SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK - CIVIL TERM - PART 17

- -X

DARIUS D. JONES,

Plaintiff,

- against -

BSREP UA PARKER LLC,

Defendant.

- -X

INDEX NUMBER: 152722/2019

JURY TRIAL

80 Centre Street
New York, NY 10013
November 10, 2026

B E F O R E :

HONORABLE LISA A. HEADLEY,

JUSTICE OF THE SUPREME COURT

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GAREN FERSTANDIG
SENIOR COURT REPORTER

THE COURT: Anything before we bring the jury in?

MR. HUTTNER: My witness for this morning is here. I did file a motion in limine with regard to his radiologist. I don't know if he is prepared to discuss today or not, but if we are discussing that today, I just ask we do it after this witness so we can get him out of here.

THE COURT: Does that motion in limine pertain to this witness or anything that we are going to be doing today?

MR. HUTTNER: No.

THE COURT: So I would like to get a full day in of testimony, whatever we need to do, you just filed it. Anything you need to add?

MR. MAHER: Judge, we are working on our responsive papers to that motion. Counsel just served that over the weekend. We would like to have until Thursday to put in our formal response to that.

THE COURT: Take whatever time, whatever you need to do, you need to do. Can we get the jury? You need to finish this by Thanksgiving and I don't think we are on track with that. Let's go, let's go. So, he's going to respond, you just filed and you respond and Court will take a look at it after you all the papers are in.

MR. MAHER: Thank you, Your Honor.

THE COURT OFFICER: All rise, jury entering.

(Jury in.)

THE COURT: Good morning, good morning, you may be seated. You're next, you're up. You ready to call your witness?

MR. HUTTNER: I am, Your Honor. Plaintiff calls Harold Bialsky.

THE COURT OFFICER: Raise your right hand. Do you swear or affirm, the testimony you are about to give will be the truth, the whole truth, and nothing but the truth?

THE WITNESS: I do.

THE COURT OFFICER: You can have a seat. For the record, please state your name with the spelling.

THE WITNESS: First name is Harold Bialsky B-I-A-L-S-K-Y.

THE COURT OFFICER: And please state your business address for the record.

THE WITNESS: 344 Grove Street, #51, Jersey City, New Jersey 07302.

THE COURT OFFICER: Thank you so much.

Your Honor, the witness has been sworn.

THE COURT: Thank you.

You may proceed, counsel.

MR. HUTTNER: Thank you.

DIRECT EXAMINATION

BY MR. HUTTNER:

Q Good morning. So, the jury doesn't think you are coming in with a bias, we are not twins, right?

A No, but we might have the some barber.

Q Are you a certified life care planner?

A I am.

Q Is that your current vocation?

A That is my current vocation, yes.

Q What do you do as a certified life care planner?

A So, a life care planner is essentially a documented outlines an individual's needs through their lifetime as a result of some type of injury. It takes into account anything and everything that the individual might need; medications, future treatments, doctor visits, diagnostic testing, surgeries, whatever it may be. Each of those items is then quantified, meaning you attach a dollar amount to it, add it up over the course of that person's lifetime and it comes to a total of what that person's care would be over the course of their lifetime.

Q And are you also a vocational expert?

A I am, yes.

Q And you did not do a vocational exam here, correct?

A I did not, no.

Q Just for background purposes, can you tell us what a vocational expert is?

A So, often times an individual who might be injured who

had a particular occupation as a result of that injury may not be able to go back to that particular occupation. So, as a vocational expert, I would be charged with understanding what they were doing prior to the injury and then make a determination as to what they might be capable of after the injury and then determine what the earnings would be in that new occupation. So, it creates a differential of what they were earning previously to what they are earning now. And in some cases if the person is injured and its a severe enough injury, it would be a total loss of earning capacity over the course of their remainder of their work life expectancy.

Q Can you tell us about your educational and work background?

A I will start with work. I was a practicing chiropractor for 14 years across the river in New Jersey. Year 12, I went back to school and attained a masters degree in rehabilitation counseling from New York University. I graduated December of 1995 from New York University. Rehabilitation counseling is a degree that focuses on working with people with disabilities, assisting them, understanding their strengths and difficulties in terms of trying to choose some type of career or occupation for themselves. Its often referred to as a vocational rehabilitation. Once I attained that degree, I was working part-time as a chiropractor. I maintained my chiropractic office and then I was pursuing part-time a career

as a vocational rehabilitation counselor. At the end of June of 1997 or the beginning of July of that year, I decided to change careers entirely. I no longer practiced as a chiropractor and I went on to pursue a career in the field of vocational rehabilitation. My first full-time job was with a facility in East Orange, New Jersey called Jewish Vocational Service. It's a non-denominational facility, we served all the people in that geographic area. My responsibilities at Jewish Vocational Service were to work with various populations, people with disabilities, attempt helping them to pursue some type of gainful employment. And also at that time, there was a very large influx of immigrants from the former Soviet Union, so the agency was working with those people to help them become assimilated into work in the Northern New Jersey area and I worked with that population as well. I maintained that position for a period of time. And then in late 1998, I relocated to Phoenix, Arizona and I lived in Arizona for about 10 years. My first job in Phoenix, Arizona was with the State of Arizona, an agency called Rehabilitation Services Administration. So, its an entitlement program, essentially a vocational rehabilitation program and I specialized in the field of traumatic brain injury. My entire caseload was working with those individuals who had suffered a traumatic brain injury. My responsibility was to plan and authorize services for those people if they were capable of returning to some type of gainful employment. I did

that -- as an aside, so Rehabilitation Services Administration is similar to the agency here in New York. In New York its called Access V.R. So, every state in the country has some type of division of vocational rehabilitation. There's the federal rehabilitation services administration. All the policies and procedures are dictated by the federal government, but every state agency carries out those policies and procedures the same if you went to Access V.R. here in New York or you went to Hawaii and needed those services, it would be identical. So, I maintained that position with the State of Arizona for approximately four years. I apologize, I think a little over a year, 15 months with the State of Arizona. I then transitioned to working at Saint Joseph's Hospital and Medical Center, the Center For Transitional Neurorehabilitation. So, that was outpatient neurorehabilitation for people who had sustained some type of insult to the brain. So, that could be external force like a car accident or a fall, it could have been a stroke, could have been infectious disease, anything that impacted the brain. So, there was a multidisciplinary team. Neuropsychologists, speech, occupational therapist. I was the vocational counselor on the unit. My responsibility was once that person had completed the majority of their rehabilitation to then work with them to help them pursue some type of gainful employment to go back to work. Could have been with the job they had prior, depending upon the extent of injury, could have

been something entirely new. So, I maintained that position for an excess of four years. And then a group of us who had worked at the CTN, who were no longer working there came together and formed our own community based group, Arizona vocational neuro rehab team. So, it was very similar to what I did in the hospital, except it was community based services instead of people coming onto a unit every day at the hospital, we delivered the same services, but out in the community. So, again, it was neuropsychologists, speech, physical, occupational therapist. I was the vocational counselor. My responsibility, again, was the same, to help those people who had sustained some type of traumatic brain injury, whatever the disability may have been to help them pursue some type of gainful employment. I maintained that position for an excess of four years and then in late 2007 and approximately early 2008, I relocated back to the northeast and began to pursue my current career on a full-time basis. And so, I have been doing this work now for a total of 30 years, 18 of which full-time.

Q And do you hold any certifications?

A I have two certifications that are relative to my career. The one that is most significant is in terms of my testimony here today is that of a certified life care planner. So, while I was a student at New York University, remote education had not taken effect yet, there was no such thing as Zoom. So, I was flying around the country. In addition to my

masters program, I accumulated an additional 140 hours through the University of Florida specific to the field of life care planning. And I sat for a certification examination that I passed on the first attempt to maintain that certification, I'm required to submit 80 continuing education units over the course of a five-year period. And I'm current with that certification. The second certification that I had is in the field of vocational rehabilitation. I'm a certified rehabilitation counselor. That certification I attained during the course of my education while at NYU. That certification requires 100 hours of continuing education over a five-year period and I am current with that certification as well.

Q So, with regard to the life care certification, that's every five years?

A Yes, renewal is every five years, yes.

Q Now, have you ever testified in court on behalf of one of my clients?

A No, this would be the first time.

Q Now, in your work as a life care planner, have you testified for both plaintiffs and defendants?

A I have testified as an expert of both plaintiff and defense. Overwhelming majority of my testimony as a life care planner is for the plaintiff and there's a very good and obvious reason for that. It is the plaintiff who has been injured. The defendant does not need the life care planner, its the plaintiff

that requires the life care planner. So, all of my testimony as a life care planner has been on behalf of plaintiffs. My work in the field of vocational rehabilitation, I have testified more frequently for defendants. So, I do a combination of both.

Q Now, at some point, did my office retain you to prepare a life care plan for a life care report for Darius Jones?

A Yes.

Q And what was your fee for doing that?

A $5,400.

Q What is your fee for the time you are spending here with us today?

A $4,800.

Q And what steps in preparing the report for Mr. Jones particularly and generally did you do?

A So, the methodology is identical across the board. But specific to Mr. Jones, it is first, I review -- I receive records, all of the appropriate medical records with regard to the injury that Mr. Jones sustained and I review those records. I then conduct an interview with the individual, in this case, Mr. Jones. And the interview for the most part is what I refer to as the individual's current status, how was that injury impacting that individual on a daily basis. And I take them through a day in the life from the moment you wake up, your entire day, even telling me about your sleep pattern. So, it gives me a sense of how the injury is impacting them.

Q And let me interrupt for one second. With regard to Mr. Jones, was that interview done in person or over Zoom or some kind of platform?

A It was a video conference interview. So, Mr. Jones lives in Saint Louis, Missouri, I was in Northern New Jersey in my home office and that's where I conducted the interview from.

Q Do you do interviews -- generally speaking, do you do some live, some on a platform?

A The majority of my interviews in this current environment are video conference interviews. There are certain individuals, certain types of cases where I do them in person and those cases are generally where somebody is severely disabled, utilizes a wheelchair and I want to assess the home environment for wheelchair accessibility and I will do that interview in person.

Q I know you told us what the life plan is, but what is the purpose of a life plan?

A Essentially it outlines in this case Mr. Jones' needs through his lifetime. So, he had injuries to his neck, his left ankle, his left shoulder. What does he need over the course of his lifetime for the purpose of surveillance? We need to monitor it to assess it from a diagnostic point of view for the doctor to keep an eye on it and then treatment, therapeutic intervention.

Q Now, besides the interview and the records you

received, do you do any other independent research?

A Well, the research is specific to what the charges would be for the services that are in the life care plan. So, to determine the charge for the services for Mr. Jones, he lives in Saint Louis, so all of the charges that are associated to this particular life care plan are in the Saint Louis area where he lives.

Q And in your experience, are medical -- is medical treatment in Saint Louis versus Manhattan, which is more expensive?

A Overwhelmingly the charges for medical services in New York City, Manhattan area are far greater than they are in Saint Louis.

Q So, even though he possibly may move back at some point to New York, you took the conservative approach and used the Saint Louis numbers?

MR. MAHER: Objection. Calls for speculation.

THE COURT: Sustained.

Q What is a professional disclosure?

A So, with each of the life care plans that I develop, I review with every individual what is referred to as a professional disclosure. I first explained to the individual the relationship that I'm about to engage in with them and I declare them, I explain to them. It is a consulting relationship. That means that I'm there strictly to gather the

information that I need to write their report. I tell them there will be no services delivered by me, there will be no engagement for any type of services. Its strictly me gathering the information I need. I explain to them the concept of confidentiality in that some confidentiality by definition, you go to your doctor, they cannot talk to anybody about anything unless you give them permission. But in these litigated matters, the file becomes open to defendants, whoever may wanna see the files. The confidentiality does not exist. And lastly, I specifically tell the person or declare to the person that I expect them to be honest and truthful with me with regard to the questions I ask and I insist that they respond verbally to me, that they will be honest with me when I ask my questions.

Q Was that disclosure done in this case?

A It was done in this case and every one of the cases I'm involved in.

Q Can you tell us what medical records you reviewed?

A Sure. So the medical records are extraordinarily voluminous. There's thousands of pages within the records. I'm simply going to give you the highlights of the records, meaning where they came from. Embedded in all of those records are office visits, diagnostic tests, things like MRIs, whatever that person may have had in a particular doctor visit or what they might have been referred for. But the main records consisted of the left shoulder arthroscopic surgery that Mr. Jones had on

February 4th of 2019, his left ankle surgery on June 4th of 2021 and then the most significant of the surgeries was the cervical spine fusion surgery on April 21, 2022. All of that information was embedded in the records from All Boro Medical Rehabilitation McCulloch Orthopedic Surgical Services and The Gerling Institute. Included in the records I reviewed are more on the legal side of things, bill of particulars that describes the certain aspects of the legal matter and the injuries that the person sustained. But those were the records that I reviewed.

Q And in order to assist you in doing your report and when you did the interview with Mr. Jones, did you obtain a history of what happened to him?

A Yes. So, in every one of the cases, I will ask the individual to describe what took place. Just to be clear though, there was some legal terminology here that's referred to as causation. That's not my area of expertise. But I simply ask the individual and wanna get a background what took place for them. My expertise is in developing a life care plan, which is what I described earlier.

Q Now, you determine -- when you determine medical costs, is that current dollars or is that future dollars?

A So, all of the dollars are noted to be 2026 dollars. So, if we are talking about 2026 dollars, there's a concept of inflation, which we are all familiar of. And then there's a concept of reduction to present value. Those are two things

that an economist specializes in. Its my understanding there will be an economist that will testify after I testify. So, I draw the line at staying in my lane, my area of expertise. The concepts of inflation and reduction to present value are that of the economist and the economist will testify to those things. Every dollar amount I share with you today is 2026 dollars.

Q Is part of your job also to determine what is fair and reasonable costs of various medical procedures?

A Correct.

MR. MAHER: Judge, I'm going to object if Counselor is seeking to elicit testimony regarding past reasonableness, past medical cost because that's outside of the scope of the witness' report and exchange.

THE COURT: He hasn't said anything yet. Wait until --

MR. MAHER: He's consulting records.

THE COURT: Do you know what he's going to say? Are you clairvoyant? Do you know what he's going to say? We don't know. So, as soon as he starts, if it goes towards that, then you make your objection. Its premature right now. We have no idea what he's going to do. Just because he is pulling out records means what? Because I don't know. Just wait, wait.

Q Doctor, when you review for cost, what do you consider?

A So, often times I have the -- because embedded within

the medical records are often the billing records from treating physicians or providers, therapists up until that time. And then when I do my projections, I use a database that's called Fair Health. And of all the states in the entire country, Fair Health is by far and overwhelming the most significant and in terms of its use here in the State of New York because it was developed here in the State of New York. And there's literally legislation here in the State of New York that refers to Fair Health as the one and only database to be using for determining usual and customary charges for any medical-type procedure.

Q When looking through the records, which included bills, did you consider those bills in conjunction with the database regarding the billing amounts?

MR. MAHER: Objection.

THE COURT: Basis?

MR. MAHER: Foundation, Your Honor. The witness is here today to testify about future costs based on his estimate of what costs would have been in the Saint Louis, Missouri and he wants to review records from past medical care that was provided in the State of New York.

THE COURT: Sustained.

MR. HUTTNER: Judge, if I could respond to that very briefly.

THE COURT: Yes, you can.

MR. HUTTNER: The records are in evidence. Experts

are entitled to testify about what is in the report as well as items that may have come into evidence.

THE COURT: Sustained.

MR. HUTTNER: Okay, thank you.

Q Getting back to the plan. How do you base the amount of years in the future?

A So, there's the concept of life expectancy and life expectancy is something that is -- rephrase that. So, there are tables that the federal government develops with regard to life expectancy. So, the table is such that the person at their current age and then the table indicates at this current age they will live for X amount of years more. The federal government publishes these tables every year and they are updated every year.

Q And I imagine that's the best guide since none of us ultimately knows how long someone will live?

A That will be the standard that anybody in my field would defer to, yes.

Q And you kind of touched on it, I'm not sure if we went through it completely. Where exactly did you get the information with regard to future costs?

A Right. So, that -- I did go over that a moment ago, but that's the Fair Health database. So, I have a subscription to the Fair Health database, it gives me a behind the scenes data where I can get very detailed information. Its actually

open to the public, its a public database. Many, many states throughout the country use Fair Health for establishing fee schedules. They are one of the few companies in the country that has access to Medicare data for the purpose of developing their database. And they update their data every six months, so its very, very current. When I develop a life care plan, the data that I have is updated every six months. And I do wanna emphasize again because Mr. Jones lives in Saint Louis, this is all data in the Saint Louis area.

Q Now, I want you to assume for the moment that Mr. Jones testified that he experiences daily pain and problems with his left ankle, his left shoulder and his neck. Is this, along with your review of records, a sufficient foundation for you to formulate a life care plan?

MR. MAHER: Objection. Foundation.

THE COURT: Sustained.

Q What did you use to formulate your life care plan?

A The review of the records and my interview with Mr. Jones.

Q Now, before we actually go through your findings specifically, would it be helpful if it was projected so the jury could see the numbers?

MR. MAHER: Objection, Your Honor.

THE COURT: What's the objection to that?

MR. MAHER: The objection is that the witness

hasn't laid a foundation for the information that's contained within the report. In this instance, the witness did not conduct a physical exam of the Plaintiff, he is not a medical doctor and he has not cited to any medical records which speak to a need for future medical care. So, absent a foundation that the medical records that he reviewed speak to a need for future medical care, my position is that there's no foundation for his report, which he now wants to show before the jury.

THE COURT: Wasn't that covered in my ruling in the motion in limine? I believe it does. Overruled. Put it up on the screen.

MR. HUTTNER: Thank you, Judge.

A So, to answer your question up on the screen is by far the best. If I kept reading this information, I would have everybody asleep in five minutes. We will get through it quicker if its up on the screen.

Q So, let's try to keep them up for 10 minutes, that will be the goal.

A Okay.

Q Going to go straight to section A, start talking about costs. Can you discuss that with us?

A So, section A, the first part is there what I refer to as routine future medical care. So, the first service item there is an orthopedic surgeon. I wanna make just one comment

about that that carries throughout my entire testimony with regard to the life care plan going forward. I will say this one time so I don't have to repeat it for every single thing. There's a start year and an end year. The start year is 2026, the year we are in, age 34 for Mr. Jones. The end year is 2069, 77 which is his life expectancy. So, that's the case for every one of these items. I will say it this one time and it will help us get through it a lot quicker. So, the orthopedic surgeon is two to three visits a year and there's a different charge for the office visit. I'm going to refer you to the line that says "comment" and it says based on CPT code 99213 and CPT code 99214. CPT stands for current procedural terminology. These are codes developed by the American Medical Association. Every doctor, every single thing they do has a code. These are office visit codes. 99213 is a 20-minute office visit. 99214 is a 30-minute office visit. I usually use a range because I don't know how long a doctor might spent. I use a range of 20 to 30 minutes for an office visit. That's how the fees vary for a 20-minute visit is $198. For a 30-minute visit its a $306. You will see that range -- so the cost per year for two or three visits is $396 on the low end to $918 on the high end. Over 44 years, his life expectancy. And that total charge is $17,424 on the low end to $40,392 on the high end.

Q One second. We are going to go through all of them. The jury will see it, but do you give a range in your totals as

well once everything is done?

A There is a total range, yes.

Q Okay, go on.

MR. MAHER: Note my continued objection to each item or category listed here based on foundation.

THE COURT: Continue.

A So, the next item would be several X-rays, one cervical X-ray every one to two years. You will see that is the CPT code for cervical X-rays. The charge for the X-rays is $267. The charge per year $133.50 on the low end to $267 on the high end. Over 44 years, $5,874 on the low end to $11,748 on the high end.

The next would be for the left shoulder. These are X-rays. Again, that's the appropriate CPT code. One time every one to two years, $283. The charge per year is $141.50 cents on the low end to $283 on the high end. For 44 years, $6,226 on the low end to $12,452 on the high end.

The next would be the left ankle X-rays every one to two years, $164. $82 per year on the low end to $164 on the high end. $3,608 on the low end to $7,216 on the high end over the course of 44 years.

So, a CAT scan, the next would be CAT scan or MRI in the cervical spine. The reason there's the possibility, so with the cervical fusion, there's actually titanium plates that the surgeon uses. There's various -- and surgeons might have a distinction for wanting to use one or the other, the CAT scan or

the MRI because of the surgical plates inserted into Mr. Jones' neck. So, there's a range here. So, the CPT code ranges from the CAT scan to the MRI. These are done less frequent, one time every three to five years. The chart for the CAT scan is $926, the MRI $300 -- I'm sorry, $3,426. That breaks down to a charge per year of $185.20 on the low end to $1,142 on the high end. Over 44 years, $8,148 on the low end to $50,248 on the high end.

Q Let me interrupt again. You're setting forth how often this is. What are you basing that on?

MR. MAHER: Objection.

THE COURT: Overruled. You can answer.

A So, these things are all projected within a reasonable degree of life care planning certainty. There's a need to figure out how often these things will be done. The X-rays are one time every one to two years. And I was a practicing chiropractor, so that's the most basic diagnostic test from an orthopedic perspective that a doctor uses. You walk into an office, they wanna take X-rays of that particular joint, spine area. The MRI is also very commonly used, but that's for the soft tissue, the disc areas, the surrounding soft tissue area, the ligament, so forth. Not necessarily every year for something like that, but there's the potential for that disc above the fusion to degenerate at a much more rapid pace.

MR. MAHER: Objection.

THE COURT: Overruled. You can answer.

MR. MAHER: Its way beyond the scope. That's my position.

THE COURT: So noted. Continue.

A To recap, when there's a fusion and you create these two bones that don't have any motion, the segment above bears the brunt of the responsibility of the motion. That also predisposes that disc above to earlier degenerative changes much more rapidly.

MR. MAHER: Objection. Again, Your Honor, he is here to talk about costs. Now he's explaining about medical progression and he's not a medical doctor and he's not a spinal surgeon. I move to strike this portion of the testimony.

MR. HUTTNER: Judge, I have no problem striking that portion.

THE COURT: So stricken. Proceed.

Q Instead of going through the medicals, just explain to us how you get to the amounts?

A Sure. Well, the MRI like I said is just not -- the CAT scan or MRI are not needed as frequently as the X-rays, which are much more standard. So, I think I was up to the shoulder.

Q Yes.

A So, the shoulder MRI is one time every three to five years, $2,929 charge per year. $585.80 on the low end to $976.33 on the high end. Over 44 years, $25,775.20 cents on low

end. $42,958.67 on the high end.

Last MRI would be for the ankle. One time every three to five years. $2,899. This is the exact type of cost per year, charge per year and total charge that -- sorry, its a little different, my apologies. Charge per year is $579.80. $966.33. Over 44 years that's $25,511.20. $42,518.67 on the high end for the ankle MRI.

The last of the life care plan is physical therapy. 24 to 36 visits a year. There are three CPT codes. So, when you go to a physical therapist they often do numerous types of activities for you when you're in an office for P.T. 97010 is hot or cold pack. 97014 is electric muscle stimulation. And 97110 is therapeutic exercise. So, the total for all -- you see the charge for each one of those is indicated with the total charge for each visit is $201. Over the course of a year that's $4,824 on the low end to $7,236 on the high end. Over 44 years that would be $212,256. On the low end $318,384 on the high end. So, the total lifetime over those 44 years on the low range is $304,823.20 to the high end of $525,917.33. And once again, the economist will share with you their expertise.

THE COURT: You don't need to speak about what the economist will do. They can speak for themselves.

THE WITNESS: Sorry.

Q So, the total lifetime charges that you have there just to be clear, that's the minimum to the maximum in Saint Louis?

A Correct.

Q Now let's go to section B.

MR. MAHER: Your Honor, I'm objecting to section B.

THE COURT: Stand up when you address the Court.

MR. MAHER: I'm objecting to section B because it relates to charges for a future surgery which there has been no medical testimony that the Plaintiff will need. Any testimony by this witness as to future surgery would be completely speculative and should not be put before the jury.

THE COURT: Sustained.

Q Would you consider this life care plan to be a minimal plan?

A I would consider this plan to be minimal. The basic minimals for observation, diagnostic testing and therapeutic intervention for these injuries, the very minimum.

MR. HUTTNER: Okay, that's all I have. Thank you.

THE COURT: Thank you.

Cross?

MR. MAHER: Yes, Your Honor.

CROSS-EXAMINATION

BY MR. MAHER:

Q Now, Mr. Bialsky, were you asked to come here to court today?

A No.

Q You came here voluntarily?
A I did.
Q And you came here at the request of counsel who is representing the Plaintiff in this case today, correct?
A Correct.
Q And you're being compensated for your appearance today?
A For my time, yes.
Q And I believe you said that you're being paid $4,800 just to appear here this morning?
A Correct.
Q And is this the first time that you ever testified in court?
A No, today is the 119th time in my now 38-year career. 119th time.
Q And about how many times a year do you testify in court?
A Its not a lot. And if you do the math, I think that comes out to about four times a year.
Q And approximately how many times a year are you requested to prepare life care plans such as the one that you did in this case?
A Its extremely variable. At this point in my career, probably 10 to 12 life care plans a month.
Q 10 to 12 life care plans a month. And each time you prepare one of those reports, you charge a fee of $5,400?

A No.

Q Okay, explain it to me then.

A Sure. So, because this plan was minimal and not very complicated, this is on the very low end of what my fee schedule is for developing life care plans.

Q So, sometimes you charge much more for the life care plan?

A The greater the complexity, the greater the fee, yes.

Q So, when you prepare these life care plans, you said that they are overwhelmingly for the client who is bringing a claim for personal injuries?

A Overwhelmingly for the plaintiff, yes. They are the injured person, they are the individual who needs the services.

Q But Defendants also use life care planners in litigation, do they not?

A They can and they do. In my experience they do, but it is extraordinarily infrequent.

Q So, what percentage of the jobs that you accept to prepare life care plans come from individuals who are representing personal injury plaintiffs?

A At this point in my career 100%.

Q So, not overwhelmingly, but 100% of your clients that you prepare these reports for are for plaintiff's personal injury attorneys?

A Correct.

Q And approximately how much of your business income is derived from preparing these reports that are essentially used for litigation purposes?

A 100%.

Q So, 100% of your current income is derived from fees earned from plaintiff's personal injury attorneys?

A No, I declared very early on that I do some defense vocational assessments, but the majority of my work is plaintiff oriented life care plan. So, the majority of my income comes from these plans.

Q I think you just said it was 100%?

A I misspoke. So, its some degree of defense vocational assessments and then the majority of it being the plaintiff life care plans.

Q And would it also be fair to say, Doctor, that the vast majority of your expertise is evaluating the vocational rehabilitation potential of clients?

A No, I would not declare that. It is very dependant on what the referral source is asking me for. Often times I do a life care plan independently, often times I do a vocational assessment independently and sometimes often times I combine a life care plan and vocational assessment.

Q Perhaps I wasn't clear with my assessment. I was listening to you when you were talking about your work experience about the work you did here in New Jersey and

Arizona. And as you went through it, correct me if I'm wrong, but the vast majority of your employment experience before you got into the business of being a life care planner who testified in court is that you were working with individuals for vocational rehabilitation counseling?

A Correct.

Q And, Mr. Bialsky, is it fair to say that you are not a medical doctor?

A That's fair and accurate.

Q And you don't have privileges to perform surgery at any hospitals?

A That is correct.

Q So, you don't perform neck surgery or shoulder surgery or ankle surgery?

A Correct.

Q And you're not currently providing medical treatment to any individuals who have neck pain, shoulder pain or ankle pain?

A That is correct.

Q Are you a licensed physical therapist?

A I am not.

Q Did you ever treat the Plaintiff, Darius Jones?

A No. I was very clear earlier when I talked about the professional disclosure when I specifically stated and that I would not be providing any services of any kind.

Q Did you conduct a physical examination of Mr. Jones?

A No.

Q So, you simply interviewed him?

A Correct. And had the records to review, yes.

Q So, as far as evaluating where he's at right now, you base that upon your interview and the review of the records, but it didn't include a physical exam?

A That's accurate, yes.

Q How many times did you interview Mr. Jones?

A Just one occasion.

Q And that interview was done remotely?

A Correct.

Q Now, Doctor, you were provided an opportunity to review Mr. Jones medical records?

A Correct.

Q And do the medical records that you receive contain any reference to Mr. Jones receiving treatment in 2023?

A I can take a look at the records and see what the dates are, but as I sit here today, I can't tell you that the thousands I have them to memory.

Q But you prepared a report, right?

A Correct.

Q Which was put up on the screen?

A Correct.

Q And on page one and page two of that report there's a listing of the records that you reviewed?

A Correct.

Q Can you take a look at those records and tell me whether any of those records that are listed among the ones that you reviewed relate to treatment that was provided to Mr. Jones in 2023?

MR. HUTTNER: Judge, I will stipulate there's no treatment in 2023, 2024, 2025 or 2026.

THE COURT: That's fine, but he can answer from his records. Let him answer.

A So, there is nothing in 2023, no.

Q And would that also be true that you did not review any records of treatment from 2024?

A Correct.

Q And would it also be true that you didn't review any records relating to treatment in 2025?

A That is correct.

Q And its also true that you did not review any records of treatment that were from this year, 2026?

A Correct.

Q So, the most recent records that you reviewed were for treatment in 2022?

A Correct.

Q And based on your record review, when was the last time that Mr. Jones had any diagnostic imaging performed on his ankle, his shoulder or his neck?

A So, the ankle would be 10/19/18, shoulder would be 10/19/18 and cervical spine would be 11/05/21.

Q So, Mr. Jones hasn't had any diagnostic imaging performed on either his left ankle or his shoulder since 2018; is that fair to say?

A Correct.

Q But you're projecting that he's going to need diagnostic testing of those body parts into the future and for the rest of his life; is that what you're saying?

A Correct.

Q And the last time that Mr. Jones had any diagnostic imaging taken of his neck was in 2021, correct?

A Correct.

Q But he didn't have any diagnostic imaging of his neck in 2022, 2023, 2024, 2025 or 2026, right?

A Not that I'm aware of, correct.

Q And even though no doctor has said that he needs further diagnostic imaging over the last five years, you sit here today and project that he's going to not only need it in the future, but he's going to need it for the rest of his life; is that right?

A Correct. At the frequency I noted, yes.

Q And would it be fair to say, Doctor, that those recommendations that you are making regarding future diagnostic testing are speculative?

A I disagree that they are speculative.

Q Well, you're not a medical doctor, right?

A Correct.

Q And no medical doctor in any of the records that you reviewed is recommending future diagnostic testing in 2026, 2027 or beyond; is that fair to say?

A There's nothing contained within the records, correct.

Q So, you didn't review any documents that indicate that he will need future diagnostic imaging and yet you speculate, don't you, that he will need it in the future. Isn't that speculation?

A No, not from my perspective. Its a reasonable degree of life care planning certainty considering the fact that the injuries exist. Mr. Jones, its my understanding, testified to the degree of symptomatology he lives with on a daily basis. He's very young. These things don't get better, they -- even if they stay the same with the level of symptomatology that he is dealing with, even if the symptomatology were to remain constant as is. The surveillance and being observed by an orthopedic physician and the various diagnostic testing that I testified to would be reasonable.

Q Now, you're not a licensed physical therapist, correct?

A That is correct.

Q And you're aware that Plaintiff has not received any physical therapy for years, right?

A Correct.

Q And you're projecting that he's going to need extensive physical therapy for the rest of his life?

A I don't believe my recommendation to be extensive considering the fact that we are talking about three anatomic regions, neck, shoulder, ankle, that its minimal and reasonable.

Q You're making assumptions, Mr. Bialsky, are you not, that the Plaintiff is going to need future medical care without relying on any recommendations contained within the medical records that you reviewed?

A That is correct. They are not specific recommendations.

Q And as such, you can't rely on them?

A I'm sorry, I'm not sure I understand.

Q Since there's nothing in the medical records that recommends this form of treatment, that's not the foundation for your testimony, correct?

A The foundation for my testimony is the fact that these injuries persist in terms of their symptoms, functional limitations and physical therapies, by far the most conservative approach to dealing with acute exacerbation of pain, maintaining functional capabilities.

Q And you're assuming that's the case, correct?

A I'm not assuming, its a reasonable degree of life care planning certainty based on my 30 years experience, my years

practical experience working as a chiropractor.

Q You haven't worked as a chiropractor in decades; isn't that true?

A That is true.

Q Did you review the emergency room records from Saint Luke's Mount Sinai Hospital?

A If its listed in there and I did. If its not listed, then I did not have access to it.

Q It doesn't appear that it is listed. Any reason why you wouldn't review the records that were most contemporaneous with the incident?

A It wasn't sent to me.

Q It wasn't sent to you?

A Correct.

Q So, you're opinions as to what the Plaintiff is going to need in the future as far as medical care are as a result of this incident was done without any consideration of a review of the records that were taken immediately after the accident occurred?

A The emergency room records were -- I did not have access to them, I had access to the thousands of pages of additional medical records.

Q So, hypothetically, if the emergency room records indicate that the Plaintiff's only complaints of pain on the date of the accident related to his left ankle, that's not

something that you reviewed?

A That is correct.

Q Now, among the records that you reviewed, did you review in conjunction with preparing your report, the report of a radiologist relating to an MRI of the Plaintiff's cervical spine that was taken at Mount Sinai West Hospital on January 5, of 2020?

A Yes.

Q And the MRI report that you reviewed, did that have a finding with respect to the cervical disc level at C6-C7?

A I don't have that report in front of me, so I'm not aware.

Q If I were to show you a copy of a report, would that perhaps refresh your recollection as to what the findings were of the radiology and the report that you reviewed in conjunction with preparing this life care plan?

A I'm happy to review it now.

MR. MAHER: Your Honor, could we have this MRI report marked for identification?

THE COURT: Any objection, counsel?

MR. HUTTNER: No, Your Honor. Could I just see it, please?

THE COURT: Yes.

(Whereupon, Defendant's Exhibit E was marked for the purpose of identification.)

THE COURT OFFICER: Defendant's E for identification in front of the witness.

Q Doctor, would you like to take a moment to look at the report?

A Is there anything in particular you would like to point me to?

Q Yes, yes. I'm going to direct your attention to page two of the report relating to the area of C6-C7. Just for purposes of foundation, you reviewed the operative report from Dr. Gerling, correct?

A Correct.

Q And Dr. Gerling's -- the operation he performed, the fusion surgery, do you recall what level that was at?

A C6-C7.

Q And so now that operation is done sometime in 2022; is that right?

A Correct.

Q And this MRI was done about a year and a half after the accident in January of 2020, correct?

A Correct.

Q And at that time, did the film study indicate any findings with respect to the disc level C6-C7?

A Yes.

Q Were there findings of a herniated disc at the C6-C7 level according to the radiology report of January 5, 2020?

A It does not use the specific term "herniation."

Q If there had been evidence of a herniation, isn't that something that would have been in the report?

MR. HUTTNER: Objection, Your Honor.

THE COURT: Sustained. You can answer.

A If that's what the radiologist would have seen, they would have noted it.

Q If the radiologist had noted a herniation at C6-C7, that would have been contained in the report?

MR. HUTTNER: Objection. Its not his report.

THE COURT: Sustained. He can answer the question.

MR. HUTTNER: Sustained he can answer?

THE COURT: Answer the question, he can answer the question.

A Can you repeat the question?

THE COURT: Overruled. I mean, he can repeat the question.

Q In other words, Doctor -- I'm having a little trouble hearing you also too, perhaps you can use the microphone. What I'm trying to get at is that you would agree with me that if the radiologist had seen a herniation at C6-C7 when they did this MRI about a year and a half after the accident, it would have been noted in the report; is that correct?

A You're asking me to speak to the issues of the radiologist and how he diagnoses this MRI, but it does not use

the term "herniation" because the radiologist terminology does not declare a herniation.

Q Well, Doctor, we are getting back to this. Your opinions are based on a review of the records, right?

A Correct.

Q So, you're assuming that the records that you are reviewing are true and accurate?

A Correct.

Q Because you never did a physical exam and you're not a doctor, so you gotta review on what somebody else said, right?

A Correct.

Q And when you looked at the report, its telling you, right, that the radiologist did not see a herniation at C6-C7 a year and a half after the accident, correct?

A Yes, but its entirely misleading because he ultimately had surgery at that area.

Q The report is misleading?

A The commentary is misleading.

Q The report says, "C6-C7 a mild disc bulge without mild stenosis or spinal cord compression"?

A That's two years prior to the surgery.

Q So, do you know what happened to Mr. Jones between when he had an MRI on January 5th of 2020 and when he had a surgery in 2022? Do you know?

A Yes, the doctor that did the surgery felt that it was

warranted because of the symptomatology.

Q You know that Dr. Gerling performed the surgery two years later, but you don't know what happened in Mr. Jones' personal life between 2020 and 2022, right?

A I'm not here to testify about his personal life.

Q But he could have been in another accident, anything could have happened, right? All you know is that in 2020 there was no herniation at the site where Dr. Gerling generally decided to do surgery; isn't that fair to say?

A Please allow me a moment because you have made --

Q Well, its really a yes or no.

THE COURT: Let him answer.

A Its not a yes or no if you can afford me a couple of moments uninterrupted here. So, first and foremost, I have no idea about anything to do with his personal life. The MRI that you are referring to said one thing. Clearly, two years later there was an orthopedic spinal surgeon who felt the symptomatology was such that it warranted surgery. So, from the time of that MRI to the time he had the surgery, there was clearly enough of a progression to the point where the surgeon felt the surgery was warranted.

Q Okay. Did you also review an MRI report regarding left shoulder MRI that was performed at Kolb Radiology on October 19th of 2018?

A Correct.

Q Now, do you recall whether or not the Kolb Radiology MRI report of October 19, 2018, made any findings with respect to Mr. Jones' rotator cuff?

A No, but this is the very same scenario that we just went over with the cervical spine because subsequent to that MRI, he had left shoulder surgery. A physician felt that he needed surgery despite the findings of that MRI --

Q Doctor --

THE COURT: Let him finish speaking first.

Q You're relying on records, right?

A Correct.

Q Let me just ask it to you straight, okay. The Kolb Radiology report of October 19, 2018, does that report state that the rotator cuff tendons are in tact with no evidence of tear or tendinosis?

A The report is what it is. And ultimately, he had surgery because a physician felt that the surgery was warranted and that was subsequent after that MRI.

Q You didn't speak to any of the doctors who actually performed these surgeries, correct?

A That is correct.

Q Now, did you also review the operative report of Dr. McCulloch regarding the left shoulder?

A Yes, its noted in my report.

Q And does that operative report make reference to the

presence of a rotator cuff tear?

A I can read what the operative report says.

Q And the operative report includes a finding of a rotator cuff tear in the left shoulder, correct?

A Okay, yes.

Q So, no rotator cuff tear in the MRI report of October 19, 2018, but by the time he has the surgery there's a rotator cuff tear?

A Counselor, you would have to talk to the physician as to why it is he decided to do surgery.

Q I know, but you are here to talk about conditions and what that's going to mean into the future?

A Correct.

Q And your testimony is based simply upon a review of records, right?

A Correct.

Q And these records indicate, do they not, that Dr. McCulloch performed surgery on a rotator cuff tear that was not in existence when the post-accident MRI was performed according to the records?

MR. HUTTNER: Objection, Your Honor. It doesn't say its not in existence. His records show that when he went in he saw the tear.

THE COURT: Overruled.

A I'm not sure if there's a question pending.

Q I'm asking you to confirm once again. You are basing your testimony on a review of records because that's the only thing you can base it on, right?

A And my interview with Mr. Jones.

Q Right, but Mr. Jones didn't get into any of these technical details regarding what the film results were or the surgery reports; isn't that fair to say?

A I don't know, I wasn't here.

Q No, no, when you interviewed him?

A Oh, I thought you meant his testimony. No, he simply declared to me how these injuries impact him on a daily basis.

Q So, when you're coming here and you're saying that you're projecting that he's going to need future medical care based on -- its just based on what is in the records?

A Correct.

Q And then you're taking a calculator basically, you are getting numbers from someplace else and just doing math, right?

A The math is necessary, yes.

Q In other words, you are not making a diagnosis because that's not your role. You are basically collecting data and you are doing math?

A Correct.

Q But if we look at the records that you were relying on as the foundation for your testimony, would you acknowledge that when an MRI was done in October of 2018, it was clearly reported

no evidence of a rotator cuff tear, but sometime later when they had the surgery, that's what the surgeon is saying he found?

A That's an excellent point, thank you very much. That's an excellent point. So, something happened that it progressed and the surgeon declared --

Q No, no, that would be speculation.

THE COURT: Please, I think the court reporter has said "one at a time." If you ask him a question, let him finish his answer before you jump back in /I don't wanna have to say this again, one at a time.

Q You don't know what happened to Mr. Jones, right? He could have injured his rotator cuff doing something else when between when he had the accident and when he had the surgery, correct?

A That I would suggest is correct, yes.

Q That you would suggest what?

A Is correct. I don't know what went on in his life.

Q And when he's telling you about his experiences, you are relying on him to be truthful in what his response is. If he is not being truthful, there's nothing you can do about that, right?

A So, when I refer you back to my professional disclosure when I specifically tell everybody and I ask for a verbal response, I expect them to be honest and truthful with me with regard to the questions I ask and he acknowledged that he would

be honest and truthful with me.

Q Now, Doctor, are there health risks associated with undergoing X-rays?

MR. HUTTNER: Objection.

THE COURT: Repeat the question.

Q Dr. Bialsky, are there health risks associated with being exposed to radiation as a result of X-rays?

MR. HUTTNER: Objection.

THE COURT: Sustained.

Q Would you agree with me, Mr. Bialsky, that you wouldn't subject someone to X-rays unless it was medically necessary?

MR. HUTTNER: Objection. He doesn't --

THE COURT: Sustained.

Q Mr. Bialsky, have you ever heard of the concept of maximum medical improvement?

MR. HUTTNER: Objection.

THE COURT: Overruled. He can answer that.

A I have.

Q And does maximum medical improvement mean that sometimes a person has a condition that there's really no benefit for continued treatment, correct?

A That's not what it means.

Q Not what it means?

A It means that the person has plateaued. So, a person can have an injury receive various treatments and therapies and

they plateau because they continue to have the symptomatology because the treatment or therapy has gotten them to the point where that is their baseline. So, chronic pain is something that people deal with even though they have reached maximum medical improvement.

Q Right, but certain treatments since they are no longer going to help the patient would not be recommended by a physician, right, because they reached maximum medical improvement?

MR. HUTTNER: Objection.

THE COURT: You can answer that.

A I thoroughly disagree with that notion simply because there's the concept of palliative care. Meaning that if the individual is suffering from pain and limitations, you can still do things to help them be comfortable, you can still do things to help them relieve that pain and functional limitation on a periodic basis. They don't have to suffer their entire life when you can offer them something to make them more comfortable.

Q Okay well again would it be fair to say that the vast majority of your expense projections relate to future physical therapy costs?

A If you allow me to look back here, I can look at those numbers and share that with you. That is correct.

Q But as you sit here now, you're not aware of any physician recommending that Mr. Jones go for physical therapy in

the future?

A I'm unaware, correct.

Q And you're unaware of any physician recommending future X-rays to a cervical spine, left shoulder or left ankle?

A Correct.

Q And you're unaware of any physician recommending future CT scans or MRIs of the cervical spine or of the left shoulder or the left ankle?

A Correct.

MR. MAHER: I have no further questions for the witness.

THE COURT: Thank you.

Any redirect?

MR. HUTTNER: Little bit.

REDIRECT EXAMINATION

BY MR. HUTTNER:

Q Mr. Bialsky, did you also review a February 9, 2022 MRI of the cervical spine?

A What was the date? I'm sorry.

Q February 9, 2022. Its in Dr. Gerling's records.

A If its embedded in the records, I don't see it listed as one of the reports that I have noted here.

Q And that shows MRI C5-C6 herniation?

MR. MAHER: Are we admitting that into evidence?

MR. HUTTNER: Its in evidence.

MR. MAHER: Oh.

Q Would you agree with me?

A If that's what the report says, then that's what the report says.

Q Now, very briefly, so in order to come to your conclusions, you review medical records and you speak to Mr. Jones, correct?

A Correct.

Q Kind of like our jury has to do, they listen to Mr. Jones and they can look at medical records?

A If that's the process then yes.

Q And to your knowledge, are they doctors?

A I don't know. I have never met any of these individuals, I'm not quite sure.

Q Now, we all know its no secret, I'm not trying to hide it, he had no treatment 2023, 2024, 2025, 2026; we all agree?

A Agreed.

Q And you put up there the costs of medical treatments if Mr. Jones wanted to get medical treatments?

A Correct.

Q To your knowledge, does Mr. Jones currently before this jury decides he should get money for that, do you know if Mr. Jones could afford those medical treatments?

MR. MAHER: Objection.

THE COURT: Sustained.

Q Well, Doctor, you were cross examined and he hasn't had these treatments. These treatments cost money, right?

A They do cost money, yes.

Q Now, you reviewed a lot of medical records here, correct?

A Correct.

Q And in your past, in past cases that you have reviewed medical records, how often would you say medical records talk about what treatment someone is going to need 20 years from now?

A I have yet to come across a medical record that projects something into the 20-year range.

Q So, the fact that no doctors in these records have recommended these treatments, does that mean anything?

MR. MAHER: Objection.

THE COURT: Overruled. You can answer that.

A The fact that they didn't make the recommendation doesn't mean anything. The fact that the injury exists and they have documented it and discussed the treatment and the recommendations for the various treatments and surgeries in the moment is what is critical.

Q Now, you also were speaking and you said you have this experience as a chiropractor and you are talking about degeneration happening and counsel asked you, well, you haven't been a chiropractor for years, correct?

A Correct.

Q How many years have not practiced chiropractic?

A I last practiced end of June 1997.

Q So, between June of 1997 -- very bad at math, that's 29 years approximately?

A Okay.

Q In those 29 years, are you familiar with any evolutionary changes undergone by the human species that would change that opinion?

MR. MAHER: Objection.

THE COURT: He can answer that. Overruled.

A No, the human anatomy has not changed since I stopped practicing chiropractic.

MR. HUTTNER: That's all I have, thank you.

THE COURT: Any redirect?

MR. MAHER: No redirect.

THE COURT: Thank you, you are excused.

Counsel, your next witness is ready?

MR. HUTTNER: Can we take a break, discuss?

(Whereupon, a discussion was held off the record.)

THE COURT: So, based on scheduling of witnesses, etcetera, etcetera, the jury will be dismissed today and return on Friday at 9:30. So, Wednesday the Court is closed holiday and Thursday don't appear because we don't have any witnesses ready. So, we will see everybody on Friday at 9:30.

THE COURT OFFICER: All rise, jury exiting.

(Jury out.)

(Whereupon, the trial was adjourned to Friday, November 13, 2026 at 9:30 a.m.)

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