So prior to October 12 of 2021, there had not been a
7 recommendation by Dr. Bitan that Ms. Howard have spinal
8 surgery, correct?

9 A That is correct. Wait a minute. She did have spinal
10 surgery. She had the percutaneous discectomy.

11 Q Right. But according to Dr. Radna, am I correct --
12 well, I want you to assume that Dr. Radna said that that was
13 not a spinal surgery. So based upon that, is my question --

14 MR. ZILBERG: Objection.

15 THE COURT: Overruled.

16 You can answer.

17 Q -- a fair question?

18 A I addressed that. That's his opinion.

19 Q All right. But other than the percutaneous
20 procedure, the pain management procedure, is it fair to say
21 that Dr. Bitan had not recommended any other spinal -- invasive
22 spinal surgeries?

23 A During the time the patient was seeing Dr. Bitan,
24 that is correct.

25 Q And that was before October 12 of 2021, correct?

Guy - By Plaintiff - Cross

1 A That is correct.

2 Q Now, Doctor, in your all of your plan recommendations
3 one through nine, it is fair to say you do not state in the
4 actual plan when these treatments are to start, correct?

5 A Effective immediately after my May 17, '26. These
6 are all recommendations going forward.

7 Q But you don't state that specifically in your report,
8 correct?

9 A I don't have to, it is understood.

10 Q Well, Doctor, if somebody is reviewing your report
11 to, say, prepare an evaluation or an analysis and it is not
12 written in your report as to when these recommended treatments
13 are to start, how are they to know when the recommended
14 treatments are to start?

15 A It is common sense understanding in a medical field.
16 If you don't have medical knowledge, you could be confused
17 about anything. But this is in the medical field, it is
18 assumed going forward. And I put that going forward these are
19 the recommendations.

20 Q All right. Well, Doctor, if a non-medical
21 individual, someone who doesn't work in the medical field, is
22 reviewing your report and preparing an evaluation for an
23 analysis of your report, they would have no way of knowing as
24 to when each of those recommended treatments was to begin; is
25 that fair to say?

Guy - By Plaintiff - Cross

1 A A non-medical person --

2 Q Yes.

3 A -- should not be reading these reports unless they
4 have a medical assistant explaining to them the significance of
5 these reports.

6 Q All right. So, if you are not -- so is it fair to
7 say, Doctor, if you are not a medical professional, if you were
8 to prepare an evaluation based upon your numbers, you would
9 need more information written in the report to indicate when
10 the treatments were actually to start?

11 MR. ZILBERG: Objection.

12 THE COURT: Overruled.

13 You can answer.

14 Q Correct?

15 A Once again -- give me one second. Just one second.

16 It clearly states on page three under my opinion
17 section: Since these injuries are permanent and progressive,
18 the patient will need the following medical services for the
19 rest of her life based on proper medical indications/optimal
20 level of care.

21 Okay? That to any common sense person indicates
22 going forward, not going backwards, because the report was
23 generated May 17, '26.

24 Q Right. But Doctor, putting aside going backwards,
25 because obviously backwards has already passed, correct?

Guy - By Plaintiff - Cross

1 A Obviously, yes.

2 Q Going forward, some of these treatments are not going
3 to happen right away, correct?

4 A These treatments are what is medically indicated
5 going forward.

6 Q Right. But you don't indicate --

7 A I don't have to.

8 Q Now, Doctor, you mentioned one of the items, number
9 nine in the items you mentioned is a home health aide, correct?

10 A That's correct.

11 Q All right. And you are aware that Ms. Howard is
12 married, correct?

13 A I am aware, yes.

14 Q That she has a husband, correct?

15 A Sitting right in the back, yes.

16 Q Right. And I want you to assume, Doctor, that
17 Ms. Howard's husband, Mr. Johnson, testified yesterday that he
18 currently does the house work?

19 A Just because he is doing it, doesn't mean that he has
20 to. The burden should not be placed on the family. The burden
21 should be placed on the injuries. And this is what is
22 medically indicated so that she does not have to burden any
23 family member.

24 Q All right. And Doctor, are you assuming that when
25 you prepared this report, that prior to the accident Ms. Howard

Guy - By Plaintiff - Cross

1 was performing 100 percent of the household duties?

2 A No. It is in many of the reports I read, she needed
3 assistance in most of her activities of daily living, including
4 putting her socks and shoes on.

5 Q But that's -- your recommendation for household help
6 was solely for household chores, not putting on clothes.

7 A Shopping, cooking, cleaning, ADL.

8 Q Not ADL. You wrote household chores, correct?

9 A One of the household chores is included by ADL.

10 Q ADL is activities of daily living, correct?

11 A Yes, it is one of the household chores that the
12 patient does for themselves.

13 Q Now, Doctor, going to your June 18, 2026 report,
14 please.

15 A Okay.

16 Q Let me know when you are there.

17 A I am here.

18 Q Okay. And that was a report that you prepared after
19 you performed an evaluation of Ms. Howard, correct?

20 A That is correct.

21 Q And that evaluation was performed on June 17, 2026,
22 correct?

23 A That's correct.

24 Q At the time, is it fair to say that Ms. Howard
25 indicated to you that she was living in Virginia?

Guy - By Plaintiff - Cross

1 A That is correct.

2 Q So is it fair to say that in order to see you for
3 your evaluation on June 17, 2026, Ms. Howard had to fly here?

4 A Had to?

5 Q Fly, to take a plane?

6 A Yes, to see me and Dr. Diwan.

7 Q Right.

8 MR. ZILBERG: Objection. Whether she traveled.

9 I don't know if she flew.

10 Q Well, Doctor, is it fair to say that somehow
11 Ms. Howard transported herself from Virginia to New York?

12 A Yes.

13 Q In or around June 17 of 2026?

14 A Yes.

15 Q Okay.

16 A I understood what you meant by, she flew. She
17 doesn't have wings to fly, she flew with the airlines.

18 Q So it is fair to say she either flew, drove, or
19 something -- you know, was transported in a car or took a
20 train, correct?

21 A Correct.

22 Q Right. And in all of those forms of transportation,
23 it is fair to say that one would have to sit for that time,
24 correct?

25 A That is correct.

Guy - By Plaintiff - Cross

1 Q And Doctor, you are also in -- when we reviewed
2 Dr. Diwan's treatments earlier, a lot of those treatments were
3 done when Ms. Howard was already outside of the Tristate area,
4 correct?

5 A Correct.

6 Q Right. So initially she was coming to New York from
7 Chicago for some of those treatments, correct?

8 A Correct.

9 Q And she traveled in some form, either fly, in car or
10 on train, from Chicago to New York to receive those treatments,
11 correct?

12 A Correct.

13 Q Right. And so that required her to sit for a period
14 of time, correct?

15 A That is correct.

16 MR. ZILBERG: Objection.

17 THE COURT: Overruled.

18 You can answer.

19 MR. ZILBERG: She doesn't necessarily have to
20 sit, she can stand on the plane.

21 THE COURT: No speaking objections. You will
22 have the opportunity for redirect.

23 Q And Doctor, is it fair to say that at some point, as
24 we said before, Ms. Howard relocated to Virginia, correct?

25 A That is correct.

Guy - By Plaintiff - Cross

1 Q And while she was in Virginia, is it fair to say that
2 she continued her treatments with Dr. Diwan in-person, correct?

3 A Correct.

4 Q And she traveled in some form from Virginia to New
5 York to have those treatments with Dr. Diwan, correct?

6 A That is correct.

7 Q Now, Doctor, in your sticking with your June 18, 2026
8 report, on the last page right before your signature, your
9 affirmation and signature --

10 A Right.

11 Q Right? You note -- am I fair to say that you note in
12 your report: The patient's overall prognosis must therefore
13 remain guarded?

14 A That is correct.

15 Q Right. And am I correct in stating that the phrase,
16 "prognosis must therefore remain guarded," means that you
17 cannot predict the future course with certainty?

18 A No, not exactly. Partially that is correct.
19 "Remains guarded" is an expression that I use indicating that
20 she still is left with deficits. The deficits are not fully
21 determinable on this date.

22 Q Right. And does it also mean that the future course
23 is still uncertain with regard to treatment?

24 A It says nothing about the future course, just her
25 current condition.

Guy - by Plaintiff - Redirect

1 Q Right. But is it fair to say that that also means
2 when you say, "remain guarded," that the future course of
3 treatment is not certain when someone is guarded?

4 A That question can be answered with a yes with an
5 explanation; not just a simple yes or no.

6 Q Okay. All right.

7 MS. LUDLAM: Judge, I don't have anymore
8 questions. Thank you.

9 MR. ZILBERG: May I, Your Honor?

10 THE COURT: Yes.

11 MR. ZILBERG: Thank you.

12 REDIRECT EXAMINATION

13 BY MR. ZILBERG:

14 Q Doctor, you were just talking about, yes with an
15 explanation, regarding the "remains guarded;" can you please
16 give us the explanation?

17 A Yes. As of that date I put, prognosis remains
18 guarded, meaning it is still uncertain as to how much more
19 deficits she will or she will not have. That's why it is
20 guarded. But the future treatments that I indicated in my life
21 care plan, those are medically indicated.

22 Q Now, Doctor, on cross examination you were asked
23 about a few treatments that you have in your plan but which
24 Ms. Lainey Howard had not previously had; for example treatment
25 with a physiatrist.

Guy - by Plaintiff - Redirect

1 A Correct.

2 Q Or in addition to EMGs?

3 A Correct.

4 Q Can you please tell us why these appear in your plan
5 even though she has never had this type of treatment
6 previously?

7 A In my professional opinion I feel that the
8 physiatrist is the best primary doctor in the traumatic
9 injuries, because their training is in orthopedics, neurology,
10 interventional pain management, disability, impairment,
11 different types of injections. No other specialty has this
12 much training as physical medicine and rehabilitation does. So
13 if the patient was being seen by a physiatrist, I could almost
14 guarantee they would have done an EMG. Like when a patient
15 goes to a cardiologist and have chest pain, almost guaranteed
16 they would get an EKG, get a stress test and a 2-d Echo.
17 That's the standard of care for these specialties. So, she
18 never had an EMG, so we don't know how bad the nerve injuries
19 are. If she had, we would have known. But it is medically
20 indicated. The indication for the EMG is when you have
21 radicular pain, any neurological deficit. She had sensory
22 deficit in the left foot, muscle weakness in both lower
23 extremities, that meets the indication for an EMG.

24 Q Now, Doctor, earlier you referred to an expression,
25 optimal level of care. Can you please tell us what that means?

Guy - by Plaintiff - Redirect

1 A Yes. Optimal level of care means the best care that
2 this patient should have. As I explained earlier, when a
3 patient has a serious traumatic injury, they should be entitled
4 to the best possible treatments, not the mediocre treatments;
5 because you want the patient to recover as effectively as fast
6 as possible to reach their pre-injured state. You don't want
7 them to get reinjured by some half-blank doctor doing a
8 procedure and causing more complications. So you want the best
9 doctors to be treating you.

10 Q Now, Doctor, counsel -- counsel read to you some
11 parts of Dr. Diwan's note from eight days after the accident
12 where -- where Ms. Howard was found to be neurologically
13 normal. And you, I believe, said it was for a very good
14 reason?

15 A Correct.

16 Q Can you please tell us what that was?

17 A Yes. In the medical field we have what is known as
18 the incubation period. The period from exposure to trauma or
19 exposure to virus or exposure to a bacteria, to the full
20 symptomology. To give you two examples: The common cold
21 incubation period is two to three days. Hepatitis type A, 60
22 days; type B 120 days. Traumatic injuries, nerve injuries,
23 take minimum four to six weeks to fully manifest themselves.
24 So, if you have neurological injuries from day one, it is
25 extremely rare for that to happen. You would have to have a

Guy - by Plaintiff - Redirect

1 break in the bone cutting into a nerve. You would have to have
2 something in the fracture line in the extremities as well.
3 That's why first eight days you have not reached the full
4 incubation period.

5 Q Now, aside from the neurological testing that
6 Dr. Diwan did, that report for when Ms. Howard first saw
7 Dr. Diwan on March 30?

8 A Right.

9 Q When she went for the injection that she could not
10 get, this is in evidence the report of Dr. Diwan of March 30.
11 He does say, urgent office visit, pain is worsening and
12 radiating, severe muscle spasms. She reports that pain is now
13 radiating to bilateral buttocks and back of thighs. The pain
14 is severe and limiting her ambulation and range of motion. Her
15 pain is a score of nine out of ten in sitting, standing or
16 walking. She is crying. The quality of pain is described as
17 stabbing, sharp, constant, throbbing, aching; and a severity
18 intensity level of nine out of ten. Pain has been worsening.

19 Do you recall those portions of that note from
20 March 30, of 2021?

21 A I do.

22 MS. LUDLAM: Objection.

23 THE COURT: Overruled.

24 You can answer.

25 Q Now, counsel, you know, read to you, you know, short

Guy - by Plaintiff - Redirect

1 portions of various records that they placed in evidence in
2 incomplete reports, cherrypicked pages. I will go through some
3 other portions of those same reports with you.

4 Now, counsel read -- now, first of all, Lainey Howard
5 had the percutaneous discectomy on July 28, 2021 -- I am sorry
6 21, 2021, correct?

7 A Correct.

8 Q And then there is a note on 7/28/2021, about a week
9 later, saying that she has some improvement?

10 A Correct.

11 Q Does that surprise you?

12 A No. As expected. Because the patient gets steroid
13 injections during the discectomy. They are given medications
14 for sedation. And they are given medications for pain after
15 the procedure. So in most cases they do show some improvement,
16 but it does not last forever.

17 Q Now, on September 3, 2021, in evidence, Dr. Diwan
18 wrote a letter to Lainey's employer saying: Please be advised
19 that Lainey is suffering from lumbar radiculopathy. Ms. Howard
20 is not to lift or wear anything in excess of 10 pounds; not to
21 partake in any physical activity that would cause excessive
22 bending or turning of the back and spine; and not to sit for
23 prolonged periods of time.

24 I will go on to, you were also read certain limited
25 portions of Dr. Diwan's note from September 22, 2021. That

Guy - by Plaintiff - Redirect

1 same note also states that: She is still diagnosed with
2 radiculopathy of the lumbar region, low back pain. That she is
3 still on -- still taking Zofran, Diclofenac gel, Percocet,
4 lidocaine, cyclobenzaprine.

5 And again, on September 22, 2021, just less than a
6 month before this October 12, 2021 accident, Dr. Diwan writes:
7 Patient can go back to work with light duty assignments.
8 Weight lifting not more than 10 pounds. Avoid flexion,
9 extension. Use lumbar support as much as possible. Wear back
10 brace if lifting weights. Avoid hard pushing or pulling.

11 MS. LUDLAM: Judge, I am objecting. This isn't
12 a question. It is just recitation of --

13 THE COURT: Yeah. Can you rephrase it into a
14 question?

15 MR. ZILBERG: Sure.

16 Q Does that affect your analysis and diagnosis in this
17 case?

18 A It is consistent with my diagnosis and my assessment
19 of this case.

20 Q On the morning -- on the very morning of the
21 October 12, 2021 accident, counsel read to you a portion of the
22 physical therapy note, with the physical therapist. Another
23 part of the physical therapy note states: Patient has
24 fluctuating muscle spasms that radiate into her lower left
25 extremity. Numbness presents in her left great toe. And pain

Guy - by Plaintiff - Redirect

1 that fluctuates in her -- with her level of fatigue and
2 activity throughout the day. This indicates that activity
3 tolerance and core endurance throughout the day factor into
4 patient's pain reports.

5 MS. LUDLAM: Objection. There isn't a question.

6 MR. ZILBERG: There will be as soon as I finish
7 reading. Give me a second.

8 Q He further in that same report states that: There is
9 a lower back disability on the Oswestry scale of 38 percent.
10 And further states that complaints of any radicular symptoms in
11 either extremity, yes, left glute and occasionally into
12 bilateral lower extremity with increased activity and sitting.

13 Does that report from the very morning of the
14 October 12, 2021 accident in any way change or affect your
15 analysis or diagnosis in this case?

16 A No, it does not.

17 Q I would like to further point your attention to
18 records from Rush Orthopedics. Rush Orthopedics, after the
19 October 12, 2021 accident.

20 THE COURT: Okay. Just a minute. We are going
21 to take a short break.

22 COURT OFFICER: All rise. Jury exiting.

23 (Whereupon, the jury exited the courtroom.)

24 THE COURT: I was notified by the court officer
25 that one of the jurors wanted to take a break.

Guy - by Plaintiff - Redirect

1 MR. ZILBERG: Thank you, Your Honor.

2 COURT OFFICER: All rise. Jury entering.

3 (Whereupon, the jury entered the courtroom.)

4 THE COURT: Okay. Thank you. You can be
5 seated. We will continue.

6 MR. ZILBERG: Your Honor, may I?

7 THE COURT: Yes.

8 MR. ZILBERG: Thank you.

9 Q Doctor, following the October 12, 2021 accident, when
10 Ms. Lainey Howard followed up two days later on October 14 at
11 Midwest Orthopedics at Rush, in the records that you reviewed,
12 they do indicate that her neck pain is marked as severe; and
13 her lower back pain is marked as moderate. Did you know that?

14 A I remember seeing it somewhere. I don't know if it
15 was in that record or a different record.

16 Q Now, Doctor, have any of the questions that you were
17 asked on cross in any way changed your opinion or analysis in
18 this case?

19 A Nope.

20 MR. ZILBERG: Thank you. Nothing further, Your
21 Honor.

22 THE COURT: Okay.

23 MS. LUDLAM: Judge, may I recross?

24 THE COURT: Yes.

25

Guy - by Plaintiff - Cross

1 CROSS-EXAMINATION

2 BY MS. LUDLAM:

3 Q Doctor, you were asked just before by Ms. Howard's
4 counsel about your plan referring to optimal treatment plan,
5 correct?

6 A That is correct.

7 Q Doctor, is it fair to say that currently Ms. Howard
8 isn't undergoing those optimal treatment plans, correct?

9 A That is correct.

10 Q So when you prepared the plan, you prepared the
11 highest level of treatment?

12 A That's correct.

13 Q Correct? And even though, it is fair to say even
14 though the patient isn't currently undergoing that treatment,
15 fair?

16 A That's correct.

17 Q Right. Now, Doctor, since your preparation of your
18 report in -- on June 18, 2026, has Ms. Howard undergone spinal
19 surgery?

20 A Yes, the percutaneous discectomy.

21 Q No, since your report.

22 A To my knowledge, no.

23 Q That's my fault. The microphone was off. I'll ask
24 it again.

25 A Okay.

Guy - by Plaintiff - Cross

1 Q Is it fair to say that since your preparation of the
2 report of October -- I am sorry. Is it fair to say that since
3 your preparation of your report on June 18, 2026, Ms. Howard
4 has not undergone spinal surgery?

5 A That's correct.

6 Q And is it also fair to say that none of her doctors
7 referred her, treating physicians referred her to spinal
8 surgery?

9 A To my knowledge, no.

10 Q Okay. Doctor, is it fair to say since the
11 preparation of your report of June 18, 2026, Ms. Howard has not
12 undergone any EMG studies?

13 A That's correct.

14 Q And Doctor, is it fair to say that since the
15 preparation of your report of June 18, 2026 Ms. Howard has not
16 seen a physiatrist for treatment?

17 A That's correct.

18 Q And Doctor, is it fair to say that Ms. Howard is not
19 currently treating with a spinal surgeon?

20 A That's correct.

21 MS. LUDLAM: Thank you, Doctor.

22 THE COURT: You are welcome.

23 MR. ZILBERG: Nothing further, Your Honor, from
24 this witness.

25 THE COURT: Okay. You are excused.

Sanmartin - by Plaintiff - Direct

1 THE WITNESS: Thank you, Your Honor.

2 THE COURT: Anything further for today?

3 MR. ZILBERG: We are calling Dr. Maria
4 Sanmartin. Just as soon as the stand is available, Your
5 Honor.

6 THE COURT: Mm-Hm.

7 MR. ZILBERG: I would like to have something
8 marked for I.D., please.

9 Should I go get the doctor?

10 THE COURT: Yes.

11 MR. ZILBERG: Plaintiff calls Dr. Maria
12 Sanmartin.

13 (Whereupon, the witness took the stand.)

14 COURT CLERK: Please raise your right hand.

15 M A R I A S A N M A R T I N, after
16 having first been duly sworn was examined and
17 testified as follows:

18 COURT CLERK: Please state your name and address
19 for the record.

20 THE WITNESS: Maria Sanmartin, 167 Kent Street,
21 Hackensack New Jersey 07601.

22 COURT CLERK: Thank you. You may be seated.

23 DIRECT EXAMINATION

24 BY MR. ZILBERG:

25 Q Good afternoon, Doctor.

Sanmartin - by Plaintiff - Direct

1 A Good afternoon.

2 Q What is your profession?

3 A I am an economist.

4 Q Okay. And what is an economist?

5 A Well, that's a great question. I would like to start
6 explaining what is economics. And in economics what we do is
7 try to see how scarce resources are allocated. And in
8 particular we answer three questions:

9 What is produced; how it is produced; and who gets
10 what. So as an economist that is focused on the health and
11 labor market, I answered this questions in the health and labor
12 market. So I follow what is going on with the healthcare
13 sector, what is happening with prices, and try to understand
14 this two sectors, the health and labor sector, as an economist.

15 Q Please take us through your educational background.

16 A Sure. So I got my Bachelor's degree in economics in
17 Uruguay. Then I pursue my Master's degree in economics in
18 Spain. And I finally did my Ph.D., also in economics, at Stony
19 Brook University.

20 Q And can you please take us through your professional
21 background?

22 A Sure. Once I graduated, I start working as an
23 assistant professor at Hofstra University. Over there I taught
24 courses in the Master of health -- in the Master of health
25 administration. I also mentored students. I wrote grants and

Sanmartin - by Plaintiff - Direct

1 scientific papers. I spend there 40 years, and then I
2 transition to the private sector. In particular to a company
3 that is called Siemens Healthineers. I work as research
4 economist for one year and a half. And then I transition again
5 to academia.

6 I am currently working as an assistant professor in
7 the School of Medicine at Hofstra, Northwell. My role there is
8 to teach students, write grants, write scientific papers, and
9 mentor the students.

10 In particular I am part of what is called the Health
11 Effectiveness and Economics Program, where students not only
12 take courses in research focused on economics, but also they
13 are mentored by a Ph.D. and an M.D. So, while they are taking
14 these courses and doing their M.D., they are part of a group of
15 people where we mentor them for doing a research project. So
16 the idea is that after three years of mentoring them, they are
17 able to publish their own research paper working with us.

18 Q Now, did my firm at some point retain your services
19 to perform an economic analysis in this case?

20 A Yes.

21 Q And have we ever worked -- have you ever worked with
22 our firm before?

23 A Yes.

24 Q By the way, how many such economic analyses as the
25 one you performed in this case have you done in your career?

Sanmartin - by Plaintiff - Direct

1 A Reports?

2 Q Yes.

3 A I have no idea. But it is -- I am part of a firm and
4 generally I may do 20, 30 per year, yes.

5 Q And can you please explain what type of analysis we
6 hired you to do and what type of analysis you actually did?

7 A Yes. So the type of analysis that we do is in this
8 particular case a future healthcare cost analysis. And I can
9 explain what it is.

10 Q Please.

11 A Mm-Hm. So we are provided with a life care plan from
12 a medical expert, which in this case is Dr. Guy. He provides
13 us with type of services, frequency, duration, and cost in
14 current dollars. As there is an uncertainty of what is going
15 to happen with prices in the future, our role is to project
16 those prices into the future.

17 Q And this is the type of reports that you said you do
18 about 20 or 30 per year?

19 A Yes.

20 Q Have you testified in court before as an expert
21 economist?

22 A Yes.

23 Q On this type of report and case?

24 A Yes.

25 Q How many times have you testified?

Sanmartin - by Plaintiff - Direct

1 A Yes, and also economic losses as well. So it is
2 future healthcare and economic loss. So I start working part
3 time in 2021 and I have testified around 20 times.

4 Q And in which courts?

5 A Well, here in New York; also in Brooklyn, Supreme
6 Court in Brooklyn; and Bronx; and Queens. So New York City
7 area.

8 Q Okay. Have you ever been rejected as an expert
9 economist in any court?

10 A No.

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

12 A Yes.

13 Q Okay. At what rate?

14 A \$5,000 flat rate.

15 Q Okay. And what would you be doing if you weren't
16 here testifying?

17 A I will be working with my students.

18 Q Now, when did my firm retain your services?

19 A That was May of 2026.

20 Q And were you provided with materials by my firm?

21 A That's correct.

22 Q What did we provide you with?

23 A We received the life care plan from Dr. Guy.

24 Q And did you prepare a report?

25 A Yes.

Sanmartin - by Plaintiff - Direct

1 Q Okay. And as part of that report, did you prepare a
2 chart?

3 A Yes.

4 Q Would it assist you in explaining your analysis to
5 the jury to utilize the chart that you prepared?

6 A Yes.

7 MR. ZILBERG: Your Honor, may we put the chart
8 up?

9 THE COURT: Yes.

10 MR. ZILBERG: Thank you.

11 Can the witness come off the stand?

12 THE COURT: Yes.

13 MS. LUDLAM: Judge, I am just going to object
14 because this is a document that is not in evidence.

15 MR. ZILBERG: It is demonstrative.

16 THE COURT: Okay.

17 MR. ZILBERG: It is not in evidence.

18 THE COURT: Go ahead.

19 Q Doctor, can you please utilize this chart in order to
20 explain and describe your analysis for the jury?

21 A Yes.

22 Q Thank you.

23 (The witness stepped down from the stand.)

24 A So, I am provided with a life care plan. In this
25 particular case is Dr. Guy who is a medical expert who is going

Sanmartin - by Plaintiff - Direct

1 to give us the type of services which you are going to see
2 here, frequency, duration and cost in current dollars. And as
3 I have tried to just explain, my role here is to project those
4 prices into the future.

5 Now, you will see now here that it says rates, and
6 these refers to growth rates.

7 What are growth rates? They are rates at which
8 prices go up over time. The U.S. Bureau of Labor Statistics
9 collects information about prices. While they are gathering
10 this information, there is one particular category of care that
11 they collect that is called medical prices.

12 Medical prices have increased an average of 3.2,
13 3.3 percent in the last 25 years. And what does it mean that
14 they have increased an average of 3.3 percent? It means that
15 some prices increased more than 3.3 percent; and other prices
16 increased less than 3.3 percent.

17 So my role is going to be to match the subcategories
18 here that are provided in the life care plan with the ones that
19 are provided in the U.S. Bureau of Labor Statistics.

20 So I am going to explain that. It is going to take
21 me a little longer the first category, but then the methodology
22 is going to be the same for all of the other categories.

23 So the first categories that is provided in the life
24 care plan is the spinal surgeon. Dr. Guy recommends that
25 Ms. Howard visit a spinal surgeon three times per year, and the

Sanmartin - by Plaintiff - Direct

1 current rate is \$300.

2 So what I am going to do is multiply 300 times three.

3 We have that the current amount for the year 2026 is \$900.

4 Now, I am going to use a 2.8 percent growth rate. So
5 what I did there is to match this category with professional
6 services. Professional services have increased in the last 25
7 years an average, so we use for these average of 2.8 percent,
8 the basis for professional services in the U.S. Bureau of Labor
9 Statistics.

10 So now in the next category -- in the next row you
11 will see that the number goes from 900 to 925. And this means
12 that I apply this 2.8 percent growth rate in the next year.
13 And I am going to do the same thing every year until the year
14 2069.

15 Why did I stop in that year? Well, I am using one
16 assumption, that is the life expectancy. For those of you that
17 are not familiar with this concept, this is based on life
18 tables that are -- that you guys can find in the Center for the
19 Disease Control and Prevention or CDC. What is life
20 expectancy? Well, they are survival probabilities that are
21 based on the year that a person is born and gender, will tell
22 you how many years that person is going to live. So in this
23 particular case we are following this 2020 life tables, which
24 are the ones that the New York Court relies upon. And
25 Ms. Howard is going to live until she reaches 81 years. And

Sanmartin - by Plaintiff - Direct

1 that's why we stop in the year 2069. Okay?

2 Now, for all these category of care, assuming an
3 annual growth rate of 2.8 percent, we will have that the
4 lifetime cost is going to be \$75,447.

5 Now, the next category that is provided in the life
6 care plan is physiatrics, which also falls under the category
7 of professional services; and that's why we are using a
8 2.8 percent growth rate. The same rationale as in the previous
9 column. You have a current cost of \$1,800. We apply an annual
10 growth rate of 2.8 percent. And the total life plan cost is
11 going to be \$150,895.

12 The next category of care that is provided in the
13 life care plan is physical therapy. Now when I match this
14 category with the one provided in the U.S. Bureau of Labor
15 Statistics, this is going to fall under other professional
16 services. And we have a growth rate of 2.2 percent. We are
17 going to apply this rate to every number. The current cost is
18 \$10,400. And then the total life plan cost will be \$750,944.

19 The next category of care that is provided in the
20 life care plan is CT scans of lumbar spine. And this category
21 we have a 2.8 percent growth rate. The annual cost is \$360.
22 And the total lifetime cost will be \$30,179.

23 The next category of care is MRIs of lumbar spine.
24 We have that the annual cost is \$3,000. We are using a growth
25 rate of 2.8 percent and the total lifetime cost will be

Sanmartin - by Plaintiff - Direct

1 \$251,491.

2 Now, the next category of care is EMG. Most of the
3 cases EMG are performed in an out-patient facility. As Dr. Guy
4 does not explicitly state that EMG is going to be performed in
5 an out-patient facility, then we are assuming a lower growth
6 rate of 2.8 percent. If he had explicitly explained --
7 explicitly written there that the EMG would be performed in an
8 out-patient facility, we would have assumed a 3.8 percent. So
9 we are taking a conservative approach.

10 The total annual cost is \$5,000. We are using a
11 growth rate of 2.8 percent and the total lifetime cost is
12 \$419,152.

13 The next category of care is prescription
14 medications. Now, for this category we are assuming a
15 3.5 percent, and we are matching with the category of
16 prescription medications in the U.S. Bureau of Labor
17 Statistics. The annual cost is \$5,413, we are using every year
18 a 3.5 growth rate and the annual cost will be 5,042 --
19 \$542,883.

20 Now, the next category you will just see one number.
21 Dr. Guy recommends dorsal column stimulation implant. Now, he
22 says that it should be replaced every seven years. However, he
23 doesn't explicitly say if the total amount is going to be the
24 same as the first time or if it is different. As I don't have
25 that information, then I took a conservative approach and I am

Sanmartin - by Plaintiff - Direct

1 just including the first implant, but not the replacements that
2 would occur in the future. So the total amount for this
3 category without including any type of growth rate because he
4 doesn't specify when it is going to occur, then what I am going
5 to assume here is just the current cost, even though these
6 might occur in the future. So the total lifetime cost for this
7 category of care is \$28,500.

8 Now, the next category is home health aide. I am
9 using a 3 percent growth rate here taking into account the
10 category of home health aide in the U.S. Bureau of Labor
11 Statistics. And also the idea that, you know, Baby Boomers
12 entering in this phase where they need more care, so the demand
13 for the services is going to increase in the future.

14 The current cost is \$45,500. We are using a
15 3 percent growth rate every year. And the total lifetime cost
16 will be \$4,012,574.

17 Now, for the last category of care we have surgery.

18 The same thing as with this category, Dr. Guy doesn't
19 say when the surgery is going to occur. When I don't have this
20 information, I assume that it might occur this year. And as a
21 consequence, I am going -- I don't use any type of growth rate,
22 so I take a conservative average. The total amount then is
23 going to be, including physical therapy, 3,000 -- \$357,400.

24 Now, for the total. What you can see here is the
25 total cost starting in July 1, because this report was done,

Sanmartin - by Plaintiff - Direct

1 you know, in May. Now, as the future is going to start in
2 November, then the total cost is going to be \$6,430,173.

3 Q Thank you. You can resume the stand.

4 (Whereupon, the witness resumed the stand.)

5 Q Now, Doctor, is your analysis and all of your
6 opinions made to a reasonable degree of economic certainty?

7 A Yes.

8 Q Now, this -- does this chart that you just went
9 through with us fairly and accurately depict your analysis and
10 professional conclusions in this case?

11 A Do you mind to repeat the question?

12 Q Sure. Does this chart fairly and accurately depict
13 your analysis and professional conclusions in this case?

14 A Yes.

15 MR. ZILBERG: Your Honor, I offer it into
16 evidence.

17 MS. LUDLAM: Objection.

18 THE COURT: What are you offering into evidence?

19 MR. ZILBERG: The chart.

20 THE COURT: Okay.

21 MS. LUDLAM: Objection Your Honor. That's --
22 those are, you know her personal numbers. It is not
23 evidence. These don't come in as evidence. It was just
24 her -- it is demonstrative.

25 THE COURT: Sustained.

Sanmartin - by Plaintiff - Cross

1 MS. LUDLAM: But it is not evidence.

2 THE COURT: Sustained.

3 MR. ZILBERG: I have no further questions.

4 THE COURT: Okay.

5 MS. LUDLAM: May I, Judge?

6 THE COURT: Yes.

7 MS. LUDLAM: Thank you.

8 CROSS-EXAMINATION

9 BY MS. LUDLAM:

10 Q Good morning, Doctor -- good afternoon?

11 A Good afternoon.

12 Q So, Doctor, you told us before that you are an
13 economist, correct?

14 A That's correct.

15 Q You went through your degrees that you obtained in
16 economics, correct, up to a Ph.D.?

17 A Yes.

18 Q But it is fair to say that you are not a medical
19 doctor, correct?

20 A That's correct, I am not a medical doctor.

21 Q Right. It is also fair to say that you do not work
22 in the medical field?

23 A That's correct.

24 Q It is also fair to say -- is it also fair to say that
25 you have not had any training in the medical field, correct?

Sanmartin - by Plaintiff - Cross

1 A That's correct.

2 Q Now, is it also fair to say that you personally do
3 not perform any diagnoses of patients?

4 A That's correct, I don't.

5 Q You don't. It is also fair to say you don't treat
6 patients, correct?

7 A I don't.

8 Q And is it also fair to say that you don't determine
9 medical necessity of various patients, correct?

10 A That's correct.

11 Q So, the numbers that you discussed today, is it fair
12 to say that you base those numbers relying entirely on
13 Dr. Guy's report, correct?

14 A Well, I -- I -- so I think there are two things here.
15 One is the prescription of medications and the type of
16 treatment, everything comes from Dr. Guy. So, I just take
17 whatever he says as a medical expert and then what I do is to
18 project those current costs into the future using growth rates.
19 So, yes, I base my analysis on Dr. Guy's opinion.

20 Q Okay. So it is fair to say -- is it fair to say that
21 you do not independently verify whether any of those projected
22 treatments in Dr. Guy's report are medically required, correct?

23 A Do you mind to repeat the question?

24 Q Sure. Is it fair to say that you do not
25 independently verify whether any of the recommended treatment

Sanmartin - by Plaintiff - Cross

1 or projected treatments are medically required?

2 MR. ZILBERG: Objection.

3 THE COURT: Overruled.

4 You can answer.

5 A Yeah, I don't have the expertise. So even if I would
6 like to verify, I lack the expertise to say if whatever he
7 recommends it is correct or incorrect, because I am an
8 economist.

9 Q Now, Doctor, is it fair to say that you performed
10 your analysis based upon Dr. Guy's plan as he wrote it out in
11 his report, correct?

12 A I base my analysis on Dr. Guy's report; that is
13 correct.

14 Q And you also, I believe, testified that what you need
15 from a doctor's plan is the type of services, correct?

16 A That's correct.

17 Q The frequency of services, correct?

18 A Correct.

19 Q The duration, correct?

20 A Correct.

21 Q And the current cost?

22 A That's correct.

23 Q Correct? And you didn't verify any of -- whether any
24 of the costs set forth by Dr. Guy were actually accurate,
25 correct?

Sanmartin - by Plaintiff - Cross

1 A Well, what I do in those cases is, I mean, as I have
2 been doing this for, you know, quite some years, I have a
3 range. Right? So if I see that a physical therapy session is
4 \$1,000, I know that something doesn't make sense there.
5 However, if it is within a reasonable range, then, you know, it
6 makes sense to me.

7 Now, we know how the whole system works in United
8 States, right? That something may cost 300 -- a session may
9 cost \$300 with physical therapy, another one may cost \$200.
10 But I don't have the expertise to say what is the type of
11 physical therapy that in this case Ms. Howard will need. So,
12 if -- you know, to summarize what I said, if the cost is within
13 a reasonable confidence interval.

14 Q So it is fair to say when you looked at -- is it fair
15 to say when you looked at Dr. Guy's report, he did not set
16 forth when any of these recommended treatments were to actually
17 begin?

18 A Well, he says that, you know, he says in that a
19 person needs these from now until, you know, during lifetime,
20 for instance. Right? So he mentions the treatment from now
21 until lifetime; or he says one surgery; or he says -- so yes,
22 he mentions the duration of the treatment. And he says the
23 person needs this treatment, the way that it is written is from
24 now until a certain period of time, whatever it is the period
25 of time that he is offering.

Sanmartin - by Plaintiff - Cross

1 Q Well, Doctor, in fact isn't it true that he did not
2 say from now in his report?

3 A Well, he says in his report -- the way that he writes
4 it says, and I can read it, right, but when he performs the
5 analysis the way that he writes is from the time that he
6 performs the analysis, or if it says, you know, in two years
7 from now, three years, depends on the services that the -- that
8 in this case Ms. Howard needs.

9 Q Is it fair to say what you just specified, two years
10 from now, three years from now, or whatever Ms. Howard needs
11 was not actually specifically written in Dr. Guy's report,
12 correct?

13 A He says the Ms. Howard needs, and he continues,
14 right? So that's present. Even if it doesn't say "now," he
15 says Ms. Howard needs is from now. Correct?

16 Q Are you making that assumption --

17 MR. ZILBERG: Objection.

18 THE COURT: Overruled.

19 You can answer.

20 Q -- that that's what Dr. Guy meant?

21 A That he says Ms. Howard needs is from the present?
22 Yes.

23 Q That's an assumption that you made, correct?

24 A It is not an assumption, it is the language. Right?
25 If it says, "will need," then it is in the future. And I don't

Sanmartin - by Plaintiff - Cross

1 know when it is going to happen. And that's -- that's why I
2 make the distinction in the analysis when it says, the
3 plaintiff will need surgery, I don't know when it is going to
4 happen. I don't use a growth rate. And if it says, you know
5 what, as I don't know when in the future it is going to happen,
6 I don't use a growth rate. But if he says, Ms. Howard needs,
7 that is, you know, from now; and then it says, you know, for
8 lifetime. So that means that it is from now until, you know,
9 life expectancy.

10 Q Right. But he doesn't specifically -- am I fair in
11 saying he doesn't specifically use the phrase, "from now," in
12 his report?

13 MR. ZILBERG: Objection, asked and answered
14 numerous times.

15 THE COURT: Overruled.

16 You can answer again.

17 A It says -- let me read exactly what he says so I am
18 not saying something that he doesn't say.

19 So -- so as he says: The patient should be seen by a
20 spinal surgeon at least three times per year to monitor the
21 patient's overall spinal injuries. The cost for each visit is
22 \$300. Right?

23 Q Doctor, I actually refer you to the sentence right
24 above that before number one; if you may.

25 A Mm-Hm. So this says: This patient has a severe

Sanmartin - by Plaintiff - Cross

1 permanent partial disability causally related to this accident.

2 And then it says: Since these injuries are permanent
3 and progressive. So the patient is injured. Right? It is
4 going to need the following medical services.

5 Q Okay. Doctor, it doesn't say, "as of now," correct?
6 It doesn't say the phrase, "as of now," correct?

7 MR. ZILBERG: Objection.

8 THE COURT: Overruled.

9 A It says that the patient -- the patient has a severe
10 permanent disability. If someone is disabled, needs treatment
11 now, not in the future. Right?

12 Q You are making that assumption as a non-medical
13 individual, correct?

14 A It is not an assumption, it is what it says here.

15 Q But what I am stating is that report does not say, am
16 I correct, that this is needed now. I am not asking about your
17 interpretation of the words permanent or progressive?

18 MR. ZILBERG: Objection, asked and answered.

19 THE COURT: Overruled.

20 You can answer.

21 A Mm-Hm. So I am basing my analysis saying that in the
22 categories that doesn't provide -- that doesn't say, every
23 year, or doesn't say, two or three years from now, but it just
24 says a surgery, then I am assuming that this is going to happen
25 now and I am not using a future growth rate.

Sanmartin - by Plaintiff - Cross

1 Q Okay.

2 A When Dr. Guy says that the cost is, you know, \$300
3 and that it needs the services three times per year, I am
4 assuming that from now until life expectancy, every year he
5 will have to see the professional three times a year.

6 Q Now, Doctor, do you know if Ms. Howard has had any of
7 these projected treatments? As of now?

8 MR. ZILBERG: Objection.

9 THE COURT: Overruled.

10 You can answer.

11 A I -- the only information that I am provided, it is
12 the life care plan.

13 Q Okay. But you don't know if she has had any of these
14 treatments since the preparation of this plan, correct?

15 A No.

16 Q Right. And as you said, this plan was prepared in
17 June, correct?

18 A May.

19 Q May?

20 A May.

21 Q And it is now October, correct?

22 A That's correct. And that's why the total, you know,
23 I specify that now the total starts November 1. So everything
24 that has happened in the past, has happened, and we are just
25 assuming cost from November 1 until, you know, life expectancy.

Sanmartin - by Plaintiff - Cross

1 Q Right. And Doctor, you have prepared these figures
2 based upon the assumption that all of this treatment will have
3 occurred, correct?

4 A All of this treatment will have -- well, I base my
5 whole analysis on the opinions of Dr. Guy. So if the medical
6 expert says that every year until life expectancy Ms. Howard
7 will need the treatment, then I assumed that that is correct
8 and it is part of my analysis.

9 Q Right. So it is fair to say that if some of those
10 treatments don't occur, then the numbers would be a lot less,
11 correct?

12 A If Dr. Guy says that Ms. Howard will not need a
13 certain treatment I can definitely update my analysis.

14 Q Now, going to your actual chart, and again you base
15 these numbers off of using Dr. Guy's report, correct?

16 A The cost in current dollars comes from Dr. Guy's
17 report.

18 Q Okay. And one of your items is physical therapy,
19 correct, which is the third column?

20 A Yes.

21 Q Okay. And you have physical therapy for 52 sessions
22 per year, correct?

23 A Yes.

24 Q Right, but in fact Dr. Guy in his report in item
25 number three only lists one physical therapy session?

Sanmartin - by Plaintiff - Cross

1 MR. ZILBERG: Objection. There was a
2 supplemental report served that clarified --

3 THE COURT: Sir, sit down. Overruled.

4 No more speaking objections. All right?

5 Go ahead.

6 A I received an addendum where it specifies that, you
7 know, it is going -- the total number that he will need -- that
8 she'll need, you know, for a whole year.

9 Q Right. But you had previously testified, correct,
10 that you were basing these numbers on a May 17, 2026 report,
11 correct?

12 A Yes. This report and the addendum. I specifically
13 sent an e-mail to the lawyers saying that I didn't have the
14 duration, so he asked Dr. Guy; and I was provided with that
15 document.

16 Q Okay. And you also note a cost for an EMG, correct?

17 A Yes.

18 Q Right? And you wrote two per year?

19 A I wrote here EMG. Well, yes. But I didn't -- but if
20 you see two per year, yeah, that's correct; that's what I
21 wrote.

22 Q And Dr. Guy wrote in his report once every two years,
23 correct?

24 A Now and every two years. Oh, yes. You are correct.

25 Q And you also list a cost for a home health aide,

Sanmartin - by Plaintiff - Cross

1 correct?

2 A Now and every two years. Yes, that's correct for
3 EMG.

4 I am sorry. Go ahead.

5 Q I am sorry, I'll withdraw that last question.

6 So going back to the EMG, so if the EMG is once every
7 two years that would significantly reduce the cost that you
8 have for the EMGs, correct?

9 A That's correct. It would be half. Yeah. That's
10 correct.

11 Q Now you also list, am I right, in your chart you have
12 a column for home health aide, correct?

13 A Yes.

14 Q And is it fair to say that you did not confirm with
15 any of Ms. Howard's treating physicians that she currently
16 requires a home health aid?

17 A I am basing my analysis on Dr. Guy's report.

18 Q And is it fair to say that you do not know if she
19 even has a home health aide currently?

20 A I don't know about that. And it is not relevant
21 either.

22 Q Right. And your numbers do not -- am I fair to say
23 that your numbers do not evaluate whether her condition would
24 ever improve, correct?

25 A I am not the medical expert, so I am not qualified

Sanmartin - by Plaintiff - Cross

1 to, you know, make those type of assumptions in my analysis.

2 Q And is it also fair to say, Doctor, that you do not
3 consider less expensive treatment alternatives when you run
4 your numbers?

5 A So when I run my numbers, I use the current cost that
6 is provided by Dr. Guy. And the main idea here is that as I am
7 not the medical expert, I am not qualified to say instead of a
8 \$300 physical therapy session, he needs a \$150 session -- she
9 needs a \$150 session. So, you know, it is the medical expert
10 who thinks that the type of physical therapy, which in this
11 case is \$200, is the one that Ms. Howard needs.

12 Q Right. And Doctor, you also testified on direct
13 examination that your numbers also include an assumption of a
14 certain life expectancy age, correct?

15 A Yes. So we need to have an assumption in terms of
16 until when we are assuming that Ms. Howard will need the, you
17 know, this type of services. And this is based on life tables
18 that are part of, you know, that are in the Pattern Jury
19 Instructions that the New York Court relies upon.

20 Q But you would agree with me that that's just an
21 assumption, correct?

22 A It is an assumption, that's correct.

23 MS. LUDLAM: Thank you, Judge.

24 MR. ZILBERG: Nothing, Your Honor.

25 THE COURT: Okay.

Sanmartin - by Plaintiff - Cross

1 You are excused. Thank you.

2 THE WITNESS: Thank you.

3 (Whereupon, the witness stepped down from the
4 stand.)

5 THE COURT: We will reconvene tomorrow at 10:00
6 a.m. Thank you.

7 COURT OFFICER: All rise. Jury exiting.

8 (Whereupon, the jury exited the courtroom.)

9 THE COURT: I am aware that two jurors have
10 brought scheduling issues to our attention. I have let
11 the attorneys know. It will be addressed when it really
12 has to be addressed. You know what I mean?

13 We probably could have done it now in the 15
14 minutes, but we should -- what do you want to do with
15 those jurors? We should address it. Either bring them in
16 individually and say can you change your plans or weren't
17 you -- didn't you agree to be here for two and a half
18 weeks. It is not two and a half weeks yet, what happened.
19 And stuff like that. Sometimes if you nudge them a little
20 they will say, all right, I'll change my plans.

21 MR. ZILBERG: I guess we could talk to them.

22 MR. SMITH: I think we have to talk to them.

23 MR. ZILBERG: We will talk to them.

24 MR. CERTAIN: We can talk to them in the morning
25 and see how adjustable those schedules are.

Sanmartin - by Plaintiff - Cross

1 THE COURT: Right. And did either of them tell
2 you that they had to be off on -- that they were leaving
3 on either of those two dates?

4 MR. CERTAIN: I don't have recollection. I know
5 that they had things, but they were further back than this
6 schedule.

7 THE COURT: I figured. Okay. Thank you.

8 MR. SMITH: Your Honor, just so we can, just so
9 the Court is aware what is going to happen here.
10 Plaintiffs represented yesterday to the Court that they
11 intend to bring in the IME monitor for Dr. April to
12 testify in rebuttal. Defendants formally raise an
13 objection to that. This whole case, as far as we are
14 concerned, should be a mistrial over this whole situation.
15 Now, not only did they get a charge which reminds the jury
16 what happened that day, now they intend to bring in a
17 witness, who is not disclosed in the witness list, that is
18 going to now testify about it. And what am I supposed to
19 do with that? Am I supposed to address those issues with
20 this guy or don't address them? If I don't address
21 them --

22 THE COURT: There is a whole series of
23 applicability of rebuttal witnesses. They may not have
24 met that requirement.

25 MR. ZILBERG: They are disclosed. There was a

Sanmartin - by Plaintiff - Cross

1 formal witness list disclosed in May, and this person was
2 on the list, listed as a potential rebuttal witness.

3 MR. SMITH: Plaintiff --

4 THE COURT: Okay. But for rebuttal there is a
5 separate test.

6 MR. ZILBERG: For rebuttal, yeah, absolutely,
7 Your Honor.

8 MR. SMITH: My point is --

9 THE COURT: It won't be able to be addressed
10 until really you have finished all of the witnesses --

11 MR. ZILBERG: Okay.

12 THE COURT: -- that he intends on rebutting.

13 MR. SMITH: I understand. My objection is this
14 takes -- this greatly prejudices the defense, because what
15 I ask him and what I don't ask him is going to resonate
16 with the jury. The fact that certain -- she testified --

17 THE COURT: Let's cut to the chase. Does it
18 have anything to do with the alleged improprieties, or is
19 it more like, well, you only did left, I only saw him do a
20 left leg testing; he never did the right leg, stuff like
21 that?

22 MR. ZILBERG: The latter.

23 THE COURT: He said the examination lasted ten
24 minutes. No, it didn't. We were there for three minutes.
25 Stuff like that.

Sanmartin - by Plaintiff - Cross

1 MR. ZILBERG: That's exactly what it is.

2 MR. SMITH: My point is, the milk has already
3 been spilled. If I don't address that it is going to be
4 apparent to the jury that I am -- I didn't want to take it
5 on. And if I do address it, I am reminding --

6 THE COURT: Aren't you going to address it with
7 Dr. Frost or Dr --

8 MR. ZILBERG: April.

9 MR. SMITH: I am going to ask Dr. April what he
10 did for his exam. But it is now not the plaintiff to
11 rebut his testimony but somebody else to basically -- how
12 do I -- how do I cross examine him without bringing up the
13 issues she raised? It is highly prejudicial at this
14 point. She has already testified what he did and didn't
15 do with the exam. We don't need another witness to
16 buttress what she had to say, and potentially making
17 the --

18 THE COURT: Why don't you tell us, what is this
19 person going to testify to?

20 MR. ZILBERG: Sure. The person is going to
21 testify that Robert April did not perform any range of
22 motion testing with or without a goniometer. That's the
23 entire extent of the testimony.

24 MR. SMITH: Again, I am going to object to that.
25 I think enough damage has already been done. And to --

Sanmartin - by Plaintiff - Cross

1 THE COURT: Well, did she testify that a
2 goniometer was never used?

3 MR. ZILBERG: She testified that he did not do
4 range of motion testing.

5 THE COURT: What?

6 MR. ZILBERG: That he did not do range of motion
7 testing.

8 THE COURT: Okay. So maybe the witness won't be
9 needed.

10 MR. SMITH: Yes.

11 THE COURT: It is a whole test for rebuttal
12 witnesses.

13 MR. SMITH: That's my whole point, Judge. Just
14 because you disclose it, doesn't mean he can testify. You
15 have to meet the threshold test for rebuttal.

16 MR. CERTAIN: Since we are on the record on
17 another issue, since we are here, during opening, and I
18 didn't want to emphasize it, counsel made repeated
19 references to ICE and the status of one of the agents who
20 was involved. I am just making sure this isn't going to
21 be in closing. You know, I have come to this building
22 complex where there are protests involving ICE. ICE is
23 probably right now the most controversial policing agency
24 in the entire country. This case has nothing to do with
25 one of the agents who participated in this investigation.

Sanmartin - by Plaintiff - Cross

1 There was no need to discuss ICE with him. There was no
2 need to bring it up. It was brought up repeatedly, so I
3 am hoping we don't --

4 THE COURT: Any use of ICE in summation?

5 MR. SMITH: I bet counsel 20 bucks I never said
6 "ICE" in my opening.

7 MR. CERTAIN: We will take that bet, Your Honor.

8 MR. SMITH: The only time I heard ICE in the
9 trial was during the examination of some witness who
10 identified the person on the police report as somebody
11 from ICE, because they are identified in the police report
12 as ICE. That's the only time I heard it. I don't recall,
13 and I'll be happy to pay the 20 bucks. But I want the 20
14 bucks if I didn't say it, because I intentionally didn't
15 open on ICE because I don't tell the jury something that
16 may not get before them.

17 So if it is there, and I have asked the court
18 reporter, perhaps we could helpfully get my opening by
19 tomorrow or by Friday, and I want my 20 bucks if I didn't
20 say anything about ICE.

21 MR. CERTAIN: And I expect that 20 bucks, Your
22 Honor.

23 MR. SMITH: That's fine.

24 MR. CERTAIN: I let a lot of people off of bets,
25 this time I am taking it.

Sanmartin - by Plaintiff - Cross

1 THE COURT: Any chance of settling?

2 MR. ZILBERG: Probably not.

3 THE COURT: I think you should. I am at wits
4 end. Okay. Thank you.

5 (Whereupon, the trial stood adjourned to
6 Thursday October 8, 2026 at 10:00 a.m.)

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