IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL DISTRICT OF PENNSYLVANIA
CIVIL TRIAL DIVISION

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EDDIE PARKS	:	
	:	
- vs -	:	
	:	
TEMPLE UNIVERSITY HOSPITAL, INC. and TEMPLE PHYSICIANS, INC. and MATTHEW LOREI, M.D. and PHILIP MATTHEW, PA	:	NO. 1906005457

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JURY TRIAL

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City Hall
Courtroom 643
Philadelphia, Pennsylvania
Thursday, May 4, 2023

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BEFORE: THE HONORABLE JAMES C. CRUMLISH, III, and Jury

APPEARANCES:

STROKOVSKY LLC
BY: JORDAN STROKOVSKY, ESQUIRE
Counsel for the Plaintiff

MARSHALL DENNEHEY WARNER
COLEMAN & GOGGIN
BY: E. CHANDLER HOSMER, III
Counsel for the Defendants

LOUISE M. ZINGLER, RPR, RMR
OFFICIAL COURT REPORTER

I N D E X

(Jury enters courtroom at 9:41 a.m.)

THE COURT: Welcome back to Courtroom 643 and I hope you had a good night.

So as you know, all of you have been selected to be members of this jury. That means that the Court, the plaintiff and the defense have all concluded that each of you will be fair and impartial jurors in this case, and that's a complement to you. The service you render as jurors in this case are as important to the administration of justice as those rendered by myself, the attorneys and all the people that are going to appear before you. So, please, pay close attention to everything that is said and done in this courtroom. So that you may perform your duties well.

Now, I'm going to describe for you in a general way what will take place during this trial.

First, the plaintiff's lawyer will make an opening statement in which they will outline plaintiff's case against the defendants. The defendants' attorney may choose to make a statement outlining their

defense either immediately following the plaintiff's opening or later in the trial.

The plaintiff's lawyer goes first because they have the burden of proof, which I will discuss in greater detail.

Once the lawyers have made their opening statements, then each party is given an opportunity to present their evidence. Plaintiff's lawyer will present evidence in support of their case and they will call witnesses to testify and may offer exhibits such as documents, graphs, charts or physical objects.

Defense also has the right to cross-examine witnesses called by the plaintiff in order to test the truthfulness and accuracy of that testimony.

Now, after the plaintiff's lawyer has presented plaintiff's case, defense counsel may present evidence for the defendant. However, there is no obligation for the defendant to offer evidence or even to testify. The plaintiff's lawyer may, of course, cross-examine any witness called by the defense.

Now, after all the evidence is presented, counsel for each side will have an opportunity to make their closing arguments to you. I will then give you my final instructions on the rules of law that apply to this case and whatever additional guidance that I think you need for your deliberations. You will then retire to the jury room to deliberate and decide what the verdict will be.

At the end of the trial you must make your decision based upon what you recall of the evidence. You will not have a written transcript to consult. It's difficult and time-consuming for the court reporter to have to read back and play lengthy testimony, so I urge you to pay close attention to the testimony as it is given.

If at any point during the trial you cannot hear or understand a witness, a lawyer or even myself, or see an exhibit, please let us know immediately and we will take care of that.

Now, while some of you may have questions that you'd like to ask a witness,

that's not permissible in this proceeding. You will have to decide the case based upon the answers given by the witnesses to the lawyer's questions. The law in evidence places limitations and guidelines on lawyers that is enforced by the Court, and, therefore, there may be a valid reason why a certain question was never asked or why certain evidence was not introduced.

As I told you before, it is my responsibility to decide all questions of law during the trial. You must follow my rulings and instructions on matters of law whether or not you agree with them.

I'm likely to give other instructions as may be necessary during the trial in addition to these instructions and my final charge. All of my instructions constitute the law that you must follow. I am, however, not the judge of the facts. You, the jurors, are the only judges of the facts. It will be your responsibility at the end of the trial when you deliberate to evaluate the evidence and from that evidence decide the facts. You will apply the rules of law that I

give you to the facts as you find them and decide whether the plaintiff has met their burden of proving the elements of their claim that would entitle them to relief.

In order for you to decide the facts of this case, you're going to have to judge the credibility and weight of the testimony and other evidence. By "credibility," I mean the truthfulness or accuracy of what is being said or shown to you. By "weight," I mean the value or importance that you give to the testimony or the evidence.

When you judge the credibility and weight of a witness' testimony or evidence presented, use your understanding of human nature and your common sense. Observe each witness as they testify. Be alert for anything in the witness' testimony or behavior or anything else in evidence that might help you judge the truthfulness and accuracy of that testimony.

Now, as I have told you before, you must keep an open mind throughout this trial. You should avoid forming opinions about any disputed question until the end of the trial

and the matter is put to you and you begin your deliberations.

Please don't talk to each other about the evidence or any other matter relating to your verdict until I send you to the jury room to begin your deliberations. Only then will you know enough about the evidence and the law to discuss this case fully, fairly and intelligently.

Of course, you should not talk to anyone else about this case, including your family members, people at home, your friends, or God forbid anyone on social media or Internet sites, as I told you before.

I'm going to stress that you must not use electronic devices, computers or conduct any independent research or communicate in any way during the trial about the trial. That includes posting information in websites and the like.

I'd also caution you not to send or receive any messages, including e-mails and texts, about your jury service during this trial. You must not disclose your thoughts about your jury service or ask for advice to

anyone until you have met with your fellow jurors to deliberate on the facts and evidence that you've seen and heard in this courtroom.

Also, as I may have told you before, there are some people that you must avoid even some casual conversations even if those conversations have nothing to do with the case. These people are, for example, the parties, the lawyers for each side, the witnesses and even myself. These people have an obligation to allow you to be free and fair in your evaluation of the evidence. So, please, don't take it as a moment of disrespect if they don't respond to a comment or a common courtesy that we are all accustomed to giving to each other.

If you're approached by anyone or if you hear or see something that you think you should not have heard, please, don't speak to other jurors about it and, please, notify Ms. Sweeney or myself and we'll take care of it.

Now, importantly, I will remind you statements made by counsel are not evidence. The questions that counsel put to the witnesses are not evidence. It is the answers

to the questions by the witness that provide the evidence to you. You should not speculate or guess that a fact may be true merely because one of the lawyers has asked a question which assumes or suggests a fact to be true.

Now, again, I will remind you that sometimes there will be objections to questions asked by counsel. When a lawyer asks a question or offers an exhibit into evidence and one of the lawyers objects, I must rule on that objection. If I overrule the objection to the question, you may consider the answer. If, however, I sustain the objection, that means I will not allow the answer to be given, and if one has already been given, I may direct that you disregard them and then you must do so.

At different points during the trial counsel and I may need to deal with certain matters outside of your hearing. I emphasize that will be rare if ever it happens. However, please don't speculate as to why we are doing that. We may be dealing with questions regarding admissibility of evidence

or arguments regarding legal issues that under the law must be addressed amongst counsel and the judge without the jury present.

So, please, don't concern yourselves about that, and as I said, we will do it as infrequently as possible.

If one of these matters comes up, counsel and I may discuss it on the other side of the bench or briefly stepping outside of your presence.

Now, as you know, you have been given notepads and pens for each of you in the event you wish to take notes during the trial. You're under no obligation to take notes and it's entirely up to you whether to take notes to help you remember what witnesses said and to use during your deliberations.

If you do take notes, remember that it is one of your most important responsibilities as a juror to observe the demeanor of witnesses to help you assess their credibility. Please don't been so involved with note-taking that it may interfere with your ability to observe a witness or detracts from your hearing of the questions being asked

and the witness' answers being given by the witnesses.

Your notes may help you refresh your recollection of the testimony and should be treated as a supplement rather than a substitute for your memory.

Again, your notes are to be used only as memory aids and should not be used, as I said, as a substitute.

The Court will also give instructions by Ms. Sweeney or my staff as to restrooms and whatnot that you're permitted to use during the trial. It's important that you pay attention to those instructions.

Please remember, as I have told you before, to wear your juror badges in a conspicuous place at all times during the trial while you're either in the courtroom or the courthouse.

Now, counsel may give opening statements, telling you what they expect to prove at trial. The opening statements, as with any other statements by counsel, don't constitute evidence. You're not to consider these opening statements as established facts.

The only purpose of the opening statement is to give you a general outline of the case and what it's about so you will have a better understanding how each piece of evidence fits into it, subject, of course, to your evaluation of the evidence as to its credibility, its accuracy and weight.

You're not to conclude that counsel will necessarily be able to prove what they say they expect to prove, nor that the Court will necessarily permit such evidence to be introduced.

Now, in conclusion, these preliminary instructions are complete, and as I have indicated earlier, counsel for plaintiff now may present an opening statement.

Thank you for your attention.

Counsel, you may.

MR. STROKOVSKY: Permission to approach the podium?

THE COURT: You may proceed, Counsel.

MR. STROKOVSKY: It's January 22, 2019. Eddie Reginald Parks is being taken

back for surgery at Temple University Hospital. His right leg is about to be amputated through his knee. An incision is made through his skin and tissue at his knee and through his ligaments and joint at the knee until the lower part of his leg is removed and disposed of. Just like that, everything changed.

Eddie was an active 27-year-old. He had a job in the medical industry. He was a certified nurse's assistant. He had a passion for cooking and he had dreams and goals to pursue that passion and one day make it a career. And he had future plans with his girlfriend Bree. They just found out that Bree was pregnant. Eddie was going to be a dad.

This amputation took Eddie's prime from him and replaced it with chronic pain, hardship and strained relationships with his family, his friends and his son. He will always be without his leg. He will always be disfigured. And he will always be haunted by what happened to him.

Eddie Parks' leg was cut off because

of the medical malpractice by defendants, Temple University Hospital, Incorporated and Defendant Dr. Lorei. No corporation or physician is above the law. The defendants must be held accountable for shattering this young father's life.

Good morning, ladies and gentlemen of the jury. This here is trial technician Lee Bitman. My name once again is Jordan Strokovsky. And I have the honor and privilege of representing the plaintiff in this case, Eddie Reginald Parks.

It's been almost four and a half years since he lost his leg. He's waited a long time to be here. An we can't thank you enough, ladies and gentlemen of the jury, because without you, none of this is possible. You, as the jury, serve as the conscience of our community. And it is you, the jury, that will hold defendants accountable.

Now, this trial is different than most personal injury trials. Most cases it would be my job, plaintiff, to prove that the other side, the defendant, made mistakes and there were injuries and harm as a result. But

now today defendants admit liability. That means they admit fault and they admit that their malpractice, their negligence caused Mr. Parks to lose his leg. That will not be an issue at this trial. The sole issue at this trial is determining a fair and full accounting of everything that Mr. Parks has lost and everything that he will be dealing with for the rest of his life.

This, as you know, this is a civil case. As you know, you don't have the ability to give Mr. Parks his leg back. But you do have the ability to give him justice by delivering a verdict that fairly and fully accounts for every bit of his loss. And at the end of this trial you will be instructed that you must fully and fairly compensate Mr. Parks for all of his past and future pain and suffering, embarrassment and humiliation, loss of life's pleasures and disfigurement. And all of his future medical costs.

And so to understand this trial, Mr. Parks' pain and suffering, you're going to learn about who he was before all this happened. You're going to hear about his

horrific experience at Temple University Hospital and you're going to hear about how he has been fighting to live his life every single day since.

So let's get started.

Prior to this, Eddie was an otherwise healthy and active 27-year-old, did normal things 27-year-olds do. Go out with friends, be outside, play sports. Once in a while ride his bike, go for a walk. And as I already mentioned, he was a certified nursing assistant. He got into that field because his mom had that job before and Eddie really enjoyed it. It was fulfilling work for him.

Eddie before all this very much so was a happy-go-lucky guy, a very much so nurturing person and he enjoyed helping people and he enjoyed stories that he would hear from his patients and the experience that they would give him, the wisdom. And he also would treat amputees, which is a bit ironic being here today.

Now, Eddie got into being a CNA from his mom --

MR. HOSMER: Your Honor, I

apologize, I have to object here.

THE COURT: Overruled. You can be seated.

MR. HOSMER: There is no claim --

THE COURT: I beg your pardon. Counsel, please don't respond with some editorial comment after I make a ruling.

MR. HOSMER: Okay.

MR. STROKOVSKY: So Eddie got into being a CNA from his mom. His passion was cooking and he got that from his dad. Eddie loved to cook. And about a year before all this happened, he would start selling platters in his neighborhood. He wasn't making any money off of it, but he was on the verge of becoming something. And it was his dream, it was his plan to be successful enough with the platters so he could get a food truck, and from a food truck of getting a brick-and-mortar restaurant.

And, also, at the time, or prior to everything happening with Temple, Eddie was in a relationship with his girlfriend Breeanca, who we call Bree. They had a solid relationship, and one month before coming to

Temple Bree and Eddie found out that Bree was pregnant. Eddie was going to be a dad.

He was naturally excited, blessed and they had plans. Eddie's got to work more. He doesn't want Bree to work while she's pregnant. Eddie has to pick up his cooking. Eddie has got to make moves to be there for his family, to build a family for the future. So everything was mapped out. Keep working hard, help people, keep cooking and be the rock for his family and for his baby.

But then in late December 2018, everything he knew would be shattered. Defendants Temple and Dr. Lorei, they admit fault. And their negligence caused Mr. Parks to wake up in early January and see that the leg injury that he came into was not fixed, rather it was a lot worse. Part of his leg, his muscles started to die and he had two large open incisions on his leg, some over a foot long and at one point 6 inches deep, and for three weeks before his amputation, he would be stuck in a hospital bed, looking at his leg sliced open like that. And you will see a picture of what his leg looked like in

that hospital bed.

And during those three weeks, his leg, his muscle would continue to die more and more and more. But he was still hopeful that the leg could be saved. And during this time period, he underwent six debridement and washout procedures. That's a procedure where he's intubated. He is taken back for surgery. They wash out his wounds and they remove dead tissue.

After removing dead tissue, after dead tissue, after dead tissue, after fighting to save his leg, being hopeful that his leg will be saved, he is given the news: Mr. Parks, you have two options. Either your leg is amputated or you're going to die.

Sadly, Mr. Parks had to choose to lose his leg. He wasn't going to give up on his son.

And then he wakes up from his amputation surgery that happened on January 22 and he sees his leg is gone. There is horror. There is loss. There is grief. And he is in pain for the three weeks prior. He's in severe pain with his leg sliced open like

that.

After the amputation, he is still in severe pain. But it's a little bit different. He has what is called "residual limb pain," which is pain in part of his leg that still remains, starting at the stump and going up the rest of his leg.

He also noticed almost immediately after his surgery something called "phantom limb pain." That's where you actually feel the leg that is no longer there. Mr. Parks, Eddie, can feel his toes wiggling that are no longer there. That's why they call it phantom limb pain. It's like a ghost. It's a supernatural experience.

And you will hear in this case that where this amputation was performed is significant. It was amputated through the knee. Typically, amputations are either below the knee or above the knee. Eddie's case it was through the knee, and through-the-knee amputees are essentially considered above-the-knee amputees for purposes of what type of prosthetic you need. And that's important because below-the-knee amputees --

don't get me wrong, any leg amputation is horrific and catastrophic -- but below-the-knee amputees it's easier to get prosthetics. It's easier to move around. But in Eddie's case, again, he's through the knee so he's considered an above-the-knee amputee and it makes it much more difficult for the type of prosthetic that he needs and for moving around. You're going to hear about that from our expert who is a physiatrist who devotes her life work to amputees, Dr. Mary Ann Miknevich.

You're also going to see a photo of Eddie Parks' limb just after the surgery. You will see the extensive incisions. And not only is it horrible to look at, but as Dr. Miknevich will explain, it's also a significant source of scar tissue and something called "neuromas" because there are so many nerves around the knee and all of them were cut and all of those cut nerves are sources for pain.

The phantom limb pain I just mentioned Eddie has been dealing with that ever since, ever since he's been dealing with

that. And what is worse than that, though, is his residual limb pain. That pain for him has been a constant. He can always feel it. He is essentially always in pain. It's just a matter of degree. Is it manageable where he can try to put on a smile and try to do things? Is it bad where he is very limited in what he can do? Or is it unbearable where at times it brings him to a point where he doesn't want to do anything but just roll in a ball in his bed and hope the pain goes away while rubbing his limb.

After his amputation, Eddie was still at the hospital for about another two and a half weeks. Those were a tough two and a half weeks that he had to endure every day at the hospital. And then he got to leave.

He was excited to leave. He wanted to get out of Temple University Hospital. But he was also scared. What was he going to do? What was going to go on with his life? How is he going to take care of Bree and their baby and work? How is he going to move around?

For the first year, Eddie didn't have a prosthetic. So he went home and he

basically went from being a fully active independent person to being a child again, almost like a baby at first. Couldn't move. He needed his girlfriend or his mom or others to help him get in the bathtub, to help him go to the bathroom. He couldn't go downstairs to get food or water. He essentially had to rely on everyone for most activities of daily living, and there were times where nobody would be around.

Still dealing with the pain, still having issues sleeping every night, he has issues sleeping, basically. It's something he still deals with today. It's because of the pain.

And Bree, she's pregnant during this whole time. So, again, instead of him being able to help Bree, make Bree's life easier, Bree now has to help him. Eddie can't even go to doctor's appointments with Bree.

But Zahir, who Eddie nicknamed Ziggy, he's born in August of 2019. That's a great moment. Such a blessed day. And Ziggy is his life. It's his pride. But there are issues right away with that. Because Eddie

wants to be the best possible dad he can, and he is being the best possible dad he can be. But because of his amputation, there are a lot of things he can't do that he would otherwise like to, including when his baby is crying in the middle of the night, Eddie can't get out of bed and go over to the baby and rock the baby to sleep. Bree has to do it.

So Eddie is getting around. He is hopping on one foot, and you will hear Eddie had a fair amount of falls during that first year.

So 2019, had some bright moments, still an incredibly painful and dark year for Eddie.

2020, there are some progress. There is some hope. The swelling and incisions of his leg are healed, and he goes through the process later in 2019, to get approved for his first leg. So in 2020, end of 2019, early 2020, he gets casted, his limb gets casted and he gets his first prosthetic leg. It's very limited, though, in its use. Eddie is uncomfortable wearing it, thinks he looks like a peg-leg.

And it's tough. You have to learn how to use the prosthetic. So he goes to physical therapy. Reaches a point where he can use the prosthetic and so he has some mobility, but not much. He is walking maybe four blocks before he is in pain and can't walk anymore.

Still not working. He is still lost without purpose in his life and he still feels stuck and bored.

In 2021, he does move on to a more advanced leg and he gets a new leg and goes through that whole process all over again. Gets fitted for it. Goes through physical therapy. And now, give or take, two years later, his mobility granted is a lot better then it once was, but it's still significantly limited. Eddie can walk about 25 minutes at a time before he needs to rest, sit down, take some medicine for his pain. Still having pain constantly. He is still having sleep issues. Still has very limited endurance. There are days where he can't do much of anything because he's in so much pain. There are other days where he tries to be as active as

possible, but then he becomes too active and that's a source of pain. Then there are times where the weather kicks in and that's another source of his pain.

Still not working. Not able to cook the way he used to. Does care for his son. Takes care of his son, but at times not as well as he would like.

And in this case, you're going to hear from Eddie, his parents. You're going to hear from Bree. You will hear about his pain and suffering, what it felt like to have this happen to him. To not be able to work or pursue his dream of cooking, his strained relationships between his family and friends and with his son and his mood. He still tries to be a happy-go-lucky guy and put on a smile, but there are times he just can't. His patience sometimes is shot. He gets irritable easily. He doesn't want to do that. It gives him shame when that happens, but it's just tough for him to deal with the pain and limitations and lack of sleep every single day.

And in this case you're going to

hear from, as I mentioned, Dr. Miknevich. She's what is called a "physiatrist." Her life's work is serving amputees. She's been doing it for almost 40 years.

So she evaluated Eddie. She talked with Eddie. She reviewed Eddie's treatment records. She came up with a list of conditions that Eddie has because of his amputation. And she did what she does with her patients, which is provide an outline of future recommendations of medical care that Eddie is going to need for the rest of his life. He's going to need prosthetics for the rest of his life. He will need to follow up with doctors for the rest of his life. Get some testing done for the rest of his life. Need some procedures to hopefully help reduce some of his pain later in life.

And this case is for Eddie's entire life. He's expected to live into his 70s. He's 32 right now. So when he reaches the age of 60, he will start needing some help in the home because of his amputation.

And you're also going to hear from a life care plan expert. That's Alex Karras.

What he does is take the future recommendations by Dr. Miknevich and he prices it out. So you will hear from him tomorrow.

And now the value of Eddie's medical care is all adjusted to future medical costs. It's adjusted to inflation, which I'm sure everyone has been hearing a lot of in the news lately. So we will bring in an economist, Andrew Verzilli. He will take the present day value that Alex Karras provides and map out what that value is over the next 40-plus years. And that value is approximately $6 million for future medical care.

You might be wondering if they admit fault, they admit they caused this amputation and debridement procedures, why are we here? What are they going to argue? There is no dispute that he's forever disfigured. I don't think they're going to dispute that he will be in pain. They're not going to dispute he needs prosthetics for the rest of his life. I presume they will claim his pain isn't as bad as the plaintiff says it is, or maybe they'll cite to some of the hurdles he has overcome over the last four-plus years, like he's more

active now than he was at the beginning. He can drive. He can ride a bike. Once he did, at least around the block. He can take care of his son to some degree. And sometimes he can wear his leg all day. And he goes on a trip once year.

But it's a nice thought thinking that Eddie is just going to get better and better over time, but I submit after you hear the evidence in this case, you realize that's not what is going to happen. And I urge you to use your common sense when evaluating the recommendations of the plaintiff's experts and the defense experts.

But I also want to point out that the expert testimony is really just about primarily one component of this case, which is future medical costs. But there are several more components for you to consider, which is his lifetime of pain and suffering, embarrassment and humiliation, loss of life's pleasures and disfigurement, as well as those things for the last four-plus years.

Eddie Parks was wronged by Temple University Hospital and Dr. Lorei. We are not

asking you to punish them. We are not asking you for a handout. All we are asking is for an honest and thorough assessment of everything that he has gone through and everything that he will go through for the rest of his long life.

And not only is doing that your duty under the law as a juror, but by doing that, you are telling Mr. Parks that he is deserving of justice, and you are telling Eddie Parks and defendants in this case no one is above the law and defendants are being held accountable for shattering this young father's life.

Thank you.

THE COURT: Thank you, Counsel.

Counsel, you may address.

MR. HOSMER: Thank you, Your Honor.

Good morning, ladies and gentlemen.

I think everyone who is sitting here is old enough and experienced enough to know that whenever human beings get involved in an endeavor, mistakes can be made. We see it in our families, our governments, our churches, and despite all of the successes we hear from

time to time through the media in medicine, medical providers do make mistakes.

I'm here on behalf of Dr. Lorei and Temple University Hospital to tell you today that as Mr. Strokovsky correctly pointed out, on December 31, 2018, Dr. Lorei did not in a timely fashion adequately appreciate the fact that Mr. Parks had a popliteal artery injury that unfortunately cut off the flow of blood to his lower extremity, and because of that, he did have to undergo an amputation.

Dr. Lorei regrets the mistake was made. And on his behalf, I extend his sympathies to Mr. Parks and his family for all of the difficulties that he has gone through.

You may, as Mr. Strokovsky said, ask yourselves why are we here if there has been an admission of a mistake, as well as the fact that it resulted in an amputation. Well, the reason is, ladies and gentlemen, there is another aspect to any kind of personal injury case, and that is that even if there is a mistake and an admission of a mistake, there still has to be a determination as to what constitutes fair and adequate compensation.

And that is what, I believe, Judge Crumlish will charge you on at the conclusion of this case.

It's you, the jury, that has to determine what constitutes fair and adequate compensation for Mr. Parks because it's something that the plaintiff and the defendant cannot agree on. We agree on the mistake being made unfortunately. We agree that it unfortunately resulted in an amputation. But we can't agree as to what the law requires you to determine what constitutes fair and adequate compensation.

So to that end, ladies and gentlemen, you're going to hear, as Mr. Strokovsky pointed out, you're going to hear from the plaintiff and some of his family members and some of his experts, and in all likelihood you will hear from experts on behalf of the defendants. You're going to hear from a physiatrist, a physical medicine and rehabilitation doctor by name of Frank Sarlow. He's Board certified in physiatry and practices in the Philadelphia area; specifically, in Newark and Wilmington,

Delaware.

You will probably hear from a life care planner by the name of Kathleen Kuntz and an economist individual with a doctorate in economics by the name of Gerard Olson.

The point of all that, ladies and gentlemen, from Mr. Strokovsky and myself will be, again, to give you the facts in order to make a determination as to what constitutes fair and adequate compensation. That may at times, ladies and gentlemen, require me, perhaps Mr. Strokovsky, to ask pointed or sharp questions of the witnesses in the case. Please understand that if that happens, sharp or pointed questions have to be asked, it's not because we don't think that Mr. Parks doesn't deserve fair and adequate compensation he does. It's not because we don't have sympathy for Mr. Parks, because we do. But in order for you sometimes to get all the facts necessary, it's necessary to ask questions of opposing witnesses so everything is brought out so you can hear everything that there is to hear in order to make that determination as to what constitutes fair and adequate

compensation.

I hasten to add in light of Mr. Strokovsky's comment there is no claim, we have an agreement with the plaintiff there is no claim here for loss of earnings or lost future earning capacity or past lost earnings.

So what is the evidence that you're going to hear from the defense side? Well, ladies and gentlemen, as I said, you're going to hear from Dr. Sarlow. What Dr. Sarlow will tell you, among other things, ladies and gentlemen, is that among the various knee amputation procedures that are available, what Mr. Parks had was a right knee disarticulation. Of the procedures that are available that, obviously, no one wants to have a leg amputated, but the more advantageous, for lack of a better word, this is a more advantageous procedure in the sense that it retained more bone, muscle and tissue then some of the other amputation procedures that are available.

Why that is important, ladies and gentlemen, is it can lead to, and more often than not does, greater functionality on the

part of the amputee.

That's what you're going to hear from the witnesses for the defense concerning Mr. Parks' functionality. He has regained, ladies and gentlemen, a fair amount of functionality. You're going to hear that from our witnesses.

Dr. Sarlow, ladies and gentlemen, will tell you that he examined Mr. Parks on two occasions; one back in 2021, and another time about three or four weeks ago, two or three weeks ago. He will tell you, ladies and gentlemen, that he reviewed the medical records of Mr. Parks, and he will tell you, ladies and gentlemen, that Mr. Parks has had a physiatrist managing him since 2019, by the name of Bradley Tucker at Penn.

He will tell you, ladies and gentlemen, that he agrees with almost everything that Dr. Tucker -- you will hear Dr. Tucker's records, all of the conclusions that Dr. Tucker, the managing physician for Mr. Parks, believes to be true.

You will hear that Mr. Parks is a K3 ambulator. You will hear Dr. Sarlow and

perhaps Dr. Miknevich describe to you what a K3 ambulator is.

Ambulation, ladies and gentlemen, as I understand it, is rated on a scale of zero to four. It's called K0 to K4. K0 being unable to walk and K4 being an individual who can participate in high energy and high impact kinds of activities, mountain climber, sporting, heavy impact sports.

Mr. Parks has been rated by Dr. Tucker and by Dr. Sarlow as a K3 ambulator. K3, obviously, is one step below a K4 ambulator, and K3 ambulator, I think the state-of-the-art definition means that it's an individual who has the ability to traverse the environmental barriers that we encounter on a day-to-day basis; specifically, hills, ramps, curbs, steps, that kind of thing, at varying degrees of speed and cadence.

You will hear, ladies and gentlemen, that Mr. Parks has what is called a "K3 microprocessor prosthesis." It's one of those state-of-the-art, very sophisticated, very advanced prosthesis that actually is programmable to allow the amputee to perform

all sorts of activities with his prosthesis, including going to the gym, jog on a treadmill, swimming, and all the other things that Mr. Parks, you will hear, has been able to do.

He's been able to go on vacations; las Vegas, New Orleans, Atlantic City, Florida. He goes to the gym. He jogs on a treadmill. Does aerobics.

Dr. Tucker, you will hear, ladies and gentlemen, has described Mr. Parks as early as August of 2021 as, quote, highly functional.

Dr. Sarlow will point out all of those things in his records. He will also tell you, ladies and gentlemen, that in his opinion, to a reasonable degree of medical certainty, Mr. Parks, thankfully, is capable of performing all of the activities that he was doing before the amputation currently.

You will hear, ladies and gentlemen, also, from probably from our life care planner, her name is Kathleen Kuntz. Just like the plaintiff's expert life care planner, Ms. Kuntz will come in and she will tell you

based on what Dr. Sarlow feels Mr. Parks will need as to future medical care, what that care is and what the present day cost of it is.

Dr. Sarlow will tell you that not withstanding his high functionality, unfortunately, Mr. Parks will need future medical care. He has to have his prosthesis replaced, I think, every five or seven years. He will have to have some incidence of physical therapy to accommodate that new prosthesis each time he gets one. And the life care planner will explain to you what future medical care he will need and what the present day cost of it is.

After that, you will probably hear from Gerard Olson, a doctor in economics. Dr. Olson will take the medical care that is prognosticated by Dr. Sarlow and Ms. Kuntz and apply economic principles to it, ladies and gentlemen, and tell you what the cost of the future medical care will be. Suffice it to say, at this point, Ms. Kuntz' opinions concerning the extent and duration of care that Mr. Parks will need will be significantly less than what Mr. Karras will prognosticate

for you with respect to future medical care. And the numbers that you may hear from Dr. Olson will be significantly less than what you will hear from their economist, Mr. Verzilli.

Now, ladies and gentlemen, as I pointed out to you before, and as Mr. Strokovsky correctly pointed out, the issue before you is what is fair and adequate compensation in this case. As I pointed out to you, Mr. Parks is highly functional. He is not taking any pain medications. And it will be your duty, as charged to you by Judge Crumlish, to determine what is fair and adequate compensation.

You probably heard me use, and it was not unintentional, the term "fair and adequate compensation" several times during my past seven minutes here. Fair and adequate compensation, ladies and gentlemen, will be charged to you. I believe that's the language that will be used by Dr. Crumlish. We kind of know these things in advance.

The word "fair," ladies and gentlemen, implies just that. Suggesting just that fairness, as Mr. Strokovsky correctly

pointed out, it's not to punish. The idea is to be fair, to be fair to Mr. Parks. We will request that you be fair. That implies, ladies and gentlemen, looking at the evidence, evaluating it in an objective dispassionate and analytic way. Devoid of sympathy and overt emotion.

So I will return in my closing, I will be back here in a couple of days, to ask you to return a verdict for Mr. Parks that is in accordance with the law: Fair and adequate. That is fair to him, fair to Dr. Lorei and adequate to compensate him for his needs in the future.

Thank you for your time, patience and attention.

THE COURT: Thank you, Counsel.

Counsel, you may call your first witness.

MR. STROKOVSKY: Thank you, Your Honor.

Plaintiff calls, we call plaintiff's father, Lisbon Eddie Parks.

THE CRIER: State your name.

THE WITNESS: Lisbon, L-I-S-B-O-N,

Eddie Parks.

LISBON EDDIE PARKS, having been duly sworn, was examined and testified as follows:

THE COURT: Counsel, you may proceed.

- - -

DIRECT EXAMINATION

- - -

BY MR. STROKOVSKY:

Q. Good morning, Mr. Parks.

Thanks for being here.

A. Good morning.

Q. Who is this over here?

A. That's my son.

Q. Do you know why we are here?

A. Yes.

Q. Why are we here?

A. To get justice for my son.

Q. What is your relationship like with your son?

A. Excellent, very close.

Q. I want to talk a little bit about Eddie's childhood and his upbringing.

Were you in his life when Eddie was growing up?

A. Yes. Eddie was raised by a two-parent

household.
Q. Who is that?
A. That's his mother.
Q. Was Eddie active as a kid?
A. Eddie was always active. He was always out and about doing something. Streets, friends. Just was a happy-go-lucky guy.
Q. Did he play any sports as a kid?
A. I introduced him to baseball, soccer, football, basketball, swimming. Things like a normal kid would do.
Q. For soccer, do you remember if he was left-footed or right-footed?
A. Right-footed.
Q. Would you play any of those sports with him.
A. Played them all with him.
Q. Were there any outdoor activities that the two of you would do as father and son?
A. Yes.
Q. Could you share a couple of those activities?
A. We used to go fishing, hiking, bike riding, swimming. We used to go in the park and go crayfish hunting. We call it crayfish, but in New Orleans they call it crawfish.
So we got crayfish in Fairmount Park, so we

would go follow the trial and we would go crayfish hunting.

Q. You just shared with us what Eddie was like as a kid. What was Eddie like in his 20s before everything that happened at Temple?

A. Eddie was a happy-go-lucky kid. He was the life of the party, down to earth, respectful. Always had friends around him. Always was basically the life. He always had a smile on his face. You could never see if something was wrong with him or not because he was happy-go-lucky. So he used to go to parties and stuff like that. Hang with his friends, bike ride with his friends. All depends what friends he was with that weekend or whatever.

He worked a lot and everything like that. But, basically, he was a happy-go-lucky guy.

Q. Was Eddie working before everything that happened at Temple?

A. Yes.

Q. Do you have an understanding of his job?

MR. HOSMER: Objection, Your Honor.

THE COURT: Overruled.

BY MR. STROKOVSKY:

Q. Do you have an understanding of his job?

A. Yes, he was a CNA.
Q. Do you know one way or another if he liked it?
A. Oh, he loved it.
Q. Do you know why?
A. He used to come home and tell me stories he used to have with the clients and stories they used to tell him. He was always -- just when he was coming up, he always just wanted to help people, so that's the type of person he is. That's another gift that he had. That's all.
Q. Speaking of gifts, did Eddie have any special talents?
A. Yes. Eddie loved to cook.
Q. How did Eddie learn how to cook?
A. From me. I taught him.
Q. How good was he as a cook?
A. Oh, he was great as a cook. Real great. But I think his passion is really baking, but he is a hell of a cook, a hell of a cook.
Q. And how did Eddie learn how to cook?
A. I taught him, but he ain't better than me. But I taught him. Kept them little secrets out.
Q. Did Eddie express to you one way or another any plans or future that he wanted with cooking?
A. Yes.

Q. What did he express to you?
A. That he wanted to start his own little business, get a food truck, get a "brick and border," things like that.
Q. Prior to everything that happened at Temple, was he doing any type of cooking?
A. Yeah. He was trying to get it off the track, and you know how people have selling parties on the weekends, so he would sell little platters for -- on the weekends just to get his name out, just to see the smiles on people face after they tasted the food.
Q. Was he making any money off of that?
A. No, not really. He probably break even or lose. But it was just the point that he wanted to see the smiles on people face. That's all.
Q. I want to talk about the time right before Eddie went to the hospital. To your knowledge, was Eddie in a relationship?
A. Yes.
Q. Do you know who that young female is over there?
A. Yes; that's his son's mother and his girlfriend.
Q. That was his girlfriend at the time?

A. Yes.
Q. That's Bree Shear?
A. Yes.
Q. Was anything -- prior to going to Temple, was there anything else that was significant that was going on with Eddie's life?
A. Well, at the time just about a month or two before, probably a month, he had just found out that he was going to be a father. That was a blessing.
Q. Did he talk to you after he found out?
A. He called me screaming, yelling, You're going to be grandfather. I was happy and everything.
Q. Now, I want to turn to the time when Eddie was in the hospital at Temple.
Talking about the time when you first saw him, do you remember roughly how long Eddie was in the hospital?
A. Not actually. I know that he went in December 30 of '18, and he spent his 28th birthday in there and he got out a couple of weeks later. His birthday is February 2.
Q. Would you see Eddie at the hospital?
A. Yes.
Q. How often would you visit him?

A. Majority of the time.
Q. Do you need a moment?
A. No, I'm okay.
Q. We know this is tough.
Prior to his amputation, were you aware of Eddie undergoing surgeries?
A. Yes.
Q. Do you remember seeing his leg?
A. Yes.
Q. Would you be able to describe what his leg looked like?
A. After his first surgery, he came out. They went and put a metal rod from his ankle to his hip and his leg was open from his ankle to his calf. And it was wide open.
Q. Did you notice one way or another if Eddie was in pain at all at the hospital?
A. Yes. I seen it in his face and he kept crying and telling me that he was hurting.
Q. How often did you see Eddie cry?
A. I never seen my son cry as much as he did when he was in the hospital. Eddie seemed like every time every day he was crying.
Q. Was Eddie able to move around while he was in the hospital?

A. No, not at all.
Q. At any time did you notice any type of restraints being used on his arms?
A. Yes.
Q. What do you remember?
A. His leg was pinned down, and on several occasions, they had to restrain him to the side of the bed with both his arms.
Q. That was hard for you to see, right?
A. That was crushing for me to see to the point that one time I had to just take one of his arms out so he could at least try to feel as much normal as possible.
Excuse me. I'm sorry.
Q. Please don't apologize. We really appreciate you being here.
What was Eddie's mental state like, if you know, while he was at the hospital?
A. He was in a very dark spot. He was hallucinating. He was talking to people, asking for people in the family that had already passed on. He was in a whole lot of pain. He was crying, talking about crying, crying, crying. Just because he was in so much pain.
Q. Do you remember when you first heard that

Eddie was going to need an amputation?
A. Yes.
Q. What do you remember?
A. They came in, talking to me, him and his mother, telling us that he will need an amputation or if he don't get it, he could die.
Q. Would you be able to describe how Eddie seemed after he heard that news?
A. He was devastated. He just broke down and started crying like a baby because it crushed him. It took a whole lot.
Q. Do you remember seeing Eddie for the first time after his amputation?
A. Yes.
Q. Would you be able to describe what Eddie was like at that time?
A. He was delirious and everything. Really didn't know where he was at. First thing he asked me was did they take my leg and because I could still feel it. So then I reached back and pulled the covers away from him and that's when he seen his leg for the first time and he just couldn't hold it. He just lost it.
Q. Do you remember anything else from the time of his amputation for the rest of the time he stayed

at Temple?
A. Can you give me that question again?
Q. Sure.
After his amputation, Eddie was still in the hospital, right?
A. Yes.
Q. Do you remember what Eddie was like through the rest of the time he was at Temple?
A. He was sad, crying all the time. He was crying all the time and sad. He just kept asking me why me, why it had to happen to me.
Q. Did you know if he was still in pain?
A. Yes. He was in pain the whole time. He kept telling me and I seen it in his face. Kept crying. I mean, I never seen a grown man cry as much as he cried. He cried because he was in so much pain. And everything they gave him, it wouldn't help.
Q. I want to move on.
A. Okay.
Q. I want to talk about what Eddie's life was like just after he left the hospital without his leg.
Do you remember things from that year in 2019?
A. Yes.
Q. Do you remember where he first was living?

A. Yes. After the hospital, he didn't want to be a burden on us so he went and stayed with his girlfriend and her mother for a couple of months.
Q. Would you see him during that time?
A. No. No. I just talked to him on the phone.
Q. Would Eddie relay to you how he was feeling?
A. Yes, all the time. Like I said, it was a very close -- we were very close. We are a close-knitted family. So he could talk to me about any and everything.

He used to tell me when he felt how much pain he was in and everything he was going through that day.
Q. Did Eddie ever discuss with you what it was like dealing with his injury with a baby on the way?
A. He used to worry that he wasn't going to be a good father to his son and do the things that me and him used to do with his son. So he was very worried about that.
Q. Did he talk with you about anything related to his future?
A. Yeah.
Q. Please take your time, but would you be able to share some of the things that were discussed?

A. Yes.

He wanted to -- first of all, he wanted, because he had good and bad days, he wanted -- hope that his pain would be manageable later down the line. And he wanted to start his food truck and he wanted to get a brick and border so he could take care of his family.

Q. Was he able to do that?

A. No, not at all.

Q. You told us about Eddie's personality before everything that happened at Temple. Have you noticed any changes in his personality?

A. Yes.

Q. What is his personality like now?

A. It broke my son. It broke his personality to the point that I lost my son that I had known all these years. He's not the same person at all.

Q. Has Eddie ever expressed those feelings to you?

A. Yes. Yes.

Q. Could you share some of what he expressed?

A. He don't know what's going to happen. He don't know what's the next, what he can actually do. Really just he want to get his life back as much as normal and he want to make his son proud of

him, you know. He wanted to do the things normal people could do like he used to.

Q. You shared with us discussions earlier about parenthood or fatherhood. Since that time, did he ever again discuss fatherhood with you or being a dad?

A. He loved being a dad. He loves it. He loves his son. His son is his world. His son keeps him living right now. His son is his leg since he don't have one. His son is his leg.

He does everything for his son to the point even when he can't get out the bed on them days, it's hard for him to get out the bed when he balled up in a knot he still pushes hisself to get out the bed just so his son can do something like a normal kid.

Q. Has he expressed any concerns about raising his son with his amputation?

A. Yes. He hope that the kids in school don't tease him about his dad being different. He hope that he don't get bullied in school because kids can be mean and sometimes that makes him worry about that.

Q. I really appreciate you. We are almost done.

A. Thank you.

Q. As Eddie's father, what do you see for his future?
A. I don't see a future for him. I really don't. I don't see a future. He was raised to make the best of the worst situation that you can and to always have a smile on your face and never let crisis eat you up. But the future, I don't think he has one because he can't do his passion that he loved and his cooking because it's so hard for him to stand up for a certain length of time and get around so he can't do it. I really don't see a future for him. Even though he had dreams and aspirations.
Q. If Eddie never lost his leg, what do you think he would be doing right now?
A. Eddie would have had his brick and border by now. Eddie is very determined to do that and that's his life goal. That was one of his life goals. That's a goal that I don't think he can achieve at this present time. Or if he can achieve it at all. But by this time he would have been with a restaurant. He would have had a restaurant by now.
Q. I'm pretty sure this is my last question.
If you can even sum it up, what have Eddie's

injuries, the loss of his leg, done to him?
A. It broke my son. It broke his personality. He was happy. He was the life of the party. Everybody always wanted to be around him and everything. His friends is gone. He's in pain every day. His personality is gone. He's not the happy-go-lucky person no more. They broke him. They broke the son that I know that I know is no longer there. They killed him.

MR. STROKOVSKY: Thank you for your courage today. I have no further questions.

THE COURT: Counsel, you may inquire.

MR. HOSMER: I have no questions, Your Honor.

THE COURT: Sir, thank you very much. You can step down.

Take your time.

So, ladies and gentlemen, we are planning our next witness. Do we need a comfort break or do you want to keep going?

Good. Thank you.

You can call your next witness.

MR. STROKOVSKY: Would it be all right if we could request a comfort break,

please?

THE COURT: Why don't we all take advantage of that request. Five, ten minutes. We will keep going.

Thank you very much, ladies and gentlemen. Remember what I told you. Keep an open mind. Please don't discuss what you have heard or seen in the courtroom until we have had the complete case put to you.

So thank you so much for your patience.

(Jury exits courtroom at 11:05 a.m.)

(Brief recess.)

THE COURT: What is the issue?

MR. HOSMER: The issue is, Your Honor, certain exhibits plaintiffs -- P-1 and P-2 show the patient's leg cut open.

THE COURT: Okay.

MR. HOSMER: It's a result of the fasciotomy that was performed, not as a result of the amputation, and this should not be an element of damages. The man needed a fasciotomy as a result of the injury --

THE COURT: I appreciate your expertise, but a much broader topic of pain

and suffering and the conditions of his injury and the mitigation of that injury is all before the jury for their evaluation. Isn't that a fact that evidence of pain and suffering of that is relevant to this case?

MR. HOSMER: Not the pain and suffering from the fasciotomy, Judge.

THE COURT: I don't know how you can parse that.

MR. STROKOVSKY: If I may, Your Honor, first off --

THE COURT: It's been exchanged, first of all?

MR. STROKOVSKY: Yes.

THE COURT: They are P whatever.

MR. STROKOVSKY: Yes.

MR. HOSMER: We filed a motion in limine --

THE COURT: Here I am, listening.

MR. HOSMER: Thank you.

MR. STROKOVSKY: I have already instructed my expert and my other witnesses not to talk about what happened in the ED or reference fasciotomies. But the bottom line is if there wasn't any medical malpractice

from that one procedure that he had, the fasciotomy procedure, his wounds would have been sewn and they would have been closed. Because his muscle died due to the medical malpractice.

THE COURT: What I will rule is that they are relevant as proffered and subject to both cross-examination of experts rather than hearing counsel's expertise. So there may be an instruction subsequent to testimony by an expert or a qualified witness, rather than have us have a legal-medical analysis that you're asking the Court to make at this juncture with no testimony before me.

MR. HOSMER: The other point I would add is that, Your Honor, I believe they're inflammatory.

THE COURT: That's a 403 balancing of evidence under the rules, which, as you would agree, that's an evaluation that I have to weigh the probity versus the prejudice. So as I have indicated, I think there is probity in the case in chief that the plaintiff has outlined. It's certainly subject to effective cross-examination when given the opportunity.

But on the 403, especially, I think the relevance and the probity outweighs the potential relevance. I would instruct counsel, though, to use good judgment on portraying medical issues I will call that, for lack of a better phrase at this moment, for a length of time that it's just to induce sympathy or outrage or abhorrence.

Counsel, did you hear me? Be judicious in the use of graphic photographs in your presentation. The jury is not always capable of absorbing in a fair way this information.

MR. STROKOVSKY: Sure. There are numerous photos of his leg cut open, but I will only intend to show one. And then one postamputation.

THE COURT: If I see that they are prejudicial and inflammatory, then I may have to intervene based on an objection. But right now I have instructed you to be judicious so that defense counsel has an opportunity without prejudice to cross-examine and determine whether or not this is part of the injury that is before the jury.

Am I clear enough, Counsel?

MR. HOSMER: Thank you, Your Honor.

MR. STROKOVSKY: Could I have a brief second to talk to my expert?

THE COURT: Sure.

(Jury enters courtroom at 11:31 a.m.)

THE COURT: Thank you, ladies and gentlemen. Welcome back. We have a witness prepared to be sworn who will be our next witness in the case.

THE CRIER: State your name.

THE WITNESS: My name is Mary Ann Miknevich, M.D.

MARY ANN MIKNEVICH, M.D., having been duly sworn, was examined and testified as follows:

THE COURT: Counsel, you may proceed.

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DIRECT EXAMINATION ON VOIR DIRE

- - -

BY MR. STROKOVSKY:

Q. Good morning, Dr. Miknevich.

A. Good morning, Mr. Strokovsky.

Q. Dr. Miknevich, if you could tell the jury briefly what is your role in this case?
A. I was asked to evaluate Mr. Parks regarding his long-term rehabilitation and long-term life care needs from a medical standpoint.
Q. You're a medical doctor, right?
A. That's correct.
Q. Do you have a specialty?
A. Yes, I do. I am a specialist in the field of physical medicine and rehabilitation, otherwise known as "physiatry."
Q. What kind of conditions do you treat as a physiatrist?
A. So as a physiatrist, we treat a lot of different types of nerve and muscle problems, catastrophic injuries, things like strokes, brain injuries, spinal cord injuries, amputations. We do nerve testing as part of our specialty. Some physiatrists practice the specialty of pain management in addition to doing general rehabilitation.
Q. And what I'm holding up here, you provided two curriculum vitaes, correct?
A. That's correct.
Q. One was from a couple of years ago and one is

an updated one; is that correct?
A. That's correct.
Q. This has been premarked as P-38 and P-39. P-38 being the first C.V. we received and P-39 being the updated one, a copy has already been provided to counsel.
MR. STROKOVSKY: May I approach, Your Honor?
THE COURT: Certainly.
We recommend publication rather than hand-to-hand transmittal of documents, as I told you in the pretrial.
Can you identify the exhibit number that you just produced for the doctor?
MR. STROKOVSKY: Yes, Your Honor.
The doctor just received Exhibits P-38 and P-39.
THE COURT: You may inquire.
BY MR. STROKOVSKY:
Q. So, Doctor, are those your C.V.s?
A. Yes, they are.
Q. Do you hold any Board certifications?
A. Yes. I'm certified by the American Board of Physical Medicine and Rehabilitation.
Q. What is the significance of having a Board

certification?
A. Have a Board certification in addition to receiving residency training in an approved program of training, you must sit for both written and subsequently a year later oral examinations to determine your expertise in the field.
Q. Do you hold any other Board certifications?
A. I'm a diplomat of the American Board of Electrodiagnostic Medicine.
Q. Dr. Miknevich, where do you work?
A. My primary office -- I work in Pittsburgh, Pennsylvania and in the greater Pittsburgh area. My primary office is located at -- now it's UPNC Mercy. That's my main address.

I also have amputee clinics in the surrounding Pittsburgh community, in the North Hills, also, in the East Hills.
Q. You work with amputees?
A. Yes.
Q. How long have you been working with amputees?
A. I started working with amputees during my residency training, which was between 1980 and 1984.

Since 1984, I have been in the full-time practice of the specialty of physical medicine and

rehabilitation, and I have been amputee clinic chief for the Pennsylvania Office of Vocational Rehabilitation, which means that my clinic is certified by the Pennsylvania Office of Vocational Rehabilitation. I have a counselor who attends all of my clinics. They make sure that the prosthetists or limb makers who attend the clinics always have certified facilities, as well.

Q. If you're able to, could you approximate how many amputees you treat as patients in a given month?

A. So on average, I have anywhere between eight to ten amputee clinics during a month. In those clinics, I would see 15, sometimes more, patients, plus I see amputees when they have other problems or sometimes on days that I don't have my clinics. So I would say easily I see 150 or more amputees every month.

Q. What do you do for your amputee patients?

A. So as a rehabilitation medicine doctor or physiatrist, our goal is to work with people who have limb loss or some people who are born without limbs, to allow them to achieve the best function possible in terms of the prosthesis that they get, the therapy that they get.

We also address medical complications that they have associated with their amputation. So I deal with all of those different issues.

Q. Do you have experience with prosthetics?

A. Yes. I have extensive experience with prosthetics.

Q. And you mentioned your main job, but do you hold any other positions that you feel qualified you for this case?

A. So in addition to my clinical practice, which I am in the full-time practice of medicine, I'm also a residency training program director for the University of Pittsburgh Department of Physical Medicine. We have 32 residents in training. So I'm responsible for their education. And one of the areas that I am responsible for is their training in prosthetics and orthotics.

Q. And in the past, have you had experience with war veterans coming back from Iraq?

A. As a matter of fact, I have. This would have been back in 2003, I was invited to be part of a project at Walter Reed that was sponsored by the Department of the Army.

We had not yet started to have soldiers coming back from Iraq, but there was a concern because at

that time in order for a soldier in active duty to get a high-tech prosthesis, something like a computer leg, a C-leg, it was an average two-year wait for them to go through the VA system. So they were looking to put forward a process to allow those soldiers to get their prosthetic devices sooner.

So they put together a team of experts. I was the only clinically practicing physician they included. And my section was to write the criteria for who would get a C-leg.

Q. And you have done research and presentations in the area of amputees; is that correct?

A. Yes.

Q. Could you give us an overview of that experience?

A. So, again, as I mentioned, I teach. I also have presented nationally, as well as internationally on topics related to amputees and their issues, including topics related to amputee pain.

I speak regularly at our local amputee support groups and participate in those, as well.

I serve as a medical adviser to Ossur Americas. Ossur is a large manufacturer of

prosthetic components.
Q. And in your C.V., it looks to be you have done about a hundred medical presentations in your career or maybe more; is that fair?
A. Been doing it a long time, yes.
Q. And do any of those involve your work with amputees or the subject of amputees?
A. A lot of them do, yes. I also mentor residents who are doing presentations on amputee-related topics, as well.
Q. And have you testified in court before as a physiatrist on similar topics of today of the diagnosis of an amputee, the prognosis of an amputee and making future medical care recommendations?
A. I have.
Q. And have you been qualified in court?
A. Yes.

MR. STROKOVSKY: Your Honor, at this time I offer Dr. Miknevich as a qualified expert in the field of physical medicine and rehabilitation.

THE COURT: Counsel, do you wish to colloquy the proffered witness?

MR. HOSMER: Just one or two, Your

Honor.

THE COURT: No worries. Go ahead, please.

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CROSS-EXAMINATION ON VOIR DIRE

- - -

BY MR. HOSMER:

Q. Good morning, Dr. Miknevich.

I'm Chandler Hosmer. I represent Dr. Lorei. Just a couple of questions on your qualifications, ma'am.

You mentioned that you have been qualified to testify in court before?

A. Yes.

Q. And so litigation is not something that is new to you, correct?

A. No, it's not.

Q. I have a history here of your litigation history, and it indicates that on at least four occasions, you've either written reports or testified for plaintiffs in personal injury cases. Would that be fair, ma'am?

A. I don't know an exact number.

Q. Not exact. Does 24 sound about right to you?

A. Over my almost 40 years, probably, but not all

plaintiffs.
Q. Yes. I see one for a defendant and the rest for plaintiffs. Would that be fair, ma'am?
A. No, that's not fair. That's not correct.
Q. Would it be fair to say about maybe 10 percent is defendants and the other 90 percent is plaintiffs?
A. No.
Q. You had mentioned -- well, do you have a percentage?
A. I don't have a percentage. I --
Q. Is it --
THE COURT: Allow the witness to answer.
MR. HOSMER: My apologies. Thank you, Your Honor.
BY MR. HOSMER:
Q. Go ahead.
A. I would probably say it's more like 75-25.
Q. I see. Seventy-five percent of the time you're doing work for plaintiffs, either writing reports or appearing in court, and then you're saying the other 25 percent is for defendants?
A. That's correct. I have been asked to do both. Probably more plaintiffs because of my own

patients.
Q. And you also mentioned, ma'am, that you had wrote criteria for a C-leg? I wrote that down.
A. That's correct.
Q. Is the C-leg the leg that Mr. Parks is now wearing as a prosthesis?
A. The version he has is a C-leg 4. This was in 2003. We were still on the original C-leg.
Q. So it's a lot more sophisticated and advanced now, I take it?
A. Somewhat more sophisticated.
Q. Is the criteria today for a C-leg the same as it was in 2003?
A. I would say, yes.
Q. And what is the criteria to qualify or to be a candidate for a C-leg?
A. Someone has to have the potential to be a community level ambulator, which is a K3 level ambulator. They need to be able to walk on a variety of surfaces, slopes, slants, steps, on even terrain in the community.

So you would not fit, for example, somebody who was just a household walker with a C-leg. Someone who does need to be out in the community would be a candidate.

Q. That would be the, I think, the language is along the lines of the individual has the ability to traverse environmental barriers that are common to all of us.
A. That's correct.
Q. Hills, steps, that kind of thing?
A. That's correct.
Q. And Mr. Parks qualifies for that, correct?
A. That's correct.
Q. And the K3 is just one step below a K4?
A. Yes.
Q. K4 is someone who engages in high-impact, high-energy kinds of activities such as mountain climbing, things of that nature?
A. It would be an active athlete or an active child.
Q. I assume that all of us would be K3 ambulators, then. Would that be fair?
A. I would say since everyone made it here today and probably walked here.
Q. We are all K3s?
A. Yes.

MR. HOSMER: That's all the questions I have.

Ma'am, thank you for your time.

THE COURT: Without objection?
MR. HOSMER: No objection, Your Honor.
THE COURT: The witness is qualified as she has been proffered.
You may proceed, Counsel.
MR. STROKOVSKY: Thank you, Your Honor.

- - -

DIRECT EXAMINATION

- - -

BY MR. STROKOVSKY:

Q. Dr. Miknevich, as I stated earlier, I asked you to evaluate Mr. Parks, correct?

A. Yes.

Q. And what did your evaluation include?

A. When I evaluate a new amputee or a patient who has limb loss, I look at their medical records, evaluate their records. I also evaluate the patient in terms of where they're at in the process. Do they already have a prosthesis? Is it something that they are waiting to be fitted for?

So assess those things, as well as look at other complications they may have related to their injury. And make recommendations regarding things

they may need in the future in terms of medical care; radiology studies, help in the home, for example, modifications to a home, transportation issues. Particularly as people age, we tend to see more complications in patients who deal with limb loss than we do in the general population.

Q. After you evaluate -- strike that.

You evaluated Mr. Parks personally, right?

A. Yes, I did.

Q. And you also reviewed his medical records?

A. Yes, I have.

Q. And did you base your recommendations and your findings on your interactions with Mr. Parks and review of his records?

A. That's correct.

Q. Is there anything else that you would have reviewed?

A. I reviewed Mr. Parks' deposition, as well.

Q. And the things that you reviewed and your evaluation of Mr. Parks, that type of methodology is that the type of methodology that is accepted in your field?

A. Yes, it is.

Q. And prior to coming to trial, you wrote reports, putting pen to paper, your findings and

opinions; is that correct?
A. That's correct.
Q. One report was from April of 2021, right?
A. Yes.
Q. And then you provided an updated report on March 23, 2023; is that right?
A. That's correct.
Q. And then you did write a letter on May 1 of this year, but that just included that you reviewed some materials that were just provided and your opinions have not changed; is that correct?
A. That's correct.

MR. STROKOVSKY: If I may, Your Honor, we have no intention of publishing it, but I'd like to hand Dr. Miknevich a copy of her reports in case she needs to refresh her recollection or refer to it during her examination.

THE COURT: It can be used as a memory aid, but it's not substantive evidence so it will be marked only for purposes of the record.

MR. STROKOVSKY: Sure. Yes. So marked only for purposes of the record.

THE COURT: To translate that,

ladies and gentlemen, this is the analysis that the witness is offering. It just allows a witness to refer to something rather than pure memory. You're to evaluate the testimony nevertheless as you find it.

MR. STROKOVSKY: For purposes of the record, what was just handed to Dr. Miknevich was P-40, which is her report from 2021, P-41, her report from March of 2023 and P-42, which, again, is just that very brief letter.

BY MR. STROKOVSKY:

Q. Dr. Miknevich, are those the reports?

A. Yes, they are.

Q. And, again, if you need to refer to that or refresh your recollection, you may do so, but let's proceed, please.

So before we get into all the specifics and your findings and your opinions, can you just give us your general impression as to how Mr. Parks' amputation has impacted his life.

A. I would have to say that Mr. Parks' amputation has changed his life now and in the future forever.

Q. And, also, by way of housekeeping, in your reports, your opinions and findings were all made to a reasonable degree of medical certainty; is

that correct?
A. Yes, they were.
Q. Do you promise us that as you testify here today, that all of your findings, opinions and conclusions will also be made to that same degree of -- to the same reasonable degree of medical certainty?
A. Yes.
Q. So, after reviewing the medical records and evaluating Mr. Parks, did you list some of his diagnoses in your report?
A. Yes.
Q. And those are what you listed as a result of Temple's malpractice, correct?
A. I'm assuming you're referring to the April 13 report or the March report?
Q. Strike that.
Did you have an opportunity to put on a separate piece of paper a list of the diagnoses of what happened to Mr. Parks as a result of the malpractice?
A. So I have, again, within my reports, I have a list of diagnoses of his conditions associated with his injury.
Q. Doctor, I'm showing you what has been marked

previously as P-43. I don't know if you can see it.

THE COURT: Without objection.

THE WITNESS: I'm assuming that's the list of diagnoses.

BY MR. STROKOVSKY:

Q. Yes. Did you review this before?

A. Yes, I have.

Q. And does this accurately list Mr. Parks' diagnoses as a result of his amputation?

A. Yes.

Q. And would this list or showing this list to the jury help you explain to them his condition as a result of the amputation?

A. Yes, it would.

MR. STROKOVSKY: Your Honor, at this time can we publish this to the jury?

THE COURT: Yes. Without objection?

MR. HOSMER: Your Honor, I think he did give it to me.

THE COURT: P-43.

MR. STROKOVSKY: I e-mailed it to you. We can give you a hard copy right now.

THE COURT: That would be great. Thank you.

MR. STROKOVSKY: Could you please put P-43 on the screen, Mr. Bitman.

MR. HOSMER: Your Honor, to answer your question, I do not object to her saying that these are the conditions that he had.

THE COURT: She's relying upon this to express an opinion, as I understand it, was the question.

MR. HOSMER: Yes.

THE COURT: Without objection then for that purpose.

BY MR. STROKOVSKY:

Q. Doctor, before we go into the specifics on this list, do you have a general understanding of Mr. Parks' health prior to coming to Temple?

A. Yes. Prior to coming to Temple, his only known medical condition was a history of asthma for which he was really not taking any treatment, didn't need it.

Q. Let's start with the first bullet point.

MR. STROKOVSKY: Would you zoom in on that.

BY MR. STROKOVSKY:

Q. So, Dr. Miknevich, this first bullet point reads: Right lower extremity washout and/or

debridement on January 3, 2019, January 8, 2019, January 9, 2019, January 11, 2019, January 13, 2019 and January 15, 2019.

Is that correct?

A. Yes.

Q. And so that's six surgeries, right?

A. Yes, it is.

Q. And, generally speaking, can you tell us what a debridement is.

A. What a washout and debridement, the word "debridement," as mentioned earlier this morning, they had to go into his limb with an incision and clean out dead muscle, infection. Cut out necrotic, dead muscle and pockets of pus.

Q. And that happened because of the delay in treatment or diagnosis that Temple admitted to you that you heard in openings?

MR. HOSMER: Objection. Beyond the scope of her report.

MR. STROKOVSKY: Sidebar, Your Honor?

THE COURT: No.

Was it within the fair scope of the expert report entered by the witness?

MR. STROKOVSKY: Your Honor, well

they admit --

THE COURT: No. Answer my question first.

We are relying upon this witness and their expertise and opinion they have expressed already. Is what you just asked reflected within the fair scope of the opinion that she already shared with us?

MR. STROKOVSKY: Yes, Your Honor, this is listed in her report.

THE COURT: So that objection is overruled if it has been contained in the report.

So you may proceed.

THE WITNESS: Can you re-ask the question?

MR. STROKOVSKY: Sure.

BY MR. STROKOVSKY:

Q. Why did Mr. Parks need debridements?

A. Because of the problem he had with the circulation in his lower leg, the muscle tissue died and also became infected.

Q. And have you seen any photographs of Mr. Parks' wounds during the time -- actually strike that.

Is it fair that from early January up until the time of his amputation on January 22, that's when those six debridement procedures occurred, right?

A. That's correct.

Q. And have you reviewed any photographs of Mr. Parks' wounds from his leg during that time period?

A. Yes.

Q. And those photos were in Temple's medical records, correct?

A. Yes.

Q. That's what you reviewed?

A. Yes.

MR. STROKOVSKY: At this time I'd like to show to Dr. Miknevich what has been marked P-2, which is photograph Bates marked 3467.

THE COURT: Counsel, without objection?

MR. HOSMER: I have not seen the picture yet.

I have seen the picture.

THE COURT: What we will do is always tell counsel what the premarked identifier is so we know what we are talking

about.

MR. HOSMER: In fairness to Mr. Strokovsky, he did give them to me a while ago. We have discussed it and I object to them for reasons stated.

THE COURT: Counsel, as I understand, as you have explained to the Court already, this is a photograph of an open wound of your client. Is that necessary for the opinion of the doctor who is now testifying to actually visualize the open wound?

MR. STROKOVSKY: Yes, Your Honor.

THE COURT: Ask the witness that question.

MR. STROKOVSKY: Sure.

BY MR. STROKOVSKY:

Q. Dr. Miknevich, would explaining what Mr. Parks went through during this three-week time period, would showing a photograph of his wounds help you explain to the jury what he went through?

A. Yes.

THE COURT: So I will overrule that objection.

I will advise the ladies and gentlemen of the jury, some of these

photographs are quite graphic, but I'm going to ask counsel to be extremely sparing in the amount of exposure that you have to very graphic evidence.

But as you just heard, this particular witness is relying upon that evidence.

So, again, counsel, I caution you to be judicious in the use of any photograph of your client's injuries.

BY MR. STROKOVSKY:

Q. So, Dr. Miknevich, on your screen hopefully in a couple of seconds, you're going to see P-2.

Do you see it?

A. Yes.

Q. Is this a fair and accurate representation of what his wound would have looked like at the hospital?

MR. HOSMER: Objection. I'm sorry, I don't mean to be obstreperous, but on what date?

THE COURT: Counsel, can you ask the witness if she's aware of when in the course of treatment this photograph was taken, if she knows.

MR. STROKOVSKY: Sure.
BY MR. STROKOVSKY:
Q. Doctor, looking at the medical record produced by Temple, is there a date on that image or --
MR. STROKOVSKY: You don't have to zoom in, Mr. Bitman.
THE WITNESS: There is not a date. It was sometime during the admission from 12/31/18 to 2/7/19.
BY MR. STROKOVSKY:
Q. Could you narrow that down? Would it be fair to say that it would be sometime between January 1 and before his amputation?
A. Yes, that's when it would have been.
THE COURT: You may publish briefly.
MR. STROKOVSKY: Mr. Bitman, if you could please briefly publish this to the jury.
BY MR. STROKOVSKY:
Q. Dr. Miknevich, we don't need to talk too much about this.
THE COURT: I'm going to suggest ask the pertinent question about what the purpose of this photograph is, and then I will ask you to take it down so you can continue questioning on the subject.

BY MR. STROKOVSKY:
Q. So what is the significance of what we are looking at here?
A. The significance of it is to show the extent of the surgeries that he required during that time period where he had underwent the multiple debridements. His muscle in his leg was dying. There was infection in the leg and they had to keep going in and removing more and more of it in an effort to try to save what was left of his leg.
THE COURT: Thank you, Counsel. You can take that down.
MR. STROKOVSKY: Please take that down.
Thank you.
BY MR. STROKOVSKY:
Q. During this three-week period prior to his amputation, was there anything else medically going on with Mr. Parks?
A. Yes. During that time, based on my review of the record, Mr. Parks was dealing with fevers. He had elevated white blood cell counts, meaning that he was showing signs of infection throughout his body. He was requiring high dosages of intravenous narcotic pain medications, including fentanyl,

Dilaudid, intravenous Tylenol. As I said, he was febrile. He was delusional, confused, agitated during that time.

And for each of these procedures, he would have undergone anesthesia and undergone a significant surgery in addition to just having the wound there. So on every one of those days he went through an additional procedure.

Q. You were in the courtroom when Mr. Parks testified, right?

A. Yes.

Q. He mentioned seeing restraints with his son. Is that something that you saw in the medical records?

A. He required a one-to-one sitter. At some point in time he was also given medication such as Haldol to try to calm him down because, again, he was confused and delusional and agitated.

Q. I apologize if you already mentioned this, but was he in pain?

A. He was, as I said, during that time, a lot of times was sedated or was somewhat out of it because of the medications. But he was getting high dosages of pain medications, yes.

Q. If you don't know, that's fine, but do you

recall in your review of the medical records any measurements of the size of Mr. Parks' wounds?

A. So --

MR. HOSMER: Objection. Lack of foundation.

THE COURT: Overruled.

THE WITNESS: They were measured in centimeters, but to convert them to inches and feet which we are more used to, some of his wounds were as large as 1 foot, 4 inches in length by a foot in width and several inches in depth. So quite large.

MR. STROKOVSKY: Mr. Bitman, could we please go back to the list of diagnoses, P-43. Zoom in on the second bullet point.

BY MR. STROKOVSKY:

Q. Dr. Miknevich, so what we see here is, Right knee disarticulation amputation January 22, 2019.

First off, what is a disarticulation?

A. So when they disarticulate a joint, it's basically you cut it right at the joint. So you don't cut through the bone. You cut through the ligaments and tendons between the two parts of the joint.

So in this case they took his femur and

separated it from the lower part of his leg.
Q. Did you review a medical illustration depicting Mr. Parks' amputation procedure?
A. Yes, I did.
Q. Do you feel that that would assist you in telling the jury about this procedure?
A. I believe it would be helpful to show the jury what happens during that amputation.
MR. STROKOVSKY: Mr. Bitman, if you can just for Dr. Miknevich and parties, can you please present her with P-25.
BY MR. STROKOVSKY:
Q. Is this the illustration that you reviewed, Dr. Miknevich? And take as much time as you need.
A. Yes, that's the picture that I reviewed.
Q. Does it fairly and accurately depict Mr. Parks's amputation procedure?
A. Yes.
THE COURT: Any objection?
MR. HOSMER: Only to the postoperative photo that is adhered to it.
THE COURT: This is now the illustration I think of the amputation procedure.
MR. HOSMER: But I think I know what

your ruling is on that. I object to that only.

THE COURT: Fair enough. That's preserved for the record.

MR. STROKOVSKY: Mr. Bitman, so you know, before you show it to the jury, I will ask you to zoom in on each step of the process.

So if you can, Mr. Bitman show P-25, please.

BY MR. STROKOVSKY:

Q. We don't need to zoom in, but just briefly, we don't have to have the jury look at it for too long. If you can briefly go through the basic steps of what you see here. It looks like the first step is part A, a fish-mouth incision made at the level of the right knee; is that correct?

A. That's correct. So they cut the tissues in that shape so that they can pull them together and close them. So they call it a fish-mouth incision, but it's just cutting through the tissues between the bones.

Q. And then we go to part B right next to it and that's where subcutaneous incisions were divided creating flaps. What you just mentioned, I think?

A. That's correct.
Q. We will move down to part C where ligaments are divided around the knee joint and the distal leg is removed; is that correct?
A. That's correct.
Q. And then if we can go to part D on the top right, this is the closing of flaps and suturing of the wound?
A. Yes.
Q. And before we show the final part, which is included, you reviewed a photograph from Temple's medical records of Mr. Parks' limb after his amputation procedure?
A. Yes.
Q. And is that what you see here in the lower right-hand side corner?
A. Yes, it is.
Q. And does that fairly and accurately reflect what you saw in Mr. Parks' medical records?
A. Yes, that is the picture.
MR. STROKOVSKY: If we can just briefly zoom in on that picture.
BY MR. STROKOVSKY:
Q. What, if anything, Dr. Miknevich, is significant about what you see here?

MR. HOSMER: Objection. Overly broad.

THE COURT: Overruled.

THE WITNESS: So the biggest thing that you see is that there is a large amount of swelling. There are some large retention sutures trying to hold the incision together. The incision itself is quite large, extending far up onto his thigh. So there is a lot of scar there.

MR. STROKOVSKY: We can take this down.

BY MR. STROKOVSKY:

Q. So, Doctor, can you also explain the significance, if any, of the level of which Mr. Parks' leg was amputated?

A. Yes. So a knee disarticulation amputation is not as commonly done as either a below the knee, or transtibial is another name for it, or above the knee, transfemoral, but it falls into the classification of transfemoral or above-the-knee level of amputation because you're essentially losing your knee joint with such an amputation.

You do end up with a long residual limb, which I think you will see with Mr. Parks, that can

affect the look of his prosthetic and how far his knee sticks out compared to his other knee. Some of those things.

But it's often done when there is significant infection because they don't want to have to cut through the bone because there is more chance of infecting the bone. So they will often go through a disarticulation level in some of those cases.

Q. In terms of mobility and using a prosthetic, can you give us an overview of the differences between someone who has a below-the-knee amputation and an above-the-knee amputation?

A. The major difference is what your knee does for you. So somebody who has a below-the-knee amputation, we basically have to replace the function of your foot and ankle.

In somebody who has a knee disarticulation or an above-the-knee amputation, we not only have to replace the function of the foot and ankle, but now we have to include the function of the knee, and because of that, the costs, the energy costs associated with walking become significantly higher. The difficulty of wearing a socket becomes much greater because it now has to go all the way up the thigh instead of just up to the level of

knee, as you would have a below-the-knee amputation. There are significant differences.
Q. While Eddie is a through-knee amputation, his type of amputation is, can you opine as to whether it's more like an above the knee or more like a below the knee?
A. It is definitely classified as an above-knee amputation.
MR. STROKOVSKY: Mr. Bitman, if we can go back to the diagnosis list and go to the third bullet point, chronic pain syndrome.
BY MR. STROKOVSKY:
Q. So it's your opinion that Mr. Parks has chronic pain syndrome as a result of his amputation?
A. Yes, it is.
Q. And can you tell us what chronic pain syndrome is?
A. So a chronic pain condition is a condition by definition that lasts more than three months. So in a chronic pain situation, patients tend to live with pain over a prolonged period of time.
Q. Why do you feel that Mr. Parks has chronic pain syndrome?
A. Mr. Parks has a number of other -- there are

other bullet points on the diagnosis list that explain some of it. He has both problems with his residual limb where the scar is, where the amputation is. So he has issues associated with pain there. He also has phantom limb pain, which is the ghost pain that Mr. Strokovsky mentioned earlier. So he has pain and he feels his foot. He describes sometimes a tingling sensation, an uncomfortable feeling associated with that. Those are all causes of chronic pain.

In addition, Mr. Parks has a gait dysfunction, meaning he doesn't walk symmetrically. Anyone who has an amputation, even people who walk as good as you can see them walk, still don't walk equally the same on both limbs. So what that tends to do is over time it causes strain on other parts of the body. It's what we call compensatory overuse. So people start to wear and tear faster. It's sort of like you strip a gear in your car. It will run for a while, but then the next gear starts to go and pretty soon you're having major problems and you have to get your car into the shop. So that happens with our bodies.

And it's well reported that this happens in all amputees. Low back pain, for example, is

reported as high as 80 percent in lower limb amputees. Musculoskeletal problems associated with gait dysfunction, extremely common happening within the first year after an amputation. So all of those things are on going.

In addition, Mr. Parks has had to use crutches. He used his arms to push himself up when he can't use his prosthesis. He had issues with his shoulders. He had lower back pain. He's had pain in his left leg, as well. So all of those things contribute to his chronic pain syndrome.

Plus, he also deals with emotional pain. That's a very real condition. It's been documented speaking with Mr. Parks. It's also been noted in his records that he has expressed frustration, anxiety related to his condition. He is fearful of having procedures done because of what has happened to him and what he's been through. He's very fearful of being hurt again.

Q. Are those common feelings for amputees?

A. Very common.

Q. Do you have a sense one way or another if Mr. Parks' chronic pain syndrome is temporary or permanent?

A. Mr. Parks has had his pain syndrome for the

past four years. It's not going to go away.
Q. So it's permanent?
A. It is permanent.
MR. STROKOVSKY: Mr. Bitman, if we can go to the next bullet point, phantom limb pain.
THE WITNESS: Could I add one other thing? Not only is it permanent, again, as he ages, he's going to be a very different person than the Eddie Parks that you even see today. Because, again, these compensatory wearing out of our parts of the body become worse as we age. All of us experience it, but it's even more difficult when you're dealing with a high level amputation.
MR. STROKOVSKY: Mr. Bitman, zoom in on phantom limb pain.
BY MR. STROKOVSKY:
Q. Dr. Miknevich, again, it's your opinion that Mr. Parks' phantom limb pain is as a result of his amputation, correct?
A. That's correct.
Q. And you described what phantom limb pain is. Actually, are there any other names or even nicknames for phantom limb pain?

A. You mentioned the word "ghost" pain. I'm used to calling it phantom limb pain.
Q. Is phantom limb pain common in amputees?
A. So phantom limb pain doesn't exist if you were born without a limb, and it doesn't exist if you had your amputation after you already lost feeling in a limb. But for every other amputee, the statistics are as high as 75 percent of all amputees experience phantom limb pain, as well as phantom sensation.

So they go together. Phantom sensation is you feel the limb, but it's not particularly bothersome. Phantom pain is when that becomes bothersome and annoying, like when your foot is asleep and you can't get it to stop, but at what point is that painful, rather than just my foot is numb.

Q. Do you have an understanding when Eddie started to experience phantom limb pain?
A. From reviewing his records at Temple, he experienced phantom limb pain immediately after the amputation. It's well documented.
Q. Do you have an understanding of whether he still is experiencing phantom limb pain?
A. From my assessments of Mr. Parks, he has told

me that he continues to experience phantom limb pain. It's also documented as a diagnosis in Dr. Tucker's notes.

Q. This is something he has been dealing with ever since he started feeling it after his amputation?

A. Yes, it is.

Q. Do you have a sense of whether or not this is just a temporary or permanent condition?

A. Phantom limb pain is a very, very difficult thing to treat. In Mr. Parks' case, he was started in the hospital on gabapentin. He had a bad reaction. He was blacking out from the medication. They tried other medications with him, including Baclofen. That didn't work.

Most recently I saw Dr. Tucker was trying him on something called "Doxepin" to see if it would help him sleep. I don't know the outcome of that because that was done since I have seen him.

But the only thing that he has been able to take, he was reluctant to stay on long-term narcotics, he had such a bad reaction in the hospital to them. And, again, people don't need to be addicted to another medication. He has been using medical marijuana that Dr. Tucker has been

prescribing for him.
Q. So is it your opinion that Mr. Parks' phantom limb pain is permanent?
A. The phantom limb pain if it's going to go away, tends to go away usually within the first year. As I said, it's four years now. It has not gone away and I believe it's permanent.
THE COURT: I hate to interrupt testimony. Why don't we take our lunch break now until 1:30 or soon thereafter.
When you are all together, we will start up again, but remember my directions. Keep an open mind until you hear it all. Please don't discuss it or research this for any reason. And I thank you so much for your patience and your attention to this.
So with that, we are going to stand in recess.
(Jury exits courtroom at 12:25 p.m.)
MR. STROKOVSKY: I hope over lunch he will feel better. Obviously, we don't want him in the courtroom if he will be in that type of --
THE COURT: It's his right to be in the courtroom. He can waive that right or

discuss it with you. He can excuse himself. But, again, this is his trial, his right. I don't think anyone would object to him excusing himself if that was necessary.

MR. HOSMER: If he wants to leave, that's up to him.

THE COURT: Exactly. You don't need my permission for that, but you can talk with your client.

MR. STROKOVSKY: Hopefully, again, he is better in an hour, but if by chance it doesn't reach a point where if by chance it is bad, I don't want him to be a distraction to everybody.

THE COURT: I'm not worried about any of that. These are decisions we have to make in real time representing a client at trial. But you will make your judgment. It may be that he doesn't feel willing to come back for a little bit. I don't want to get ahead of myself.

MR. STROKOVSKY: If that were to happen --

THE COURT: You keep saying if. I put the stop sign up. My obligation is to

deal within the now.

MR. STROKOVSKY: I would be curious if a brief instruction to the jury that why he has to step out --

MR. HOSMER: No.

THE COURT: Nope.

MR. STROKOVSKY: If anything, if it's bad, we can put him in the back.

THE COURT: The jury assesses credibility in every aspect of everything from our shoeshines to our haircuts. So I don't predict what they're valuing or not valuing. It's up to all of us professionals to make our best judgments with our clients. How is that?

MR. STROKOVSKY: Thank you, Your Honor.

(Lunch recess.)

MR. HOSMER: The first is this, Mr. Strokovsky and I entered into an agreement that there would be no lost wage claim or future lost earning capacity claim. That's why I objected in the opening to references to an inability to work, because it's not relevant in my opinion.

And Mr. Strokovsky tells me he's

going to he elicit an opinion from Dr. Miknevich that he can't work as a certified nursing whatever he was, CNA assistant. So I'm objecting I know ahead of time, evidentiary et cetera, but inasmuch there is no claim for lost earnings in the future or in the past, the fact that he was a CNA for a brief of period of time, should not come in.

THE COURT: Let me ask a practical question. Is there going to be any economic testimony with numbers and calculations and expertise?

MR. HOSMER: Not as it pertains to work.

THE COURT: So there will be no evidence to support calculation as to lost wages. I could understand it also being part of the general damages, as I call them psychic damages, pain and suffering, humiliation, loss of life's pleasures. There is a lot of categories fall into the person who is often who they are and identity. I think it's something for a jury to decide that his life has been disrupted. But I will preclude any testimony about the economics of his job as a

nurse's aide or certified nursing assistant.

Does that make sense?

MR. STROKOVSKY: Yes, Your Honor. We have no intention of offering any economic evidence.

MR. HOSMER: The second point, I will probably let Mr. Strokovsky take this part over. We have a stipulation as to breaching the standard of care. We have a stipulation that it caused the amputation and that it caused several pre-amputation procedures.

MR. STROKOVSKY: Yes, that's true. But now it appears that he may on cross-examination --

THE COURT: He?

MR. STROKOVSKY: Counsel intimated that he now wishes on cross-examination to say, well, can't debridements happen regardless. But, again, we have a stipulation that they're admitting liability and causation, including those debridement procedures. That's why I'm not calling my causation expert, Dr. Amin. And you told me there was no need to call Dr. Amin.

MR. HOSMER: I did say that.
MR. STROKOVSKY: You're admitting liability, but trying back-door fighting right now when it's clear he would not need any of these debridements but for the malpractice. If we want to bring back --
THE COURT: No, I can't do that. This is the unfortunate consequence of sometimes trial lawyers not completely being on the same page with agreements, which is why I favor them to be of record or in writing.
MR. HOSMER: Well, we did put it on the record no, it says, pre-amputation procedures.
THE COURT: We are in agreement that you're not going to elicit testimony about pre-amputation procedures?
MR. HOSMER: No, he is.
MR. STROKOVSKY: Are you talking to me?
THE COURT: Yes.
MR. STROKOVSKY: Again, because it's admitted that his pre-amputation procedures are related to the amputation and we are not talking about the initial procedures.

THE COURT: I guess listening to the testimony of -- I have heard from the expert that there is no ongoing consequence to the prior procedures that may be as a neural damage. I'm not sure what that was all about. But that's why I thought that testimony was being offered that the debridement and desiccation and irritation, all that.

Let's get it clear. We have an expert on the stand who is going to testify as to the consequence of the injuries. I have not heard anything that tells me, I don't know how better to explain it, the bright line you seem to be drawing.

MR. STROKOVSKY: So, Your Honor, the bulk of the conditions are all going to be flowing from the amputation, but the first three weeks of his suffering as a result of the malpractice of being stuck in his bed, his muscles continued to die and die and die and undergoing those procedures, that's pain and suffering.

THE COURT: That's what I was going to ask. That's testimony directed to pain and suffering that he endured for those three

weeks in the hospital.

MR. STROKOVSKY: Right.

And we are not talking about what happened in the ER or the day of the subject malpractice. We are not talking about all that. We are talking about what we agreed was aftermath.

MR. HOSMER: So far I have agreed with everything he said. The three weeks in the hospital --

THE COURT: What happened to him when he was enduring, heard eyewitnesses who would testify regarding knowledge of what they saw, what they heard. Where are we going wrong?

MR. STROKOVSKY: He want -- counsel wants to -- would like to cross-examine my expert on the stuff that is undisputed about the debridement procedures being a result and I don't understand it. One --

THE COURT: That doesn't count.

MR. STROKOVSKY: -- it's not relevant. It's unfairly prejudicial because we have an admission to liability, including those procedures, and then he's going to get

up there and stand there -- counsel is going to get up there and try to make it sound like those procedures are not related. That's almost like trying to back door --

THE COURT: All right.

I hate asking counsel what his cross-examination is going to be. But isn't it fair if you go into those areas on cross-examination, that the plaintiff is entitled to redirect and demonstrate how this expert, and any other subsequent experts, may have an opinion as a result of that, if you go there. I don't know if you're going go there. Doesn't plaintiff have an opportunity then to either rebut or otherwise redirect or cross your witness?

MR. HOSMER: Yes, if I open a door, of course, he is.

THE COURT: That sounds like it's happening here. I don't know how we draw the bright line. I understand, and I think we are at least in a preliminary understanding that the case, as it stands now, and by agreement of counsel, that it is all the things that happened in those three weeks that led up to

and including the amputation.

MR. HOSMER: Not quite. That is because there is a fasciotomy that was done that was necessitated --

THE COURT: I'm sorry, Doctor, you lost me.

MR. HOSMER: I'm sorry. Mr. Parks underwent --

THE COURT: I don't doctor; you don't lawyer. Right?

MR. HOSMER: Mr. Parks underwent a procedure by Dr. Lorei called a "fasciotomy" that was necessitated by the injury that Mr. Parks, the initial injury that he sustained. They were needed regardless of the conduct of Dr. Lorei. He would have required that fasciotomy. You're saying no.

MR. STROKOVSKY: He required a fasciotomy, but his tissue would not have died requiring debridements subsequent to that. They have no expert testimony to that effect.

I was told I had no need to call in my causation expert because of the stipulation to liability. So I told my causation expert, who absolutely says all the debridements are

related for the delay in diagnosis. And then if we -- and that opens the door to all the mistakes that he made, as well. Well, he made mistakes at ten. He made mistakes at midnight. He made mistakes at two. He made mistakes at four. He made mistakes at six. So then we have to bring all that in for the jury to weigh causation. I don't think you want to bring in all the mistakes that were made.

MR. HOSMER: I think he's making a mountain of a molehill, Judge.

THE COURT: No, I do that. Let's back it up and get it simple so we all understand.

MR. HOSMER: Okay. I intend to ask about -- I won't make a secret of it -- I intend to ask about the fact that the fasciotomy was necessitated by the injury and not by any conduct of Dr. Lorei.

THE COURT: And you're going to ask this doctor for that expert opinion?

MR. HOSMER: I have to because --

THE COURT: No, you don't have to.

MR. HOSMER: I am because --

THE COURT: Has she been qualified or offered on that subject?

MR. HOSMER: She already said --

THE COURT: Please answer my question. Has she been qualified to offer an opinion on that subject?

MR. HOSMER: As you said, she was qualified for the things for which she was proffered.

MR. STROKOVSKY: I'm reading our stipulation that we came to an agreement on yesterday.

THE COURT: Take your time and read it into the record.

MR. STROKOVSKY: Okay.

We stipulate -- he has a hard copy. I have a photo of it, defense counsel. I'm going to read it right now.

When Mr. Parks presented to Temple University Hospital on December 30, 2018, with a leg injury, his care was managed by defendant, Dr. Matthew Lorei --

DR. LOREI: Lorei.

THE COURT: You have one of the most qualified attorneys in the Commonwealth

representing you. Let him do his job.

DR. LOREI: Okay.

MR. STROKOVSKY: The next sentence reads: Dr. Lorei is Defendant Temple University Hospital, Inc.'s agent.

Dr. Lorei did not appreciate that Mr. Parks had sustained a popliteal artery injury. Consequently, there was inadequate blood flow to Mr. Parks' right leg which resulted in a through-the-knee amputation on January 22, 2019.

Dr. Lorei admits he breached the standard of care and his breaches resulted in Mr. Parks' unfortunate amputation, as well as several pre-amputation procedures.

MR. HOSMER: He read it correctly. I have it here.

THE COURT: So pre-amputation procedures, you are telling me now that you, Counsel, are telling me now that that expressly says that that is limited to one medical condition that was misdiagnosed?

MR. HOSMER: I'm not saying that, Judge. I'm simply pointing out that pictures were shown of a leg wide open from a

fasciotomy procedure and the fasciotomy procedure was necessitated by the injury itself, the --

THE COURT: I don't think this witness who is on the stand now, I don't think that was evidence offered, right. It was just as to her understanding of the consequences of an amputation which included that three-week period.

But to the extent that you're going to cross-examine outside the scope of her opinion, I think I'm going to preclude that. If there is another witness that you're going to offer in a defense of other events of malpractice that are not before me, other misjudgments of Temple's physicians, for example, that caused something else. I mean, it's consequential. You're losing me by going over, I think, the scope of this witness' testimony and how she's been offered.

MR. HOSMER: All right. The only thing I can say, Judge, the jury saw a picture of an open leg.

THE COURT: Open wound, right.

MR. HOSMER: Over my objection.

THE COURT: And that was offered for something other than a medical opinion as to the root causes of that open wound, but rather it was just a fact of what that wound looked like.

MR. HOSMER: The fact the wound looked like, but the wound came about as a result of the procedure that Dr. Lorei --

THE COURT: I don't know that. Other than there has been a stipulation as to Dr. Lorei's stipulation, right? He's not contesting liability for whatever conduct or omissions that occurred and Temple's accepted that as their agent.

So, again, this witness has not been offered to render expert opinions outside of those which have been expressed in her opinion and her testimony, and to show him that photograph, the showing of that photograph, has nothing do with, as I can tell, foundationally or direct sense with criticisms of or origins of other either concurrent or overriding medical malpractice acts by other Temple physicians.

MR. HOSMER: But it was presented

for the purpose of showing pain and suffering, and that particular aspect --

THE COURT: Are you telling me that the three weeks that we all agreed to of that open wound does not constitute evidence of pain and suffering?

MR. HOSMER: It gets a little complicated. I'm not trying to make it complicated.

THE COURT: Okay. So I got --

MR. HOSMER: The answer to your question, I'm not trying to be funny, is yes and no.

It's related in the sense that this man needed the debridement procedures. We are saying are related to Dr. Lorei's conduct. However --

THE COURT: I'm now going to rule that the photograph was offered based upon the representations of counsel of why it was being offered. It did not expand the scope of the opinions of this witness, and I'm not going to allow cross-examination which suggests that other agents of Temple University or other physicians or nonphysicians committed some

form of malpractice or contributed to this condition. None of that is going to be offered in this case.

MR. HOSMER: Agreed. But it was Dr. Lorei who performed the fasciotomy that was necessitated by the injury. The initial --

THE COURT: I'm sorry, at this point I have a specific witness with specific proffered expertise who's testified for the basis of seeing that exhibit. It doesn't go beyond that and it hasn't been a waiver of the stipulation that the parties entered into, as I heard the stipulation just repeated to me.

MR. HOSMER: I agree there's no waiver of stipulation.

THE COURT: I'm saying we are not going to entertain cross-examination that would suggest culpability of nonparties or nonagents of Temple.

MR. HOSMER: That won't happen, Judge.

THE COURT: You're going to ask about other medical conditions and treatments that led to this open wound, right?

MR. HOSMER: No. I'm sorry if I'm

not being clear. I'm simply stating that Mr. Parks -- there was an occurrence. He went to Temple. He had developed something called "compartment syndrome." That compartment syndrome necessitated an operation called a "fasciotomy" where you slice open the leg and relieve the pressure within the leg. That procedure was necessitated not because of Dr. Lorei did something incorrect before. And that procedure --

THE COURT: I know that how?

MR. HOSMER: Because it was the initial procedure.

THE COURT: How do I know that as of record here? I'm trying a case right now. I have a witness with specific expertise.

MR. HOSMER: And this witness testified --

THE COURT: Let me finish.

Again, I can't go around and around on this. That I ruled that this witness' testimony went to the existence of this open wound, and as a result of that open wound during that three-week period, which we have all agreed is subject to this lawsuit, she

rendered opinions, this witness rendered opinions. And you can cross-examine on the opinions rendered, but you're not going to expand into suggesting alternative causation of other issues other than how this witness has been offered.

Now, can I be clearer than that? You may disagree with me.

MR. HOSMER: I don't think we communicating.

THE COURT: Mr. Strokovsky agrees that the fasciotomy was not as a result of anything that Dr. Lorei did, correct?

MR. STROKOVSKY: Well, should I speak, Your Honor? Do you want me to speak?

THE COURT: Briefly.

MR. STROKOVSKY: If this gets brought up, it will open up a whole can of worms.

THE COURT: No, it won't because I'm going to hear objection if necessary. If I don't hear objection, then I will rule on it. But this is why we have trial objections.

MR. STROKOVSKY: The one thing that is clear, so I don't have my causation expert

here, and, again, I told him he didn't have to come because of our stipulation and that wasn't necessary for per our discussion. A fasciotomy was performed, and if a popliteal artery was diagnosed and treated in time during the course of eight-plus hours while under care, there is no way he ever would have those open wounds, but the incision to the fasciotomy would have been closed up, Mr. Parks would be fine and we wouldn't be here today.

THE COURT: Respectfully, Doctor, I can read your hand gestures. You have to rely on your counsel.

MR. STROKOVSKY: There's an admission of liability here.

THE COURT: I believe this undoes the stipulation and the instruction I have given or you've given in your openings.

I'm going to say that the suggestion of other causes other than what has been described as that three-week period ran up to the amputation, that is what is before this jury by agreement of the parties. Now, if there is some misinterpretation, I'm not going

to allow even on cross-examination suggesting other causation of injuries that is by agreement of parties not before the Court.

Am I clear enough?

MR. HOSMER: I understand, Judge.

THE COURT: Otherwise, you wouldn't have stipulated as to liability and causation. I heard that crystal clear.

MR. HOSMER: I tried to be crystal clear.

THE COURT: Do you understand my ruling, both counsel?

MR. STROKOVSKY: Yes, Your Honor.

THE COURT: So we will bring the jury in. We will complete this witness' testimony.

Is the doctor local or does she have to go back to Pittsburgh tonight?

MR. STROKOVSKY: I hope we will finish her today.

Your Honor, this may speed things up a little bit. At some point Dr. Miknevich's direct exam discussing Mr. Parks' gait, discussing his prosthetic, we would like the opportunity to briefly allow Mr. Parks to

demonstrate his walking in front of Dr. Miknevich, and then also to have Dr. Miknevich show to the jury Mr. Parks' prosthetic and explain what we are looking at.

THE COURT: So as to the prosthetic, that seems relevant.

As to the demonstration of gait, is that without objection, Counsel?

MR. HOSMER: No objection, Judge.

THE COURT: So, again, just be economical, not to in any way impede the fair and efficient presentation of your trial and we appreciate all the parties cooperating.

(Jury enters courtroom at 2:00 p.m.)

THE COURT: Welcome back, ladies and gentlemen. I hope you had a nice lunch.

You should know we continued to work for the benefit of the efficient and fair presentation in this case while you were having your lunch. And it's really out of deep respect for your time and dedication as jurors in this matter.

Thank you so much.

So, Counsel, you have a witness on the stand.

MR. STROKOVSKY: Thank you, Your Honor.

Mr. Bitman, if we could please put P-43 back on.

BY MR. STROKOVSKY:

Q. Dr. Miknevich, we just finished talking about Mr. Parks' phantom limb pain. In lockstep with what we have been doing, let's move on to the next bullet point, residual limb pain.

Once again, if you can give me a refresher, what is the residual limb?

A. So the residual limb is the part of the leg that remains. So residual limb pain can be pain anywhere within that extremity.

Q. What does it typically feel like?

A. Depending on what the cause of residual limb pain is, it can be anything from discomfort from a blister, let's say, that starts from the skin rubbing or from callouses or a skin irritation, a skin infection that can happen inside of a socket, to deep muscular throbbing pain, to pain that is electrical-type pain from the nerve endings that have been cut and form little -- sort of when they have no home, they have nowhere to grow, they tend to form little balls that are called "neuromas" and

those can send off electrical signals almost like if you got a nerve that was irritated in your tooth.

There is a relation between residual limb pain and also phantom limb pain. For example, in Mr. Parks' case, when he gets residual limb pain, if it becomes severe enough, it can become then shooting, stabbing into the phantom limb, as well.

Q. Is residual limb pain common in amputees?

A. It's very common.

Q. What is your understanding as to when Eddie started experiencing residual limb pain?

A. Eddie has had residual limb pain since his amputation.

Q. Does he still experience it today?

A. Yes, he does.

Q. Has he been dealing with this since his amputation?

A. Yes, he has.

Q. Do you have a general understanding of the frequency?

A. So he has pain. He tries to -- he's been trying to wear his prosthesis more and more, despite the fact that he has pain.

But from my last conversation with him, he can

walk about 25 minutes. He has to stop at that point. Sometimes he has to use his medication. Sometimes he has to rest, take the limb off, massage his limb.

Q. When you say "medication," do you mean medical marijuana?

A. Yes, I do.

Q. Do you have an understanding as to how long he's been using medical marijuana for pain relief?

A. Dr. Tucker has been prescribing that for years now.

Q. What are some things that you -- have you talked about the general things that can cause residual limb pain in amputees. Could you tell us some things, if any, that you know about Mr. Parks that would contribute to his residual limb pain?

A. So Mr. Parks does have currently problems with his skin. He has what we would refer to as folliculitis or keratitis, which is an inflammation of little hair follicles on the bottom of his limb. Often that occurs with friction or rubbing-type problems.

But he's had that at least since his January visit with his physician. He had it when I saw him for his most recent video evaluation. I got to see

a close-up photograph of it.
Q. Aside from -- you were talking before about scar tissue and neuromas. Does that have any application to what is going on with Eddie's residual limb pain?
A. In Mr. Parks' case, I believe it does.
Q. Why is that?
A. Because he has pretty extensive scarring on his residual limb. And at times he's sensitive along the scar.
Q. And it was in the illustration demonstrating Mr. Parks' amputation was a photo of Mr. Parks postamputation; is that correct?
A. Yes.
Q. And you reviewed that photo, as well, specifically in Temple's medical records, right?
A. Yes.
Q. And would reshowing that specific photo isolated from the illustration briefly, would that help explain to the jury your opinions regarding scar tissue and neuromas?
A. If you wanted to show them again, I think briefly, it would help them to understand how extensive his scarring was.
MR. STROKOVSKY: Mr. Bitman, if you

could first show to Dr. Miknevich P-4, which is Bates -- TUH Bates stamp 3443.

BY MR. STROKOVSKY:

Q. P-4, Dr. Miknevich, that's the photo in the medical records that you saw of Mr. Parks' postamputation, correct?

A. Yes.

Q. Is that a fair and accurate representation of what you previously saw?

A. Yes.

MR. STROKOVSKY: If we could just briefly publish it to the jury for three seconds.

Could you zoom in, Mr. Bitman?

BY MR. STROKOVSKY:

Q. Dr. Miknevich, please tell us if you want anything zoomed in or not zoomed in related to Mr. Parks' incision.

A. I don't think it has to be zoomed in any further.

Again, I think the issue is it's quite a big incision. There is quite a bit of swelling associated with it. There is still some drainage in between the incision.

MR. STROKOVSKY: Take that down, Mr.

Bitman.

Thank you.

BY MR. STROKOVSKY:

Q. I'm going to go a little bit out of order here, but Mr. Parks' incision and healing of that incision, does that have any significance for the timing as to when he can get a prosthetic leg?

A. Yes. So in Mr. Parks' case, he was not able to get a prosthesis until late in 2019. He still had some stitches in. And he went to Dr. Lenrow and subsequently Dr. Tucker, starting in the summer of 2019.

Q. Was there any irregularities or any type of swelling that you saw in that photo?

A. As I said, there was quite a bit of swelling.

Q. Does that have any impact as to when an amputee can get a prosthetic?

A. So, typically, there are things called "immediate-fit prosthesis," but normally we wait until sutures are out. The limb size is stabilized a little bit because as soon as you put somebody into a shrinker or even a prosthetic socket, their limb shape and size is going to change fairly quickly.

They did not fit him until later in 2019.

Q. What is a shrinker?
A. A shrinker is sort of like a stretchy compression sock but you wear it on your limb to try to control some of the swelling.
Q. Do you know if one way or another Mr. Parks ever wore a shrinker?
A. I don't.
Q. What is heterotopic ossification, Dr. Miknevich?
A. Heterotopic ossification is a big word for bone growth in tissues other than where it should be.
Q. Is that something you see in amputees?
A. Yes. For many years, we thought it only happened in traumatic amputees, but now we are seeing it more. Other people are more aware of it, even in patients who lose their limbs from other causes.
Q. Can that be a source for pain?
A. Yes, depending on how large that bone growth happens. We see people who it can literally look like a fish hook or dear antlers stuck in the bottom of their limb. It can poke through the skin. It can rub nerves in the limb. It can be a source of irritation and skin breakdown.

Q. Do you have an understanding as to whether or not Mr. Parks has heterotopic ossification?
A. Heterotopic ossification in Mr. Parks' limb was documented in an x-ray from July of 2019.
Q. Mr. Parks' residual limb pain, do you have an opinion one way or another if it's temporary or permanent?
A. Mr. Parks' residual limb pain has been going on for four years. It's permanent.

MR. STROKOVSKY: Mr. Bitman, if we can return to P-43, please. Go to the next bullet point, which is difficulty sleeping secondary to pain.

BY MR. STROKOVSKY:
Q. Dr. Miknevich, this is also a diagnosis that you have for Mr. Parks as a result of his amputation, correct?
A. Yes.
Q. What is your understanding about Eddie's difficulty sleeping due to pain?
A. So this was present even when he was still in Temple after the amputation. It was documented that they were trying different medications to help him sleep.

His pain sometimes is worse when he takes his

limb off, particularly if he's been on it a fair amount during the day. And it interferes with his ability to sleep, and because of that, he can be groggy during the day. He can lose concentration, have difficulty focusing.

Q. Is that something he's dealing with today?

A. That's something he continues to deal with at least several days a week.

Q. So he's been dealing with this ever since his amputation?

A. That's correct.

Q. Do you have a sense one way or another if his sleeping problems are temporary or permanent?

A. His sleeping problems are permanent at this point.

Q. So you already discussed the medications that Mr. Parks has tried, as well as him using medical marijuana. I don't think I asked this, though. Medical marijuana, is that something you typically see in your amputee patients?

A. Since it's been legalized in Pennsylvania, we see it used a lot more for sleep and for pain.

Q. Aside from the medical marijuana, the prior medications that didn't work and the other medication you mentioned that he tried recently but

you don't know the results yet, does he do anything else to try to alleviate his pain?
A. I know that some of the things he does, he will try to massage or stretch his own limb. That's been recommended by his doctor. And he's done that.
He also had been going to the gym, trying to work on distracting himself and just trying to increase his activity.
Q. Do you know if he's been going to the gym lately?
A. My understanding when I spoke to him last was he was not going to the gym at that point.
Q. And did you have an understanding as to why he wasn't going to the gym?
A. What he told me was that he had sort of reached the point where he didn't feel he could progress. He felt sort of awkward being there because of him being an amputee and not really having directed therapy. So he was in the process of being ordered a new socket and my understanding was they were going to resume physical therapy with him after he got the new socket.
Q. Did Eddie express to you one way or another about being excited to go get physical therapy

after his new socket?
A. He was looking forward to getting physical therapy.
Q. How would you gauge Eddie's level of motivation based off your interactions?
A. From the three visits that I have had with Eddie, he has always been optimistic. He is trying to work hard at wearing his leg. He is trying to work hard at doing things with his son. Trying to get more active. He still hopes that some day he's going to be able to cook or do something that he wants to do.
Q. I should have followed this up a couple of questions ago, but regarding massaging the limb for pain relief, is that something common you see in your patients?
A. Yes. As I mentioned before, phantom limb is difficult to treat, so is residual limb pain. So we have patients do lots of things from mirror therapy to massaging their limb.
MR. STROKOVSKY: Mr. Bitman, if we could please go to the next bullet point, which is gait dysfunction.
BY MR. STROKOVSKY:
Q. So gait dysfunction, that's a diagnosis you

believe Mr. Parks' has because of the loss of his leg?

A. Yes.

Q. Can you just tell me what "gait dysfunction" means again?

A. So gait is the process of walking. So gait dysfunction is that he is just not walking normally. He has continued difficulty with his walking.

Q. Would it be any benefit for you in explaining Mr. Parks' gait dysfunction to have Mr. Parks briefly walk in the courtroom?

A. If he's willing, that would be good.

MR. STROKOVSKY: Are you ready?

MR. PARKS: Yes.

THE COURT: Without objection.

BY MR. STROKOVSKY:

Q. Dr. Miknevich, should he just start walking?

A. Yes. You can have him just walk forward.

When are watching a patient who has an amputation, we watch them from all different angles, from the front, the side, the back. What we are looking for is that symmetry that I talked about. So we are looking to see if his shoulders stay level. If his hips stay level. Is he

swinging both legs appropriately.

And what has been noticed consistently with Mr. Parks, which was another reason why we were hoping he would get more physical therapy, is Mr. Parks --

Mr. Parks can you walk once more?

MR. PARKS: Yes.

THE WITNESS: He doesn't swing the right knee as well as he does the left. He sort of hikes his hip. So he hikes up on the left to sort of swing the right one through. Sometimes he actually swings it around, which Dr. Tucker referred to as circumduction, which is what that is when he swings the leg around.

The fact that he doesn't bend his knee when he puts his full weight on the foot makes the leg act like it's too long and he has to swing it or he will catch the toe.

BY MR. STROKOVSKY:

Q. So I believe you just mentioned a present socket issue Eddie has been having with his prosthetic?

A. Yes.

Q. And he's about to receive a new socket; is that correct?

A. Yes. He had lost the fit of his socket and was wearing like 20 ply of prosthetic socks to try to get it to fit.

When that happens, when people's limbs lose shape, they don't lose everywhere the same. So if you just keep adding socks some places will be too tight, other places will be too loose, and it creates more friction rubbing problems.

Q. So are you saying it's your understanding that at least at one point Mr. Parks would have to put on 20 socks one by one over his limb?

A. So socks come in different ply or different thicknesses. So there are some socks that one sock is equal to five. But when you're up around 20 ply, that's a lot of socks.

Q. And he had to put that on just to try to have fit into his prosthetic?

A. To keep his prosthesis from falling off, yes.

Q. You mentioned that Eddie is excited once he gets a new socket to go back to physical therapy. Do you think the physical therapy can help with his gait?

A. I believe so. He's actually had very limited physical therapy.

Q. Do you think that his gait can be completely

or no longer be dysfunctional?
A. As I said before, even when we do gait studies, which they will have amputees walk on treadmills and they monitor them with cameras and energy costs like checking how much oxygen they're using, even the best walkers as amputees still have some asymmetry in their gait. So, no, even at its best, there will be still some abnormality.
Q. So Mr. Parks will always have dysfunction with his gait?
A. Yes.
Q. It's just a matter of degree?
A. Yes.
If I can make one other comment with that.
So the other point related to his gait is he wears a computerized prosthesis which is great. It's definitely something that is better than what he had before, but essentially what the computer does, there is a hydraulic cylinder in his knee on his prosthesis that as he approaches different surfaces, there are gyroscopes within the leg that sort of say, We are going down a slope, we are walking level, you can slow down, you can speed up. But the reality is it's still basically a hinge. It's nothing like your own knee. The best

prosthetic in the world will never replace your own knee.

So there is still issues related to -- he has had issues if it wasn't charged correctly, the knee can stop swinging; it becomes completely stiff. If the socket is not fitting, the knee might not sense what position his leg is in and it can cause instability and Mr. Parks has fallen. He's most recently, that I was aware, was last year that he had fallen.

MR. STROKOVSKY: Mr. Bitman, if we can go back to the list. I would like to go the next bullet point, limited endurance.

BY MR. STROKOVSKY:

Q. Dr. Miknevich, so Mr. Parks has limited endurance as a result of this amputation, correct?

A. Yes.

Q. Can you just tell us what you mean by that when you say limited endurance?

A. So Mr. Parks had said prior to his amputation, he played sports. He walked miles. Now he can walk several blocks, but that's about it. He tires more easily.

And, again, people who walk abnormally use more energy. It's harder to walk. It tires them

out more than people who walk completely normally. So that gives him limited endurance.

Also, the fact that he doesn't sleep or his sleep is disrupted also affects his endurance. So there are days that he, as his father said, wants to curl up in a ball, but there are other days that he pushes himself and tries to do more. But then those are often days that he complains of more pain.

Q. You mentioned earlier that it's your understanding that Mr. Parks can walk up to 25 minutes before needing to rest due to pain.

A. That was what Mr. Parks told me.

Q. How does limited endurance, what impact would it have, if any, if Mr. Parks were to try other things other than walking, like other types of movements, I guess?

A. Could you give me an example?

Q. Sure.

For instance, let's say jogging on a treadmill. Is Mr. Parks able to do that?

A. He might be able to do it for short periods of time.

Q. Would that -- would his limited endurance have an impact on how long he would be able to jog?

A. Yes.
Q. How about lifting things; would his limited endurance have an impact on that?
A. Yes.
Q. Or bending, repetitive bending movements?
A. Any repetitive task. So it's a matter of doing something on a consistent sustained basis. So he can do things for brief periods, but he can't do it for long periods of time consistently.
Q. Is it common in amputees to have limited endurance?
A. Yes. There have been many studies done looking at energy costs associated with walking with an amputation, and, again, walking with Mr. Parks' level of amputation is about 60 times more effort than normal walking.
Q. What is his outlook with limited endurance? Is that something he will always deal with or will he -- is there a chance he will no longer have endurance issues?
A. Well, again, since he was going to the gym, he was doing somewhat better than he had initially following the amputation. But as he continues to get older, everyone, as they get older, your body has a harder time extracting oxygen into the cells.

Your heart has a harder time pumping. Eddie already has problems with his endurance because of the amputation itself. So as he ages with the amputation, his problems with endurance and ability to sustain any type of activity is going to become harder and harder.

Q. Do you think he can ever reach his endurance level that he had pre-amputation?

A. Based on what he described to me, that he was capable of doing the sports that he played, running, the extensive bicycling, I do not think he will ever get back to that.

Q. So his endurance will always be limited?

A. Yes.

MR. STROKOVSKY: Let's move to the next bullet point, Mr. Bitman, history of recurrent falls or near falls.

BY MR. STROKOVSKY:

Q. That's a condition that Mr. Parks has as a result of his amputation?

A. Yes.

Q. And, I guess, it's pretty self-explanatory, but I will ask it nonetheless. What does that mean?

A. Okay. So what that means is a fall is

actually falling on the ground or falling out of bed or falling somewhere.

Near falls are you stumble but you catch yourself, which is one of the things that microprocessors knee can do, is it has a feature called "stumble recovery" so instead of the knee just buckling suddenly, the computer says, Hey, we are falling, and it stiffens up so the patient can maybe catch themselves a little bit easier if they are starting to fall.

But the issue with falls in patients who have amputations like Mr. Parks as is in inclement weather, on a wet floor, sudden twisting and turning movements, it can confuse the prosthetic knee. The foot has no feeling. The foot doesn't have normal movement. So people are at risk of falling.

Amputees, there are many studies that look at fall risk, and there was a study from Canada that looked --

MR. HOSMER: Objection; hearsay.

THE COURT: Overruled.

THE WITNESS: That looked at patients who were in their early 60s and they had over 400 patients, and 50 percent of them

had fallen within the previous year and the other 50 were fearful of falling because they had fallen before.

So it's a very high incidence. It's something we ask amputees pretty much every month when we see them in a clinic, how many times have you fallen.

BY MR. STROKOVSKY:

Q. So falls or near falls are common in amputees?

A. Yes, it is.

Q. You talked about an amputee can fall even with his or her prosthetic on, correct?

A. Yes.

Q. What about are amputees at risk of falling when their prosthetic is off?

A. Yes.

Q. Could you explain a little bit what you have seen in your patients who have fallen without their prosthetic on?

A. Well, even with Mr. Parks, when he doesn't have his prosthesis on, he is either using crutches or a lot of times he will hop around the house on one leg. Again, you step on grease in the kitchen, you step on some water in the bathroom and you're going down. There is no way he can catch himself.

Q. Is it fair to say that Mr. Parks has fallen or had near falls ever since his amputation?
A. Yes, he has.
Q. Is he going to be at risk for this for the rest of his life?
A. Yes. And, again, as I said with other things, as he continues to get older and develops more compensatory use problems with other joints, more pain issues in his back, in his hip, in his other knee, the risk of falls will even get worse.
MR. STROKOVSKY: Why don't we move on, Mr. Bitman, to the second to last bullet point.
BY MR. STROKOVSKY:
Q. We already discussed this, right?
A. Yes.
Q. So heterotopic ossification, that's a condition that Mr. Parks has as a result of his amputation, correct?
A. Yes.
Q. Is that something that is permanent?
A. Unless it's -- in some cases if it gets severe enough that it's poking through the skin or causing other significant problems, they will operate on it. Usually, we try to avoid that if possible, but

sometimes there is no other option but to have it surgically removed.
Q. And is it common for the bone growth to continue over time?
A. Yes.
Q. We will move to the last bullet point and we already briefly discussed this. So we don't need to talk too, too much. But you already mentioned that as a result of his amputation, and you explained the reasons why, but Mr. Parks at times will experience pain in other parts of his body, correct?
A. Yes.
Q. That includes the left hip and thigh, the right hip, the lower back, shoulders and emotional pain, as well, correct?
A. Yes.
Q. Are these things that he has been dealing with to some degree over the last four years?
A. Yes, he has.
Q. Are these things you think he will be dealing with into the future?
A. Yes, they are.
Q. Do you think he will always be dealing with these issues as he gets older?

A. As I said before, these issues become more and more significant as people age.

MR. STROKOVSKY: Take that exhibit down, Mr. Bitman. Thank you.

BY MR. STROKOVSKY:

Q. So, Doctor, we just went through a list of diagnoses or conditions that Mr. Parks has as a result of his amputation and the debridement procedures as a result of what is already admitted to, from these diagnoses and your evaluation, you came up with future care recommendations; is that correct?

A. That's correct.

Q. And this is to cover his anticipated care for his whole life; is that correct?

A. Yes.

Q. So, I guess, in order to do that, is it your typical practice to determine what the person, whoever you're treating, or in this case, Mr. Parks, what his life expectancy is?

A. Yes.

Q. And what is your opinion as to Mr. Parks' life expectancy?

MR. HOSMER: Objection. Beyond the scope of her qualifications and for what she's

been proffered and for the reasons mentioned in my motion in limine.

THE COURT: I already ruled on your motion in limine.

Overruled.

Can you answer the question, Doctor?

THE WITNESS: Yes.

So we typically use the United States Government, the national vital statistics life tables as the source for looking at the current age someone is. And if they look at different ways, they break down the population. So we tend to use male or female, so we will uses gender. And then we tend to use the population for the whole life for males for the United States as the basis, or females if it was a female.

BY MR. STROKOVSKY:

Q. Using that particular life table, is that common for experts in your field?

A. Yes, it is. We take into account what the life tables looks at all individuals, so all males in the United States, and projects how long they may live. Occasionally, you will have a particular condition, kidney failure, cancer, something that

may make them less likely to live than their normal life expectancy.
Q. And what is your opinion, based off your updated report, using that table, as to Mr. Parks' future life expectancy?
A. I believe it was 44 years expected life expectancy.
Q. So he is 32 now. I'm not too bad at math. I think that means statistically per your table you expect him to live until he's 76?
A. Yes.
Q. So we have 44 years of future potential treatment to cover. So, Doctor, did you see a similar list regarding your future care recommendations that was similar to the list we just went over with the diagnoses?
A. Yes.
Q. And do you feel that list is something that would help the jury in explaining your future care recommendations?
A. I believe it would, yes.
MR. STROKOVSKY: Mr. Bitman, if you could please show Dr. Miknevich P-44.
THE COURT: Do you have an objection?

MR. HOSMER: I do not.
THE COURT: You may publish.
BY MR. STROKOVSKY:
Q. Those are the bullet points, right, for medical care recommendations?
A. Yes.
Q. Well, let's start with the first bullet point. So, Dr. Miknevich, do you have recommendations for Mr. Parks' future care in this field of medical health consultations and interventions?
A. Yes.
Q. Can you please tell us what those recommendations are? And I understand we are going through a lot, so as was instructed earlier, if you need to glance at your report to refresh your recollection, please feel free to do so.
A. So based on my evaluation of Mr. Parks and his current problems, it was anticipated that he will need to follow with his physiatrist, that's typically on an every six-month basis for the rest of his life. That's so that his prosthetic supply changes can be addressed. If he's starting to develop other compensatory overuse kind of problems, they can deal with those.
We also thought it was reasonable that he

periodically see an orthopedic surgeon related to again compensatory overuse issues, the heterotopic bone formation as that worsens as he ages. So I think we put that as once every five years.

Q. These recommendations, is that what you recommend for your own patients?

A. Yes.

Q. I think you just mentioned the frequency for seeing an orthopedic surgeon or were you talking about all doctors?

A. No. That was specifically for orthopedics. He would only see them when he was referred.

Now, I also put in pain management. As I had mentioned before, Mr. Parks is somewhat fearful of the idea of other interventions that may help his pain, but he did tell me when I spoke to him during our last meeting, that if it was something that would really be helpful, he was open to at least exploring it.

He had briefly seen a pain management physician earlier in his course, but that was during COVID and that didn't continue.

Currently, Dr. Tucker orders his pain medication. Physicians sometimes move on or things change over a course of 44 years, so if he is not

ordering his pain medication, he would need a pain physician to do that. Pain physicians can also address other types of interventions to deal with pain such as possibly injecting the neuromas that he has or even consideration of something called a "spinal cord stimulator."

Q. Have you seen in the past other patients of yours having concerns or fears about going to the hospital or seeing doctors?

MR. HOSMER: Objection; relevance.

THE COURT: Overruled.

THE WITNESS: Yes. People are very fearful of having more procedures and things done.

BY MR. STROKOVSKY:

Q. Regarding your medical health consultations and recommended interventions, is there anything else you would like to tell the jury before we move on?

A. No.

Q. Okay. Then let's move on to the next one.

The next bullet point, x-rays, MRIs, EMGs. So actually, you know what, I apologize, Doctor, just to clean things up.

Everything we are going to talk about, about

future medical care, is it your opinion that's all related or due to Mr. Parks' amputation?

A. Yes. Everything I have listed is directly related to his amputation.

Q. All right. Back to x-rays, MRIs, EMGs.

So Mr. Parks is going to need x-rays, MRIs and EMGs, correct?

A. That's correct.

Q. And why are you making those recommendations?

A. Because as we discussed, he's going to live another 44 years. He is going to age with an amputation, which, again, puts more strain on other joints. He is already having pain in his left hip and his lower back. Pain in his shoulders. That is anticipated to continue to be a problem and probably worsen as he ages, so he will need periodic x-rays, MRI scans to further look at his discs in his spine if those continue to worsen or his back pain continues to worsen.

EMG studies, people who use arms and hands for weight-bearing often can get things like carpal tunnel. He was diagnosed with a pinched nerve in his back by the pain doctor that he had seen. That was done on the EMG test. So we had included a couple of EMG studies for the future.

Q. These types of studies, do you make those recommendations for your own patients?
A. Yes, I do.
Q. Let's move on to the next bullet point, physical therapy -- physical and occupational therapy and evaluation. So Mr. Parks is going to require those?
A. Yes.
Q. And can you just tell us a little bit about what that is and why you think that's necessary for Mr. Parks.
A. So as we mentioned, he's going to be getting a new socket. When he gets his new socket, it's recommended that he be seen by physical therapy for a short course of therapy to try to get him walking more normally or as normally as he can. With the physical therapy, sort of get him on a good program that he could then continue when he goes back to the gym.

Occupational therapy looks at not only weight-bearing joints in the shoulders, but it also looks at things associated with equipment needs that he might need in the home to help with his self-care. Again, especially as he gets older. And every time he gets a new -- as technology keeps

changing and improving, if he gets a different type of prosthetic leg that does something different than what he has now, he may need additional therapy to learn how to use it.

Q. And I just heard you say medical equipment needs -- actually, strike that.

Physical therapy, occupational therapy, you make those recommendations for your own patients, correct?

A. Yes.

Q. But let's move on to medical equipment needs.

Mr. Parks is going to need medical equipment in the future; is that correct?

A. That's correct.

Q. What type of equipment do you feel that he is going to need?

A. Well, again, we are looking at Mr. Parks over a 40-plus-year life expectancy. Right now he doesn't need things like a hospital bed, but as he ages, that's going to probably become something that he will need. I see that happening with patients that I currently treat as they end up needing joint replacements because they wear out a different joint or have worsening back problems or can no longer ambulate. So that type of

equipment -- I don't know if we have wheelchairs under medical equipment or if that's a separate.

Q. Feel free to look at your report, if you'd like.

A. If we can just take the highlighted medical equipment needs off, then I can see the rest of it.

Q. Wheelchairs and scooters?

A. We have it separately.

Other medical equipment, for example, safety in the shower is very important when you're an amputee. So things like grab bars, a tub bench so he doesn't slip and fall in the shower because, again, it's wet and he has one leg. Those are concerns.

Q. You mentioned you know this is over the course of 40-plus years, and coincidentally you have been treating amputees for 40-plus years; is that correct?

A. Well, 39.

Q. Almost 40 years.

So have you treated amputee patients of your own where you see them at a younger age and you've seen them grow older?

A. I have many patients that I have seen.

Q. When you're talking about the problems you see

as amputees age, is that a common thing that you have seen in your own patients?
A. Yes. As I said, I see the need for joint replacements. I have injected their joints. I'm ordering imaging for them. I'm ordering new equipment for their homes stair glides, grab bars, other types of equipment that they may need to keep them safe as they get older.
Q. Let's move on to the next bullet point, and this is one we will spend a little more time on than the others. Prosthetics and supplies for the prosthetics. Is it fair that -- silly question -- he's obviously not getting his leg back. He is going to need prosthetics for the rest of his life?
A. That's correct.
Q. How long do prosthetics typically last?
A. So on most prosthetic components, particularly some of the higher tech components like he has his knee, they come with a three-year warranty period, so they're quite costly. And to try to get them repaired once they are out of warranty, maybe to do a minor adjustment, could be thousands and thousands of dollars. So usually once it's out of warranty period, it malfunctions, we get them replaced.

Q. And you know the type of prosthetic that Mr. Parks has right now, correct?
A. Yes.
Q. Is it the same prosthetic he has always had?
A. No.
Q. So you mentioned before he didn't really have a prosthetic the first year, 2019, and then towards the end of 2019, he was able to start getting a prosthetic; is that correct?
A. That's correct.
Q. Do you know what type of prosthetic that first one was?
A. Yes. So it was -- basically, it had a mechanical knee unit, which because of the length of Mr. Parks' residual limb, it's something called a polycentric knee, where instead of the hinge sticking straight out, it folds back on itself. But it is just the mechanical knee, so if you are going down a grade or stepping the wrong way, it can buckle abruptly. So a much more basic prosthesis.
Q. It's my understanding for at least Mr. Parks' current prosthetic, it's customized to his residual limb; is that correct?
A. Yes.

Q. And by doing that, a prosthetist -- and a prosthetist is a professional who makes the prosthetic; is that correct?
A. That's correct.
Q. That process includes making a cast, or I don't know if mold would be the right word, to understand the size and shape of the residual limb?
A. So there are different ways that they do it. To take a cast of the limb is very commonly done. Some practitioners will scan the residual limb and make it computerized CAM mold and make it from there.

But, typically, it involves several visits for making the cast, making what they call a check or test socket, seeing how that fits, adjusting it, bringing the patient back again. And this goes on often for four or five visits before they eventually get the new socket.
Q. For his first leg that he started the process in 2019, did that also require a similar process to make it?
A. Yes.
Q. And then after it's made, he then has to learn how it use it, right?
A. That's correct.

Q. And is that typically easy for your patients?
A. Not as new amputees. Especially, above the knee is more difficult than below the knee. But even below-the-knee people typically need some physical therapy to be able to use the prosthesis correctly.
Q. And then after a course of physical therapy, if the patient gets to a baseline or good enough to use it at home, then they can start using it; is that accurate?
A. Yes.
Q. And is that the process that Mr. Parks went through for his first leg?
A. Yes.
Q. Is it your understanding that at least at first, Mr. Parks would use other assistive devices like a cane to walk?
A. Yes, crutches, cane.
Q. And we talked about how now he can walk 25 minutes at a time. When he got the first leg, did you have an understanding if he was able to do that then?
A. No, he could not do that then.
Q. And then was -- is it fair it was about a year after --

MR. HOSMER: Objection; leading.
THE COURT: Overruled.
BY MR. STROKOVSKY:
Q. Is it fair it was about a year after he got his starter prosthetic for when he got the prosthetic he has now?
A. Yes.
Q. Again, it's the same process. He has to get, I guess, approved for it, get it casted, make sure it fits and then be trained on it?
A. So he had to wear the preparatory or the initial prosthesis and show again the motivation and, basically, the ability to progress his walking to become a community ambulator for him to qualify for the computerized knee, which he did, and that was about a year later.
Q. We talked about the casting process. Did you get to see a video of Mr. Parks actually going through that casting process?
A. Yes, I did.
Q. Do you think showing that video of the casting process would help the jury understand the process of what an amputee has to go through in getting a prosthetic?
A. I think it would be helpful.

MR. STROKOVSKY: Mr. Bitman, if you can show to Dr. Miknevich first P-21.

THE COURT: Without objection?

MR. HOSMER: Correct.

THE COURT: Thank you.

You may proceed, Counsel.

BY MR. STROKOVSKY:

Q. Is that the video you saw?

A. Yes.

MR. STROKOVSKY: Maybe, Mr. Bitman, if you can start it from the beginning and we'll play it for the jury.

BY MR. STROKOVSKY:

Q. Dr. Miknevich, if you could just explain to the jury what we are looking at after he hits play.

A. This is his prosthetist. He's making a cast of Mr. Parks' residual limb. From that cast, he is going to fill that cast. And from that, he is going to pull a socket over it and make a socket.

They have to wait for that to dry so they can remove it.

So if the patient -- somebody whose volume is changing, the casts are not made to adjust for volume. There are some newer socket designs that are volume adjustable, which is what he has been

ordered for his new socket because his limb volume does change.

MR. STROKOVSKY: You can stop the video, Mr. Bitman. Thank you.

BY MR. STROKOVSKY:

Q. So Mr. Parks' current prosthetic, that's better than his first prosthetic type, right?

A. Yes.

Q. But how does it compare to an actual leg?

A. It will never be remotely close to his own leg.

Q. Dr. Miknevich, if Mr. Parks would be able to take off his prosthetic so you can show the jury the components of his prosthetic, do you think that would be helpful in having the jury understand how a prosthetic is used and applied?

A. If Mr. Parks is willing to do that and the Judge is willing to do that.

THE COURT: Without objection?

MR. HOSMER: There is an objection.

THE COURT: I will overrule that objection.

MR. PARKS: I'm okay with it, if you are.

MR. STROKOVSKY: If I may, Your

Honor, if we could have one minute where Mr. Parks could perhaps go behind the screen to take his leg off.

THE COURT: Is there anything short of asking Mr. Parks to remove the leg that you need to form an opinion, Doctor?

THE WITNESS: The purpose was to help the jury understand what his components are in his prosthesis.

MR. STROKOVSKY: And, also, just to show the day-to-day life of being an amputee using a prosthesis. I think it really shows again his day-to-day life, something he has to do every single day, and he's going to have to do for the rest of his life. That's why we find it highly relevant.

THE COURT: I will allow it.

MR. STROKOVSKY: Eddie, if you can just come back here for one second and take off your leg.

May I approach, Your Honor?

THE COURT: You may.

THE WITNESS: Jordan, if you want to show it to the jury, I can explain the parts.

THE COURT: Let's do that just for

the benefit of the court reporter. What we have is the plaintiff's prosthetic leg that has been removed. It's not going to be entered as an exhibit, but rather as a demonstration for the purposes of supporting the expert's testimony.

May we proceed?

MR. STROKOVSKY: Yes.

BY MR. STROKOVSKY:

Q. First off, do you have a sense how heavy this is?

A. The knee itself weighs 3 pounds. The foot is probably another pound and a half. Those things are often 8, 10 pounds.

Q. I probably need to hit the gym. It felt heavier than that.

MR. HOSMER: Objection.

THE COURT: My first problem is you're not on the microphone, so we lose that. So please move that table mic to the furthest corner.

MR. STROKOVSKY: I will strike that comment, I apologize.

THE COURT: We don't editorialize. We just ask questions and hope the witness can

answer.
BY MR. STROKOVSKY:
Q. So start at the top or --
A. The thing they're not seeing is Mr. Parks has a liner on his skin.
Q. We can bring him out.
THE COURT: No, that's not necessary. Describe it, please.
THE WITNESS: It's a gel liner. I always describe them that they feel like gummy bears. But it forms an interface between the skin and the socket because there is always movement between the bones, the tissue, the socket. So when people sweat, when people rub inside the socket or it gets too loose or too fight, they can rub sores on the limbs. The purpose of the gel liner is to try to reduce it. It doesn't reduce it completely. People still run into issues with excessive sweating and skin issues.
Again, Mr. Parks' has had issues with his skin, folliculitis. Skin irritation of hair follicles on his limb from wearing the limb.
So over the gel liner fits a socket

and the socket is the cup that his leg fits down inside.

BY MR. STROKOVSKY:

Q. In here?

A. Yes.

Inside of there they put a flexible material to just give him a little more cushion. That's the clear white material that you can see on the brim and where the windows are in the socket.

And then we have the computerized knee. That's that particular knee is called the C-leg.

Q. Where is that around here?

A. That whole thing in your hand.

So that has to be plugged in and charged on a regular basis. Typically, people do it every night to allow the knee to swing and to move.

Q. Is a prosthetic like this like an electrical toothbrush, if it's not charged, you can still manually use it?

A. So it depends on the type of microprocessor knee. With the C-leg, if you don't charge it, it becomes stiff, so he will be walking sort of like a peg-leg.

There are other manufacturers that make them and if you don't charge theirs, it becomes

free-swinging. So there are differences.

THE COURT: Anything more with the prosthesis?

MR. STROKOVSKY: Sure.

BY MR. STROKOVSKY:

Q. What are these clear things we see here?

A. Those are windows. So that is between the hard socket and the flexible socket. They put the window in the front because of Eddie's skin irritations. And then the back they typically do it to allow him to sit more level, because, otherwise, the socket is round and it tends to push people up when they are sitting and make their sitting balance worse when they are sitting on a chair.

Q. How would turning this into a window help with skin issues?

A. If the bone is hitting into the socket, that material has a little more give to it then the hard material.

Q. Is there anything else?

A. Just the prosthetic foot, if you want to pull the sock off.

Q. Before I forget, is this the charger back here?

A. Yes, that's the hydraulic cylinder in the back. You can see that. That moves by the computer.

So the type of foot he has is something called an "energy-storing foot" which typically they're made out of carbon. And when he loads his weight, it gives him some spring-back. But because of the length of his leg, his is a fairly low profile, so it doesn't have as much movement as somebody who had a shorter leg, let's say.

Q. How did this get put on? How did it get put on? So he would have to put his liner on --

THE COURT: Counsel, step back a little bit from the jury. Thank you.

THE WITNESS: He would have to put his liner on and he wears a seal ring that he rolls up over the liner -- it's sort of like a mason jar ring -- and he pushes his leg down into the socket to keep it on.

BY MR. STROKOVSKY:

Q. Do you know how long that typically takes an amputee?

A. It depends. Some people have more swelling in the mornings and it takes them a bit longer on certain days. It varies.

Q. Is there anything else while we have this here?
A. The only other thing to just show with that foot is even though the foot moves because he loads energy into the carbon, it doesn't move like a foot moves. I mean, it's quite stiff.
Q. What is the significance of that?
A. Well, we discussed before some of the fall risks. You know, walking on uneven surfaces, the feet don't give, your own foot would give. There is no rotation in that device if you're twisting. So somebody who is cooking, let's say, may need to go from side to side very quickly. They're not going to be able to do that as well. Or somebody who is a golfer may need something with more rotation put into it.
Q. Is there anything else?
A. No.

MR. STROKOVSKY: I will be right back.

THE COURT: Counsel, just from a standpoint of time management, how much more do you think you have with your direct examination of the doctor?

MR. STROKOVSKY: We are getting

closer to the end. Just a few more -- it would be hopefully no more than a half hour.

THE COURT: Please proceed with alacrity.

MR. STROKOVSKY: Understood. Thank you, Your Honor.

BY MR. STROKOVSKY:

Q. Dr. Miknevich, you mentioned liners. Typically, what material are liners?

A. Sometimes they're silicone. Sometimes they are a mineral oil or a polyurethane material.

Q. I think you mentioned, as well, that the skin sweats when a prosthetic is being used; is that correct?

A. Yes.

Q. Does that sweat go onto the liner?

A. It sits inside the liner.

Q. Is there any type of maintenance that an amputee has to do to maintain the liner?

A. Yes. They have to wash the liner every day. Again, if they're building up sweat, they can -- the liner can actually slide off their leg during the day. So sometimes they have to stop and dry their leg off. Sometimes we use antiperspirant.

There are some liner designs that are supposed

to take more sweat off than others, away than other ones, but there are not any that have a seal like he has.

Q. How do they get clean?

A. Usually, with soap and water.

Q. Is there a particular type of soap?

A. Usually, we recommend liquid hand soap.

Q. What happens if an amputee doesn't wash the liner?

A. They're prone to get skin infections, fungal infections, bacterial infections of the skin, rashes.

Q. When a prosthetic is being used with things like the limb itself, the liners or any plies that are used, can they give off a smell?

A. Yes. Because the liners are made out of rubber sort of material, silicone material, they typically do have an odor.

Q. Regarding skin issues, you mentioned earlier, I believe, that you noticed Mr. Parks with, I believe, you called it folliculitis?

A. Yes.

Q. This year?

A. Yes.

Q. What exactly is folliculitis?

A. We all have hair follicles on our extremities, on our faces. So when those hair follicles get plugged, they can create little bumps that can sometimes get a little white top on them and act like a pimple. Sometimes they can actually become an abscess or cause more issues. But we see them in the amputees often with issues related to sweat, as well as issues related to friction and pressure.

Q. You saw that while you were on a Zoom call with Mr. Parks; is that correct?

A. Yes. And subsequently saw a photo that showed it much more clearly.

Q. Photos taken during that session?

A. During that session, yes.

Q. And you have looked at those photos?

A. Yes, I have.

Q. Do those photos fairly and accurately depict his skin condition at that time?

A. Yes they do.

MR. STROKOVSKY: Mr. Bitman, if you can show Dr. Miknevich P-31, which are photographs taken on February 9, 2023.

THE COURT: Exhibit 1?

MR. STROKOVSKY: P-31, Your Honor.

THE COURT: Without objection?

MR. HOSMER: I have to see it, Your Honor.

MR. STROKOVSKY: Mr. Bitman, if you could publish that for Mr. Hosmer.

MR. HOSMER: I see it here, Your Honor. If that's what she's going to testify to, I have no objection.

THE COURT: Thank you.

Proceed.

BY MR. STROKOVSKY:

Q. Looking at P-31A, again, that's a photo of what you saw that day?

A. Yes.

MR. STROKOVSKY: If we can publish that to the jury, please?

THE COURT: You may.

THE WITNESS: So as I mentioned before with his socket, they have certain areas where they cut out the hard socket. So in patients with a very long limb, that bone sort of acts like a bell clapper and hits against the side in the socket. So he's forming a callous down around that edge of the bone. And they did put a window there to try to relieve that. But, again, they're making

him a new socket.

But this, you look in the middle of that, as well as some other places on his limb, you're seeing little bumps and little almost little crater areas that are signs of the skin irritation.

BY MR. STROKOVSKY:

Q. Could I try pointing it out with the laser pointer and let me know if I'm on the right spot.

What is this?

A. That's the callous with some of them in the limb. Even if you come up higher on his leg toward the top up in there, there is a lot more of them.

Q. What is the significance of having these?

A. Again, to us, that can be painful. Patients can complain of pain with them. They can get worse. They can get infected.

Again, for us, we often recognize that there is a sign that the patient is getting too much friction or pressure in the socket. Something needs to be done.

MR. STROKOVSKY: Mr. Bitman, can you please show for the parties and Dr. Miknevich P-31B.

BY MR. STROKOVSKY:
Q. Is this also a picture that you saw that day?
THE COURT: Without objection?
MR. HOSMER: No objection, Your Honor.
THE COURT: Thank you.
THE WITNESS: Yes, it is.
MR. STROKOVSKY: If we could publish that, Your Honor.
THE COURT: You may.
THE WITNESS: That picture is really just showing, because he still has his femoral condyles from his knee, but he just doesn't have the rest of the knee. The lower part of his residual limb is fairly high which, again, can create fitting problems. But it's also showing his scar and there is an area in the mid portion of the scar where that tissue is adherent.
MR. STROKOVSKY: Zoom in on the scar, Mr. Bitman.
BY MR. STROKOVSKY:
Q. Is there anything else you would like to point out right now, Dr. Miknevich?
A. No. Those adherent areas can sometimes be a

source where the skin will get more irritated because it doesn't move more freely there.
Q. This area right here, is that the fist --
A. That's the callous that we saw, yes.
Q. This here, is this the --
A. That's the one in the front, yes.
Q. What, if you know, again, if you don't know, that's perfectly fine, what are we looking at here?
A. Those are leftover marks from the retention sutures he had in when he had the original amputation.
MR. STROKOVSKY: Take that down.
BY MR. STROKOVSKY:
Q. Do you expect Mr. Parks to be at risk for skin issues in the future?
A. Yes.
Q. Is that a risk that will ever go away?
A. No.
Q. Back to Mr. Parks' prosthetic, I think you mentioned before about if it's not being charged and things like that. But what about if there are any issues with some of its parts; does that have any significance?
A. If there is problems with any of the parts, it won't work.

Q. And --
A. Or it may work incorrectly.
Q. Do you know if one way or another if Mr. Parks has had issues with his prosthetic pertaining to parts in the past?
A. Yes, he has. He has had issues with his liner actually falling off on one occasion, at least that I saw in his prosthetist's notes.

He's also had mechanical issues with the knee not working and they thought that was due to the problems that his socket wasn't fitting and it wasn't triggering the knee correctly.
Q. And as we saw in that video of him getting casted, it's expected he will get a new socket; is that correct?
A. Yes.
Q. Is this the first new socket since he received his leg?
A. No. He has had, I want to say, three sockets.

MR. STROKOVSKY: Mr. Bitman, if we could go back to the medical care recommendations exhibit. Thank you.

BY MR. STROKOVSKY:
Q. So let's talk specifically about the prosthetics and prosthetic parts that Mr. Parks

will need.

So we see an Otto Bock C-leg 4 microprocessor every five years. It's your opinion that Mr. Parks will require that prosthetic every five years?

A. Yes. Typically, the warranty is up in three years so we would say three to five. But as he gets older, he will be relying on some other mobility things such as possibly a scooter. So we reduce the frequency of it to be conservative.

Q. So, basically, you think currently he may need one every few years, but you're just factoring in he may not need it as he gets much older?

A. Correct. Or he may not be able to use it when he is in his late 70s.

Q. Underneath that we see annual maintenance. So that's a recommendation you have, correct?

A. Yes.

Q. What does that mean?

A. Just that they check all the components, make sure they're safe; that he is not going to have something snap or break because it is mechanical.

Q. Layperson's terms, is it similar to getting your car inspected every year?

A. Exactly.

Q. Let's go down to the next part, socket

replacement every two three years.

So that's a recommendation you have, right?

A. Yes.

Q. And can you explain to us, again, why, I guess, what the purpose of the socket is and why it's necessary to change out every two to three years?

A. So, again, the socket is what attaches the leg to the patient. So, again, any changes in weight, Mr. Parks has had some weight changes throughout this period of time. If he loses weight, gains weight, develops sores, it may necessitate a new socket. So we typically replace the socket more frequently than we replace the other components.

Q. In the amputees that you treat, do you see them requiring new sockets due to weight change?

A. Yes.

Q. In your experience, hypothetically, if Mr. Parks were to gain weight, what is a certain amount of weight that would make you think he might need a new socket?

A. Really depends. We have some patients who it can be as little as 10 pounds can make a huge difference. They just can't get it on. Other people, it may be more than that.

Q. Have you seen in your patients, weights fluctuate up and down over the course of the years you treat them?
A. Yes. And, also, as people tend to get older, we see more issues with what we call edema or swelling. So that can create significant problems, as well, with the fit of the socket if the patient is holding water or retaining water.
Q. And next we have liners and socks. We already spoke about liners and socks, but, generally speaking --
A. Every six months.
Q. Every six months Mr. Parks needs new liners and socks?
A. Yes, because they wear out and they stretch out.
Q. And let's go to the next line, water leg prosthetic with maintenance, supplies, socket replacements. First off, can you tell us what is water leg?
A. So a water utility leg is basically a prosthesis that you can get wet. Mr. Parks liked to swim before. That was something he wanted to do. His current microprocessor C-leg is not waterproof. If he gets that wet, he will ruin the

knee.

So this is a much more basic prosthesis, but none of the parts would rust if they get wet. So he has been fearful of being in the shower around the water in the shower. So you can wear a water prosthesis into the shower for safety. He could also wear it to the beach or to a swimming pool.

Q. How often does a water leg prosthetic need to be changed out?

A. I want to say it's similar, maybe five to seven years.

Q. Is it the same thing with relation to maintenance, still requires yearly maintenance?

A. Sockets still would need to be changed, the liners and socks would need to be changed.

Q. So liners and socks changed every six months?

A. Yes.

Q. Sockets replaced every two to three years?

A. Yes.

Q. That's for the rest of his life?

A. Yes.

Q. If we can move on to wheelchairs and scooters. So it's your opinion that Mr. Parks is going to need wheelchairs and scooters in the future; is that correct?

A. Yes.
Q. I guess what type of wheelchairs and scooters and why.
A. So Mr. Parks did use a manual wheelchair when he first had the amputation briefly. But, again, there are going to be times that he can't wear his prosthesis because of a skin problem or some other problem with pain or joint problem, or the prosthesis may be broke and needs to be in for repair. So typically he would need to have a basic wheelchair available.

The scooter becomes more of an issue, again, as he ages with the amputation because the energy cost of walking in the community becomes so much more. So it's not unreasonable starting at, I believe, age 60 is what we recommended that he look into power mobility such as a scooter for distances.
Q. Do you make those same recommendations for your own patients?
A. Yes.
Q. Why don't we move, go on to the next bullet point emergency care.

So it's your opinion that Mr. Parks is going to need emergency care in the future?

A. Yes.
Q. What do you mean when you say emergency care?
A. So over the -- again, his life expectancy of 40-plus years, he has had falls. He's fallen before. We said it's going to be more of an issue as he ages. So emergency room visits may be necessary for him should he fall and have an injury related to the use of his prosthetic, so that's typically what we mean.

Or should he develop a skin infection, let's say that causes a fever or an open wound, he may need to be seen in the emergency room.

Q. Why don't we move on to the next bullet point. We are almost done. We are getting there.

The next bullet point, interventions and surgical procedures. I will just briefly go through the whole list. Neuroma scar injections muscle reinnervation with neuroma resection, resection of heterotopic bone and spinal cord stimulator.

So these are all recommendations that you have made for his future; is that correct?
A. Yes. So the spinal cord stimulator we recommend it at trial. That's a device that is implanted into the spine and it can be localized to

control pain in certain areas of the body. It's being used with success with patients with both phantom limb pain, as well as residual limb pain.

We mentioned the heterotopic bone resection already.

Muscle reinnervation is the way to deal with the neuromas that form in the limb. Again, he continues to have pain. He's using medical marijuana at this point.

But, you know, some of these options may be things that may allow him to use less medication if he is willing to consider them in the future. But they are surgical procedures.

And then the neuroma or scar injections, if you can localize an area in the scar that is particularly painful, you can inject it with something that will kill that nerve ending. It doesn't get rid of all the neuromas in the limb, though.

Q. But a neuroma, slash, scar injection may provide some pain relief?

A. Yes.

Q. Is that something you recommend for your own patients?

A. Yes. And it's something I do, as well.

Q. When was the last time you did a neuroma or scar injection?
A. I did two of them last week.
Q. Briefly, can you explain what is involved with the muscle reinnervation with neuroma resection?
A. So it's bigger surgery, but it's a more effective treatment than doing the scar injections or neuroma injections. So they go up higher on the sciatic nerve and they actually cut the nerve where the neuromas form, let that die off, and then they bury the end of the nerve that is left into a muscle so that the nerve, which keeps trying to grow and find a new home, finds a home.

What they have been finding with this procedure, they call it TMR, targeted muscle reinnervation, in cases where they are doing it at the time of the amputation, they are seeing people who never have phantom pain. When it's done later for nerve pain, phantom limb pain, it's about 50 percent statistically what they're seeing in terms of improvement.

But, again, if we can localize a particular neuroma and get that resected and buried, it can be very helpful in terms of pain.
Q. The resection of heterotopic bone, you already

briefly discussed what that procedure entails, right?
A. Yes.
Q. The spinal cord stimulator, so that is something you said you recommend first on a trial basis. What do you mean by that?
A. So what they will do at the University where we tend to do them, they will implant the leads into the patient's spine on a trial basis and see if it provides pain relief. If it does, then they actually implant the stimulator with the battery pack.
Q. And then if it's -- if you reached the next level after a trial, is it permanent?
A. Then it's implanted, it's permanent. The battery has to be replaced, I believe, every eight to ten years.
Q. And is that something you have recommended for your own amputee patients?
A. Yes.
Q. Why?
A. As I mentioned before, I mean, treating amputee pain can be very challenging. It often requires multiple ways to attack it and approach it. And for people who failed a lot of other

interventions, it is something that is very helpful.

Q. Let's move on to the final bullet point.

Home health aide services, starting at age 60.

So you recommend that Mr. Parks needs a home health aide when he reaches 60.

A. Yes.

Q. Why?

A. Well, again, Mr. Parks lives by himself. I'm assuming at some point his son who stays with him sometimes will not be there. He is going to need more assistance with things with his own self-care. As things like cooking, doing his laundry, as he develops more of these compensatory overuse problems with aging.

Q. Is that something you recommended for your own patients?

A. Yes, it is.

Q. Do you have an idea of how many hours a day he would require it?

A. I believe I recommended six to eight, starting at age 60.

Q. Does that change at all as he gets older?

A. Six to eight hours daily for life expectancy, starting at age 60. As he ages, this would

increase to 10 to 12 hours, beginning at age 70 and afterward.
Q. Why would it -- why do you feel it would increase when he reaches age 70?
A. Because, again, people's mobility in general becomes more of a problem as they age, and with him aging with an amputation, it compounds that.
Q. Mr. Parks right now is a young 32. What do you see happening to him if he's in his 60s and doesn't have home health aide services in the home?
A. Well, he will be at more risk for injury. He may need to move into some type of assisted living if he can't live independently. So it's a way to try to keep him living at home.

THE COURT: Counsel, where are we with respect to reaching a conclusion on this witness and the witness is going to have to be offered for cross-examination, as well?

MR. STROKOVSKY: Sure.

THE COURT: I want to take a five-minute quick break. There is a lot of information that you're being presented with. I'd like you to keep you as fresh as we can. So Mike will escort you out and maybe stretch, if not, take a comfort break, as I call it.

We will see you in about five minutes. Thank you very much for your attention.

(Jury exits courtroom 3:28 p.m.)

THE COURT: So I'm looking at the clock. I call this time management. I don't mean to interrupt anyone's presentation of evidence. When do you think you will be able to get to a conclusion of the substantive evidence and reach an opinion that you're going to, I guess, posit to the jury, when will that happen?

MR. STROKOVSKY: Hopefully within 15 minutes.

THE COURT: Okay. And so, again, I understand that there is some vagaries to it, but be mindful. I do want to have your witness offered for cross-examination today and I, therefore, need you to give a conclusion that the jury will have to consider during that cross-examination. So let's get that done.

I hate to hold you over, Doctor, for another day, and some of us are volunteers, some of us have to be here. I apologize, we

are trying to be as efficient as we can and being fair at the same time.

(Brief recess.)

(Jury enters courtroom at 3:38 p.m.)

THE COURT: Thank you very much, ladies and gentlemen.

My plan, as I promised you before when we first met, is a hard stop at five to get you back on your way home. The witness is going to continue with her testimony. We may begin the cross-examination by the defendant before five, but in any event, that's our game plan.

We will meet again first thing at nine o'clock. When you're all here and ready to go, we will get started right away. As always, the attorneys and the Court will continue to work when you're not here to continue to make this as fair and as efficient as we can.

Thank you again, Counsel. You may continue direct examination.

MR. STROKOVSKY: Thank you, Your Honor.

BY MR. STROKOVSKY:
Q. So now that we discussed your recommendation for Mr. Parks to have a home health aide when he turns 60. Did you generally provide us all of your recommendations for future care that you believe Mr. Parks needs over the course of his life because of his amputation?
A. Yes.
Q. And all of the conditions and diagnoses you and I generally covered that, as well, including everything we went over that was listed in Exhibit P-43 listing out those conditions; is that correct?
A. Yes.
Q. And those are all conditions that you believe he has as a result of the amputation; is that correct?
A. Yes.
Q. With the exception of the debridement procedures, which preceded that, correct?
A. That's correct.
Q. In your work as a physiatrist, do you review work capabilities of your patients?
A. Yes, I do.
MR. HOSMER: Objection. Same basis as before.

THE COURT: I will overrule it with the limitation I already advised plaintiff's counsel.

BY MR. STROKOVSKY:

Q. Are you aware of what job Eddie Parks had before his amputation?

A. Yes.

MR. HOSMER: Objection. Same basis.

THE COURT: Overruled.

THE WITNESS: It was a certified nursing assistant.

BY MR. STROKOVSKY:

Q. Do you have a general understanding of the physical requirements for that job?

A. Yes.

Q. What are some of those physical requirements?

A. So as certified nursing assistant, depending on where you're working, if it's a skilled nursing facility, which is a commonplace that they work, or a hospital, you're responsible for helping the patients with their bathing, their toileting, feeding them, if necessary, walking them if they need to be walked, transferring them from bed to chairs, from bed to wheelchair, for example. Those are some of the tasks. You would have to get them

dressed. So all of those things fall under certified nurse assistants.

Q. Do you think Eddie can meet those physical requirements today?

MR. HOSMER: Objection. Same basis.

THE COURT: I hope it's a different basis.

Sustained.

BY MR. STROKOVSKY:

Q. Are you familiar with the physical requirements involved with cooking?

A. Yes.

Q. Do you feel that or do you have an opinion one way or another if Mr. Parks physically can do the tasks involved with cooking for long periods of time?

MR. HOSMER: Objection. Same basis.

THE COURT: Overruled.

THE WITNESS: So the big issue with Mr. Parks is, yes, he cooks some meals for himself, for his son. That's a very different situation than somebody who is cooking for a job, who is working in a restaurant, who is working even in a food truck with a high-paced clientele. They have to be able to turn

quickly and in close quarters. They have to be able to bend, lift, be distracted while they're doing other tasks. There is grease. There is water on the floors. So there is again a high fall risk. So it's physical labor, as well as the potential fall risk.

Could somebody do it on a short-term basis? Possibly. But if we are looking at a lifetime of work, he's physically not going to be capable of doing that long term.

BY MR. STROKOVSKY:

Q. Does Mr. Parks have any physical limitations with lifting things?

A. So there are weight limitations on the computerized knee. So the maximum weight you can have on that prosthesis is a total of 300 pounds. So he's 200, approximately, now. So he couldn't ever lift anything over more than a hundred. It could break the prosthesis.

But, again, it's more of a matter of could he do that on a repetitive basis. You know, he has issues with carrying things and worrying about whether he is going to fall or not, that becomes an issue when you're trying to be cooking, lifting heavy pots and moving things on stoves where there

is burning flames.
Q. Would your discussion earlier about limited endurance, does that come into play, as well, with his physical limitations?
A. That comes into play, as well.
Mr. Parks also uses medical marijuana, which is an issue for most employers in terms of passing drug testing.
Q. Do you think Mr. Parks' physical limitations will improve, stay the same or get worse as he ages?
A. They will get worse as he ages. So the goal for Mr. Parks is to find a job that he would be capable of doing over the long --
MR. HOSMER: Objection. Again, this is --
THE COURT: Counsel, there is not a claim for wage loss in this case?
MR. STROKOVSKY: There is not.
THE COURT: I want to be clear that your testimony that you're asking this witness be not portrayed as having any basis of a claim for wage loss. The prospective employment either.
MR. STROKOVSKY: Yes. It only goes

toward the noneconomic damages --

THE COURT: That's all you need to say. So the jury understands what I'm saying there is not a job loss claim in this. You can continue with that understanding.

MR. STROKOVSKY: Sure.

BY MR. STROKOVSKY:

Q. You reviewed another exhibit that lists out some risks of future complications into the future for Mr. Parks; is that correct?

A. Yes.

Q. And that essentially just took the findings in your report and put them in an outline form; is that correct?

A. Yes.

MR. STROKOVSKY: Mr. Bitman, if you can show Dr. Miknevich P-45. Show it to Mr. Hosmer, as well, please.

MR. HOSMER: Okay.

THE COURT: No objection. You may publish.

MR. STROKOVSKY: Thank you, Your Honor.

If you can publish it, Mr. Bitman.

BY MR. STROKOVSKY:
Q. We will be really quick about this because we covered most of this.
So it's your opinion, Dr. Miknevich, that in the future, Mr. Parks --
MR. HOSMER: Objection; leading.
THE COURT: We are on direct and also some of this has already been gone over in detail. Ask a direct question that the witness can answer without you including the answer in the question.
MR. STROKOVSKY: Okay.
BY MR. STROKOVSKY:
Q. Dr. Miknevich, do you have an opinion as to any potential complications that Mr. Parks may have as he ages?
A. Yes.
Q. What are those?
A. So as I have them listed, things such as skin breakdown, degenerative changes in the left leg, worsening back pain, overuse problems with his arms and continued weight loss or weight gain may require him to have more frequent socket replacements then what we have. He may need more medical care then what we planned for, depending on

the severity of these things.

MR. STROKOVSKY: Take that down. Thank you.

BY MR. STROKOVSKY:

Q. Dr. Miknevich, did you have the opportunity to read any reports by the defense expert of this case, Dr. Sarlow?

A. I did.

Q. Generally speaking, did you have agreements or disagreements with his reports?

A. I think there were some things we agreed upon and some things we did not.

Q. I don't need you to go into an exhaustive list of agreements and disagreements, but, generally speaking, could you -- would you be able to point out to some things that you agree with and some things you may disagree with?

A. So I don't have his report here to comment point by point. But I think we pretty much agreed on prosthetics, what he would need in the future --

MR. HOSMER: Objection.

THE COURT: Overruled.

THE WITNESS: Where we tended to disagree was in terms of things such as him needing help in the home, him needing a

scooter in the future or a wheelchair. I think he projected one wheelchair for the rest of his life, which wheelchairs wear out. They don't last forever.

He also said that Mr. Parks could do any type of occupation that he wanted to, which I disagree with. Again, the goal here is to find work that is meaningful for Mr. Parks that he can do over a lifetime of work history, not something that he could do short term.

I will give you examples of that --

MR. HOSMER: Objection. We are going into this whole job thing.

THE COURT: Doctor, just so you know, there is not a claim here for wage losses, job-related wage losses. So if you can still be responsive to the question, give your opinion without relying upon expectation of future jobs. Does that make sense?

THE WITNESS: Yes.

MR. STROKOVSKY: If I may, Your Honor, just to clarify.

THE COURT: I don't like clarification. What are you asking me to do

in English?

MR. STROKOVSKY: Mr. Parks not working or missing out on work that does go towards his pain and suffering.

THE COURT: It also goes to his life's pleasures, but the expert should not opine about future jobs other than the physical limitations of his alleged injuries. Does that clarify?

MR. STROKOVSKY: Perfectly clear. Thank you, Your Honor.

THE COURT: You may continue, Doctor.

THE WITNESS: So the point that I wanted to make there is that when we look at patients who have amputations, traumatic amputations of the lower extremities, it's very frequent that they have to change jobs or that they don't return to work at all. And that's just statistics.

There was a statement that Mr. Parks is likely to never fall either with or without his prosthesis. Mr. Parks has fallen. He's had near falls. Amputees fall. I think over the course of the next 40-plus years, it's

highly unrealistic to expect that Mr. Parks will never have another fall.

Home health aide, the comment was made there was no need for that in the foreseeable future. Again, we are talking age 60 and upward. We are not talking about now.

BY MR. STROKOVSKY:

Q. Your opinions and recommendation that you made in court today, have you discussed those with life care plan expert Alex Karras?

A. Yes, I have.

Q. How many times?

A. Multiple.

Q. You conveyed your opinions as to Mr. Parks' condition and diagnosis to him?

A. Yes, I have.

Q. And you relayed your recommendations for future medical care an treatment?

A. Yes. Yes, I did.

Q. Which is the same medical care and treatment that we have discussed here today?

A. Yes.

Q. And did you review Alex Karras' reports?

A. Yes, I did.

Q. Did you agree or disagree with his reports?

MR. HOSMER: Objection. I don't know her scope of expertise and her report.

THE COURT: Overruled.

MR. STROKOVSKY: I will rephrase.

BY MR. STROKOVSKY:

Q. After reviewing Mr. Karras' reports, do you agree or disagree with what is in his reports?

A. I signed the verification that I agreed with what was in the life care plan.

Q. His reports accurately convey your recommendations?

A. They do.

Q. And he provided a recent report after considering your recent report, correct?

A. Yes.

Q. And, again, his report accurately conveys your most recent recommendations?

A. Yes.

Q. So we talked about Mr. Parks' condition as it relates to his amputation. We talked about your recommendations for his future care and we talked about future complications that he may have in the future, correct?

A. Yes.

Q. That's a nutshell summary, it's not

everything. But all the opinions and findings and recommendations that you have made in court today, have they all been made to a reasonable degree of medical certainty?

A. Yes, they have.

MR. STROKOVSKY: I have no further questions. Thank you.

THE COURT: Thank you, Counsel.

Counsel you may inquire.

MR. HOSMER: Thank you, Your Honor.

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CROSS-EXAMINATION

- - -

BY MR. HOSMER:

Q. Good afternoon, Doctor. I'm Chandler Hosmer. I represent Dr. Lorei. I have some questions for you, ma'am.

A. Yes.

Q. About a minute or two ago I wrote down what you said to the jury; that Mr. Parks may need more than what is planned is what you told them. Do you remember saying that?

A. Yes.

Q. Similarly, the inverse of that would also be true. He may need less than what has been planned,

correct, because you're looking into the future?
A. That's correct.
Q. Now, Doctor, you wrote, I think, three reports, correct?
A. I wrote two reports.
Q. Two reports.
I have one from May 1, one from March 23 and one from April 13.
A. The one from May 1 is just I reviewed some additional records and did not change my opinion.
Q. Understood. But three reports together; all right.
But we will talk about the two main ones, the one from -- you wrote one on April 13 of 2021, and another one on March 23, 2023, correct?
A. Yes.
Q. Do you have those reports with you, ma'am?
A. I do.
Q. You would agree with me that those reports are a complete and accurate recitation of your opinions and factual basis of those opinions?
A. Yes.
Q. And the recipients of those reports are stated on those reports, specifically, Mr. Strokovsky; is that correct?

A. Yes.
Q. And the medical records listed in those reports is a complete recitation of all the medical records that you not only reviewed, but that you are aware of; is that correct?
A. That's correct.
Q. Now, you are not Mr. Parks' treating physiatrist, correct?
A. I'm not.
Q. His treating physiatrist is Bradley Tucker?
A. That's correct.
Q. And Dr. Tucker is a Board certified physiatrist, correct?
A. Yes.
Q. He's at Penn, correct?
A. Yes.
Q. And he's been managing Mr. Parks' care since 2019, for the past basically four years, correct?
A. Yes.
Q. And you would agree with me that based on your review of records, Dr. Tucker saw Mr. Parks three times in 2021 and three times in 2022?
A. I would have to count the number of visits, but that sounds about right.
Q. You will accept my representation?

A. Yes.
Q. And then, I believe, it's two times in 2023, correct?
A. Yes.
Q. So he has seen the patient and laid hands and eyes on the patient significantly more than you have, correct?
A. Yes.
Q. Because you saw the patient in 2020, correct?
A. Yes.
Q. And then about three weeks ago -- no, I'm sorry. In February there was a Zoom teleconference with Mr. Parks, correct?
A. Yes.
Q. You're located in Pittsburgh?
A. Yes.
Q. Mr. Parks and Dr. Tucker are located in Philadelphia, correct?
A. Yes.
Q. And you would agree with me there is a great number of Board certified physiatrists in this area, correct? You agree?
A. I would agree.
Q. Now, when you did see him in 2020, I assume you had to travel here to see him from Pittsburgh,

correct?
A. I did.
Q. I'm sorry?
A. I did.
Q. When you saw him for the first time in February of 2020, he did not have the sophisticated advanced C-leg that he has now, correct?
A. That's correct.
Q. I forget what you call that leg, what was that called, the first one?
A. A preparatory.
Q. A mechanical one?
A. Yes.
Q. Thank you.

And you would agree with me there is nothing in your report indicating that you sent these reports to his managing physiatrist, Dr. Tucker, correct?
A. No, I did not.
Q. You never discussed with Dr. Tucker, because it's not in your report, any of your recommendations, feelings, diagnoses or anything else, correct?
A. That's correct.
Q. Dr. Tucker doesn't even know you exist, does

he?
A. I have no idea.
Q. Now, if we could, Doctor, can we go to page 10, because I want to go through just a little bit of history.
A. Which report, sir?
Q. April 13, 2021. Just go through some of the history pertaining to Mr. Parks as you set forth in your report.
Let me know when you're there, please.
A. I'm here.
Q. This report was written by you, signed by you, correct?
A. Yes.
Q. And it's based on your review of records, as well as your evaluation of Mr. Parks, correct?
A. Yes.
Q. Now, you write that Mr. Parks saw a Dr. Meta on July 1 of 2019. Am I correct about that?
A. Yes.
Q. Dr. Meta was a pain management doctor, correct?
A. Yes.
Q. That's the one and only time that Mr. Parks had seen a pain management physician in his entire

life, correct?
A. I know that he saw Dr. Meta. I don't know how many times he saw Dr. Meta.
Q. You reviewed Dr. Meta's report, correct?
A. Yes, I did.
Q. Would you agree with me the last time he saw him was July 16, 2019?
A. I would be guessing.
Q. Okay. Well, you don't reference any other date of him seeing Dr. Meta in your report; is that correct?
A. No.
Q. Is that correct?
A. That's correct. He did not see him after he started with Dr. Tucker.
Q. And in your report, you note, you talk about the encounter with Dr. Meta on page 10, the second full paragraph, where you say that it was noted by Dr. Meta that Mr. Parks had stated that he had not followed up with any rehabilitation doctors or pain management. Do you see that line, ma'am?
A. Yes, I do.
Q. So what you're saying there is between the time that he left Temple and the time he saw in July of 2019, he had not seen any doctors, correct,

according to your review of the records?
A. That's correct.
Q. And at that time in July of 2019, which would be six months after the amputation, he was currently at that time on no pain medication, correct?
A. That's correct.
Q. Now, if you turn it page 12 of your report, please.
Mr. Parks saw another physiatrist in Philadelphia by the name of Dr. Lenrow?
A. Yes.
Q. Saw him on two occasions, August 22 and September 16 of 2019, correct, ma'am?
A. That's correct.
MR. HOSMER: Can you pull up Exhibit 5, page six just for us?
THE COURT: P as in Paul five?
MR. HOSMER: Exhibit 5, page six.
Do you have any objection to the medical record there?
MR. STROKOVSKY: Just that page, no.
THE COURT: Any objection?
MR. STROKOVSKY: No objection, Your Honor.

THE COURT: Thank you.

You may publish.

MR. HOSMER: You showed me the wrong page. I need page six.

THE COURT: Any objection to page six? What are we looking at now?

MR. HOSMER: Exhibit 5, page six.

THE COURT: Counsel, any objection?

MR. STROKOVSKY: Small print, Your Honor, one second, please.

MR. HOSMER: Mr. Strokovsky, I will draw her attention to the next to last line.

THE COURT: So the question is, any objection to the document, not any particular part of it, being published?

MR. STROKOVSKY: No, Your Honor.

THE COURT: All right.

You may publish then.

MR. HOSMER: If you can slow it, please.

MR. STROKOVSKY: Actually, Your Honor, I do object. I object. I apologize. Sidebar, Your Honor.

THE COURT: No. Overruled.

MR. STROKOVSKY: I couldn't see it

because it was small print, I apologize. If he zooms in on just the specific line --

THE COURT: The document -- is the document subject to an objection? It's a medical record that has been produced in this case.

MR. STROKOVSKY: Yes.

THE COURT: That's overruled.

MR. STROKOVSKY: We have a standing agreement, Your Honor --

THE COURT: That's different.

MR. HOSMER: I will take care of that.

THE COURT: Do we have an agreement or not?

MR. HOSMER: I do. I will make doubly sure.

THE COURT: Bear with me, ladies and gentlemen.

MR. HOSMER: I think we have it worked out right now.

MR. STROKOVSKY: If that's all he is showing, sure.

THE COURT: So the answer is no objection?

MR. STROKOVSKY: If he's only showing one line, I have no objection.

THE COURT: You may proceed to publish.

BY MR. HOSMER:

Q. Doctor, being very careful, and appropriately so, I had Tim just highlight the line from Dr. Lenrow's medical chart from August 26, 2019. Do you see what it says there, ma'am?

A. Yes.

Q. Denies difficulty with ambulation?

A. Yes.

Q. "Ambulation" meaning walking, correct?

A. Yes.

Q. If we go to page 12 of your report, you talk about the visit of September 16, 2019, and you're reciting from Dr. Lenrow's records again with respect to the September 16, 2019. Do you see that third paragraph, second line?

A. Yes.

Q. It says there, He's had no falls and was experiencing no pain on that date.

Did I read that correctly?

A. That's correct.

Q. Now, are you aware of any trips or vacations

that Mr. Parks has taken?
A. I was aware from his deposition that he had taken a trip to Atlantic City, I believe.
Q. He also took one to Las Vegas, correct?
A. I don't have that information.
Q. You don't remember that one; okay. We will deal with that later.
Moving on to page 14 of your report, ma'am.
On this page you're dealing with the August 5, 2020, visit that Mr. Parks had with Dr. Tucker, correct, up at the top, he has the K3 microprocessor knee and he's a K3 walker. Would you agree with that, Doctor?
A. We are on page 14; is that correct?
Q. Page 14, yes.
Would you agree with me he's a K3 walker?
A. I don't see where it says he's a K3 walker.
Q. I apologize. I'm kind of misleading you a little bit. I apologize for that.
If you go to page 13 of your report, last paragraph, next to last line -- I'm sorry, second line, says, At the estimated functional level as a K3?
A. Right. He has the ability or potential for ambulation.

Q. That's as of August 5, 2020, that's Dr. Tucker's opinion that you reviewed, correct?
A. Yes.
Q. And if I repeat Mr. Strokovsky, I apologize, K3, there is K levels, there is zero through four. Am I right about that?
A. That's correct.
Q. Zero being complete inability to walk and -- oh, I reviewed it with you earlier -- and K4 meaning high impact, high energy?
A. Right.
Q. Mr. Parks, at least as of August 5, 2020, according to Dr. Tucker, estimated his functional level at K3 correct?
A. Again, with an explanation. So what he had said was that he estimated his function that he had the ability or the potential to be a K3.

So as a physician, a physician can estimate based on their evaluation of the patient what they think they will be capable of doing even if they're not doing it at that point.

Q. But it even turned out to be correct, because he's a K3, right?
A. He is K3, yes.
Q. At the time Dr. Tucker stated this, Mr. Parks

had his first mechanical prosthesis, correct? He didn't have the state-of-the-art, sophisticated one that he has now, correct?

A. Well, again, at that point he was saying that he had the potential to be a K3. He ordered a K3 prosthesis on that basis. He didn't say that he was a K3.

Q. My question was just a little bit different.

When he estimated him at the K3 and said what he did about the August 5, 2020, office visit with Dr. Tucker, Mr. Parks had not yet received his leg C-3 leg, correct?

A. That's correct.

Q. He got that in late 2020, correct?

A. That's correct.

Q. It was also noted as of that time, that he was jogging on a treadmill -- again, I'm sorry, page 14, didn't mean to mislead you, fourth paragraph?

A. That's in the note, yes.

Q. This is Dr. Tucker, this is you quoting Dr. Tucker, correct?

A. Yes.

Q. Jogging on a treadmill, as well as using a stationary bike, correct?

A. Yes.

Q. And, then, also, with respect to Dr. Tucker's office visit of August 5 of 2020, Dr. Tucker noted on that date that the patient was not taking any medications, correct?
A. That's correct.
Q. Do you see that line 22 of the -- that would include pain medication, correct?
A. Yes.
Q. And you mentioned that --
A. Can I make a comment? Higher up, if you go up higher to the third photograph, he did continue medical cannabis treatment for pain management. That's in the same note.
Q. I didn't see that, but thank you for pointing that out.
But, again, there is no over-the-counter or prescription pain medications being used as of August 5, 2020, correct?
A. No.
Q. I'm incorrect?
A. No, he was not using any other pain medication at that point, just the medical cannabis.
Q. Both over the counter and prescription, correct?
A. It was noted that he did not receive any

relief with other medications, including Ansaids, Tylenol or neuropathics.

Q. I didn't ask you that, ma'am. I'm asking what Dr. Tucker said on August 5, 2020.

Isn't it true that he said that the patient was not taking any medications?

A. That's what he said.

Q. And that would include over-the-counter, as well as prescription medications, correct?

A. But the reason was, was because they didn't work.

Q. Did you hear me ask you about that?

MR. STROKOVSKY: Objection.

THE COURT: Counsel, just ask another question then.

MR. HOSMER: Okay.

BY MR. HOSMER:

Q. Doctor, going back to your testimony about the K3 and potential that he had in Dr. Tucker's opinion in August of 2020, the reason why Dr. Tucker wanted him to have the C-3 leg was because he had the potential to become a full K3 walking and traversing, I think what they called environmental barriers, that we referred to before, correct?

A. Yes.
Q. Now, moving on to -- moving away from the history for a moment and talking about Mr. Parks' future needs, one of the intents of these reports that you produced was to give the jurors and me, advise me ahead of time of what you believe Mr. Parks' requirements were for future medical care, correct?
A. Yes.
Q. You used the word "requirements" in both your April 13 and your March 23 reports, correct, with respect to what he would need in the future?
A. Can you tell me what page?
Q. Sure. Page four of your April 13 report, top line says, Mr. Parks will require ongoing medical and rehabilitative care.
A. Yes.
Q. And he will require access to a combination of medical health specialists, correct?
A. Yes.
Q. Now, for example, in your March 23 report, you noted that the plaintiff will require a pain management specialist, and you state in your report that Mr. Karras relied upon that that he would need a pain management specialist, a Board certified

pain management specialist one time every three months for the rest of his life, correct?
A. Yes.
Q. And then at page six of your March 23 report, you state that he will require formal physical and occupational therapies four times a year for the rest of his life, correct?
A. Yes.
Q. And you intended Mr. Karras to rely on that in his reports; is that right?
A. Yes.
Q. And you would agree with me it would be inappropriate to extrapolate or predict medical care that wasn't really needed, correct? It's to be done to reason -- it should be stated to a reasonable degree of medical certainty, correct?
A. And those opinions were based on within a reasonable degree of medical certainty.
Q. So, now, let's go to your report of April 13, 2021, please.
In your April 13, 2021, report, you state that in your opinion, Mr. Parks will require pain management evaluations four times per year for the rest of his life, correct?
A. That's assuming that they would be taking over

his medication management.
Q. I'm just reading from the report, ma'am. It says just that, correct?
A. That's what it says on the report.
Q. And then you go on to state he will need physical and occupational therapies four times per year for the rest of his life, correct?
A. That's correct.
Q. And you state lumbar epidural steroid injections three times a year for the rest of his life for -- as of the year 2021, correct?
A. Can you tell me what page you're on?
Q. I'm sorry, I apologize, page 28.

MR. STROKOVSKY: Of what report?

MR. HOSMER: The first one, the one we are sticking with April of 2021 for now.

THE WITNESS: So what my statement actually says is that he would require a series of three lumber epidural steroid injections with repeat series yearly as determined by his pain management physician based on his response. I did not say that he would need them three times a year.

BY MR. HOSMER:
Q. Let's look at that for a minute. Maybe I

misunderstood you.

You write, It's anticipated Mr. Parks will require a series of three lumbar epidural steroid injections related to his diagnosis of lumbar radiculopathy with repeat series of three lumbar injections on a yearly basis for life expectancy.

Correct?

A. As determined by the pain management physician based on response.

Q. Okay.

A. So if he didn't respond, he would not need them.

Q. But if he did, he would need them?

A. Yes.

Q. And, then, finally, on page 27, you talk about the neuroma scar injections, correct, and that was one time a year, I believe one time a year for the rest of his life?

A. It was another one that said he would need at least one occasion with additional injections on a yearly basis based on his response to this treatment.

Q. Right. One time a year?

A. But only if it was helpful.

Q. Okay.

So let's take a look at what has happened in the meantime, because these were given to a reasonable degree of medical certainty, correct?
A. Yes.
Q. Now, you would agree with me, according to all the records that you reviewed, Mr. Parks has not seen a pain management specialist four times a year in 2021, 2022 or 2023, correct?
A. He has not.
Q. And you would agree with me, then, that your prediction was that he was going -- it was going to be necessary as of April of 2021, turned out to be incorrect, that predictive requirement didn't take place, correct?
A. That did not take place.
Q. And Dr. Tucker never recommended that Mr. Parks see a pain management specialist four times a year, correct?
A. Dr. Tucker did not. Dr. Lenrow did.
Q. I asked you about Dr. Tucker, the man that has been managing him for the past four years.
A. Dr. Lenrow was the physician that started treating him and turned him over to Dr. Tucker.
Q. Let's stick to my question, if you don't mind, please.

Dr. Tucker, who has been managing Mr. Parks since 2019, never recommended a pain management specialist four times a year, correct?
A. That's correct.
Q. So, ma'am, doesn't the fact, and not withstanding the fact that Dr. Tucker didn't recommend it, and Mr. Parks didn't have the four times a year with a pain management specialist, doesn't that -- you nevertheless in your subsequent report of March of 2023 again recommend that, correct?
A. Yes, I did.
Q. Now, doesn't the fact that Dr. Tucker didn't suggest it at any time to his patient, and Mr. Parks never went to get -- pain management specialists four times a year, doesn't that suggest to you that perhaps he may not need one in the future?
A. When I talked to Mr. Parks the last time, the reason he did not go back to pain management was he was worried about having any additional procedures. But he had indicated that he was willing to rethink that.
Q. But the fact of the matter is having recommended it in April of 2021, and Dr. Tucker not

stating it was needed, Mr. Parks, apparently feeling it wasn't needed, you nevertheless in April of 20 -- in March of 2023, are telling this jury that he needs it four times tumors a year, correct?
A. So, again, Dr. Tucker is handling his pain medication. So he is seeing him the four times a year instead of twice a year as a physiatrist would be seeing him. But if he were not involved in his care, he would need a pain management physician.
Q. You would have to agree with me, I believe, Doctor, that you said it was a requirement that he see a pain management specialist four times a year. He hadn't seen one for four times a year in 2019, 2020, 2021, 2022, and 2023, correct?
A. But he has seen a pain physician in between there. He has not seen one consistently.
Q. The last time he saw a pain management physician, we can keep going over this, was, Doctor --

THE COURT: Just ask a question.

MR. HOSMER: Okay.

BY MR. HOSMER:
Q. In 2019, correct?
A. It was a Dr. Ashburn.
Q. I think it was Dr. Gupta was the last pain

management person that he saw.

MR. HOSMER: Let's try it a different way.

BY MR. HOSMER:

Q. You would agree with me that Dr. Tucker has not ever recommended that the patient see a pain management specialist four times a year, correct?

A. That's correct.

Q. And you would agree with me that Mr. Parks has not seen a Board certified pain management specialist for the past three years, correct?

A. He saw Dr. Ashburn in 2019.

Q. Okay.

Thank you for that clarification.

So, again, Mr. Parks has not seen a pain management specialist not only not four times a year, but at all since 2019, correct?

A. That's correct.

Q. So if this jury were to conclude that history was going to repeat itself into the future, because none of us know what the future is, if they were to conclude that because Dr. Tucker never recommended it and Mr. Parks didn't get it four times a year, if the jury were to conclude that is not something that would be needed in the future, that should be

removed from their consideration as it pertains to future medical care, correct?

A. Could you repeat the question?

Q. It was a little convoluted.

You would agree, would you not, if this jury were to conclude, based on Dr. Tucker's care and treatment, and based on Mr. Parks' conduct, that history would repeat itself and Mr. Parks would not require a pain management specialist and the jury should not be considering that in their evaluation of what is fair and adequate compensation, correct?

A. I would agree, but I have to make a comment. So my comment is this also occurred during the peak of the COVID pandemic when you couldn't get an appointment. Even Dr. Tucker was seeing the patient via telemedicine. It's very difficult to assess somebody thoroughly under telemedicine.

Q. But we know for a fact he didn't even try to make an appointment or have one via telemedicine, correct?

A. I don't know that he didn't try to make an appointment.

Q. It's not in your report, though, is it?

A. No, it's not.

Q. And you took an in-depth evaluation and

history from Mr. Parks, correct?
A. We talked about it at his most recent evaluation in March.
Q. You would expect him to tell you if he saw a pain management specialist. I mean, if he had seen one, he would have mentioned it?
A. At that time he told me Dr. Tucker was handling his medical marijuana.
Q. But he never reported to you seeing a pain management specialist even one time, correct?
A. That's correct.
Q. With respect to the physical therapy and occupational therapy, again, if I read your report correctly, you were saying that that would be necessary as of April of 2021, four times a year, correct?
A. That's correct.
Q. And you would agree with me, would you not, that not only has Mr. Parks not had physical therapy in 2021, 2022, 2023, four times a year, he hasn't had it at all, correct?
A. That's correct.
Q. And Dr. Tucker hasn't recommended it, correct, on a formal four times a year basis, correct?
A. Well, Dr. Tucker is planning to order physical

therapy once he gets his new socket. He has had a lot of issues with socket fit during that time. And he did not order physical therapy, you are correct.

Q. He did not order it, correct?

A. That's correct.

Q. Mr. Parks didn't get it, so then it leads me to the same question again. Inasmuch as Dr. Tucker didn't recommend it, the man who has been managing him for four years, and Mr. Parks didn't go see one, four times a year, you nevertheless in your report of March of 2023, again, say it's a requirement, correct?

A. Again, that requirement is based on looking at his 44-year future life expectancy. The remainder of that sentence talks about dealing with future issues, new prosthetics and future compensatory use issues.

Q. I'm sorry, I don't see that here. I'm looking at page four of your report. It says, Physical therapy, four to six times for life expectancy and occupational therapy -- that's consultations, I'm sorry.

The next line down, physical therapy and occupational therapy, four times per year for life

expectancy.
A. To address exacerbations, complications and self-care assessments as Mr. Parks ages with a disability.
Q. That was your predictive requirement as of April of 2021, correct?
A. That's correct.
Q. And that predictive requirement did not come to pass, did it?
A. Not during that period of time, but this is again over his life expectancy, anticipate four times a year, four visits per year.
Q. Between the time of your report of April 13 of 2021, and your report of March 23 of 2023, two years gap, Mr. Parks did not have physical therapy or occupational therapy, didn't have it at all let alone four times per year, correct?
A. He did not have it at all.
Q. So your predictive requirement was incorrect, right, for that --
A. I disagree with that. It wasn't incorrect. It's based on four times a year. What that averages out to over his entire lifetime. So there may be years that he didn't get any. There may be years that he needs 12 or 20 sessions.

Q. I see.

It doesn't say that here, though, does it?

A. It says four times a year, which is what gets costed out in the life care projection, is that total cost. It's four visits over the course of a year.

Q. Yeah?

A. Times however many years his life expectancy is.

Q. Right.

I'm looking right here, Doctor. It says physical/occupational therapy four times per year for life expectancy, correct?

A. Yes.

Q. And he did not have any physical therapy in that two-year period from the time you predicted it in April of 2021, as a requirement up to and including today, correct?

A. Correct. But I, again, I think you're confusing what I'm saying.

Q. I'm simply going by what you wrote in your report and what Mr. Karas will have to rely on when he comes in here tomorrow.

A. Mr. Karras is going to rely on a certain number of therapy sessions over the course of 44

years. So four times 44, whatever that comes out to. That's what he will be anticipating. The fact that he doesn't get any doesn't mean that he may not need twice as much or three times as much in the future years.

Q. The inverse is also true. The fact that he didn't get it the prior two years that when you predicted he would need it, this jury could conclude from that that he may not need it in the future, correct, at a rate of four times per year?

A. Again, semantics, because my understanding was that I'm looking at a certain number of sessions over the course of his life, averaging out to four over per year, not that he would need four every single year.

Q. That's not what it says, though, does it, ma'am? That's not what Mr. Karras is going to be reading, correct?

MR. STROKOVSKY: Objection.

THE COURT: Sustained.

BY MR. HOSMER:

Q. Would you agree with me, Doctor, that if the jury were to conclude that on the basis of Dr. Tucker's lack of recommendations and Mr. Parks' determination not to get physical therapy and

occupational therapy at a rate of four times per year over the past two years, if this jury were to conclude that that is not a reasonable expectation, then that too should be removed from their consideration?

MR. STROKOVSKY: Objection.

THE COURT: Sustained.

MR. HOSMER: Let's move on to another one.

Neuroma scar injections on page 28.

BY MR. HOSMER:

Q. In April of 2021 -- I think it's page 27, actually.

Local neuroma scar injections on at least one occasion with additional injections on a yearly basis for life expectancy based on his response to this treatment.

So what you're saying there is that if he gets -- if one is recommended by a pain manager and he would get it, if that was determined to be efficacious, he could get more, correct?

A. That's correct.

Q. But since he hadn't seen a pain manager, no one has recommended, including Dr. Tucker, that he get neuroma scar injections, correct?

A. That's correct.
Q. And, again, if the jury were to conclude that this was not something that he would need in the future, it should be removed from their consideration, correct?
A. That's correct.
Q. Lumbar injections, I think you prognosticated in your report of April of 2021, at a rate of three times per year. Did I get that right?
A. Can I ask what page you're on?
Q. Sure. Page 26.
A. Page 26, I have prosthetics and supplies and wheelchairs.
Q. Let me check, please.
I wrote down the wrong page number.
Would you agree with me, though, that your report from April of 2021, predicts a requirement of epidural injections at the rate of three times a year?
A. We discussed this previously. It says that he would require a series of three lumbar epidural injections with a repeat series on a yearly basis, as determined based on his response.
So, again, if he did not show any improvement, those would be removed, and, in fact, we removed

them from my later report because he was not complaining of radiculopathy when I saw him last.
Q. And there it is. I apologize for taking time to find it.
Mr. Parks will require a series of three lumbar epidural injections related to his diagnosis with three repeat series of three lumbar injections on a yearly basis for life expectancy.
So when you say on yearly basis --
A. Based on response. You left that part of the sentence off.
Q. Based on response.
But before he can have a response, he's got to get the injections, right?
A. He would get one set of injections.
Q. Which --
A. But yearly injections. One set if he didn't respond, he wouldn't get more.
Q. You would agree with me that he's never gotten a lumbar injection, correct?
A. That's correct.
Q. And Dr. Tucker hadn't recommended one, has he?
A. No, he has not.
Q. So if the jury were to conclude that on the basis of Mr. Parks not getting the injections and

the absence of a recommendation by Dr. Tucker, then this, too, would be something that would not be appropriate for consideration by the jury, correct?

MR. STROKOVSKY: Objection.

THE COURT: Overruled.

You may answer the question, if you can.

THE WITNESS: Can you repeat the question?

MR. HOSMER: Sure.

BY MR. HOSMER:

Q. If the jury were to conclude on the basis of an absence of recommendation by Dr. Tucker, and the absence of Mr. Parks getting the lumbar epidural injections, if the jury were to conclude that this was not something he would need in the future, then that should be removed from their consideration, correct?

A. That's correct. And, as I said, we removed this from my last recommendations.

Q. I saw that. You took it out. Very interesting you had it in your April report and then you took it out in March, correct?

MR. STROKOVSKY: Objection to form.

THE COURT: It's cross-examination.

No. Overruled.

THE WITNESS: It was in 2021, in a report. He was complaining of radiculopathy-type symptoms. He had an EMG that showed findings of radiculopathy. When I talked to him subsequent to that, he was not complaining of radicular pain when I spoke to home most recently and evaluated him. And that's why it was removed from the plan.

BY MR. HOSMER:

Q. This kind of points out the difficulties a physiatrist like yourself have because you're asked to predict something in the future. Sometimes it may come to pass and sometimes it may not, correct?

A. That's correct.

Q. What happened in this case was you predicted, as a requirement, that those injections would be necessary in April of 2021, but by March of 2023, it's no longer a requirement, correct?

A. That's correct.

Q. Now, the same thing could happen with respect to just, for example, sticking with the spinal cord stimulator. That's something you prognosticated, as well?

A. I prognosticated a trial.

Q. A trial that, again, if successful, the implantation of a spinal cord stimulator, correct?
A. That's correct.
Q. But, again, if like the lumbar injections, it becomes unnecessary because he doesn't have back pain or the back pain is minimal, then, again, that would be removed from consideration by both Mr. Karras and the jury, correct?
A. That's correct.
Q. And tell me if this would be fair to conclude, that inasmuch as the predictive requirements for the pain management specialist did not turn out as of April of 2021 to be correct, inasmuch as the neuroma scar injections were not done, and inasmuch as the lumbar injections were removed from consideration by you as of March of 2023, they were, so to speak, near-term predictions, this was something you prognosticated that would be needed between April of 2021 and March of 2023, correct?
A. No. Again, these recommendations are based on his life on the future.
Q. But we have already established, I believe, that your prognostication or predictive requirements, as you call them in your report, for example, the pain management specialist four times

a year, was something that you had predicted would be necessary as of April of 2021, and thereafter continuing, correct?

A. That's correct.

Q. And would it be fair to conclude that inasmuch as some of what you predicted as a requirement in the near term was incorrect, it wouldn't be unreasonable to say, well, some of those things that you're predicting for future may also be incorrect. Am I right about that?

A. I disagree that they're incorrect.

Q. Let's just assume hypothetically if there are some. For example, the pain management, we will just take one.

A. Near-term prediction is incorrect.

Q. Now we will take two. We will take the pain management specialist age. We will take the lumbar epidural injections that you actually removed from your March 2023 report --

A. You're combining two things. I will answer one.

Q. All right. We will take one. We will do the pain management specialist.

A. Okay. At this time Dr. Tucker is --

Q. Wait until I finish my question, please.

Inasmuch as the predicted requirement as of April of 2021, for a pain management specialist to be seen four times a year, beginning in April of 2021, inasmuch as that didn't take place as near-term prediction, wouldn't it be fair to conclude that maybe some of the future predictions out 40 years for hospital beds and the like could possibly also be incorrect?

A. I think that the question is difficult to answer because they're completely different things.

Q. Let's go back to the second question I asked you then when the cross-examination started.

You had said in your direct examination, that Mr. Parks may need more care than what is planned. Then I followed it up on cross-examination and you agreed that he may also need less care than what had been planned by you, correct?

A. That's correct.

THE COURT: Are we able to move along, Counsel?

MR. HOSMER: I am, Your Honor.

BY MR. HOSMER:

Q. Orthopedic evaluations, you said he needed one every five years?

A. Yes.

Q. And he hadn't had one since he left Temple, correct?
A. He has not.
Q. X-rays, page 24 of your April report, you say he needs x-rays one time every five years, correct?
A. Yes.
Q. You would agree with me that the last time he had x-rays performed was in July of 2019?
A. That's correct.
Q. And Dr. Tucker has not recommended that he undergo any x-rays since that time, correct?
A. Dr. Tucker has not ordered any x-rays.
Q. And Mr. Parks has not had any, correct?
A. That's correct.
Q. Now, one of the things you mentioned as one of the components of his chronic pain syndrome was back pain. Do you remember that testimony, ma'am?
A. Yes.
Q. And that was an important consideration in your opinion to the jury, that he is experiencing chronic back pain -- chronic pain syndrome, correct?
A. Yes.
Q. You reviewed the records from Allied Orthotics; is that correct?

A. Yes, I did.
Q. And you saw -- you would agree with me that at no time did Mr. Parks ever complain of back pain to Allied Orthotics or to Dr. Tucker during the entire time they have been taking care of him, correct?
A. I don't know that I could answer that without reviewing those records again.
Q. Would you except my representation that having reviewed the records, and you reviewed the records, do you recall seeing anything about back pain being documented by either Dr. Tucker or by Allied Orthotics, two medical providers that he's seen in the past two years?
A. I would be guessing.
Q. So you don't know?
A. I don't know.

MR. HOSMER: Tim, bring up, please, Exhibit 4, page 58, but, again, just for counsel, please.

MR. STROKOVSKY: Do you plan to blow up one certain part?

MR. HOSMER: No, the whole thing.

MR. STROKOVSKY: May I confer?

THE COURT: Briefly. We are running out of daylight here.

The parties have agreed to a portion of the publication. Is that what is happening?

MR. HOSMER: Yes. The bottom part of the page.

THE COURT: By agreement, right?

MR. HOSMER: Yes.

BY MR. HOSMER:

Q. Doctor, what I have had Tim show you is one of the pages from the chart of Allied Orthotics. As you can see in the bottom of the page, it's dated June 3, 2021; do you see that?

A. Yes.

Q. You reviewed the Allied Orthotics chart, correct?

A. Yes.

Q. And we agree that Allied Orthotics and Dr. Tucker are the only two medical providers that Mr. Parks has seen in 2021 and 2022, correct?

A. That's correct.

Q. And would you agree with me that as of June 3, 2021, Allied Orthotics notes about back pain, N, meaning no, correct?

A. So, again, this is a checklist completed by a prosthetist, by a limb maker. I question the

medical validity of the answers.
Q. Are you telling this jury that Allied Orthotics would write something -- deliberately write something incorrect in the chart?
A. What I'm saying is that I work with prosthetists on a daily basis. They're not physicians. They don't know how to assess some of these conditions.
Q. Again, if Mr. Parks reported that he didn't have back pain and it was documented -- let me ask you in a different way --
A. I would be guessing that because I have no idea who filled this out, how it was filled out. It's just a checklist form. There is no narrative substance to go with this.
Q. You reviewed it and you relied upon it, correct?
A. I reviewed it.
Q. You would agree with me that either Mr. Parks reported to the prosthetist or the prosthetist observed that Mr. Parks had no back pain as of June 3 of 2021, correct?
A. I don't know how that was filled out. I would be guessing if Mr. Parks told him or he looked it up or he had a secretary in the office fill out the

form. I have no idea who filled out that form.
Q. But we know it's a medical record, correct?
A. It's a prosthetist's record, yes.
Q. It's just as important that a prosthetist record be accurate and correct as it would be yours or Dr. Tucker's, correct?
A. Yes.
Q. Let's go to page 82 and do the same thing, just the bottom third of the page, Tim, please.
MR. HOSMER: Are we okay, Mr. Strokovsky?
MR. STROKOVSKY: Yes.
BY MR. HOSMER:
Q. Here, again, approximately a year later, Mr. Parks is again seeing the prosthetist and once again the prosthetist notes there is no back pain, correct?
A. That's correct.
Q. So back to my original question.
You would agree with me that Mr. Parks has never reported to any medical provider or prosthetist in 2021, 2022, or 2023, back pain, other than to you, correct?
A. I would need to review the additional records of Dr. Tucker again to see if they specifically

mention back pain. This looks like it was the same form that was copied again.

Q. We can at least agree that you will probably be back here tomorrow. You will overnight --

THE COURT: That's certainly a question I could ask.

MR. HOSMER: I won't be presumptuous, I'm sorry.

THE COURT: That's all right. I want to accommodate not only the parties and the jury, but we are at the end of the day and how much of this field are you going to plow again on this issue?

MR. HOSMER: What am I going to do?

THE COURT: Plow the field.

MR. HOSMER: I certainly have more than ten minutes.

THE COURT: Just out of deference to the jury, I will release you now because it sounds like we are going to have pretty substantial cross-examination of this witness yet to come. I don't know.

But in any event, nine o'clock I will see you all. Remember, please no research. Don't discuss the case with anyone

and keep an open mind until you hear everything in the courtroom.

So thank you very much. You have a wonderful evening.

(Jury exits courtroom at 4:51 p.m.)

THE COURT: Doctor, you will be excused for the day. Unfortunately or fortunately, we will see you again tomorrow.

THE WITNESS: Okay.

THE COURT: Other than the completion of the cross of the doctor and possible redirect, what do we have lined up for tomorrow? Have you shared that with each other?

MR. STROKOVSKY: Yes.

MR. HOSMER: Yes.

THE COURT: We have a full day?

MR. STROKOVSKY: Yes. We have two experts, but they should be a lot quicker. We will have the remaining fact witnesses, but I don't anticipate each fact witness being that long, unless there is a long cross.

THE COURT: You will get final joint points for charge and a verdict slip to me, please. And I would recommend to preserve

your record, docket them, as well, in case there are any disputes in the future.

We will be ready to go at nine. I appreciate your cooperation and working together, and it really is as a compliment to your clients and the jury. So thank you again.

Everyone is excused.

(Court adjourned at 4:53 p.m.)

I hereby certify that the proceedings and evidence are contained fully and accurately in the notes taken by me on the trial of the above cause, and that this copy is a correct transcript of the same.

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Louise M. Zingler, RPR, RMR
Official Court Reporter

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The foregoing record of the proceedings upon the trial of the above cause is hereby approved and directed to be filed.