

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

- - -

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

- - -

JURY TRIAL

- - -

City Hall
Courtroom 643
Philadelphia, Pennsylvania
Monday, May 8, 2023

- - -

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

1 (Jury enters courtroom 9:16 a.m.)

2 THE COURT: Good morning, everyone.
3 Welcome back.

4 So as promised we are going to
5 resume trial. At this point, as you know, the
6 plaintiff has rested their case, and defense
7 now has the right and opportunity to present
8 witnesses.

9 So what I anticipate is two live
10 witnesses today, a break for lunch and then we
11 will do the closing statements of counsel and
12 then I will give you the instructions to guide
13 you as a matter of law.

14 So I always preface these comments
15 by saying God willing, so that's our plan,
16 that's what we intend do. I hope I have been
17 faithful to my promises to you, but here we
18 go. We have a witness ready go.

19 THE CRIER: State your name.

20 THE WITNESS: Frank Bernard Sarlo
21 M.D., S-A-R-L-O.

22 FRANK SARLO, M.D., having been duly
23 sworn, was examined and testified as follows:

24 - - -

25 DIRECT EXAMINATION ON VOIR DIRE

1

- - -

2 BY MR. HOSMER:

3 Q. Good morning.

4 I'd like to talk about your qualifications for
5 a minute.6 MR. HOSMER: I'm going to ask Tim to
7 bring up D-18 only for Mr. Strokovsky and Dr.
8 Sarlo, please, and the Judge.

9 BY MR. HOSMER:

10 Q. To your right, can you identify that document,
11 please.

12 A. Yes. It's my curriculum vitae.

13 Q. Your resume?

14 A. Correct.

15 Q. I'd like to talk about that for a minute.

16 Let's start off, if you don't mind, with your
17 education. Can you tell the jury about your
18 education, beginning with college, please.19 A. Undergraduate in biology, major in premed at
20 St. Joseph's University Medical School, Hahnemann
21 University School of Medicine, now known as "Drexel
22 Medical School."23 And then postmedical school residency training
24 initially and internship here at Hahnemann
25 University Hospital as a medical intern, and then

1 three years of physical medicine and rehabilitation
2 residency at Thomas Jefferson University Hospital.

3 Q. Following completion of your residency, where
4 did you go after that?

5 A. After my residency training, I had two-year
6 employment with a practice in Lafayette Hill,
7 Pennsylvania, where I worked both at Nazareth
8 Hospital on the inpatient rehabilitation service,
9 as well as outpatient care in the Lafayette Hill
10 office.

11 Q. That would take us up to, what, about 1997?

12 A. Correct.

13 Q. Following 1997, tell the jury what your
14 employment experience has been, sir, please.

15 A. Yes.

16 In 1997, I took a position with Physiatriст
17 Associates in Wilmington, Delaware, private
18 practice for Dr. Anthony Cucuzella, Senior. This
19 position entailed working as a staff physician for
20 Christiana Care Health System at Wilmington
21 Rehabilitation.

22 In addition to that, I had an outpatient
23 practice with a focus on spinal care and
24 electrodiagnosis.

25 Q. Is that the Christiana Spine Center?

1 A. Correct.

2 Q. Are you licensed to practice medicine, Doctor?

3 A. I am.

4 Q. In what state or states?

5 A. Yes. I have active unrestrictive licenses for
6 both for Pennsylvania, Delaware and Maryland.

7 Q. Are you Board certified in any specialty, sir?

8 A. I am.

9 Q. Can you tell the jury in what specialty you're
10 Board certified?

11 A. Physical medicine and rehabilitation, as well
12 as a secondary certification in electrodiagnosis.

13 Q. Briefly explain to the jury please what is
14 physical medicine and rehabilitation?

15 A. It's a subspecialty of internal medicine that
16 manages patients after they have had major
17 life-changing issues such as strokes, spinal cord
18 injury, head injury, musculoskeletal trauma. We
19 are nonsurgical physicians that are also physicians
20 that also manage pain, as well as getting patients
21 that have had these life-changing events back to
22 the highest possible functioning level that we can.

23 Q. Are you a member of any professional
24 organizations, Doctor?

25 A. I am. The American Board of Physical Medicine

1 and Rehabilitation, American Association of
2 Physical Medicine and Rehabilitation, as well as
3 the American Association of Electrodiagnostic and
4 Neuromuscular Medicine.

5 Q. Doctor, have you done any work with amputees
6 in the clinic?

7 A. I have.

8 Q. Can you describe to the jury what that is
9 involved -- what is involved with that, please.

10 A. Yes.

11 I work in conjunction with the physical
12 therapy department at the University of Delaware.
13 We manage and evaluate patients that have had
14 either their initial amputation and are getting fit
15 for their initial prosthesis, or other patients
16 that have an existing prosthesis and changing needs
17 over time. I do this on a monthly basis. We may
18 have anywhere from six to ten patients at a time.

19 We work closely with the Ph.D. physical
20 therapy candidates, as well as the orthotics and
21 prosthetic providers.

22 Q. Is there a volunteer aspect to this?

23 A. Yes.

24 Q. Can you tell the jury what that is, please.

25 A. I'm there as a physician to lend practical and

1 real life medical information to the students that
2 they may not otherwise have. You know,
3 specifically why we do certain parts of the
4 assessment, and the medical expertise that is
5 needed to help them get the proper prescription set
6 up for the patient.

7 MR. HOSMER: Your Honor, at this
8 time I've concluded my voir dire on
9 qualifications.

10 THE COURT: Any objection?

11 MR. STROKOVSKY: I have just a few
12 questions.

13 THE COURT: You may ask. You may
14 inquire.

15 - - -

16 CROSS-EXAMINATION ON VOIR DIRE

17 - - -

18 BY MR. STROKOVSKY:

19 Q. Good morning, Dr. Sarlo.

20 So as you mentioned on your C.V., at the top
21 it says "private practice Christiana Spine Center";
22 is that correct?

23 A. Yes.

24 Q. And you have been there since 1997?

25 A. Correct.

1 Q. That's your full-time job?

2 A. It is.

3 Q. And Christiana Spine Center is the only
4 practice in the region focused only on spine care;
5 is that correct?

6 A. No. I mean, there is other spine care
7 practices in my area. I'm not sure what you're
8 asking.

9 Q. Sure.

10 Well, Christiana Spine Center is the only
11 practice in the region focused only on spine care;
12 is that correct?

13 A. Not to my knowledge. I mean, there is other
14 spine centers in the area, and by virtue of me
15 being one of the members of Christiana Spine
16 Center, I don't focus only on spine care.

17 Q. Your practice group has a website, right?

18 A. We do.

19 Q. And do you understand that on your website,
20 you advertise as the only practice in the region
21 focused only on spine care?

22 A. I think it says that on the website, yes.

23 Q. And the words is the words I just said,
24 correct?

25 A. If it's on the website, then that's correct.

1 Q. Would you like to see a printout of the
2 website?

3 A. No, that's not necessary.

4 Q. You would agree with me the website says,
5 "Christiana Spine Center is the only practice in
6 the region focused only on spine care"?

7 A. If that's what it says, that's what it says.

8 MR. STROKOVSKY: Could you publish
9 the history?

10 BY MR. STROKOVSKY:

11 Q. I just want to show it to you.

12 A. It's really not necessary because I'm a member
13 of the practice and I don't function purely as a
14 spine care doctor. So I don't really know what
15 your point is, but I can go through my day-to-day
16 activities for you if you'd like, where if you're
17 questioning my nonspine care, then I'm happy to go
18 over that with you.

19 Q. Sir, on your screen, do you see a picture of
20 what appears to be your website?

21 A. Yes.

22 Q. And does it not say towards the top, The only
23 practice in the region focused only on spine care"?

24 A. Yes. You made that point already. I'm not
25 sure --

1 Q. I want to confirm that's what your website
2 says.

3 A. Okay.

4 MR. STROKOVSKY: Actually, if it's
5 okay, I'd like to publish this to the jury.

6 MR. HOSMER: I don't care. No
7 objection.

8 THE COURT: Without objection, you
9 may publish.

10 BY MR. STROKOVSKY:

11 Q. So that's what is in yellow, "The only practice
12 in the region focused only on spine care"; is that
13 correct?

14 A. You asked me that and I said yes.

15 Q. Would you be able to give us an approximation
16 as to how much of your medical legal work is for
17 plaintiffs and defendants?

18 MR. HOSMER: Objection. Presupposes
19 there is some medical legal work. Needs a
20 foundation.

21 THE COURT: Overruled.

22 Can you answer that question,
23 Doctor?

24 THE WITNESS: Yes, I can.

25 So of the medical legal work that I

1 do, I would state probably 80 percent is
2 defense, 20 plaintiff.

3 MR. STROKOVSKY: I have no further
4 questions.

5 THE COURT: Do you object to the
6 doctor's qualifications as an expert as
7 proffered?

8 MR. STROKOVSKY: No objection, Your
9 Honor.

10 MR. HOSMER: Follow-up with one
11 question, Your Honor, on qualifications?

12 THE COURT: Yes. Despite them being
13 agreed to by counsel?

14 MR. HOSMER: I can just make it part
15 of my regular --

16 THE COURT: We have just gotten
17 beyond the qualifications of the expert for
18 testimony. Good to go.

19 MR. HOSMER: Thank you.

20 - - -

21 DIRECT EXAMINATION

22 - - -

23 BY MR. HOSMER:

24 Q. Doctor, when Mr. Strokovsky was asking you a
25 question about Christiana Spine Center, you said

1 you can describe your nonspine care. Could you do
2 that, please?

3 A. Yes, I can.

4 In addition to the in-office spine care that I
5 provide, I also work on the patient rehabilitation
6 at Wilmington Hospital as an attending physician
7 with full admitting privileges. This can and does
8 include patients with multiple medical issues who
9 require inpatient rehabilitation.

10 In addition to that, I have the amputee clinic
11 as mentioned.

12 In addition to that, I have a practice in
13 electrodiagnostic medicine.

14 And in addition to that, I also work with
15 patients who are have complex spasticity issues
16 that are related to specifically upper motor neuron
17 dysfunction such as stroke, head injury, multiple
18 sclerosis and other spinal cord injuries.

19 Q. Can you give the jury a range of the number of
20 lower extremity amputees that you treated or
21 managed in the course of your career, sir?

22 A. Hundreds.

23 Q. Now, you have been retained by my office, is
24 that right to evaluate this case?

25 A. Correct.

1 Q. And what does your evaluation consist of?

2 A. It consisted of an initial in-person meeting
3 with Mr. Parks. It consisted of a document review
4 of the medical records and a physical examination,
5 as well as a report that was produced after that
6 initial meeting. And then one subsequent
7 evaluation that was conducted via Zoom due to
8 practical purposes.

9 Q. That Zoom telemedicine encounter occurred on
10 about April 20 of this year?

11 A. That's correct.

12 Q. And you wrote a couple of reports pertaining
13 to your evaluations; is that correct?

14 A. Yes.

15 Q. And do you have them with you today?

16 A. I do.

17 Q. They're up there with you, correct?

18 A. I have them in my hand.

19 Q. So the jury has already heard to some degree
20 the fact that Mr. Parks is what is referred to as a
21 "K3 ambulator." Could you describe to the jury the
22 K system and what it means to be a K3 ambulator,
23 please.

24 A. The K system is a functional measure that was
25 designed and put forth by the Centers for Medicare

1 Services and Health Care Financing Administration
2 in order to help stratify the various options for
3 prosthetic devices to more properly fit the correct
4 device with the needs of the patient that requires
5 them.

6 So K -- it's a five-point system, so K0
7 through K4. And, basically, each level increases
8 the level of the functional ability of the patient
9 using the prosthesis.

10 Q. What is a K3 ambulator, Doctor?

11 A. K3 basically is a person who is ambulating
12 with variable cadence. In other words, they're
13 fast, slow-moving. They're ambulating over various
14 environmental barriers such as stairs, uneven
15 surfaces, such as cobblestones or grass or dirt or
16 ramps. They are high level beyond straight
17 community ambulators with certainly the potential
18 for more.

19 There is a higher level, which is K4, which
20 really specifically relates to patients who may be
21 high-level athletes or have high impact activity
22 and lifestyles.

23 Q. Has Dr. Tucker assigned a K level -- Dr.
24 Tucker being the managing physiatrist for
25 Mr. Parks, has he assigned a K level to Mr. Parks?

1 A. Mr. Parks is a K3 ambulator.

2 Q. Do you agree with Dr. Tucker in that regard?

3 A. I do.

4 Q. To a reasonable degree of medical certainty?

5 A. Yes.

6 Q. Now, if you would, describe the -- I think
7 it's called the C-3 microprocessor prosthesis that
8 you observed on Mr. Parks, please.

9 A. Yes. I mean, brief background, we try to
10 match the prosthesis with the patients and the
11 Ottobock C-leg is a microprocessor controlled knee
12 mechanism that allows multiple programming stages
13 based on the needs of the patient. There is
14 numerous different ways the patient themselves can
15 actually adapt and modify the programming, and
16 there is a bit of a training process for this,
17 which Mr. Parks has gone through. It allows for
18 the highest level of mobility that we would want a
19 young, healthy individual to be able to achieve.

20 Q. Does it permit jogging on a treadmill?

21 A. It does.

22 Q. Exercising, weight training?

23 A. Yes, stationary bike exercising. Ultimately,
24 it could provide for actual running outside,
25 outdoors.

1 Q. Is it the kind of prosthesis perhaps we've
2 seen in the media for servicemen who have lost
3 limbs?

4 A. Absolutely.

5 Q. And the procedure, the amputation procedure
6 that Mr. Parks went through back in January of
7 2019, it's called a "knee disarticulation"; is that
8 correct?

9 A. Correct.

10 Q. Can you tell the jury, describe to the jury
11 what -- briefly what is involved in a knee
12 disarticulation.

13 A. Basically, it's determined to be appropriate
14 for folks who have the need for an amputation due
15 to nonviability of the limb, but preserves maximum
16 length possible in the residual limb. And,
17 specifically, through the knee retains the patella
18 and musculature of the femur. Does not cause -- it
19 minimizes the trauma around the femur itself. It
20 allows for a good weight-bearing and suspension of
21 the prosthesis once it's fit.

22 Q. Does it have any significance in terms of
23 predicted or expected function amount as opposed to
24 other forms of amputation procedures?

25 A. The goal of any amputation procedure is to

1 preserve as much length as possible. And to
2 provide for as good as wound healing as possible,
3 and to provide for the best possible suspension
4 system possible.

5 So with that said, if one must have loss of
6 the limb below the knee and does not have enough
7 length remaining of the below the knee component,
8 this is the best option possible.

9 Q. Doctor, are the terms "objective" and
10 "subjective" familiar to you as they're used in the
11 medical community?

12 A. Yes.

13 Q. Can you tell the jury what "objective" means
14 and "subjective," please.

15 A. Yes. I mean, "objective" is something that is
16 measurable, that can be demonstrated unequivocally,
17 such as a fracture on an x-ray, you know, imaging
18 studies show objective findings.

19 "Subjective" is perception of a patient and
20 isn't as quantifiable.

21 Q. Is a complaint of pain by any patient to you,
22 is that considered objective or subjective?

23 A. It's subjective.

24 Q. Doctor, I think you had told us already that
25 you reviewed Mr. Parks' records as it pertains to

1 his progress since discharge from Temple University
2 Hospital; is that correct?

3 A. I have.

4 Q. Would you relay to the jury the significant
5 aspects of what you reviewed in preparation for
6 your opinions today, please. You can refer to your
7 report.

8 A. Yes.

9 Q. Or reports, I'm sorry.

10 A. Yes.

11 I mean, the records that I reviewed
12 specifically are the physical therapy records. I
13 believe he was at first Magee Rehabilitation.
14 Records from Dr. Tucker, who is his outpatient
15 psychiatrist. There were some records from Dr.
16 Lenrow, who is one of his outpatient psychiatrists.
17 Records from Allied Prosthetics and Orthotics,
18 which is the prosthetic manufacturer for Mr. Parks.

19 I briefly reviewed some of the home health
20 care notes that were there initially upon
21 Mr. Parks' early return to home, the home setting.
22 Those are the records I reviewed.

23 Q. In taking, let's say, from the time of the
24 termination of the nursing assistant at home in
25 February of 2019, tell us based on your interview

1 of Mr. Parks how he progressed since that time,
2 please.

3 A. Yes.

4 I mean, I saw him in person in February 2021.
5 We spent some time talking about his life as it's
6 been since he returned home. Initially, from when
7 he first returned home until when I saw him, he had
8 made a lot of progress with respect to
9 reincorporating all of his activities of daily
10 living, beginning to figure out how to manage
11 caring for his young son, how to navigate his
12 household such as up and down the stairs.

13 And subsequently to that initial meeting,
14 where it appeared he was doing well. He had just
15 received the microprocessor knee, which was new for
16 him at the time. He had struggled a bit with the
17 mechanical knee, but it was a game changer when he
18 got the microprocessor knee. He seemed upbeat and
19 seemed as optimistic as possible.

20 As of more recent April 2023, he had seemed to
21 have made even greater strides. Over that time
22 frame he has lost a considerable amount of weight.
23 I specifically asked him about the weight loss. He
24 said this is because he's been going to the gym
25 regularly, doing a lot of cardiovascular exercise,

1 the weight loss. And this is true with any new
2 amputation where the residual limb will become
3 modified over time. Basically, we will call it
4 shrinking and it does. It shrinks for a number of
5 reasons; specifically, in this case weight loss.
6 He has had to have some socket adjustments as a
7 result of that, which is typical and expected.
8 With those socket adjustments, have come periods of
9 advancement in functional activities.

10 He's doing as well as I would expect an
11 amputee at his level to do, which is phenomenal.

12 Q. You said he lost weight. Did he lose about 60
13 pounds due to going to the gym?

14 A. He told me 60 pounds, yes.

15 Q. Let's look at some of the specific records, if
16 we can, please.

17 MR. HOSMER: Could you go to Exhibit
18 5, please, page nine.

19 BY MR. HOSMER:

20 Q. Doctor, what I have shown you or what I put up
21 on the screen is the records of Dr. Lenrow, another
22 physiatrist, from August 26, 2019. Do you see that
23 in front of you, sir?

24 A. Yes, I do.

25 MR. HOSMER: Can you highlight what

1 we talked about, please.

2 MR. STROKOVSKY: I object.

3 Your Honor --

4 Can you take that down, please?

5 That's fine right there. Thank you.

6 MR. HOSMER: I think we have an
7 agreement.

8 BY MR. HOSMER:

9 Q. Doctor, do you see that little excerpt of Dr.
10 Lenrow's evaluation of August 26, 2019?

11 A. Yes, I do.

12 Q. It says, Denies difficulty with ambulation.
13 That's what he reported to Dr. Lenrow at that time,
14 correct?

15 A. Yes. Correct.

16 Q. And that was before Mr. Parks got the C leg?

17 A. Correct.

18 Q. The advanced microprocessor knee.

19 MR. HOSMER: Take that down. Thank
20 you.

21 BY MR. HOSMER:

22 Q. Now, I think you mentioned it before, but once
23 he got the microprocessor knee, what kind of effect
24 did it have on his lifestyle as he reported to you?

25 A. Yeah. He reported to me that it was

1 substantially improved. He was able to do things
2 he hadn't felt confident doing before. He did show
3 me using his app on his smartphone the way he is
4 able to make adjustments to the programming on the
5 knee mechanism, as mentioned before.

6 He mentioned to me that he was able to show a
7 friend of his that he was able to ride a bike,
8 which the friend, I believe, was pretty shocked by
9 it.

10 So, yes, ascend and descend stairs with the
11 prosthesis. A lot of things he wasn't really able
12 to do before. He was quite pleased with the
13 function of the new knee.

14 MR. HOSMER: Could we go to Exhibit
15 4, please, page 58.

16 I know what you're worried about.
17 You all right with that?

18 MR. STROKOVSKY: Yes. You don't
19 need to say what I'm worried about.

20 THE COURT: This is not a chat
21 between you.

22 BY MR. HOSMER:

23 Q. Doctor, what we have shown you is the chart of
24 Allied prosthetics, dated June 3, 2021. This is
25 one of the documents you reviewed, sir, in

1 preparation for your opinions today?

2 A. Yes.

3 Q. And it indicates there that Mr. Parks'
4 recreational activities of daily living information
5 at that time included bicycling, shopping, house
6 chores, weight lifting. I think that covers it,
7 doesn't it?

8 A. Yes, it does.

9 MR. HOSMER: Now, could you go down
10 further on that page, please. Show the jury
11 what you and I talked about before with
12 respect to his balance activity and endurance.

13 Are you okay with that?

14 MR. STROKOVSKY: Yes.

15 BY MR. HOSMER:

16 Q. Again, this is from June 3, 2021, Doctor, the
17 same page that you reviewed, correct, sir?

18 A. Yes.

19 Q. And it indicates he's not having any back pain
20 at that time, correct?

21 A. Correct.

22 Q. And his balance, activity and endurance are
23 considered excellent by his prosthetist?

24 A. Yes.

25 Q. Now, Dr. Miknevich testified that she didn't

1 think prosthetists were very good in assessing back
2 pain. Do you have an opinion in that regard?

3 A. I mean, absolutely. I think that prosthetists
4 always wants to know how the patient is doing, if
5 there are adjustments that need to be made to the
6 prosthesis for whatever concerns that the patient
7 may be having at the time. Back pain certainly
8 being one of them.

9 To the degree that they're assessing that the
10 actual nature of the back pain, I don't have a
11 great opinion on that in the sense of if there is
12 back pain that's being caused by X, Y or Z on the
13 prosthesis that can be adjusted. If it's something
14 that needs physician assessment, then they -- I
15 have a really good relationship with my
16 prosthetist. They always consult me, as well.

17 Q. A prosthetist is capable of writing down about
18 a patient as to whether the patient does or does
19 not have back pain?

20 A. Yes. Absolutely.

21 MR. HOSMER: Let's move on to
22 Exhibit 3 from August 26, 2021. Show that to
23 Mr. Strokovsky and the Court, please, page
24 279.

25

1 BY MR. HOSMER:

2 Q. You reviewed Dr. Tucker's records, correct?

3 A. Yes.

4 MR. HOSMER: Could we focus in on
5 what we talked about before, please.

6 Highlight that and only that.

7 You can show it.

8 THE COURT: Without objection.

9 BY MR. HOSMER:

10 Q. This is a line from Dr. Tucker's chart. Dr.
11 Tucker is the physiatrist that has been managing
12 Mr. Parks for the past four years; is that right?

13 A. Yes, he is.

14 Q. What does he write with respect to the
15 prosthesis as of August of 2021?

16 A. He continues to use his right lower extremity
17 prosthesis without significant issues, reporting
18 his prosthesis is working well for him.

19 MR. HOSMER: Go to page 280 of
20 Exhibit 3, please.

21 BY MR. HOSMER:

22 Q. I will make it more simple.

23 Dr. Tucker, do you remember reading as of
24 August 6, 2021, wrote that Mr. Parks' gait was,
25 quote, non-antalgic?

1 A. Correct.

2 Q. Tell the jury what does "non-antalgic" mean?

3 A. He was able to ambulate without signs of
4 painful ambulation or pain.

5 Q. Mr. Karras testified that non-antalgic means
6 he is walking without a limb. Is that correct a
7 definition?

8 A. I would say in certain circumstances, yes. In
9 certain circumstances, it really just means walking
10 without pain.

11 Q. At this point in time he has a prosthesis on,
12 correct?

13 A. Correct.

14 Q. Going back to Allied Orthotics, Exhibit 4,
15 page 73, from October of 2021 --

16 MR. HOSMER: Tim, can you put that
17 up, what we highlighted, please, the
18 highlighted portion that we talked about.

19 BY MR. HOSMER:

20 Q. Is that part of the record that you reviewed,
21 sir?

22 A. Yes.

23 Q. It says that he is a K3 ambulator, as of
24 October of 2021, correct?

25 A. Yes.

1 MR. HOSMER: If you would go to the
2 first paragraph with the highlighted only,
3 please.

4 BY MR. HOSMER:

5 Q. There it says again, as of October 2021,
6 states that he has lost 20 pounds at that time and
7 is still working out at the gym and feels good.
8 Correct?

9 A. Yes, correct.

10 Q. You read that as part of your evaluation?

11 A. Yes, I did.

12 Q. For your opinions?

13 A. I did.

14 MR. HOSMER: Exhibit 4, Tim, page
15 82.

16 BY MR. HOSMER:

17 Q. Dr. Sarlo, this will be a visit with Allied
18 Orthotics moving along in time, March 16, 2022.

19 MR. HOSMER: Highlight the top
20 paragraph, please.

21 You can publish that, please.

22 BY MR. HOSMER:

23 Q. We are now up to March 16, 2022, and under
24 daily living information from Allied, recreational
25 activities, can you tell the jury what that

1 included?

2 A. Recreational activities including bicycling,
3 shopping, house chores, long walks, aerobics,
4 weight lifting. I don't know what that other word
5 is.

6 Q. I'm having trouble with it, as well.

7 A. Weight lifting I can see that.

8 MR. HOSMER: If you would, Tim,
9 please go to the bottom of page 82 where it
10 talks about his endurance just like we did
11 last time.

12 BY MR. HOSMER:

13 Q. Again, as of March 16, 2022, no report of back
14 pain, correct?

15 A. Correct.

16 Q. And his balance, activity and endurance are
17 considered excellent?

18 A. Correct.

19 MR. HOSMER: Go to page 85, please.

20 Just show it to Mr. Strokovsky, please.

21 Are you all right with that?

22 MR. STROKOVSKY: Yes.

23 BY MR. HOSMER:

24 Q. So this, too, Dr. Sarlo is from March 16,
25 2022, and tell the jury what it says about the

1 assessment of the gait as of that time and his
2 endurance, ability to walk.

3 A. Gait is normal at the time. He's able to do
4 stairs. His endurance is over three hours. He can
5 do a full flight of stairs.

6 Q. Now, with respect to back pain, based on your
7 review of the records of Allied and Dr. Bradley
8 Tucker, did Mr. Parks ever complain to either of
9 those two medical providers about experiencing back
10 pain?

11 A. He did not.

12 Q. As a matter of fact, we see that he
13 specifically said there was no back pain in March
14 of 2022, correct?

15 A. Correct.

16 Q. Did Mr. Parks report back pain to you, Doctor?

17 A. He did not.

18 Q. Moving on to falls, based on your review of
19 the records, when is the last time that Mr. Parks
20 complained to a medical provider about falling,
21 approximately?

22 A. It was within the first few months of him
23 returning home from the hospital, but not since
24 then.

25 Q. You did a physical examination of Mr. Parks;

1 is that right, sir?

2 A. I did.

3 Q. Can you tell the jury what your physical
4 examination consisted of.

5 A. I can. Bear with me, to get to that part on
6 my report.

7 I mean, as it consisted of what I normally
8 would do with every patient, of course. A general
9 assessment; well nourished, well developed,
10 cooperative.

11 I do a brief neurological examination which
12 includes things such as reflexes, cranial nerve
13 exam, manual muscles grades and assessment of
14 joints, looking for joint contractures, et cetera.
15 Pulses.

16 Condition of residual limb. Condition of the
17 sound limb skin.

18 Q. When you -- did you assess the strength of his
19 legs?

20 A. Yes.

21 Q. And can you tell the jury the strength of his
22 leg, please?

23 A. Yes. Five over five, which is normal
24 strength.

25 Q. Did you palpate his residual limb, the stump?

1 A. Yes, I did.

2 Q. Did he experience pain when you palpated his
3 stump?

4 A. He did not.

5 Q. You observed -- I'm sure you observed his
6 gait?

7 A. I did.

8 Q. On two occasions, correct?

9 A. Yes.

10 Q. Can you tell the jury what you observed about
11 his gait, please.

12 A. In person, it was right after he received his
13 microprocessor knee. He was managing quite well.
14 He did have some gait deviations that are typical
15 for someone getting the hang of using a prosthesis
16 and a microprocessor knee. That specifically was
17 him building confidence with what the knee did do
18 for him. And learning how to maneuver the limb
19 through ultimately a normal range of motion.

20 I think initially he did have some hip hiking,
21 which means he lifts the amputated side with the
22 prosthesis to clear it, as well as at times, he may
23 have also had what we call circumduction, meaning
24 swinging it to the side at times.

25 The second time I observed him really was on

1 Zoom, but I got a good view of what he was able to
2 do, and almost all of those deviations had been
3 abolished and he actually really was making
4 substantial improvements as of April 2023.

5 Q. Do you have an opinion, sir, as to his
6 prognosis with respect to the gait deviations that
7 you observed as of several weeks ago?

8 A. Yeah. I mean, the so -- and I want to preface
9 this and just state that he still hadn't received
10 his newest socket which was being fabricated. I
11 believe he's been casted for it. So he still is --
12 still at the time as of April 2023, was having a
13 reduced level of fit for the socket.

14 So with that said, he didn't really show
15 obvious signs of that while he ambulated. He was
16 actually doing quite well. The idea is once he
17 receives his newest socket that he probably would
18 even be able to abolish almost all of the gait
19 deviations.

20 Q. He's taking -- he is using marijuana; is that
21 right for pain?

22 A. Yes.

23 Q. Any other pain -- is he taking any pain
24 medications?

25 A. He's not.

1 Q. To what extent, if at all, based on your
2 evaluation, is the subjective complaint of pain
3 that he is making affecting his ability to function
4 and walk?

5 A. As of my most recent evaluation, he has been
6 wearing the prosthesis all day and over 14 hours.
7 At times he may take his limb out of the socket
8 just to do that, not specifically for pain. He
9 wasn't being limited in his functional activities
10 but the pain that he was experiencing, specifically
11 the pain that he did describe, was in the residual
12 limb not in the phantom limb.

13 So with that said, I really wasn't able to get
14 out of him how much marijuana he was smoking or
15 however he was using it specifically for the pain.
16 That was somewhat of a nebulous quantity. I really
17 couldn't get an answer for that.

18 Suffice it to say, he tried not to use it
19 because he's caring for his son 50 percent of the
20 time. So most of that time that he is with his son
21 he's able to function as a dad doing a lot of
22 things for his son without being limited by the
23 pain, to my knowledge.

24 Q. How about his ability to carry out activities
25 of daily living; did you make an assessment of

1 that?

2 A. Yes.

3 Q. Can you tell the jury his ability to carry out
4 activities of daily living?

5 A. He's independent.

6 Q. Do you hold that opinion to a reasonable
7 degree of medical certainty?

8 A. I do.

9 Q. By activities of daily living, tell the jury
10 what you mean, please.

11 A. Yeah. I mean feeding himself, showering,
12 bathroom, shopping, dressing.

13 Q. Now, do you have an opinion to a reasonable
14 degree of medical certainty as to whether Mr. Parks
15 is capable of resuming and carrying out all of the
16 activities he was doing before the amputation
17 today?

18 A. Yes. I mean, in my professional opinion, I
19 believe, based on my two assessments of Mr. Parks,
20 that he should be capable of performing all the
21 previous activities that he performed prior to the
22 amputation.

23 Q. Dr. Miknevich and Dr. Tucker have both
24 described Mr. Parks as highly functional. To a
25 reasonable degree of medical certainty, do you

1 agree with their assessment?

2 A. Yes, I do.

3 Q. If he chose to return to work, is Mr. Parks
4 capable of returning to just about any line of work
5 he would choose?

6 A. Yes.

7 Q. What is your basis for saying that?

8 A. Clinical experience, similar patients. It's a
9 matter of having an optimal prosthesis and an
10 optimal function and an optimal strength and
11 baseline. And there really are no limitations on
12 him based on his current functional status.

13 Q. Do you hold that opinion to a reasonable
14 degree of medical certainty?

15 A. I do.

16 Q. Let's turn our attention now to his future
17 medical care.

18 A. Yes.

19 Q. I guess, the threshold question is: Did you
20 make an assessment of or did you make a
21 determination as to his life?

22 A. Yes.

23 Q. On what did you rely to do that?

24 A. There are tables that are actuarial tables
25 that are used specifically for adults when you're

1 attempting to project life care and longevity.

2 Q. Are these the tables from the Centers for
3 Disease Control?

4 A. Yes.

5 Q. And what did you make an assessment or did you
6 use a table to determine his life expectancy?

7 A. Yeah. I reviewed the reports of the experts
8 and I agreed with them.

9 Q. We better determine which experts you're
10 talking about.

11 A. Yes, sir.

12 Q. Which table or let me ask you this.

13 Does the CDC determine or differentiate life
14 expectancy based on gender, race and age?

15 A. Yes, they do.

16 Q. Is that the table you used for Mr. Parks?

17 A. Yes, it was.

18 Q. What was Mr. Parks' life expectancy based on
19 that table that was adjusted for gender, race and
20 age?

21 A. It was an additional 39 years.

22 Q. Now, is that particular table adjusted for
23 gender, race and age typically employed in the
24 field of physical medicine and rehabilitation when
25 necessary?

1 A. It is.

2 Q. Now, what I'd like you to do now, sir, refer
3 to your reports and give the jury a summary of what
4 you believe Mr. Parks will require as it pertains
5 to future medical care, please, and equipment.

6 I think it begins on page five of your
7 April 25, report.

8 A. So, specifically, as it pertains to the
9 prosthesis itself and the sockets and everything to
10 do with the prosthetic fit and function, I think
11 that is detailed here, you know, prosthetic
12 consumables such as socks, the seals, the silicone
13 liners, et cetera, as needed when they wear out.

14 The microprocessor knee in total contact
15 socket one every five years for his life
16 expectancy. That includes everything to do with
17 the prosthesis.

18 Q. When you say "everything to do with the
19 prosthesis," what do you mean?

20 A. The socket, the knee mechanism, the ankle, the
21 foot, and everything used to suspend the prosthesis
22 from the residual limb; specifically, the silicone
23 seals, the socks and the liners, and everything
24 used to adjust for normal day-to-day volume
25 expansions and contractions of the limb.

1 Q. With reference to the first paragraph of five
2 of your report, what is your opinion as to whether
3 he requires a physician and orthopedic surgery
4 consultations?

5 A. Yeah. I mean, the two specific visits I have
6 had with Mr. Parks and reviewing the medical
7 literature, I did not see the need for a specific
8 physician completely unnecessary pain management.
9 He wasn't requiring pain management over and above
10 that which Dr. Tucker was managing for him.

11 Q. Again, with reference to page five, would he
12 require any EMG studies?

13 A. No.

14 Q. Why not?

15 A. There is no need for an EMG related to his
16 amputation.

17 Q. Does he require a home health aide when he
18 gets older?

19 A. I mean, based on what I evaluated and saw
20 Mr. Parks' capabilities, I really did not feel the
21 need for a home health aide as he gets older.
22 There are normal, everyday foreseeable issues that
23 all of us might encounter that could potentially
24 require that, but that's not specific to his
25 amputation.

1 Q. Will he require a fully electric hospital bed
2 somewhere around age 60, in your opinion?

3 A. Definitely not.

4 Q. Will he require -- I think you already said he
5 requires replacement of the prosthesis once every
6 five years?

7 A. Yes.

8 Q. It's been prognosticated by the plaintiff's
9 experts that around age 60, he will require a
10 motorized scooter and wheelchair. Do you agree
11 with that?

12 A. I mean, it's normal to have a manual
13 wheelchair for purposes of when he doesn't have the
14 use of his prosthesis.

15 Q. You included that in your report?

16 A. I did. Yes, I agreed with that.

17 I didn't agree with the scooter. I did not
18 see the purpose of the scooter. He fully, and I
19 anticipate him to continue to be fully mobile with
20 his prosthesis.

21 Q. It's been opined that he will require or may
22 require neuroma scar injections. Do you agree with
23 that?

24 A. I see no evidence of a neuroma currently and I
25 don't anticipate him forming one in the future.

1 Q. It's been stated that he may need emergency
2 room treatment due to falls in the future. Do you
3 agree with that?

4 A. I don't agree with that specific to his
5 prosthesis. He hasn't fallen in over two years.

6 Q. It's been opined that he will require
7 currently physical therapy and occupational therapy
8 four times a year. Do you agree with that?

9 A. Four times a year is a bit excessive, but I do
10 agree at some point he would potentially require
11 fine-tuning with a physical therapist if he does
12 have changes to his prosthetic prescription that
13 are different than what he had previously. So
14 that's a reasonable thing to consider.

15 Q. Has he had any physical therapy in the past
16 two years?

17 A. He has not.

18 Q. Has Dr. Tucker recommended physical therapy in
19 the past two years?

20 A. Not over the past two years. I do believe it
21 is being recommended after he receives his final
22 socket.

23 Q. Now, he's gotten a couple of sockets between
24 2021 and the present, correct?

25 A. Yes.

1 Q. And no physical therapy was undertaken; is
2 that right?

3 A. No.

4 Q. Is that right?

5 A. Correct. Yes.

6 Q. Have there been medical advances, Doctor, in
7 the past couple of decades with respect to the
8 treatment and equipment for amputees?

9 A. Most definitely.

10 Q. Do you see any reason why those advancements,
11 those medical improvements would not continue?

12 A. I see no reason for them not to continue.

13 Q. Again, just give me a minute to make sure we
14 covered everything.

15 Phantom pain, what did Dr. Tucker say as of
16 March of 2023 concerning the frequency of
17 Mr. Parks' phantom pain?

18 A. Rare.

19 Q. Have all the opinions you have given today,
20 Dr. Sarlo, been to a reasonable degree of medical
21 certainty?

22 A. They have been.

23 Q. Including with respect to the needs or the
24 absence of needs for future medical care?

25 A. Yes, they have.

1 MR. HOSMER: That concludes my
2 direct examination.

3 THE COURT: Counsel, you may
4 inquire.

5 MR. STROKOVSKY: Your Honor, could
6 we have a comfort break?

7 THE COURT: Yes. We will take a
8 ten-minute break, everyone.

9 Keep an open mind. Don't discuss
10 this amongst each other until you heard it all
11 and listen to my instructions.

12 (Jury exits courtroom at 10:12 a.m.)

13 (Brief recess.)

14 (Jury enters courtroom at
15 10:26 a.m.)

16 THE COURT: As you know, now is
17 plaintiff's turn to examine the doctor.

18 So, Counsel, you may proceed.

19 MR. STROKOVSKY: Thank you, Your
20 Honor.

21 - - -

22 CROSS-EXAMINATION

23 - - -

24 BY MR. STROKOVSKY:

25 Q. Dr. Sarlo, I'm looking at your first report,

1 which was from December of 2021, in front of me.
2 At the top corner it's addressed to a Marshall
3 Dennehey attorney that's in King of Prussia, PA
4 address; is that correct?

5 A. Yes.

6 Q. On page nine of your report, you state that
7 Mr. Parks should be fully able to return to the
8 workforce in any capacity of his choosing and
9 previous ability; is that correct?

10 A. Yes.

11 Q. So, right now if Mr. Parks wanted to be a
12 full-time bike messenger, he could?

13 A. Sure.

14 Q. If he wanted to be a full-time fireman, he
15 could?

16 A. As long as the fire department has no specific
17 stipulations.

18 Q. So he could run into burning buildings and
19 save people, right?

20 A. Sure.

21 Q. And he could be a police officer on patrol
22 running after bad guys, right?

23 A. Sure.

24 Q. And today if he wanted to, he could work a
25 full-time job as a waiter at a high volume

1 restaurant; is that correct?

2 A. I see no reason why not.

3 Q. Or he could be a barback full time at a beer
4 garden picking up kegs and changing them?

5 A. I don't see a reason why that should be
6 prohibited.

7 Q. And he could be a CNA still, right?

8 A. Yes.

9 Q. He could pick up elderly patients and help
10 them from falling?

11 A. I don't see a reason why not.

12 Q. He could pick up fellow amputees and prevent
13 them from falling, right?

14 A. Yes.

15 Q. He could help transfer them out of bed?

16 A. Yes.

17 Q. He could be on his feet all day?

18 A. Yes.

19 Q. He could walk constantly all day?

20 A. Yes.

21 Q. In fact, if he's a barback, he might have to
22 run to change a keg, right?

23 A. He could do that. I see no reason why not.

24 Q. He could be a union carpenter, correct?

25 A. If he had skills that allowed that, sure.

1 Q. So he would be able be stories high on metal
2 beams working?

3 A. You have heard of the Office of Vocational
4 Rehabilitation? I think with proper training he
5 could do whatever he wanted.

6 Q. And that's today, right?

7 A. As of today with his current, yes, as of
8 today.

9 Q. Did you view Mr. Parks' medical records from
10 Temple?

11 A. Yes.

12 Q. It's my understanding he was discharged on
13 February 7, 2019. Does that sound accurate?

14 A. Yes.

15 Q. He was given a prescription for a bedside
16 commode, a wheelchair, a rolling walker and
17 crutches upon discharge; is that correct?

18 A. To my knowledge, yes.

19 Q. Also, are you aware that while still at
20 Temple, he had complaints of phantom limb pain?

21 A. I'm not surprised.

22 Q. Are you aware?

23 A. Yes.

24 Q. He also had residual limb pain noted at the
25 hospital?

1 A. Correct.

2 Q. And that was almost four and a half years ago?

3 A. Yes.

4 Q. After his discharge, he did have some retained
5 sutures at some point; is that correct?

6 A. Yes.

7 Q. After discharge, he was still in pain; is that
8 correct?

9 A. Yes.

10 Q. And as you mentioned earlier, Mr. Parks takes
11 medical marijuana, correct?

12 A. Yes.

13 Q. And I think you noted in your report he does
14 not want to take opiates; is that correct?

15 A. I believe he said he just wants to stick with
16 the medical marijuana.

17 Q. I believe you said something to the effect of
18 he did not want to take narcotics and other pain
19 meds because of the way it made him feel. Does
20 that sound accurate?

21 A. Yes.

22 Q. In your report, you noted that he had -- this
23 is your report from 2021 -- you noted that he had
24 two falls; is that correct?

25 A. Yes.

1 Q. And one outside in the snow on the steps?

2 A. Yes.

3 Q. Another in the bathroom on the shower floor,
4 correct?

5 A. Correct.

6 Q. And being here today, could Mr. Parks have a
7 job with snow and ice removal?

8 A. I see no reason why not.

9 Q. Also, by the time you did your report in late
10 2021, you noted that for the most part, he
11 eliminated all assistive devices while walking?

12 A. Correct.

13 Q. So there were sometimes where he would use an
14 assistive device?

15 A. I think initially, yes. When I subsequently
16 interviewed him on April of 2023, he basically said
17 he didn't use the crutches anymore. When he
18 doesn't have his limb, he says he hops, which is
19 rare. Usually, he's wearing his limb.

20 Q. It was mentioned on cross-examination whether
21 or not Mr. Parks has seen a pain management
22 specialist since 2019. Has Mr. Parks seen a pain
23 management specialist since 2019?

24 A. I believe he has one or two visits with Dr.
25 Gupta. I don't believe he's continuing to follow

1 with him at this stage.

2 Q. So it sounds like you're aware he saw Dr.
3 Gupta three times in 2020?

4 A. That's to my knowledge, yes.

5 Q. Dr. Gupta is, in fact, a pain management
6 specialist, right?

7 A. As far as I'm aware, yes.

8 Q. Are you aware, also, during those visits,
9 there were complaints of back pain?

10 A. To my knowledge, yes, in the record it was
11 stated.

12 Q. Are you aware that there was also a note that
13 Mr. Parks may require a neuroma injection?

14 A. I'm not sure where that came up. These were
15 subjective statements made by the pain management
16 doctor. I don't see any evidence in the medical
17 reports that the patient had a neuroma.

18 Q. What is a neuroma?

19 A. A neuroma is a swelling of the nerve sheath
20 that can happen as a result of trauma or the
21 amputation itself.

22 Q. How does that happen?

23 A. How does what happen?

24 Q. How does that form the neuroma?

25 A. I don't know. I mean, it happens. We get

1 neuromas in our feet. They're interdigital
2 neuromas usually just from wear and tear over time.
3 Usually, they're presenting in an amputee soon
4 after the amputation process. It's part of the
5 healing that occurs during the initial phases after
6 the amputation is completed.

7 Q. Does it occur when nerves are cut?

8 A. Yes.

9 Q. Are there any nerves in the leg?

10 A. Of course.

11 Q. How many?

12 A. I mean, really? You want me to detail all of
13 the nerves in the leg? Is that what you're asking
14 me?

15 Q. Are there a lot of nerves in the leg?

16 A. Quite a few, yes.

17 Q. So when his amputation occurred, would a lot
18 of nerves been cut?

19 A. Several.

20 Q. And you mentioned photographs that you
21 reviewed for this case. Were those photographs of
22 Mr. Parks in Las Vegas?

23 A. I believe I saw some photographs of that, yes.

24 Q. Did you see any other photographs?

25 A. I don't recall.

1 Q. How about heterotopic ossification; are you
2 aware that Mr. Parks has or that's been found in
3 Mr. Parks?

4 A. Yes.

5 Q. And that's an excessive bone growth as a
6 result of the amputation, correct?

7 A. Yes.

8 Q. And that was documented sometime in 2019.
9 Does that sound accurate?

10 A. Yes.

11 Q. That can be a source of residual limb pain,
12 correct?

13 A. It can be.

14 Q. Have you, yourself, ever performed a neuroma
15 skin injection?

16 A. I have.

17 Q. You have?

18 A. Yes.

19 Q. In an amputee?

20 A. Yes.

21 Q. Have you ever performed a neuroma
22 reinnervation procedure?

23 A. No. I'm not a surgeon.

24 Q. In your report of 2021, under review of
25 systems, you noted him as positive for residual

1 limb pain; is that correct?

2 A. Yes.

3 Q. And positive for phantom limb sensation?

4 A. Yes.

5 Q. You reported his sleep is disrupted at times
6 due to his pain?

7 A. Yes.

8 Q. You also noted in your first report that that
9 was some mild circumduction of his right lower
10 extremity?

11 A. Correct.

12 Q. I don't know if I'm going to do a good job
13 with this, but when you say circumduction, is that
14 the leg moving like this?

15 A. Sure.

16 Q. More or less?

17 A. Correct. Maybe to not that extreme, but,
18 generally speaking, that's approximate.

19 Q. Mr. Parks still does that to some extent,
20 right?

21 A. Not so much.

22 Q. But to some extent?

23 A. No. He really does a little more of a hip
24 hike than a circumduction.

25 Q. Does he walk with a limp?

1 A. He walks with a limp, yes.

2 Q. It's fair no matter how improved or healthy an
3 amputee can be with a prosthetic, he or she will
4 never walk the same as if they had two legs?

5 A. That's correct and obvious, yes.

6 Q. Your diagnosis, you diagnosed -- this is from
7 your first report -- with phantom limb pain and
8 residual limb pain?

9 A. Yes.

10 Q. You also noted deficits in activities of daily
11 living and function.

12 A. Go ahead.

13 Q. So you noted he did have some physical
14 limitations with regard to activities of daily
15 living; is that correct?

16 A. Yeah. I mean, just to be clear, this was
17 February 2021. You know, he was still undergoing
18 adjustments to his microprocessor knee and his new
19 socket, so, yes, these deficits were present at the
20 time. They evolved and, I believe, at this stage
21 as of April 2023, they have all been resolved.

22 Q. But for purposes of your report from 2021,
23 which that is when it was written, right?

24 A. Yes.

25 Q. And in that report, you noted that he had some

1 limited function in terms of his activities of
2 daily living?

3 A. I did say that, yes.

4 Q. Nonetheless, you still said that he has no
5 physical limitations at that time?

6 A. I mean, if you can show me the line where I
7 say that.

8 Q. Sure.

9 If you go six lines up from the bottom.

10 A. Of page?

11 Q. Page six. This is your 2021 report.

12 A. Yes.

13 Q. The sentence begins towards end of that line,
14 I will read it and please let me know if I read it
15 properly.

16 With respect to any limitations that Mr. Parks
17 has related to his current postamputation status,
18 it's in my professional opinion that Mr. Parks has
19 no physical limitations and should be able to
20 resume all of his activities of daily living and
21 previous functional activities while using his
22 microprocessor knee and prosthetic socket.

23 Did I read that correctly?

24 A. Yes, you did.

25 Q. Is it fair Mr. Parks can't do whatever he

1 wants if he is not wearing his prosthetic?

2 A. Correct.

3 Q. And in your report from 2021, you mentioned
4 that he will more than likely require additional
5 high level physical therapy intervention to achieve
6 his ultimate goals so that he may master the full
7 functionality of the microprocessor knee, improve
8 his overall physical conditions, endurance, core
9 strength and minimizing if not eliminating all gait
10 deviations.

11 A. I did say that, yes.

12 Q. And on page seven of your first report, you
13 noted that his current microprocessor is -- his
14 current prosthesis as he's using, it's reasonably
15 expected to be replaced every three to five years?

16 A. Five years is the warranty on the mechanics of
17 the C-leg, yes.

18 Q. Your report said reasonable life expectancy of
19 that processor is approximately three to five
20 years.

21 A. If that's what it says in the report, that's
22 what it says in the report.

23 Q. Well, I don't want to represent something and
24 you have to base it off of me. Please, take your
25 time. It's on page seven, I believe.

1 MR. HOSMER: Judge, I will stipulate
2 it's there.

3 THE COURT: Let counsel ask his
4 question.

5 THE WITNESS: Can I just clarify
6 that a bit?

7 So three to five years means the
8 warranty is for five years. If it fails
9 before then, it's covered under warranty. So
10 that's the point I was making there.

11 Now, specifically, you're talking
12 about the whole prosthesis. There are
13 components of the prosthesis that may require
14 more frequent adjustments such as sockets, we
15 talked about. So, I think, that if you want
16 clarification, that's the clarification,
17 specifically that the componentry is a little
18 different and treated with different
19 specifications as far as replacement and
20 frequency.

21 BY MR. STROKOVSKY:

22 Q. I guess while we're on that topic, you're more
23 or less in agreement with Dr. Miknevich's
24 recommendations in terms of prosthetics; is that
25 fair?

1 A. Yes, I am.

2 Q. And her recommendation was a new prosthetic
3 every five years?

4 A. Yes.

5 Q. And you agree with that?

6 A. I do.

7 Q. And new socket replacement every two and a
8 half years; is that correct?

9 A. I think replace the socket when you need to
10 replace the socket. It's not a hard number. Could
11 it be that frequent? It could possibly be that
12 frequent.

13 Q. But you're aware that Dr. Miknevich made
14 recommendation of socket replacement every two and
15 a half years?

16 A. Yes.

17 Q. In your report, you agreed with that?

18 A. Yes.

19 Q. And are you aware that Mr. Parks has had his
20 microprocessor prosthetic for approximately two and
21 a half years?

22 A. Yes.

23 Q. And since he first received his microprocessor
24 two and a half years ago, he's had two sockets
25 replaced.

1 A. Yes.

2 Q. And he's also set to receive another socket?

3 A. Yes.

4 Q. Which he was, I believe you noted this in your
5 most recent report, he was casted for his new
6 socket the day before you two spoke?

7 A. Correct.

8 Q. You noted in your first report on page seven,
9 I believe, that it would not be unreasonable to
10 anticipate future skin issues related to Mr. Parks'
11 residual limb.

12 A. Correct.

13 Q. You noted that it would be unreasonable to
14 have any future x-rays of his left leg and hip,
15 correct?

16 A. Yes.

17 Q. For the rest of his life?

18 A. As far as a given, yeah, I would agree.

19 Q. Has Mr. Parks ever -- have you noted any
20 complaints of left leg pain in any of Mr. Parks'
21 medical records?

22 A. I haven't, except the pain management doctor
23 may have written something to that effect.

24 Q. Do you know if Dr. Tucker ever noted left leg
25 pain?

1 A. I didn't see any references to left leg pain
2 in Dr. Tucker's records.

3 Q. And if it was in there, that's something you
4 think you would have noticed?

5 A. Yes.

6 Q. Actually, while we are still on the topic of
7 left leg, let's go to back pain. You stated that
8 there was no mentioning of any type of back pain
9 issues at all when you spoke to Mr. Parks most
10 recently?

11 A. Most recently not specifically, unless I asked
12 him -- I asked him specifically about back pain.
13 And then he suggested he had some episodic back
14 pain.

15 But voluntarily after I discussed the whole
16 case with Mr. Parks on his interview on a Zoom call
17 on his previous evaluation, no mention of back pain
18 was offered during that time frame.

19 Q. But when you asked him about it, that's when
20 he told you?

21 A. Yes, because it's in the medical record I had
22 to ask him.

23 Q. We can agree that his primary source of pain
24 comes from his amputated leg, right?

25 A. No. His primary source of pain is his

1 residual limb. The phantom limb, the limb that was
2 amputated is not his primary source of pain.

3 Q. I apologize if I mixed up the medical lingo.
4 What I meant was his existing right leg is the
5 primary source of his pain?

6 A. Correct.

7 Q. You did note in your report that x-rays of his
8 right leg would be appropriate every five years?

9 A. Yes.

10 Q. And that's to monitor the bone growth as a
11 result of his amputation?

12 A. Yes.

13 Q. Because if that were to grow to a point where
14 it causes substantial pain, he may need a
15 resection?

16 A. Correct.

17 Q. And a resection, that's just medical
18 terminology, I guess in layperson's terms,
19 resection would be he needs a surgery to remove
20 that excessive bone growth?

21 A. Correct.

22 Q. So, Doctor, you treat patients with spine
23 issues, not saying that's your whole practice, but
24 you do treat patients with spine issues, right?

25 A. Yes, I do.

1 Q. Do your patients seem to get better or worse
2 as they enter old age?

3 A. All of us decline as we age. I'm not
4 really -- I'm not sure what you're asking me. You
5 know, it's the nature of aging. You know, we age
6 and we are not like we were when we were 20.

7 I don't know specifically if you're asking me
8 if that's because of the prosthesis, no, I don't
9 agree with that.

10 Q. Based off of your first report, you found
11 there to be no need for anything set aside or any
12 recommendations for emergency room care?

13 A. As they pertain to the amputation, correct.

14 Q. And so that covers his entire life, which I
15 think is, you have it projected now as almost 40
16 years; is that correct?

17 A. Correct.

18 Q. Do any of your amputee patients ever have to
19 go to the ER?

20 A. For appendicitis or for other things that
21 occur to them that are not specifically related to
22 the amputation, yes.

23 Q. You don't have any patients who are hopping on
24 a wet shower floor and slip and fall?

25 A. I mean, that can happen, certainly.

1 Q. You don't have any patients who have fallen
2 down the stairs who are amputees?

3 A. Not typically.

4 Q. Are you less likely to fall being an amputee
5 than being an able-bodied person with two legs?

6 A. I mean, it's sort of a broad question to ask.
7 Of course, you're more likely if you're not wearing
8 your limb. And you're using the term as an
9 amputee. There is a lot of different types of
10 amputees out there; specifically, those who have
11 lost a limb as a result of medical problems that
12 they may have. So in that category, certainly
13 there are patients that are out there that are more
14 likely to fall specifically due to their medical
15 comorbidities such as diabetes, neuropathy, poor
16 vascularization.

17 There is numerous reasons for that general
18 statement you just made. So I would agree with it.

19 Q. You don't believe at all that when he reaches
20 advanced age or starting around the age of 60, he
21 cannot benefit from an electronic scooter?

22 A. I don't see the need for an electronic
23 scooter.

24 Q. He doesn't need any help at home?

25 A. He told me he doesn't.

1 Q. He told you that at age 60 he does not need
2 any help at home?

3 A. No. I didn't -- you said he doesn't need any
4 help at home. I said -- I took that to mean
5 currently.

6 If you mean at age 60, I don't foresee that
7 happening. Other life -- life circumstances, does
8 he develop hypertension, does he have a stroke, I
9 don't know. I can't really give you that answer.

10 There is no medical literature that states or
11 will support the fact that because he's an amputee,
12 he requires a home health aide at 60.

13 Q. Have you ever recommended a home health aide
14 for any of your patients who lost their leg?

15 A. I mean, these are folks with multiple medical
16 comorbidities, meaning they lost their limb because
17 they have these other medical issues and they have
18 more requirements than someone who is, otherwise,
19 able-bodied, young, healthy and very mobile.

20 When he gets to be 60, I don't know, maybe he
21 quits trying to live life, I don't know. But I
22 can't, as it stands today and I look to the future
23 for Mr. Parks, I have -- I'm full of optimism for
24 him.

25 Q. So you just mentioned that age 60. So he

1 would need to want to quit living life to need a
2 home health aide?

3 A. I think you're just putting words now in my
4 mouth. No, I did not say that specifically. I
5 said if he continues on the current track that he
6 is, which he is trying his very best to overcome
7 all of the things that have been thrown his way, he
8 is doing extremely well and I anticipate him to
9 live normal life, otherwise. That's my
10 justification for that statement; that I don't
11 anticipate him needing a home health care worker.
12 At age 60, same reason. I don't believe he needs a
13 hospital bed or a scooter. All of those things are
14 consistent with my opinion.

15 Q. Because when he is 60, he will be able to move
16 around just as well he is now?

17 A. I see no reason why he shouldn't be. I'm
18 almost 60.

19 Q. When he is 70, he should be able to move
20 around as he does now?

21 A. I have 70-year-old patients continuing to work
22 full time on construction sites with a shorter
23 amputation than he has, so, yes.

24 Q. If he can't do it, then it's his fault?

25 A. I didn't say that.

1 MR. HOSMER: Objection.

2 THE COURT: Overruled.

3 THE WITNESS: I didn't say that.

4 BY MR. STROKOVSKY:

5 Q. At age 70 you don't think he will need any
6 help in the home?

7 A. I don't believe so.

8 Q. At age 70 he wouldn't benefit from having a
9 scooter?

10 A. I don't believe so.

11 Q. How many wheelchairs did you recommend for his
12 life?

13 A. I think -- I mean, one manual wheelchair. I
14 certainly would acquiesce to a replacement of that
15 as needed. That's a reasonable thing to consider.

16 Q. Did you put that in your report?

17 A. I don't know what I put in. You can direct me
18 to my report.

19 Q. You don't know sitting here today?

20 A. Show me the line what I said, yeah.

21 Q. So let's go to your second report from
22 April 25, 2023. Again. In the top left corner
23 it's addressed to Marshall Dennehey with a King of
24 Prussia, Pennsylvania address; is that correct?

25 A. Yes, it is.

1 Q. Go to page two, please.

2 You note that he has developed, since your
3 last visit in 2021, he has developed some mild
4 folliculitis?

5 A. Ingrown hair.

6 Q. You use the word "mild folliculitis." That's
7 an ingrown hair?

8 A. Yes.

9 Q. So he developed an ingrown hair on his
10 residual limb?

11 A. Yes. Of course, this was over Zoom, so I
12 couldn't really see it. I'm just going on the
13 basis of what he was stating at the time.

14 Q. Did you ever see any photos of Mr. Parks'
15 folliculitis?

16 A. No.

17 Q. You were never provided any photos from
18 defense counsel?

19 A. No.

20 Q. Would you like to see some photos would that
21 help?

22 MR. STROKOVSKY: Mr. Bitman, could
23 you please put up what has already been shown,
24 P-31. I believe it's P-31A, or the first
25 photo. If you want to put it on this screen

1 first.

2 Yes, that's it.

3 Can we publish that?

4 MR. HOSMER: Sure.

5 BY MR. STROKOVSKY:

6 Q. So I will represent to you these are photos
7 that were taken in February of this year and
8 provided to the defense counsel in this case.

9 Do you see folliculitis or ingrown hairs?

10 A. I mean, I see what appears to be a bit of a
11 callous in the distal limb. There are some
12 enlarged pores.

13 I'm looking at a photograph. I wanted to see
14 Mr. Parks in person the second time, but that
15 wasn't provided to me as an option so we did it by
16 Zoom and now we are looking at a photograph at one
17 point in time. I do see this. Doesn't concern me.
18 It's there. It's not uncommon.

19 Q. You did mention in your report that the
20 ingrown hairs has been self-limiting, correct?

21 A. From what Mr. Parks stated, yes.

22 Q. Even though you don't care Mr. Parks cares.

23 A. I don't understand what you're saying I don't
24 care.

25 Q. I believe you said --

1 A. It doesn't worry me, as far as what I'm seeing
2 there as a medical provider. I see that all the
3 time and I'm not concerned by it.

4 MR. STROKOVSKY: Take that down, Mr.
5 Bitman.

6 Thank you.

7 BY MR. STROKOVSKY:

8 Q. Also, on page two, I believe about 12 lines
9 down you start off discussing he states his typical
10 day. Could you just let me know when you're there?

11 A. Yes.

12 Q. I'm just going to read it and please let me
13 know if I read it incorrectly.

14 So this is from your recent Zoom call with him
15 this spring, right?

16 A. Yes.

17 Q. But I will read it now.

18 He states his typical day when he has his son,
19 which is 50 percent of the time, parenthesis, it
20 says he shares custody with his girlfriend which is
21 the baby's mother. During the time he has his son,
22 he will get up at 8 a.m. in the morning, turn the
23 TV on for his son, put on his prosthesis, go
24 downstairs to get juice for his son. He will cook
25 breakfast for his son. They will eat together and

1 they will leave home approximately 9 a.m. to take
2 his son to day-care.

3 Did I read that correctly so far?

4 A. Yes.

5 Q. He states that after taking his son to
6 day-care, he will go to the gym. He's currently
7 not going to the gym. It is unclear why
8 specifically he is no longer going to the gym,
9 except he is having ongoing fit issues related to
10 his prosthesis.

11 He states since our last visit, he was
12 evaluated by Moss driving program and cleared for
13 return to driving with a modified vehicle to use
14 for accelerate pedal for his left foot.

15 He has had no other medical complications
16 since our last evaluation. He is taking no
17 medication other than medical marijuana for his
18 pain. He was given something for sleep. He does
19 not recall the name of the medication. He states
20 it did not really help his sleep and he
21 discontinued taking the medication.

22 In addition to caring for his three-year-old
23 son, he states he is wearing his prosthesis nearly
24 all day long and will occasionally remove it for
25 discomfort. He's had no fall since his last

1 evaluation.

2 He's managing completely independent his
3 self-care activities, including dressing, bathing,
4 housekeeping, driving, going to the grocery store
5 and cooking.

6 He states that the pain he is experiencing is
7 in the residual limb. He states sometimes when the
8 residual limb is at its peak, it will trigger
9 phantom limb sensation as if the toes are still
10 there and he is able to wiggle his toes.

11 I read that correctly?

12 A. Yes.

13 Q. That was your account of his day-to-day life,
14 as he told you?

15 A. Correct.

16 Q. You did note that if he does use crutches,
17 which is now a rare occasion; is that correct?

18 A. Yes.

19 Q. And that could cause some discomfort in his
20 shoulder, correct?

21 A. Yes.

22 Q. You also noted in your report on page three,
23 that he expressed some discomfort in his left lower
24 leg?

25 A. Yes. That was -- yeah, that was correct.

1 Q. And he expressed some discomfort in his lower
2 back if he's up for long periods of time?

3 A. Correct.

4 Q. You also noted that he still has -- actually,
5 strike that.

6 When I got up and you saw me try to mimic a
7 walk, was that circumduction that I was trying to
8 note?

9 A. I mean, I think so, yeah.

10 Q. Circumduction is the hip hike, right?

11 A. No.

12 Q. What is circumduction?

13 A. What you just did.

14 Q. Can you explain that in physiatry terms?

15 A. I'm confused.

16 Q. What am I doing right now?

17 A. Circumduction.

18 Q. Can you explain what circumduction is in
19 layperson's terms?

20 A. You're swinging the leg laterally to clear it.

21 Q. That's not normal walking, right?

22 A. Correct.

23 Q. And you did note in your report that he still
24 has some degree of circumduction. It's on page
25 three.

1 A. Yes.

2 Q. You did agree, I think you already said this,
3 that he does need physical therapy after his new
4 socket comes in?

5 A. Yes.

6 Q. And, again, in this report, you state to a
7 reasonable degree of medical certainty that
8 Mr. Parks should be able to pursue any employment
9 that he desires; is that correct?

10 A. Correct.

11 Q. And it's also your professional opinion that
12 Mr. Parks is at a minimum, if at all, increased
13 risk of future falls when performing mobility
14 around the apartment and in the community with and
15 without his prosthesis; is that correct?

16 A. Yes.

17 Q. And you said at a minimum if at all, correct?

18 A. Correct.

19 Q. So "if at all" means that, it's your opinion
20 that there may be zero increased risk of falling
21 because Mr. Parks is an amputee?

22 A. Yes.

23 Q. But you told us earlier it's fair to say that
24 a person who is missing a leg has an increased risk
25 of falling then a person who has two legs; is that

1 correct?

2 A. Yeah. Again, I will go back to you making
3 generalizations about all amputees. All amputees
4 are not the same. Amputees are very different case
5 by case. And if at all, isn't zero and I didn't
6 say zero. You're the one who wanted me to say
7 zero. And I apologize if I did say zero, but I
8 didn't mean zero.

9 Q. What does "if at all" mean?

10 A. If at all. It means, he's very unlikely to
11 fall, as a result of being an amputee.

12 Q. You noted before that, I believe, on your
13 direct exam, you stated that there were reported
14 falls within the first few months when he left
15 Temple?

16 A. Correct.

17 Q. And those are the only falls that you're aware
18 of?

19 A. Correct.

20 Q. Is it fair that someone who falls in the past
21 may have a risk of falling in the future?

22 A. I'm not really sure what you're asking me.

23 Q. I'm asking you is a person who has a history
24 of falling in the past, does that person have a
25 risk of falling in the future?

1 A. I guess it depends on the reason they fell.

2 MR. STROKOVSKY: Mr. Bitman, if you
3 could just pull this up just for the parties,
4 please, Plaintiff's Exhibit 33A -- my
5 apologies, not Plaintiff's Exhibit 33A.

6 Plaintiff's Exhibit 35A on page
7 eight, please.

8 BY MR. STROKOVSKY:

9 Q. Dr. Sarlo, in front of you is a physical
10 therapy progress note from Magee Rehab Hospital; is
11 that correct?

12 A. Yes.

13 Q. And it's dated February 16, 2021, correct?

14 A. Yes.

15 Q. And under subjective it says, Patient stated
16 he fell on ice and fell down steps. Arm is sore.
17 Did I read that correctly?

18 A. Yes.

19 MR. STROKOVSKY: Your Honor,
20 permission to move to the easel?

21 THE COURT: Ms. Sweeney, would you
22 bring the easel forward to counsel.

23 Thank you, sir. I appreciate that.

24 MR. STROKOVSKY: My handwriting has
25 not improved.

1 THE COURT: I will recommend that
2 you use the bold marker I gave you.

3 MR. STROKOVSKY: Thank you, Your
4 Honor.

5 BY MR. STROKOVSKY:

6 Q. I just want to bullet point some of these
7 references to falling.

8 So, first, we have reports of falls within the
9 first few months after he leaves the hospital in
10 2019, correct?

11 A. Yes.

12 Q. Now we have a report of a fall on ice --

13 A. I just want to be clear. I'm not sure what
14 falls she's referring to or when that occurred. A
15 lot of times these notes are generated by cut and
16 paste. So you would have to back up through the
17 entire medical record to be sure that wasn't
18 happening. Because I only knew of one slip and
19 fall on the ice and one in the bathroom. They're
20 the two that I'm aware of.

21 Q. But we can agree that the note from
22 February 16, 2021, says, Patient stated he fell on
23 ice and fell down steps. Arm is sore?

24 A. Yes. It doesn't say when he fell. I have no
25 knowledge of when that occurred.

1 Q. Would you like us to go through every single
2 Magee note to see if the subjective has changed or
3 stays the same?

4 A. I don't know. It's up to you.

5 Q. Are you telling the jury right now that you
6 think that that may not have been reported in
7 February of 2021?

8 A. As a new fall?

9 Q. Correct.

10 A. Yes.

11 Q. Okay. Well, I guess we are going to have to
12 then.

13 Let me first mark this down.

14 MR. STROKOVSKY: You can take that
15 down, Mr. Bitman.

16 Can I scroll through this, please?

17 I have to go through every note now.

18 BY MR. STROKOVSKY:

19 Q. Dr. Sarlo, we will put up for you and the
20 parties, this here is the physical therapy progress
21 note from Magee from February 11, 2021.

22 A. Yes.

23 Q. The note is two pages long, so please take as
24 much time as you need, but my question is going to
25 be do you see anything in this note which repeats

1 the subjective complaint of falling that you saw in
2 the note from February 16?

3 A. Not on page one.

4 Q. Okay.

5 MR. STROKOVSKY: Go to page two.

6 THE WITNESS: So there's no
7 subjective on that note.

8 BY MR. STROKOVSKY:

9 Q. So there is no reference of falling in that
10 note?

11 A. There is no subjective line item on that note.
12 And I don't know the course of treatment because I
13 can't tell what number visit this was out of the --
14 of the treatment protocol. So normally they would
15 say, hey, this is Visit Number 3 or whatever for
16 this round of treatment.

17 So, I mean, it's really being kind of -- do
18 you know how many visits that he attended during
19 this period of physical therapy? When was the
20 original visit for this round of physical therapy
21 and why is that humorous to you?

22 Q. You're an expert --

23 THE COURT: Hold on a second,
24 please.

25 Just for the benefit of the court

1 reporter and the jury, question and answer.

2 Doctor, if you can answer the
3 question of counsel. Your counsel may have an
4 opportunity to ask you questions.

5 THE WITNESS: Absolutely.

6 There is no mention of subjective
7 complaint on this note. It's eliminated.
8 It's not even addressed.

9 BY MR. STROKOVSKY:

10 Q. Why don't we go to the next note after
11 February 16, 2021.

12 So, Doctor, in front of you is a two-page
13 physical therapy progress note from February 23,
14 2021, correct?

15 A. Yes.

16 Q. So, please, I'm going ask the same question,
17 which is to a reference to complaint of falling in
18 that note. I understand it's two pages. Let me
19 know when I need to go to the next one.

20 A. Not on page one.

21 Q. How about page two?

22 A. Not on page two.

23 MR. STROKOVSKY: Mr. Bitman, if you
24 could please pull up P-33A, page 197.

25

1 BY MR. STROKOVSKY:

2 Q. Dr. Sarlo, in front of you is a note from
3 March 5, 2021, from Mr. Parks' physiatrist Dr.
4 Tucker; is that correct?

5 A. Yes.

6 Q. Do you see a little bit above the halfway
7 mark -- or actually the top third it asks recent
8 falls?

9 A. Yes.

10 Q. And it says, Past three months or since last
11 visit, it says, yes, three times walking in snow,
12 comma, walking --

13 A. Yes, I see that.

14 Q. It says, Injury from falls, bruising at
15 multiple locations with soreness now resolved.

16 A. Yes, I see that.

17 Q. And that is give or take 20 days or so from
18 that Magee note; is that correct?

19 A. Yes.

20 Q. Is it fair to assume that Mr. Parks did fall
21 within that time frame?

22 A. It appears to be the case in the snow and ice.

23 Q. Is it easier for an amputee with a prosthetic
24 leg to walk on snow and ice than an able-bodied
25 person with two legs?

1 A. I would say no.

2 MR. STROKOVSKY: If we can go to
3 P-33A, Mr. Bitman, page 245.

4 BY MR. STROKOVSKY:

5 Q. Under the interval history -- actually, so,
6 first off, you see here that this is another note
7 from Dr. Tucker, right?

8 A. Yes.

9 Q. I believe it is from May 12, 2021, correct?

10 A. Yes.

11 Q. And under interval history, there is
12 discussion of a fall; do you see that?

13 A. Yes.

14 Q. It says he had one fall due to a rug slipping
15 out from him but was fortunately not injured; is
16 that correct?

17 A. Yes.

18 Q. While we're on that page, at this time in May
19 of 2021, in fact, the very line above it says he's
20 now using 20-ply socks; do you see that?

21 A. I do.

22 Q. So is that your understanding, that he had to
23 wear 20 plies of socks to try to fit into his
24 socket?

25 A. Yes.

1 Q. That's not normal, right?

2 A. It's too many socks.

3 Q. It's a lot of socks, right.

4 MR. STROKOVSKY: Mr. Bitman, if you
5 could stay on -- can you please go to 33B,
6 page 76, please.

7 BY MR. STROKOVSKY:

8 Q. Dr. Sarlo, you see here again this is another
9 note from Dr. Tucker from August of 2021; is that
10 correct?

11 A. Yes.

12 Q. While we are on this note, before I get into
13 the falls, do you see there that he is reporting
14 phantom pain?

15 A. Yes.

16 Q. And then underneath that part it does say
17 recent falls in the past three months or since his
18 last visit, correct?

19 A. Yes.

20 Q. And here the answer for that is yes, right?

21 A. Yes.

22 Q. Yes, dash, according to this, he fell twice
23 due to missing steps, correct?

24 A. Correct.

25 Q. I think this is the last one.

1 Why don't we go to P-33, B.

2 MR. STROKOVSKY: Mr. Bitman, page
3 57, please.

4 BY MR. STROKOVSKY:

5 Q. Dr. Sarlo, what we see here is another note
6 with Dr. Tucker from March 16, 2022, correct?

7 A. Yes.

8 Q. While we are on this note, it does mention
9 that he is experiencing stump pain, correct?

10 A. Yes.

11 Q. And just under that it has recent falls in the
12 past three months or since the last visit; do you
13 see that?

14 A. Yes.

15 Q. And there it says, Once when using crutches,
16 slipped on his child's toy.

17 Is that correct?

18 A. Yes, it says that. Yes.

19 Q. You, in your second report, you diagnosed him
20 still with residual limb pain; is that correct?

21 A. Yes.

22 Q. So he still has residual limb pain almost four
23 and a half years after his amputation?

24 A. Yeah. There were periods during the medical
25 record where he wasn't having limb pain.

1 I want to clarify specifically that I don't
2 expect him to never have pain in that limb. He was
3 in the process of being casted for a new socket due
4 to weight loss related to his physical activities.
5 His existing socket did not fit him and he was
6 having discomfort from that for that reason.
7 That's what he told me.

8 Q. So are you saying that Mr. Parks has not
9 consistently complained of stump or residual limb
10 pain?

11 A. No, he has. There are times where they
12 didn't, through the medical record, there were
13 times when his socket fit well and he didn't have
14 pain. But that is a consistent complaint, yes.

15 Q. There have been consistent complaints of
16 phantom limb pain in the reports; is that correct?

17 A. In the record, yes. But I asked him
18 specifically, and that's the reason why I asked him
19 these questions, is that every time they would
20 refer to phantom limb pain in the medical record,
21 he specifically was referring to the residual limb,
22 which is not phantom limb pain. So.

23 Q. You are telling us that he did not feel -- he
24 cannot feel himself wiggling his toes?

25 A. That's not pain; that's sensation.

1 Q. He did report that to you when you spoke?

2 A. Yes.

3 Q. That was a couple of weeks ago?

4 A. Yes.

5 Q. And you say, if I'm not mistaken, that Dr.
6 Tucker no longer believes that Mr. Parks has
7 phantom limb pain?

8 A. Correct.

9 Q. And did you see that in his medical record?

10 A. There was a recent note that says denies, yes.

11 Q. Was that shown on the screen at all?

12 A. I don't know where it was shown.

13 MR. STROKOVSKY: Mr. Bitman, why
14 don't we pull up 33B.

15 BY MR. STROKOVSKY:

16 Q. To save time, I'm going to start from the
17 summer of 2021. This would be the time July of
18 2021 would have been after the time you first saw
19 Mr. Parks; is that correct?

20 A. Yes.

21 Q. But in your first report, you did believe at
22 that time he had phantom limb pain, correct?

23 A. I believe so.

24 Q. It's just now you think it's gone?

25 A. I think there is -- it's evolved to a

1 sensation, and I think now it's more residual limb
2 pain that triggers phantom limb sensation. That's
3 specifically what he told me on April of 2023. And
4 I specifically asked him that question.

5 MR. STROKOVSKY: If we can go to
6 page 75, Mr. Bitman.

7 BY MR. STROKOVSKY:

8 Q. Dr. Sarlo, this appears to be a note from Dr.
9 Tucker from August 6, 2021, correct?

10 A. Yes.

11 Q. Under musculoskeletal, it says "right leg
12 pain," correct?

13 A. Yes.

14 Q. And just under that, it says "numbness and
15 tingling on left leg," correct?

16 A. Yes.

17 Q. So there has been at least one complaint of
18 left leg pain?

19 A. Yes. It's right there.

20 MR. STROKOVSKY: If we can go to
21 page 76, Mr. Bitman.

22 BY MR. STROKOVSKY:

23 Q. And towards the second half of that page, it's
24 in bold, it says in regards to the pain, and it
25 says "phantom pains on the right lower extremity";

1 is that correct?

2 A. Yes.

3 MR. STROKOVSKY: If we can go page
4 82, please, Mr. Bitman.

5 BY MR. STROKOVSKY:

6 Q. Under encounter -- do you see the row that
7 says "encounter vitals," Dr. Sarlo?

8 A. Yes.

9 Q. And it says pain score and it says "ten, worst
10 pain ever"?

11 A. Yes.

12 Q. So based off that, it's your understanding
13 that Mr. Parks would have complained of having the
14 worst pain ever of ten out of ten of his right leg?

15 A. It appears so.

16 Q. And if we can move on to page 65, we are
17 looking at a note from January 28, 2022; is that
18 correct?

19 A. Yes.

20 Q. And that is also with Dr. Tucker, correct?

21 A. Yes.

22 Q. In this it reports that he is having increased
23 pain in his right stump?

24 A. Correct.

25 Q. And it also notes that the pain is always

1 there, but often worse when not using his
2 prosthesis, correct?

3 A. Yes.

4 Q. And the pain is located in the back of the
5 stump and in the medial thigh; is that correct?

6 A. Yes.

7 Q. And there is also mentioning that he still is
8 having trouble sleeping at night?

9 A. Yes.

10 Q. And if we can go to page -- strike that.

11 At the very bottom of that page, again, it's
12 saying -- it says "phantom limb syndrome" and it
13 says "phantom pain, yes, or pain, yes?"

14 A. It says that, yes.

15 Q. So he is reporting phantom limb pain; is that
16 correct?

17 A. Correct.

18 Q. And phantom limb sensation, as well, correct?

19 A. Yes.

20 MR. STROKOVSKY: If we can go to
21 page 71, Mr. Bitman.

22 BY MR. STROKOVSKY:

23 Q. And there is the pain scale or pain score
24 again in the middle; do you see that, Dr. Sarlo?

25 A. Yes, I do.

1 Q. Again, it's reported that his pain is a ten
2 out of ten, for his right leg; is that correct?

3 A. Yes.

4 MR. STROKOVSKY: Why don't we go to
5 page 57 -- page 55, Mr. Bitman.

6 BY MR. STROKOVSKY:

7 Q. And, again, there is a reference here of him
8 using 20-ply socks, correct?

9 A. Yes.

10 Q. And it's also mentioned on that page, that
11 there is a discussion with Mr. Parks regarding his
12 stump pain and his phantom limb etiologies that's
13 under plan.

14 A. Yeah, I see it.

15 Q. Is it fair that under the plan it says
16 "reviewed stump and phantom pain etiologies with
17 Mr. Parks"?

18 A. Yes.

19 MR. STROKOVSKY: If we can go to
20 page 35.

21 BY MR. STROKOVSKY:

22 Q. On that same note, stump pain from the distal
23 stump is noted; is that correct?

24 A. Yes.

25 MR. STROKOVSKY: If we can go to

1 page 37.

2 BY MR. STROKOVSKY:

3 Q. Is it noted that he has chronic pain and
4 neuropathy on the second paragraph of the
5 impression?

6 A. I have no idea where that came from.

7 Q. But that's what it says, right?

8 A. I don't know where that came from. It doesn't
9 make sense to me.

10 Q. I just want to point out that all of the
11 instances that you noted where he is complaining of
12 pain, he is also noted to have a poor fitting
13 prosthesis that is too big for him at this time.
14 As of the 28th of September, he still hadn't been
15 fit for a new socket.

16 MR. STROKOVSKY: Go to page 39.

17 This is the same note.

18 BY MR. STROKOVSKY:

19 Q. It's noted at the top of the page that he has
20 chronic pain syndrome; is that correct?

21 A. Yeah. I mean, this is a note justifying him
22 for using the medical marijuana program
23 specifically. And any pain that lasts for more
24 than six months is considered chronic page.

25 Q. You'd agree that Mr. Parks has chronic pain

1 syndrome, correct?

2 A. I think that's an overreach. I don't agree
3 with that.

4 Q. Didn't you just say --

5 A. There is a functional mechanical reason for --
6 to have pain that hasn't been properly treated or
7 addressed. I don't really agree with that
8 statement that he has chronic pain. You have to
9 fit a certain number of criteria to be able to be
10 qualified for medical marijuana, and I personally
11 do not agree with that statement, that he has
12 chronic pain.

13 Q. So you disagree with Dr. Tucker's statement
14 that Mr. Parks has chronic pain syndrome?

15 A. I do.

16 Q. And he notes that Mr. Parks has severe chronic
17 or intractable pain of neuropathic origin or near
18 chronic or intractable pain or neuropathies; is
19 that correct?

20 A. Yeah. I disagree with that completely.

21 Q. He also provides that he has right traumatic
22 above knee amputation with phantom pain; is that
23 correct?

24 A. No, it's not correct.

25 Q. I'm saying he notes phantom pain; is that

1 correct?

2 A. Yeah, but the note isn't correct. He doesn't
3 have an above-the-knee amputation.

4 Q. He has a through the knee.

5 A. He has a knee disarticulation amputation.
6 It's different.

7 Q. But oftentimes physiatrists will refer to an
8 amputation as a below the knee or above the knee,
9 correct?

10 A. Not if it's a knee disarticulation. It's
11 inaccurate.

12 MR. STROKOVSKY: You can zoom out,
13 Mr. Bitman.

14 BY MR. STROKOVSKY:

15 Q. While we're on amputations, do you know how
16 many amputation procedures Mr. Parks underwent?

17 A. He had a revision, so I think he had an
18 initial procedure that then was revised to the
19 through-the-knee amputation.

20 Q. So it's your understanding that first his leg
21 was amputated at Temple, right?

22 A. Yes.

23 Q. And then while still at Temple, he had a
24 second surgery to further the amputation?

25 A. Correct.

1 Q. Will you accept my representation that you're
2 mistaken?

3 A. Sure.

4 Q. That he only had one amputation, which was on
5 January 22, 2019?

6 A. There is a period where he had a knee and
7 external fixator provided because of the laxity of
8 the ligaments of the knee. I may have confused
9 that with a primary procedure.

10 MR. STROKOVSKY: Mr. Bitman, can we
11 go to page 41, please.

12 BY MR. STROKOVSKY:

13 Q. So we are still talking about the
14 September 20, 2022, note.

15 A. Yes.

16 Q. You see at the bottom again it's noted that
17 his pain is a ten out of ten, worst pain ever; is
18 that correct?

19 A. Yes.

20 MR. STROKOVSKY: Mr. Bitman, if you
21 could please go to page 19.

22 BY MR. STROKOVSKY:

23 Q. Dr. Sarlo, am I correct that this is a note
24 from Dr. Tucker from January 25, 2023, correct?

25 A. Yes.

1 Q. And if you look towards the bottom, stump pain
2 is noted, correct?

3 A. Yes.

4 Q. And phantom limb pain is noted, correct?

5 A. Yes.

6 MR. STROKOVSKY: Take that down, Mr.
7 Bitman.

8 Actually, Mr. Bitman, that same
9 exhibit, if you could go to page 22.

10 BY MR. STROKOVSKY:

11 Q. So we are still on January 25, 2023, correct,
12 Dr. Sarlo?

13 A. Yes.

14 Q. Under the impression part, the second
15 sentence, am I correct that it says he continues to
16 have dysfunctional gait. Is that part correct?

17 A. Yes.

18 Q. Stump pain is noted?

19 A. Correct.

20 Q. Difficulty sleeping due to stump and phantom
21 limb pain is noted?

22 A. Yes.

23 MR. STROKOVSKY: You can take that
24 down.

25 Please go to page 25, Mr. Bitman,

1 the last thing from that note.

2 BY MR. STROKOVSKY:

3 Q. So we are still on the January 25, 2023,
4 visit. Am I correct that there is a pain score
5 again and it's noted ten out of ten, worst pain
6 ever?

7 A. That's what it says.

8 Q. And then let's go to page five, please.

9 Now we are looking at a note from March 31,
10 2023; is that correct?

11 A. Yes.

12 Q. And that's about a couple of weeks before,
13 maybe three weeks before you saw Mr. Parks,
14 correct?

15 A. Yes.

16 Q. And forgive me if I'm mistaken, do you believe
17 that Mr. Parks does not have a right hip hike in
18 his walk?

19 A. I mean, I observed him on a Zoom call. I
20 mean, honestly, it's a really lousy way to observe
21 somebody's gait, quite frankly. And I offered to
22 see him in person and that was not something that
23 was possible to happen, so I apologize.

24 Q. You saw him in person once before, right?

25 A. Yeah, right after he got his microprocessor

1 knee.

2 MR. STROKOVSKY: Can we go to page
3 five?

4 THE WITNESS: I'm going to back you
5 up on that.

6 MR. STROKOVSKY: Your Honor.

7 THE COURT: Sir --

8 THE WITNESS: I want to point out --

9 THE COURT: Doctor, we do it
10 question and answer, and then if you need to
11 follow up, your counsel will ask you.

12 THE WITNESS: That's fine.

13 THE COURT: I mean no disrespect.
14 The court reporter can't follow this.

15 THE WITNESS: I apologize.

16 THE COURT: No apologies are
17 necessary.

18 MR. STROKOVSKY: If we can go to
19 page five.

20 BY MR. STROKOVSKY:

21 Q. You see there he's noting having worsened pain
22 in his residual limb?

23 A. I'm sorry, can you just help me?

24 Q. Of course.

25 It's towards the first half. It says the

1 sentence starts off with "he feels that he's having
2 worsened pain in the anterior distal aspect of his
3 residual limb worse recently."

4 A. It's confusing the way it's worded. So, I
5 mean, I'm sorry, can you go back to the non-blown
6 up.

7 It says, He is having worsened pain in the
8 anterior distal aspect of the residual limb worse
9 recently. It says, He pain is usually worse when
10 the limb is off. Pain in the stump. But is now
11 it's worse when the limb is off.

12 I'm a little confused by all of that, but with
13 that said, yes, that's what it says.

14 Q. He's complaining of stump pain, correct?

15 A. Yes.

16 Q. I think this is the same note that you
17 discussed with your attorney where, I believe, you
18 said this is where Dr. Tucker says that Mr. Parks
19 no longer has phantom limb pain?

20 A. It doesn't say that. It says rare.

21 MR. STROKOVSKY: Can you zoom in on
22 that, the stump pain part, the phantom limb
23 pain part.

24 Is it all right if we publish this?

25 MR. HOSMER: Sure.

1 BY MR. STROKOVSKY:

2 Q. I heard you on direct exam say it says rare.
3 But does it say anything else right next to the
4 word "rare"?

5 A. Less than usual.

6 Q. So it also says less than usual?

7 A. It does say that.

8 MR. STROKOVSKY: You can take that
9 down, Mr. Bitman.

10 If you can go to page ten of that
11 same exhibit.

12 BY MR. STROKOVSKY:

13 Q. Dr. Sarlo, is it also noted that his pain is a
14 ten out of ten?

15 A. That's what it says.

16 Q. Did you state earlier in your testimony that
17 you believe that Dr. Tucker does not believe
18 Mr. Parks has phantom limb pain?

19 A. I don't think I said that. I think I said I
20 didn't agree with Dr. Tucker's assessment that he
21 is having -- that he has phantom limb pain.

22 Q. You're now saying that Dr. Tucker in his notes
23 at least does note phantom limb pain, correct, from
24 what you saw at least?

25 A. From what I saw.

1 Q. But isn't it true that your most recent report
2 from this year, you state Dr. Tucker does not
3 describe phantom limb pain?

4 A. Correct.

5 Q. And you're in agreement with that?

6 A. With my statement? Yes.

7 Q. No. Are you telling us that Dr. Tucker does
8 not diagnose phantom limb pain?

9 A. No. What I'm saying is I believe that the
10 pain the patient is having is residual limb pain
11 and that triggers phantom limb sensation.

12 I specifically asked Mr. Parks this on our
13 Zoom call in April. I wanted clarification
14 directly from the patient about this matter.
15 Because it was confusing to me in the medical
16 reporting of the pain itself, because most of the
17 time they were addressing the pain that he was
18 having to be focused on his residual limb. I
19 specifically asked Mr. Parks that question in April
20 to clarify it for my mind and my report because
21 they are totally different scenarios.

22 Q. You also in your most recent report, you
23 state, you agree that Mr. Parks -- or you agree
24 with the recommendation for an elevated commode
25 seat?

1 A. It's a good thing to have.

2 Q. What exactly is an elevated commode seat?

3 A. For a really low seat. It just makes it
4 easier to sit on.

5 Q. And you also mentioned that he could benefit
6 from a shower chair; is that correct?

7 A. Yes.

8 Q. That's a chair that you place in the shower so
9 he can sit on it, right?

10 A. Correct.

11 Q. That helps reduce the risk of falling, right?

12 A. For everybody. I wish I had one.

13 Q. And you agree with the recommendation that
14 Mr. Parks could use a water leg?

15 A. Yes.

16 Q. In fact, is it fair that more or less -- I
17 think we may have covered this, I apologize if I'm
18 re-asking it -- but you're in agreement with Dr.
19 Miknevich's recommendations in terms of prosthetics
20 and prosthetic parts and maintenance?

21 A. Yes. Correct.

22 Q. And, also, again, on this, you state that Mr.
23 Parks having one wheelchair for the rest of his
24 life is reasonable, correct?

25 A. With the associated repair costs if needed,

1 yes.

2 Q. Was that mentioned in your report?

3 A. Probably not.

4 Q. And, again, in your updated report, Mr. Parks
5 doesn't need a scooter, right?

6 A. I don't believe so.

7 Q. Doesn't need one now, right?

8 A. Correct.

9 Q. Doesn't need one in his 40s, right?

10 A. At all, period.

11 Q. Doesn't need one for the rest of his life?

12 A. Correct.

13 Q. Into his 70s?

14 A. As it specifically pertains to this
15 amputation, correct.

16 Q. He also in this report, Dr. Sarlo, in your
17 most recent report, again, Mr. Parks isn't going to
18 need to go to the ER at all over the course of his
19 life related to his amputation, correct?

20 A. Correct.

21 Q. There was some mentioning in your report of a
22 spinal cord stimulator. You don't recommend one,
23 right?

24 A. Absolutely not.

25 Q. Are spinal cord stimulators ever used to

1 address leg pain?

2 A. They're used for radiculopathy radicular leg
3 pain, pinched nerve, not for this type of pain.
4 They got a poor track record across the board for
5 treating leg pain, as well. Very invasive.

6 Q. Do you still foresee skin issues with
7 Mr. Parks into the future?

8 A. Similar to the folliculitis, yeah. I mean, if
9 you're going to put skin into an enclosed space,
10 you can develop fungal infections, folliculitis.
11 These are typical occurrences in an amputee.

12 Q. And you mentioned that Mr. Parks does need to
13 take his -- when he, as you report, wears his leg
14 all day, there are times where he does need to take
15 his prosthetic off, right?

16 A. That's what he told me, yes.

17 THE COURT: Counsel, do you have --
18 I'm not pressing you. I want to know for the
19 benefit of all.

20 MR. STROKOVSKY: I'm almost done.

21 Thank you, Your Honor.

22 BY MR. STROKOVSKY:

23 Q. Again, your opinion from your report this
24 year, that hasn't changed in terms of your beliefs
25 on what Mr. Parks can do and can't do, right?

1 A. Correct.

2 Q. He can still do any job he wants?

3 A. Yes.

4 Q. Any physical activity he wants?

5 A. With training, of course. There is always
6 caveats.

7 MR. STROKOVSKY: I have no further
8 questions.

9 THE COURT: Anything, Counsel?

10 MR. HOSMER: Yes, Your Honor, just a
11 few follow-up.

12 - - -

13 REDIRECT EXAMINATION

14 - - -

15 BY MR. HOSMER:

16 Q. Doctor, with respect to the phantom pain --

17 MR. HOSMER: Tim, bring up Exhibit
18 3, page 304.

19 BY MR. HOSMER:

20 Q. I think you probably remember it. Just to
21 move things along, Dr. Tucker characterizes it as
22 rare, less than usual. Do you remember that
23 testimony a few minutes ago?

24 A. Yes.

25 Q. Assuming there was phantom pain in the years

1 preceding that, would that characterization of rare
2 represent a reduction in the frequency of phantom
3 pain?

4 A. Yes. It's an expected evolution of the
5 phantom limb experience and/or syndrome that as
6 amputees use their prosthesis continuously over
7 time and resume normal activities, that their
8 phantom limb sensation and pain reduce.

9 Q. And, then, with respect to Dr. Tucker's office
10 visit that Mr. Strokovsky pointed out to you of
11 January 25, 2023, there is, Mr. Strokovsky has
12 pointed out, the residual limb pain, the stump pain
13 is, quote, intermittent, correct?

14 A. Correct.

15 Q. Now, would that, too, represent a reduction in
16 the frequency of pain that he is experiencing
17 compared to the years before?

18 A. Yes.

19 Q. And, Doctor, while Mr. Strokovsky took you
20 through these dates of pain here, we can agree that
21 based on the Allied chart from 2021 and 2022, that
22 notwithstanding the pain, he was bicycling,
23 correct?

24 A. Correct.

25 Q. Shopping?

1 A. Correct.

2 Q. House chores being performed?

3 A. Correct.

4 Q. Going on long walks?

5 A. Correct.

6 Q. Doing aerobics?

7 A. Yes.

8 Q. And weight lifting?

9 A. Correct.

10 Q. Both in 2021 and 2022, correct?

11 A. Correct.

12 Q. And then at that time his balance, activity
13 level and endurance were all excellent?

14 A. Correct.

15 Q. So do you still your opinion -- what is your
16 opinion as to the extent to which the pain is
17 interfering with his functionality?

18 A. There is a bit of a discord between the
19 reporting ten over ten over pain, worst pain ever.
20 As a doctor who deals with pain and as a subjective
21 complaint, we try to objectify it as best we can.
22 We give it a number value, and when we look at the
23 number value to try to get a sense of that, but
24 then we also have to equate the number value to
25 function.

1 So if someone is telling me ten, typically,
2 that means they're incapacitated by the pain. So
3 when I see him reporting pain as a ten over ten on
4 all of those notes that we were redirected to, but
5 yet I still see him completely wearing that
6 prosthesis for up to 14 hours a day and more,
7 driving, bicycling, going to the gym, et cetera, it
8 sort of is a little bit of a discord there and
9 makes me question the subjective nature of his ten
10 over ten pain.

11 So I like to look at the person and how
12 they're functioning, and that's really how I like
13 to treat patients, because we fixate on a number.
14 We overtreat to my experience. It's not all or
15 one. You got to use both. You got to use
16 function. You got to use subjectivity. You got to
17 use, to the best of your ability, all the tools
18 that you have as a physician that is treating a
19 specific patient.

20 Q. I think you had mentioned that while this was
21 going on in 2022, he was being fitted with new
22 sockets to make life more comfortable for him; is
23 that right?

24 A. Correct.

25 Q. Now, Mr. Strokovsky also asked you about a

1 number of falls that he had in 2021, and at least
2 based on the reference by Dr. Tucker on March 16,
3 2022, that he had a fall on his kid's toy sometime
4 before March of 2022. That would indicate to you,
5 at least, it's been more than -- it's actually, I
6 guess, about 15 or 18 months since his last fall,
7 correct?

8 A. Correct.

9 Q. And you had been asked some questions about
10 his circumduction. Do you remember Mr. Strokovsky
11 asking you about that?

12 A. Yes.

13 Q. About two hours ago?

14 A. I do.

15 Q. How would you characterize this with an
16 adjective, his circumduction? In other words, is
17 it minor, is it major --

18 A. Minimal. Minimal at this stage. Again, I
19 observed him with an ill-fitting prosthesis,
20 ill-fitting socket. So these are the things that
21 we pick up on as clinicians that tell us that there
22 is probably something wrong with the fit.

23 That's being addressed appropriately, as far
24 as I can tell.

25 Q. Finally, Doctor, with respect to the March 31,

1 2023, office visit with Dr. Tucker, there was
2 something on the chief complaint page. You said, I
3 want to back up to this, and Mr. Strokovsky and the
4 Judge told you I could ask you about it. So?

5 A. Yeah. It was the rare occurrence of the
6 phantom limb sensation.

7 MR. HOSMER: That's all the
8 questions I have. Thank you.

9 MR. STROKOVSKY: Brief follow-up.

10 THE COURT: Very brief.

11 - - -

12 RECROSS-EXAMINATION

13 - - -

14 BY MR. STROKOVSKY:

15 Q. Your impression of Eddie is he's highly
16 motivated, right?

17 A. Yes.

18 Q. He wants to get better, right?

19 A. Yes.

20 Q. He wants to do as much as he can do in his
21 life, right?

22 A. As far as I can tell, yes.

23 Q. He's not giving up on life; is that correct?

24 A. I don't believe he is.

25 Q. He wants to play with his son, right?

1 A. Yes.

2 Q. He wants to work full time, right?

3 A. Appears so, yes.

4 Q. He wants to do things that other 32-year-olds
5 are doing his age, right?

6 A. Yes.

7 Q. And you have no reason to doubt that, right?

8 A. I do not.

9 MR. STROKOVSKY: I have no further
10 questions. Thank you.

11 THE COURT: Thank you, Doctor. You
12 can step down.

13 Counsel, what is your anticipated
14 direct on your next witness?

15 MR. HOSMER: I would say no more
16 than a half hour, Judge.

17 THE COURT: Why don't we keep going
18 and get to 12:30, ladies and gentlemen, if
19 that's all right.

20 Counsel, call your next witness.

21 MR. HOSMER: Yes, Your Honor. We
22 call Kathleen Kuntz.

23 THE CRIER: State your name.

24 THE WITNESS: Kathleen Kuntz,
25 K-U-N-T-Z.

1 KATHLEEN KUNTZ, having been duly
2 sworn, was examined and testified as follows:

3 - - -

4 DIRECT EXAMINATION ON VOIR DIRE

5 - - -

6 BY MR. HOSMER:

7 Q. Good afternoon.

8 A. Hi.

9 Q. I'd like to start off by introducing the jury
10 to you via your resume and C.V.

11 MR. HOSMER: Tim, could you show her
12 D-19, please, on the screen.

13 BY MR. HOSMER:

14 Q. Is that the first page? I know it's
15 obliterated there by the highlighting. Does that
16 appear to be the first beige of your resume or your
17 curriculum vitae?

18 A. Yes.

19 Q. What I'd like to do is begin with your
20 education. Can you explain that to the jury,
21 beginning with college, please.

22 A. Certainly.

23 I started nursing school in 1977. Completed
24 an associate's degree at Gwynedd Mercy College in
25 1979. I continued to move forward to complete the

1 bachelor's degree in 1981. And worked for years
2 after that.

3 I bent back and completed by first graduate
4 degree in 1988 at Gwynedd Mercy College. That was
5 with a specialty focused in pediatrics, which is
6 the environment I was working in at the time.

7 After that, I had done some postgraduate
8 certificate programs. One in nursing
9 administration. One in life care planning. One in
10 managed care case management. And one in Medicare
11 set-aside arrangements. More recently -- I'm
12 sorry, one in elder care case management.

13 More recently, I had gone back to graduate
14 school again and completed a postgraduate
15 certificate to be eligible for Board certification
16 as a family nurse practitioner.

17 And then after that, I completed the doctoral
18 studies which are part of the doctoral of nursing
19 practice degree.

20 And then I had gone back for yet another
21 postgraduate certificate in psychiatry.

22 Q. Is that it?

23 A. That's it.

24 Q. You're a nurse practitioner?

25 A. I am.

1 Q. You have, I know you said it, I want to
2 emphasize, a postgraduate certificate in life care
3 planning for advanced catastrophic case management;
4 is that correct?

5 A. That's correct.

6 Q. Can you tell us something about what a life
7 care planner does, please.

8 A. A life care planner it's a rehab profession.
9 It's an interdisciplinary profession. So there are
10 individuals with different clinical backgrounds
11 that participate in this program. They take
12 coursework and complete examinations and then there
13 is a Board certification exam, as well.

14 My best analogy of what life care planning is,
15 is it's much like case management with the
16 exception that instead of being limited to the
17 environment in which you're working, like the
18 hospital or a clinic, it focuses on what I would
19 expect to be the needs of an individual with these
20 type of injuries across the life span.

21 Q. Can you tell me something about your
22 employment experience, please, referencing page two
23 of your C.V.

24 A. I think it goes back even further, actually.

25 Right after nursing school, my first clinical

1 position was as a registered nurse at the American
2 Oncologic Hospital, which is now part of the Fox
3 Chase Cancer Center.

4 After that, I had worked at the Children's
5 Seashore House, which over the years had become
6 part of the Children's Hospital of Philadelphia.

7 As part of those responsibilities, I also held
8 faculty positions with the University of
9 Pennsylvania in their nursing department, as well
10 as with Thomas Jefferson University, providing
11 clinical instruction to students.

12 I worked per diem for a period of time at
13 Phoenixville Hospital, providing case management
14 services.

15 I worked actually volunteered at a clinic
16 called "Health Link Clinic" in Southampton,
17 providing nurse practitioner services for
18 individuals who didn't have insurance.

19 I worked as a family nurse practitioner at a
20 family care medical center for a period of time in
21 Chalfont, Pennsylvania, and helped them develop a
22 house calls program.

23 When that practice was acquired by the health
24 system and the house calls system was canceled, I
25 went to work for another company that did home

1 house calls, home visits.

2 I worked at the Minute Clinics, actually many
3 of them across the area.

4 I worked at a clinic in Lansdale which
5 provided family practice services to individuals
6 with no insurance or low levels of insurance.

7 And then upon completing the psychiatric
8 mental health nurse practitioner program, I worked
9 in Harleysville, Pennsylvania, providing nurse
10 practitioner services until the pandemic hit and
11 when we were locked out of that office, I had gone
12 to work for the place where I currently am.

13 My work with Rehab Advantage is my life care
14 planning work which actually began in 1985, but has
15 continued to this time. From that point in time,
16 I -- my clinical had always been 50 percent and the
17 life care planning work had always been the
18 remainder.

19 Q. I think you testified that you have taught
20 both at Jefferson School of Nursing and at the
21 University of the Pennsylvania?

22 A. I did. As a clinical faculty so I was with
23 the students in the clinical area.

24 Q. Turning to page three of your C.V., you have
25 21 publications; is that correct? I counted them

1 up.

2 A. That could be. There could be more. I had to
3 cut it off, so I put the most recent ones.

4 Q. The more recent ones, okay.

5 At least among the ones you listed here, there
6 is one called "Life Care Plan, Provide a Pathway
7 for Improved Outcomes"?

8 A. Yes.

9 Q. That was published for the Journal for
10 Specialists in Pediatric Nursing?

11 A. Correct.

12 Q. You have given presentations to a variety of
13 conferences and hospitals over the course of your
14 career; is that correct?

15 A. That's correct.

16 Q. And I counted them up. I see about 40
17 presentations. Does that sound about right?

18 A. Well, it would have been cut off. So it could
19 be more.

20 Q. Among the organizations that you have
21 addressed would be the AANP, I'm going to guess,
22 that's the American Association of Nurse
23 Practitioners?

24 A. That's correct.

25 Q. You have spoken to or presented to the Case

1 Management Society of America?

2 A. Correct.

3 Q. Thomas Jefferson University?

4 A. Yes.

5 Q. Association of Rehabilitation Nurses; is that
6 correct?

7 A. That's correct.

8 Q. University of Delaware?

9 A. Yes.

10 Q. The American Association of Nurse Life Care
11 Planners?

12 A. Yes.

13 Q. And can you -- I'm sorry.

14 You belong to a number of professional
15 organizations. I'm just going to mention three of
16 them. The American Academy of Nurse Practitioners,
17 the Association of Rehabilitation Nurses and the
18 International Academy of Life Care Planners, among
19 others; is that right?

20 A. That's correct.

21 Q. You volunteer for Girl Scouts of America,
22 Easter Society and the others that you mentioned?

23 A. At different points in time, correct.

24 Q. Ma'am, taking all of your nursing experience,
25 your assistive services that you provided over the

1 years of your career and your life care planning,
2 how many numbers, how many amputees have you dealt
3 with in taking all those together?

4 A. Well, my involvement in either the care or
5 planning for care of individuals with amputations
6 of all types, would be well over a hundred.

7 MR. HOSMER: At this time, Your
8 Honor, I submit her for cross-examination on
9 qualifications.

10 MR. STROKOVSKY: No questions.

11 THE COURT: The witness is accepted
12 based upon counsel's proffer.

13 - - -

14 DIRECT EXAMINATION

15 - - -

16 BY MR. HOSMER:

17 Q. Now, Ms. Kuntz, you had been retained by my
18 office; is that correct, ma'am?

19 A. That's correct.

20 Q. For the purpose of formulating a life care
21 plan?

22 A. Yes.

23 Q. And you have written two reports to that end;
24 is that right?

25 A. That is.

1 Q. And can you tell if -- do you have the reports
2 with you?

3 A. I do.

4 Q. One is dated March 25, 2022, and the second
5 one is dated May 1, 2023. Did I state that
6 directly?

7 A. That's correct.

8 Q. Tell us what records did you review in order
9 to prepare for the opinion that you're here to give
10 today, please.

11 A. Well, the records review for the initial
12 report are specified in an appendix.

13 Q. Would they include the report of Allied
14 Orthotics?

15 A. Yes.

16 Q. And Bradley Tucker?

17 A. Yes.

18 Q. And Magee Rehabilitation?

19 A. Correct.

20 Q. And Temple University Hospital?

21 A. Yes.

22 Q. Tell us what else you reviewed, please, from
23 your appendix.

24 A. There were individual provider's records some
25 which predate the injury which I think Dr. Ravi

1 Dhanisetty. It may have been a primary care
2 provider.

3 Then there was some information from the
4 Philadelphia Fire Department EMS. There was some
5 information from Visiting Nurses Association in
6 Philadelphia --

7 Q. Let me pick a few out.

8 How about David Lenrow, physiatrist?

9 A. I think that's correct.

10 Q. Did you review Mr. Parks' deposition?

11 A. Yes.

12 Q. Did you review the reports of Dr. Frank Sarlo?

13 A. Yes.

14 Q. Did you review the reports of Mary Ann
15 Miknevich and Alex Karras, the life care planner?

16 A. Correct.

17 Q. So, ma'am, tell us in the year 2021 and 2022,
18 based on your review, did Mr. Parks see any medical
19 providers other than Allied Orthotics and Dr.
20 Tucker?

21 A. I did not see any records from other providers
22 during that period of time.

23 Q. How many times did Mr. Parks see Dr. Tucker in
24 2021 and 2022, respectively?

25 A. Well, I can answer 2022 more quickly. There

1 were three times in 2022.

2 And in 2021, there was one after I authored my
3 report, and I'm looking for the reference on the
4 first report.

5 Q. Just to speed things up a little bit, I will
6 lead you little bit.

7 Do you agree three times, March 5, 2021,
8 May 12 of 2021 and August 16, 2021, does that sound
9 right?

10 A. Correct.

11 Q. Based on your review of the records, do you
12 remember how many times Mr. Parks saw Allied
13 Orthotics in those two years?

14 A. The records that I was provided I don't have
15 the numbers of visits, but I believe they were more
16 frequent because he was being followed up for
17 adjustment to his socket and fit of his prosthetic.

18 Q. Did you add up the amount of medical expenses
19 that were incurred in 2021 and 2022 for Mr. Parks?

20 MR. STROKOVSKY: Objection.

21 THE COURT: Overruled.

22 THE WITNESS: I had been provided
23 billing information and I had summarized the
24 payments that were made.

25

1 BY MR. HOSMER:

2 Q. Tell the jury in 2021 and 2022, what was the
3 amount of medical expenses incurred in each of
4 those years, please.

5 A. By my calculations and from the records,
6 provided payments were made in 2021, which summed
7 up to \$8,060. That's rounding to the nearest
8 collar.

9 Q. What year was that?

10 A. In 2021.

11 In 2022, it was \$6,581.

12 MR. STROKOVSKY: Your Honor, may I
13 object to this line and have a standing
14 objection to this line of questioning so I
15 don't say object?

16 THE COURT: I am directing counsel
17 the source of any payments is to be not
18 inquired into by this witness.

19 MR. HOSMER: Understood. That's why
20 I used the word "incurred."

21 BY MR. HOSMER:

22 Q. Please don't identify any sources.

23 THE COURT: If any.

24 BY MR. HOSMER:

25 Q. If any.

1 Just tell us, if you would repeat for me again
2 the amount in 2022 that you added up, please.

3 A. \$6,581.

4 Q. Now, what I'd like you to do is with reference
5 to your report, explain to the jury the patient's
6 history up to and including today, but, please,
7 begin upon discharge from Temple University
8 Hospital and nothing before that.

9 A. From the discharge?

10 Q. From the discharge of Temple University
11 Hospital forward, please.

12 A. So that is after the surgical procedures?

13 Q. Correct, after the amputation.

14 A. So I don't mistakenly say the wrong thing, the
15 date of discharge I have is 2/7/19.

16 Q. Correct. My suggestion would be begin page
17 four, the second paragraph where it says "as an
18 outpatient."

19 A. Okay.

20 So, well, in the sentence preceding that, it
21 says that he was discharged to home and he received
22 home care nursing and therapy services.

23 Then as an outpatient, he was followed by a
24 vascular surgeon who identified healing of the
25 surgical wound and also provided support with pain

1 management. He had ongoing pain symptoms. Was
2 referred to pain management as a specialist. And
3 he also followed up with rehabilitation and a
4 prosthetist for fitting of a prosthesis.

5 In July of 2019, he was evaluated by an
6 orthopedic specialist who again recommended
7 rehabilitation and pain management.

8 There was imaging that was performed
9 periodically to show the degenerative changes of
10 his hip.

11 And in the process of seeing these multiple
12 providers, he was identified as a K3 ambulator,
13 which identified him as having the ability or
14 potential for ambulation with variable cadence and
15 that level of function is typical of a community
16 ambulator who has the ability to traverse most
17 environmental barriers and may have occasional
18 therapeutic or exercise activity that demands
19 prosthetic utilization beyond simple locomotion.

20 In August, I had noted he was further
21 evaluated by a prosthetist and fitted for his
22 device. That was not a definitive prosthetic.

23 In January of 2020, he was tolerating a half
24 hour of ambulation with the prosthetic. And
25 continued with occupational and physical therapy.

1 In January 2020, he was seen by a pain
2 management specialist because of worsening right
3 lower extremity and lower back pain.

4 Q. According to your records, is that the last
5 time he saw a pain management specialist, in
6 January of 2020?

7 A. That could be.

8 Q. Approximately.

9 A. It could be because it looks like the more the
10 subsequent references, the complaints are offered
11 to the physiatrist.

12 MR. HOSMER: Could you bring up
13 Exhibit 4, page 58, Tim.

14 BY MR. HOSMER:

15 Q. Again, daily living information, please.

16 MR. HOSMER: Are you okay with that?

17 MR. STROKOVSKY: Okay.

18 BY MR. HOSMER:

19 Q. I know this is somewhat repetitious. We have
20 to do this for your evidentiary foundation for your
21 opinion.

22 Is this a document you reviewed?

23 A. Yes.

24 Q. In preparation for your giving opinions here
25 today?

1 A. Yes.

2 MR. HOSMER: Take that down -- I'm
3 sorry. Please scroll down, Tim, to the bottom
4 of the page concerning balance, activity level
5 and endurance.

6 BY MR. HOSMER:

7 Q. Do you see that? Is that one of the documents
8 portion of document you reviewed?

9 A. Yes.

10 Q. It reports there are no back pain; do you see
11 that?

12 A. Yes.

13 Q. Dr. Miknevich testified yesterday that she
14 believes that prosthetists are not fully capable of
15 assessing or taking a report of back pain. Do you
16 agree with that?

17 A. Well, this document appeared to record
18 Mr. Parks' self-report of pain. It doesn't appear
19 to be an assessment of pain.

20 Q. What does it say as far as back pain is
21 concerned?

22 A. None.

23 Q. And the balance, activities and endurance
24 level are excellent; is that right?

25 A. Correct.

1 MR. HOSMER: Take that down.

2 BY MR. HOSMER:

3 Q. You reviewed the record of Dr. Tucker; is that
4 right?

5 A. Yes.

6 MR. HOSMER: Can you bring up page
7 279 yet again, Tim, please. Again, on the
8 highlighted portion.

9 BY MR. HOSMER:

10 Q. This is a visit from August 1, 2021. Did you
11 review that document in preparation for your
12 opinions today?

13 A. Yes.

14 Q. And that says, He continues to use his right
15 lower extremity prosthesis without significant
16 issues and he reports his prosthesis is working
17 well for him, correct?

18 A. Correct.

19 MR. HOSMER: Tim, you can take that
20 down, please.

21 BY MR. HOSMER:

22 Q. With respect to Exhibit 4, March 16, 2022,
23 page 82, again, the document indicates that he is,
24 under daily living information, he's bicycling,
25 shopping, doing house chores, going for long walks,

1 doing aerobics and weight lifting?

2 A. Yes.

3 Q. He is reporting no back pain, correct?

4 A. Correct.

5 Q. His activities, balance level and endurance
6 are all characterized as excellent, right?

7 A. Correct.

8 MR. HOSMER: Take that down.

9 BY MR. HOSMER:

10 Q. That's the document you reviewed, Ms. Kuntz?

11 A. Yes.

12 Q. And I'm not sure you mentioned this, if you
13 did or did not, but you did talk about the
14 microprocessor prosthetic and what is at -- what
15 level has Mr. Parks been assessed as far as a K
16 level for walking?

17 A. He's assessment remains at a K3 level.

18 Q. That is someone who can traverse typical
19 environmental barriers such as steps, curbs?

20 A. Correct.

21 Q. Ramps, hills?

22 A. Yes, moderate terrain. Actually, that's the
23 statement that I previously read. Did you want me
24 to read that again?

25 Q. What?

1 A. That was the statement I previously read.

2 Q. No. That's okay. Thank you. The jury has
3 heard it plenty of times.

4 Did you -- turning our attention to your life
5 care plan itself, did you employ a life care table
6 in order to determine Mr. Parks' life expectancy?

7 A. Well, life care planners cannot determine life
8 expectancy, but we can use the available data that
9 is available and published and generally accepted.
10 So I did utilize the published United States life
11 tables information.

12 Q. What table did you use to determine life
13 expectancy?

14 A. The initial table utilized the United States
15 life table 2018, which was published in the year
16 2020.

17 Q. And did you use a table that was specific to
18 Mr. Parks?

19 A. There is a specific table for varying
20 demographics, and I did utilize the table that was
21 specific to Mr. Parks.

22 Q. That's the one that adjusts for age, gender
23 and race?

24 A. Correct.

25 Q. Based on that, what did you determine,

1 according to the CDC guidelines, as his life
2 expectancy?

3 A. So the initial -- in the initial report at age
4 30, which was where he was at that time, the life
5 expectancy specified by that report was 43 -- 43.9
6 years at age 30. It was 43 years at age 31.

7 Q. Now that two years has transpired and it's
8 2023, based on your 2023 report, what is his life
9 expectancy according to the CDC guidelines?

10 A. So for that report, I had utilized an updated
11 United States life table which also represented
12 2018 but was published in 2022, and it had
13 identified Mr. Parks' demographic at his age to
14 have a life expectancy of 39 years.

15 Q. Now, you have set out a life care plan in your
16 two reports; is that correct?

17 A. Correct.

18 Q. Would you explain to the jury what it is you
19 believe that Mr. Parks will require with respect to
20 his life care plan for the next 39, 40 years,
21 please.

22 A. Okay.

23 So I relied on medical records received, as
24 well as deposition testimony and all available
25 information, including the reports of other

1 individuals who have examined Mr. Parks.

2 I had the opportunity initially to meet with
3 him and ask my own questions, and, also, had an
4 opportunity to see the home that he had moved into
5 to see if there were other environmental things
6 that needed to be accounted for.

7 And I did rely on Mr. Karras' recommendations,
8 as well, because he would have had the opportunity
9 to actually speak with treating providers to obtain
10 additional information which was the one thing that
11 I did not have, but I had his account of that.

12 And there were differences from the initial
13 report and the second report as of the second
14 report, is that you're asking me?

15 Q. Well, I will ask you specifically.

16 Did you set forth for Mr. Parks any kind of
17 occupational therapy or physical therapy?

18 A. Yes. That was one of the things that differed
19 from the first report to the second. Considering
20 that Mr. Parks was doing very much better, but,
21 also, recognizing that he could have those
22 variations in terms of how well the prosthetic fit
23 and the need for new sockets to be replaced. I did
24 identify brief periods of therapy that would be
25 beneficial with each new prosthetic for the

1 purposes of gait training and safety, as well as
2 updating his home exercise program to be sure that
3 it was safe and effective.

4 Q. Did you include, as Mr. Karras did, physical
5 therapy and occupational therapy four times per
6 year for the rest of his life?

7 A. I think the four times per year, no -- let me
8 just refer, I'm sorry.

9 I think that he had revised his
10 recommendations in the subsequent report. So he
11 separated out evaluations from the treatment plan.

12 Q. I'm not asking you about Mr. Karras. I'm
13 simply asking you did you set forth a regimen of
14 four times per year for the rest of his life for
15 physical therapy and occupational therapy?

16 A. That was Mr. Karras' recommendation. My
17 recommendation follows the replacement of the
18 prosthetic. So the sum that I have in my column
19 represents a short course of therapy with each new
20 prosthetic for that purpose.

21 Q. Mr. Karras suggested that Mr. Parks requires
22 pain management specialty consultations four times
23 a year for the rest of his life. Did you assess
24 for that?

25 A. I did not identify a pain management

1 specialist separate from the physiatrist, which I
2 thought would better meet Mr. Parks' needs because
3 they can address the functional aspects of having a
4 prosthetic, as well as address the pain management.
5 So my recommendation for the pain management would
6 have been incorporated in care by the physiatrist.

7 Q. There was no recommendation specifically for a
8 pain management specialist in your report?

9 A. Not separately, no. The pain management would
10 be managed by the physiatrist.

11 And Mr. Parks hasn't continued to follow up
12 with the pain management specialist, so that
13 further supported by recommendation.

14 Q. Mr. Karras has also set forth a fairly
15 extensive list of MRIs and x-rays that he felt that
16 Mr. Parks would need. Did you agree with that
17 extensive list?

18 A. I did not agree with the extensive list.
19 There really isn't a formula for periodic imaging
20 to manage any sequella of an amputation. There
21 wouldn't be imaging, unless it was indicated by
22 symptoms. And if there were symptoms, there would
23 need to be some kind of identification of whether
24 they were coming from the amputation as a source of
25 that or whether they might have been from any

1 underlying or preexisting conditions.

2 Q. Now, it appears from my review of your report,
3 you have allowed for the crutches, the cane, a
4 toilet seat, handheld shower and a walker?

5 A. Correct.

6 Q. Can you tell the jury the basis for that,
7 please.

8 A. Well, having been dependent on a prosthetic,
9 there are various safety concerns in the home that
10 are safety concerns for really everyone that
11 becomes even more important to attend to. And some
12 activities that become a little bit more difficult
13 with a prosthetic such as getting up and down from
14 the toilet, getting in and out of the tub, standing
15 in a tub that could become slippery. So those
16 types of devices would be necessary for safety.

17 Q. Mr. Karras has prognosticated the need for
18 fully a electrical hospital bed and the maintenance
19 of it for Mr. Parks beginning at age 60. Do you
20 agree with that recommendation?

21 A. I did not agree with that.

22 Q. Can you tell the jury why, please.

23 A. I didn't notice that Mr. Parks had difficulty
24 getting in and out of his bed. He expressed no
25 desire for a hospital bed. Typically, a hospital

1 bed is brought into the home at the point that
2 someone is dependent on care being delivered by
3 someone else to facilitate that care, unless it's
4 necessary to have a control to raise or lower a bed
5 to make it easier to get in or out of.

6 I did include a recommendation for a support
7 bar by the bed.

8 Q. Well, the electric bed was prognosticated for
9 age 60 by Mr. Karras. Do you agree with that?

10 A. I did not see that he was going to need a
11 hospital bed.

12 Q. Mr. Karras has also prognosticated the need
13 for an electric scooter at, I believe, age 60. Did
14 you agree with that?

15 A. I did not see, with the improvements that
16 Mr. Parks had made, that he was going to need to
17 have a scooter to navigate his community at age 60.
18 Although, I do know plenty of 60-year-olds that
19 wished they had a scooter, the impact of aging hits
20 us all, it doesn't necessitate the need for scooter
21 in the community.

22 Q. Mr. Karras has prognosticated a need for
23 emergency room services. Did you make an allowance
24 for that?

25 A. I did not. In life care planning, the costs

1 that are associated with specific complications of
2 an injury are not calculated into the life care
3 plan. The focus of a life care plan is to prevent
4 the need for those emergency services, and so where
5 they may be sometimes cited in a life care plan,
6 the costs shouldn't be counted in.

7 Q. Mr. Karras has also set aside in his report
8 surgery for neuroma resection. Do you agree with
9 that allowance?

10 A. I did not, again, because I thought it was a
11 potential complication. I hadn't seen information
12 that was recommending that that neuroma be
13 resected. He had not had any care or treatment
14 provided in that interim period for a neuroma that
15 I could see.

16 And Mr. Karras had also included the cost of a
17 neuroma resection and continued injections to the
18 neuroma. I didn't have any information to support
19 those recommendations.

20 Q. Mr. Karras also included four spinal cord
21 stimulator implantations over the course of his
22 life. Did you allow for that?

23 A. Again, I did not because that appeared to be a
24 potential complication, and it also appeared to be
25 something that would not be related to the --

1 specifically to the amputation but may be related
2 to other reasons for low back pain.

3 Q. Did you make allowance for household
4 assistance as Mr. Parks ages?

5 A. I did.

6 Q. Tell the jury what you made allowances for in
7 that regard, please.

8 A. I made allowances for assistance of
9 housecleaning, recognizing in the interim part when
10 I had seen Mr. Parks until now, he was actually
11 doing more housekeeping type of activities than he
12 had been at the time I saw him. At that point in
13 time he was still dependent on other people to get
14 things for him because he wasn't able to wear the
15 prosthetic reliably.

16 So he is able to do the housekeeping tasks
17 that he describes to various providers, but I could
18 see that he may still have difficulty with
19 housecleaning like mopping the floors and cleaning
20 bathrooms, the toilets and tub and cleaning out a
21 refrigerator, those type of things I could still
22 see being problematic.

23 I only identified it as support for the period
24 between age of 60 and 70, because by age 70, most
25 elders are looking for assistance in those areas.

1 Q. Which he would need anyway, is that what you
2 mean?

3 A. Yes.

4 Q. Now, you have given us opinions concerning the
5 life care plan and the allowances that you made and
6 the reasons why you disagree with some of those
7 allowances made by Mr. Karras, correct?

8 A. Correct.

9 Q. Have all the opinions that you have given us
10 been conveyed to this jury to a reasonable degree
11 of certainty in your field of life care planning?

12 A. Yes.

13 Q. Based on your calculation of the cost for
14 those services, what did you calculate the cost to
15 be?

16 A. This is in current dollar value and the cost
17 would come to \$1,288,544.

18 Q. You hold that opinion to a reasonable degree
19 of certainty?

20 A. Yes.

21 MR. HOSMER: That's all the
22 questions I have, Your Honor.

23 THE COURT: So, ladies and
24 gentlemen, let's allow you to take a chance to
25 get some lunch. We will do some more work to

1 keep things moving, but I would expect by
2 early this afternoon, we will be in a position
3 to hear the closings by counsels and my
4 instructions and have you begin your
5 deliberations.

6 So that's the game plan. I'd like
7 to stick to that. So take an hour for lunch
8 and then we will see you back, so thank you.

9 (Jury exits courtroom at 1:45 p.m.)

10 THE COURT: Ma'am, you can step down
11 for our lunch break.

12 I have had an opportunity to review
13 the submissions of the parties, including the
14 verdict slip and the proposed points for
15 charge. I'm going to finish up my review. I
16 should be able to accomplish that charging
17 conference with some efficiency because most
18 of the points of charge I believe are agreed
19 to.

20 And with respect to the verdict
21 slip, I think especially because of conceded
22 liability, that may change the approach that
23 the Court has to the verdict slip.

24 In any event, I will hear arguments
25 briefly on that, but we should get here about

1 in 50 minutes, budgeting about 10 minutes, to
2 allow that, and that's without prejudice to
3 whatever motion practice that may be necessary
4 at the close of defense case. However, I'm
5 going to have counsel really focused on a
6 cross-examination of the life care planning
7 expert.

8 Anything else I need to do before I
9 take a break?

10 MR. STROKOVSKY: Your Honor, how
11 much time will be allowed for closing argument
12 or statement?

13 THE COURT: Didn't we talk about 25
14 minutes?

15 MR. HOSMER: I think that was the
16 opening, but 25 for closing is fine.

17 THE COURT: You would get 10 minutes
18 for rebuttal.

19 MR. STROKOVSKY: Twenty-five, plus
20 10?

21 THE COURT: Yes. Does that sound
22 fair enough to everyone?

23 MR. HOSMER: Sure.

24 THE COURT: Everyone is excused for
25 lunch.

1 (Lunch recess.)

2 THE COURT: Good afternoon.

3 As I indicated, I have had an
4 opportunity to review the submissions of the
5 parties, and we have had the benefit of
6 substantial evidence at trial and because of
7 the large number of agreed-upon charges, I
8 think this charging conference will not be
9 that long.

10 So if you don't mind, keep notes as
11 I go along. I will identify the joint points
12 for charge by the number identified by the
13 parties. I believe that's consistent with the
14 standard Pennsylvania jury charges, I guess
15 it's the 2020 edition. Because they're not in
16 dispute, I will move through it.

17 I'm going to charge 4.00, 4.20,
18 4.30, 4.40, 4.50, 4.80, 4.90, 4.100, 4.110,
19 4.120, 5.20, 7.50, 7.210.

20 I have a note that we have a factual
21 dispute between the life expectancy of the
22 plaintiff. Will you remind me the chart your
23 expert relied upon or the number? My plan is
24 to charge between X and Y and the fact finder,
25 meaning the jury, will then determine which of

1 those to choose in calculating futures.

2 MR. STROKOVSKY: I believe it's to
3 76. I can double-check.

4 THE COURT: Give me the raw
5 remaining life years.

6 MR. HOSMER: It's 2066 for 44 years.

7 MR. STROKOVSKY: I can pull it up in
8 one second.

9 MR. HOSMER: Forty-four years life
10 expectancy under Table 2.

11 THE COURT: I think his expert
12 relied on Table 1.

13 MR. HOSMER: No, he relied on two.
14 Mine relied on Table 14.

15 THE COURT: I thought the life care
16 planner said Table 2. She confused me then.

17 MR. STROKOVSKY: For line items,
18 2066 would be the final year. So it would be
19 until he is 76.

20 THE COURT: Give me the net number
21 of years that you put to the jury through your
22 expert as life expectancy.

23 MR. STROKOVSKY: I believe it's 34.

24 MR. HOSMER: I'd like to agree with
25 you, but it's 44.

1 MR. STROKOVSKY: Forty-four, my
2 apologies.

3 THE COURT: For the fact finder, it
4 would be between 44 and 39 years; is that
5 right?

6 MR. HOSMER: Well, Your Honor, I
7 requested the charge as written be directed to
8 the jury. It specifically says the life
9 expectancy Table 14 someone of Mr. Parks' age,
10 gender and race is.

11 THE COURT: So because there is a
12 divergence of expert opinion, I'm going to put
13 that to the jury as a fact question for them
14 to determine. I think both of you have a
15 basis for that calculation, but it is in
16 dispute as far as the evidence before this
17 court.

18 So going forward, 14.30, 14.150, and
19 14.190. And I also plan to give the standard
20 12.00 closing instructions.

21 Understood.

22 MR. HOSMER: Understood.

23 MR. STROKOVSKY: And, Your Honor,
24 for 14.30 14.150, I guess even 7.50, are you
25 using what was submitted yesterday?

1 THE COURT: What was jointly
2 submitted to me is what I'm using.

3 MR. STROKOVSKY: Understood. We
4 tailored it to, obviously, to make a damages
5 trial.

6 THE COURT: That's why I moved
7 quickly through the index because this was
8 submitted to me as a joint agreed-upon series
9 of charges. That's what I'm relying upon.

10 MR. HOSMER: What Mr. Strokovsky, I
11 think, is 14.150, I don't think --

12 THE COURT: This is the MCARE
13 charge?

14 MR. HOSMER: Yes, 14.150.

15 MR. STROKOVSKY: We don't have an
16 economist for the defendant.

17 MR. HOSMER: We do not.

18 THE COURT: I'm giving an
19 instruction that they should adjust for
20 inflation. You're just submitting that to the
21 jury.

22 MR. HOSMER: Yes. They heard that
23 from Mr. Verzilli and they can decide what to
24 do with it.

25 THE COURT: That's for closings, I

1 guess, plaintiff to argue. Fair enough.

2 MR. HOSMER: If you look at the
3 third paragraph under damages generally, it
4 begins with the words "the damages include."

5 THE COURT: Paragraph 1 is you must
6 determine, is that right, going through the
7 paragraphs?

8 MR. HOSMER: Yes, Paragraph 1 is you
9 must determine.

10 THE COURT: The next one is you must
11 completely.

12 MR. HOSMER: Yes. The third is the
13 line for you to record the verdict. The
14 damages include, one, medical expenses, two
15 should be emotional pain and emotion physical
16 pain and emotional distress. I thought
17 Mr. Strokovsky inserted the words "past and
18 future" in front of Items 2, 3, 4 and 6.

19 THE COURT: That's true.

20 MR. STROKOVSKY: I see that now.
21 That's taken out. I'm fine with that.

22 THE COURT: Past and future is being
23 deleted. It's just pain and emotional
24 distress, correct?

25 MR. HOSMER: Correct. The words

1 "past and future" should come out of all those
2 lines.

3 THE COURT: So one through six?

4 MR. HOSMER: Correct.

5 THE COURT: Deleted past and future,
6 physical pain and emotional distress.

7 Any other edits?

8 MR. STROKOVSKY: The verdict slip we
9 might have some follow-up questions.

10 THE COURT: I'm about to hand out my
11 review of the arguments I think clearly
12 represents law of the matter in contest here.

13 MR. STROKOVSKY: I guess, going to
14 future medical in one lump sum, I guess that
15 obviates the need for the jury to figure out
16 what year.

17 THE COURT: I think contained within
18 the standard charge. More importantly it
19 avoids any kind of complications or
20 mathematical errors by the jury.

21 MR. STROKOVSKY: So I think there
22 needs to be -- Your Honor, I believe there
23 needs to be a slight tweak to the existing --

24 THE COURT: First, talk to counsel.

25 MR. HOSMER: On 7.50.

1 THE COURT: Undisputed negligence.

2 MR. HOSMER: Yes.

3 THE COURT: Am I wrong on it's
4 undisputed negligence?

5 MR. HOSMER: It's the way
6 Mr. Strokovsky wrote it. I resubmitted.

7 THE COURT: You first talked to each
8 other about an edit.

9 MR. HOSMER: We have and we can't
10 agree.

11 THE COURT: All right.

12 MR. HOSMER: The first paragraph
13 says -- as submitted by Mr. Strokovsky says,
14 The parties agree that defendants, Matthew
15 Lorei and Temple University Hospital, were
16 negligent and that this negligence caused harm
17 to Eddie Parks.

18 The fact of the matter is we didn't
19 agree that Temple University Hospital is
20 negligent. We agreed that Temple University
21 Hospital was the principal and they should not
22 be characterized as being negligent. They can
23 be characterized --

24 THE COURT: Can I then say and
25 Temple University Hospital, Inc., principal as

1 a modifier?

2 MR. HOSMER: As long as it doesn't
3 say they were negligent, yes.

4 THE COURT: It will say Dr. Lorei
5 and Temple University, Inc., principal, it's a
6 word of art.

7 MR. HOSMER: Were negligent is that
8 what it will say?

9 THE COURT: Yes.

10 MR. HOSMER: I don't think that's
11 really fair because I agreed to the --

12 THE COURT: Again, I'm not going to
13 tell them it's imputed negligence. The object
14 of this exercise is not to convert to pure
15 legal. See if counsel will agree to an edit
16 that expresses that. I don't disagree with
17 your client's interest in that respect. Can
18 you do that?

19 MR. STROKOVSKY: No, Your Honor.
20 Because the whole reason we are here is
21 because of our case against Temple and Dr.
22 Lorei. I would agree or not that I even would
23 have his -- I'm fine with your suggested added
24 word or even just phrasing it as defendants
25 and leaving out the names entirely, but we

1 could have filed a lawsuit just against
2 Temple --

3 THE COURT: I don't want to hear
4 that. We have a very straightforward --

5 MR. STROKOVSKY: We need keep Temple
6 in this case --

7 THE COURT: If you do it one more
8 time, frankly, I will hold you in contempt.
9 Stop arguing your legal theories. I'm -- I
10 understand this case. At this point I have
11 read a large amount of information. So how do
12 we address what I think is the basis for
13 liability of Temple is not pure negligence,
14 but rather vicarious liability. Am I getting
15 that right?

16 MR. STROKOVSKY: Yes, Your Honor.

17 THE COURT: So how do we express
18 that in this charge without prejudice to
19 defense counsel's client by agreement? I'm
20 trying to reach an agreement on that issue
21 only.

22 MR. STROKOVSKY: We are fine as
23 principal.

24 MR. HOSMER: I would say it should
25 say the parties agree the defendant, Matthew

1 Lorei, was negligent and the parties agree
2 that that negligence caused the harm to Eddie
3 Parks. It's further agreed that Temple
4 University Hospital is the principal of
5 Matthew Lorei, M.D., just as we stipulated.

6 THE COURT: Ultimately, your verdict
7 slip is what is going to define your recovery.
8 This charge is not. And your complaint frames
9 a liability. I don't disagree that Temple has
10 asserted that its liability is not by
11 individual conduct of Hootie the Owl, but
12 rather the vicarious or imputed liability
13 to -- from Dr. Lorei's conduct.

14 I don't want to make this more
15 complicated. This is the charge portion the
16 verdict slip is really speaking for itself on
17 who will be culpable.

18 MR. STROKOVSKY: Your Honor, would
19 you be able to read what was just written?

20 THE COURT: The second sentence
21 after it's going to be after M.D., I'm going
22 to not read, and Temple University Hospital,
23 Inc. was negligent, the grammatically conform.
24 And the parties agree that the negligence
25 caused harm to Mr. Parks.

1 Further, it is agreed that Temple is
2 the principal of Dr. Lorei.

3 MR. STROKOVSKY: Your Honor, just
4 because we -- I took out a charge about
5 vicarious liability, could there be a few
6 extra words stating that --

7 THE COURT: You're being philosophic
8 there can be, but where was all of this when I
9 asked for the points for charge last week? So
10 if you're going to craft something, you have
11 to have the agreement of the defense counsel
12 at this juncture.

13 So do you have some actual words
14 that you can propose to the defendant to
15 satisfy your concern?

16 Just to be clear, the verdict slip
17 reads, State the amount of damages sustained
18 by Eddie Parks as a result of the negligence
19 of the defendants, plural. Doesn't need any
20 more explanation and should not confuse the
21 jury.

22 I don't find anything that would
23 confuse a jury as to this single modification
24 which is consistent with the liability theory
25 that you put forward. Unless you want me to

1 tear up this verdict slip, I don't know,
2 mistrial or how do you want me to go forward
3 then?

4 MR. STROKOVSKY: Understood, Your
5 Honor. We are fine.

6 THE COURT: I don't want to
7 prejudice you, but, I mean, defense counsel
8 does have a condition that is easily remedied
9 in my charge, but does no violence to the
10 verdict slip, which is most important to your
11 client.

12 MR. STROKOVSKY: Understood, Your
13 Honor.

14 MR. HOSMER: I would prefer the
15 verdict slip to say Dr. Lorei, also.

16 THE COURT: The caption is the
17 defendants, plural. I'm leaving it. The
18 theory is different.

19 MR. HOSMER: I do need a couple of
20 minutes to talk to my client.

21 THE COURT: Absolutely.

22 MR. HOSMER: For this reason.

23 THE COURT: I just need to have
24 finality of the charge because I'm not going
25 to hold the jury up to make up time for what

1 should have been done last week. I'm amenable
2 to you talking to your client and do what is
3 necessary.

4 MR. HOSMER: All right. Thank you.

5 MR. STROKOVSKY: If I may, in 7.50,
6 there is a paragraph in there about answering
7 yes for question one on the verdict sheet.
8 Since our verdict sheet does not have the
9 issue of negligence --

10 THE COURT: I will strike that and
11 Temple, the second sentence of 7.50.

12 MR. STROKOVSKY: It says -- I think
13 the second paragraph says, You must answer yes
14 on the verdict sheet to Question 1.

15 THE COURT: Is this 7.50?

16 MR. STROKOVSKY: Yes, Your Honor.

17 THE COURT: So the second sentence
18 caused by, I'm deleting by Temple University
19 Hospital, Inc. and is that what you're
20 suggesting?

21 MR. STROKOVSKY: No, Your Honor.

22 THE COURT: Isn't that consistent,
23 though?

24 MR. STROKOVSKY: I apologize, I hope
25 I'm not looking at something different, but I

1 see here there is a paragraph, it might not be
2 your seconde paragraph, it says, You must
3 answer yes on the verdict sheet to Question
4 Number 1 whether defendants were negligent in
5 Question 2.

6 THE COURT: That's not the standard
7 charge. I will read it.

8 Party agree that defendant Matthew
9 Lorei, striking and Temple University
10 Hospital, Inc., was negligent and parties
11 agree that the negligence caused harm to Eddie
12 Parks, period.

13 Further, it's agreed that Temple is
14 the principal of Matthew Lorei, right, the
15 parties disagree, however, to the extent
16 Mr. Parks' harm was caused by, striking Temple
17 University Hospital, Inc., Matthew Lorei's
18 negligence, correct.

19 MR. STROKOVSKY: Yes, Your Honor.

20 THE COURT: And, then, again, to be
21 consistent with the language that we think is
22 controlled in that first paragraph, we are
23 deleting, You must decide the extent of harm
24 Matthew Lorei, possessive, negligence caused,
25 and return a verdict that fully compensates

1 Eddie Parks for all harm sustained; is that
2 right?

3 MR. STROKOVSKY: Understood, Your
4 Honor.

5 MR. HOSMER: I have to insist on
6 line by line on the verdict ship. The way
7 Temple will fund any verdict with an
8 annuity --

9 THE COURT: Line by line per year,
10 and so what is that, 25-some lines you're
11 asking the jury per line whatever?

12 MR. HOSMER: Yes, 39.

13 MR. STROKOVSKY: I would say 44.

14 MR. HOSMER: Or 44, right. I'm
15 sorry, that's what we submitted. I think
16 that's what MCARE requests.

17 More importantly --

18 THE COURT: Let's talk bluntly.
19 Does that affect plaintiff's recovery, a
20 potential for recovery line by line or the
21 absence of it?

22 MR. STROKOVSKY: If it's line by
23 line, all that I request is that --

24 THE COURT: No, answer my question
25 first. Does that affect your ability to

1 recover against the defendant?

2 MR. STROKOVSKY: As long as the jury
3 is allowed to bring Mr. Verzilli's line by
4 line --

5 THE COURT: Now you're adding stuff.
6 Do you agree with that?

7 MR. HOSMER: I don't agree to let
8 them take that back.

9 THE COURT: That's the problem.
10 You're asking them from memory to fill out 44
11 lines of damages.

12 MR. HOSMER: Correct.

13 THE COURT: If that is going -- if
14 you need that, your client insists on it, I
15 will allow the evidence that they're being
16 called upon to determine. I got 44 lines of
17 hypothetical speculative.

18 MR. HOSMER: Can I talk to them
19 again?

20 THE COURT: You have to. Understand
21 it would be reversible error to ask them 44
22 times to wholly speculate without evidence for
23 them to consider.

24 MR. HOSMER: Thank you. Be right
25 back.

1 calculate 44 line items over each and every
2 individual year that has been submitted to the
3 jury for factual determination.

4 So I am compelled as a matter of
5 law, though, to give the jury to make fact
6 determinations that will be evident in the
7 record and support a verdict. I don't know
8 what I can do other than grant your request to
9 add those 44 individual lines for economic
10 harm, but I will allow the jury to bring with
11 them the economic report or summary of Mr.
12 Verzilli; otherwise, they would be called upon
13 to wholly and rankly speculate.

14 MR. HOSMER: I respectfully
15 disagree.

16 THE COURT: I appreciate that. Your
17 objection is noted, and I don't know what else
18 I can do, otherwise. I was inclined to have a
19 single line calculation to avoid just this
20 issue. But if this is what has to happen,
21 then you have your objection and I will have
22 the verdict slip edited in a few minutes.

23 MR. HOSMER: I'm reluctant and don't
24 like to say this, but if this Verzilli chart
25 goes back to the jury, if they request it and

1 it's given to them, I feel compelled to move
2 for a mistrial.

3 THE COURT: I would consider that;
4 however, be prepared notwithstanding that
5 desire to call a mistrial for a verdict slip
6 that I'm compelled to consider, based on your
7 arguments, so I will consider it as I would
8 anything of record, but let's -- I'm right now
9 going to prepare an amended verdict slip that
10 includes for economic damages those 44
11 specific annualized lines. Is that a fair
12 expression of what they are?

13 MR. HOSMER: I believe that's what
14 MCARE says.

15 THE COURT: MCARE can figure out
16 what that does to verdict slips that are
17 compelled to be rendered on behalf of their
18 clients or the subjects of the legislation.
19 We will continue working just not to delay the
20 closing arguments, the completion of this
21 testimony and closing argument and my charge.
22 I will instruct my law clerk to help
23 facilitate this.

24 Is there anything else I need to do
25 before we begin testimony again?

1 MR. HOSMER: No, Your Honor.

2 MR. STROKOVSKY: No, Your Honor.

3 THE COURT: My 7.2, it may be dated,
4 but it refers to the HSF guidelines should I
5 amend that to say CDC for clarify? I always
6 call it the HSF.

7 (Jury enters courtroom at 2:15 p.m.)

8 THE COURT: Welcome back, ladies and
9 gentlemen.

10 We had to do a little work. I'm
11 sorry we didn't start right as I thought we
12 would. We are ready to go. The expert
13 witness is still on the stand.

14 And you may proceed, Counsel.

15 MR. STROKOVSKY: Thank you, Your
16 Honor.

17 - - -

18 CROSS-EXAMINATION

19 - - -

20 BY MR. STROKOVSKY:

21 Q. Good afternoon.

22 So you wrote two reports for this case, right?

23 A. That's correct.

24 Q. One was last year, correct?

25 A. Correct.

1 Q. And another one was last week, right?

2 A. Correct.

3 Q. And the life expectancy that you had for
4 Mr. Parks as a male, African-American male per the
5 life table in last year's report was 74. He was
6 expected per statistics to live to age 74?

7 A. Life table words it differently. It speaks to
8 the remaining years. And the initial report in the
9 document referenced, specified at age 30 to be 47.8
10 years. I cited that because I believe that's what
11 Mr. Parks' age was when Mr. Karras authored his
12 report. And at age 31, the remaining years was 43.
13 So that was the reference point that I utilized.

14 Q. So 31, plus 43, that's seven four, right?

15 A. Yes.

16 Q. So, again, based off that, his life expectancy
17 was to age 74; is that correct?

18 A. Yes.

19 Q. And now this year, you used updated life
20 tables, right?

21 A. Correct.

22 Q. By about a year, is that fair, or is it more
23 than a year?

24 A. I think it's approximately a year. It may be
25 more. I can look at the reference.

1 The initial table was dated 2020, and the
2 current table is dated 2022.

3 Q. So it's a two-year difference?

4 A. Somewhere in the year. I don't have the
5 specific date.

6 Q. And now you have them as statistically as a
7 black male to live until he's 71; is that correct?

8 A. I cited the current information and that's
9 what it recorded in that stated reports.

10 Q. Thirty-two plus 39 is 71.

11 A. Correct.

12 Q. So over the one-year time from your first
13 report to your second report, per the statistics,
14 his life expectancy went down three years; is that
15 correct?

16 A. It did go down. I believe it went down in Mr.
17 Karras' report, too, where both of us citing the
18 report, not determining the life expectancy.

19 Q. Right.

20 A. That's data.

21 Q. It went down three years, right?

22 A. That's the data that is published in the
23 statistics, correct.

24 Q. That is because of COVID-19, right?

25 A. I don't know the reasons.

1 Q. You don't follow trends with life expectancy?

2 A. I read the information, but I don't know the
3 specifics for every element, no.

4 Q. Would you be surprised to learn if a
5 three-year decrease in life expectancy during
6 COVID-19 would be the reason or COVID 19 would be
7 the reason for that decrease?

8 A. I would not be surprised if that's a
9 contributor.

10 Q. Are you aware that the decrease in life
11 expectancy for all people, frankly per the life
12 tables, over the last two years has decreased?

13 A. No. In fact, that's what I was mentioning
14 that that's the reason why Mr. Karras' life
15 expectancy was reduced, as well.

16 Q. And it's the largest dip since World War I.
17 Are you aware of that?

18 A. I didn't know that specifically.

19 Q. Would you be surprised to hear that?

20 A. No.

21 Q. But you didn't do anything to account for
22 COVID decreasing the numbers by three years?

23 A. I utilized the report the same way that Mr.
24 Karras had.

25 Q. But Mr. Karras did not base his off of gender

1 and race, though, right?

2 A. No.

3 Q. He based it off gender only, right?

4 A. Correct.

5 Q. So I have in front of me your first report,
6 dated March 25, 2022, correct?

7 A. Correct.

8 Q. And it noted when you first met with
9 Mr. Parks, that was in January of 2021?

10 A. Correct.

11 Q. And he was still using a cane, correct?

12 A. Correct.

13 Q. Then you went to his home in the summer of
14 2021, correct?

15 A. Correct.

16 Q. You came inside his home, right?

17 A. Yes.

18 Q. Mr. Parks was there, right?

19 A. Right.

20 Q. So was I right?

21 A. Yes.

22 Q. And then you finished whatever you needed to
23 do and then you left, right?

24 A. Correct.

25 Q. And do you remember saying goodbye to me?

1 A. I remember -- I can't say I specifically
2 saying goodbye, but I'm sure I did.

3 Q. But your report says that you saw Mr. Parks
4 walk to the corner store?

5 A. Correct. Well, walking to the corner store.
6 He said that's where he was going.

7 Q. Did you actually see him walking or he said he
8 would walk to the corner store?

9 A. No, I saw him walking.

10 Q. Were you waiting in your car to watch him?

11 A. No, but I was in my car.

12 Q. How long were you in your car by the time you
13 saw him walk?

14 A. I don't know. I would have written some notes
15 down from the assessment.

16 Q. Do you know where the corner store was?

17 A. I think it's around the corner. I don't know
18 specifically. I can't picture it at this moment.

19 Q. Were you in front of the corner store?

20 A. No. I was in front of the house.

21 Q. Did you follow him as he walked to the corner
22 store?

23 A. No.

24 Q. Did you see him enter the corner store?

25 A. No.

1 Q. Your plan from -- actually, strike that.

2 From your plan, did you -- have you ever had a
3 conversation with Dr. Sarlo?

4 A. No.

5 Q. You two never met up and discussed what each
6 of you saw when you interviewed Mr. Parks?

7 A. No.

8 Q. Did you try to follow his recommendations?

9 A. I reviewed his recommendations, as I did all
10 of the records that are listed.

11 Q. Did you use his recommendations as a basis for
12 your recommendations?

13 A. No, no more than any other record that I
14 reviewed.

15 Q. And in that report, you said you did not
16 recommend a bed with side rails, or you did?

17 A. I did not recommend the hospital bed.

18 Q. But you recommended another type of special
19 bed; is that correct?

20 A. No.

21 Q. Or something next to the bed?

22 A. I recommended a support bar to help get up out
23 of bed, if needed.

24 Q. And is that for now or for when he is 60?

25 A. I believe I have it in there beginning at age

1 60.

2 Q. Are you aware that Dr. Sarlo made no such
3 recommendation for anything next to the bed?

4 A. I am.

5 Q. Are you aware in Dr. Sarlo's first report, he
6 recommends that Mr. Parks' microprocessor should be
7 changed out every three to five years? Did you see
8 that?

9 A. I did.

10 Q. But you did not for your report change out a
11 prosthetic every three to five years; is that
12 correct?

13 A. That's correct.

14 Q. You changed it out every five years?

15 A. Correct.

16 Q. You have reviewed Alex Karras' report, right?

17 A. Yes.

18 Q. In terms of orthotics, you agree that up until
19 the age of 60, that Mr. Parks is going to need a
20 new prosthetic every five years, correct?

21 A. That's the average for a prosthetic
22 replacement, correct.

23 Q. And in your first report, you did say that
24 Mr. Parks will need a scooter at the age of 60; is
25 that correct?

1 A. That is what my thought was at the time I saw
2 him the first time, correct.

3 Q. Because he had a scooter from the age of 60,
4 you no longer gave Mr. Parks a new prosthetic every
5 five years. You made it every eight years,
6 correct?

7 A. No, that was not because of the scooter. It
8 was because of mobility supports, including an
9 additional prosthetic that he wouldn't be wearing
10 the prosthetic full time. He would have another
11 prosthetic for certain activities, and then he
12 would have a scooter for mobile support, if needed.

13 Q. So your first report you have him getting a
14 prosthetic every five years up until the age of 60,
15 right?

16 A. I think it's every five years for life.

17 Q. It didn't change --

18 A. You're right, I'm sorry, that's what you were
19 just referencing.

20 Q. Your first report had a plan that he required
21 a scooter at the age of 60, right?

22 A. That I thought it would be beneficial for him
23 to have that mobile support at age 60.

24 Q. You thought Mr. Parks would benefit at age 60
25 with a scooter?

1 A. Correct.

2 Q. And then you also changed the frequency as to
3 when he will get a new prosthetic. Starting at age
4 60, you believe he needs one only on average every
5 eight years instead of five, right?

6 A. Yes.

7 Q. Is one of the reasons because as he gets
8 older, he will use the prosthetic less; is that
9 correct?

10 A. I think I referenced there would be less wear
11 and tear because there would be a different level
12 of activity. I don't remember stating that he
13 would use it less.

14 Q. But now in your report from last week, you no
15 longer believe Mr. Parks could benefit from a
16 scooter at the age of 60?

17 A. I don't believe he would need a scooter at age
18 60, correct.

19 Q. In fact, he doesn't need a scooter at the age
20 of 70, right?

21 A. I don't know. I guess it depends on other
22 levels of ability.

23 Q. Well, your report says he no longer needs a
24 scooter in his lifetime, right?

25 A. Related to the amputation, correct.

1 Q. And I think you testified, please tell me if
2 I'm mistaken, but did you testify that Mr. Parks
3 does not need any type of surgical procedure in his
4 future?

5 A. No, I did not. I think I stated that any of
6 those procedures should be identified as potential
7 complications and the cost of those should not be
8 calculated in to expected cost for the future.

9 That information is typically presented for
10 information purposes, but not calculated in a life
11 care plan because it can't be known greater than
12 50 percent certainty that it will be necessary.

13 Q. Your report, you didn't have any page numbers,
14 right? It's not -- it makes it a little tough to
15 navigate, but I will go forward, I'm just saying.

16 Let's go to the part of your report that says
17 surgical intervention from 2021, okay.

18 A. This is the initial report?

19 Q. The initial report, yes, please.

20 MR. STROKOVSKY: Mr. Bitman, if you
21 could put up Exhibit P-67. Halfway through
22 there is a table surgical intervention, if you
23 could find that, that would be great.

24 BY MR. STROKOVSKY:

25 Q. So you compared what you did when you did your

1 report from 2021, is you compared the
2 recommendations of Alex Karras?

3 A. Correct.

4 Q. And Alex Karras in his life care plan, he
5 recommended a right stump neuroma resection,
6 correct?

7 A. Correct.

8 Q. And he also recommended a right stump
9 resection heterotopic bone procedure, correct?

10 A. Correct.

11 Q. And in your report from 2021, you agreed with
12 those recommendations, correct?

13 A. Yes.

14 Q. So when you said earlier that on direct about
15 not having a plan for surgeries, you were mistaken,
16 correct?

17 A. I don't remember earlier if the question was
18 specific to the first report or if it was specific
19 to what would be necessary after additional medical
20 records were received.

21 Q. Are you saying you no longer recommend that
22 Mr. Parks will need a right stump neuroma
23 resection?

24 A. I didn't identify any information that I cited
25 that Mr. Parks had a neuroma that required

1 resection.

2 Q. So that's what you're saying now?

3 A. Yes. In the initial report, I specified it
4 would be necessary to the degree that it was
5 related to the amputation.

6 Q. Add in your addendum report from last week,
7 you -- now this doesn't actually need to be
8 numbered. This is just two pages, right?

9 A. Correct.

10 Q. And here on the second page, you have four
11 bullet points, and that includes what was added or
12 taken away from your previous plan from last year;
13 is that correct?

14 A. Correct.

15 Q. And nowhere in those four bullet points does
16 it take out the recommendation for a right stump
17 neuroma resection, correct?

18 A. Correct.

19 Q. And nowhere in your second report does it take
20 out your recommendation for a right stump resection
21 heterotopic bone, correct?

22 A. Correct.

23 Q. So you do still believe that Mr. Parks will
24 need those in his future, correct?

25 A. No. I believe that I -- it's an omission on

1 my part to not include that as a bullet point as a
2 difference.

3 Q. You made a mistake?

4 A. I did.

5 Q. You made a mistake, so now there is less money
6 going to Mr. Parks?

7 A. I made a mistake in reference. I don't
8 believe I made a mistake in my opinion.

9 Q. And you just told us about two minutes ago
10 that you said you saw nothing in the medical
11 records to support that Mr. Parks has a neuroma,
12 right?

13 A. That he has a neuroma that requires resection.

14 MR. STROKOVSKY: Mr. Bitman, if you
15 can zoom in on the next part right below that.

16 I'd like to publish this.

17 MR. HOSMER: That's fine.

18 BY MR. STROKOVSKY:

19 Q. So in your initial report from 2021, do you
20 not say, A review of available medical records
21 supports the formation of heterotopic bone lesions
22 and possible neuroma contributing to pain symptoms
23 at the stump.

24 Did I read that correctly?

25 A. Yes.

1 Q. As such, the recommendations for surgical
2 resection of these is appropriate to the degree
3 that an amputation would not have otherwise been
4 necessary; is that correct?

5 A. Yes.

6 Q. The cost and frequency identified are noted to
7 be within a reasonable range.

8 Did I read that correctly?

9 A. Yes.

10 Q. And that's it right there, right?

11 A. Correct.

12 MR. STROKOVSKY: Mr. Bitman, can you
13 show the top again of the top two lines.

14 BY MR. STROKOVSKY:

15 Q. So, again, just so the jury can see, so this
16 is your report from last year, saying that you do
17 agree with Mr. Karras that he will need a right
18 stump neuroma resection, right?

19 A. I believe I said that it appeared to be
20 reasonable based on the information that was
21 reviewed.

22 Q. And you reviewed the available medical record,
23 right?

24 A. Correct.

25 Q. That's why you thought it was reasonable,

1 right?

2 A. At that point, correct.

3 MR. STROKOVSKY: You can take that
4 down.

5 BY MR. STROKOVSKY:

6 Q. So even though you noted no change in your
7 plan with regard to those two surgeries in your
8 updated report, last week two days before trial,
9 today sitting here, you are saying Mr. Parks does
10 not need those procedures anymore?

11 A. I'm saying that in the interim year, there was
12 no medical information to say that those conditions
13 were contributing to the problem and required
14 surgical intervention.

15 Q. A neuroma causes residual limb pain, right?

16 A. It can.

17 Q. A heterotopic ossified bone can cause residual
18 limb pain, right?

19 A. It can.

20 Q. And you're aware that Mr. Parks consistently
21 complains of residual limb pain with his providers?

22 A. I know that there has been variations in the
23 report of pain, and it wasn't interfering with his
24 function in the records that I had reviewed from
25 over the past year.

1 Q. Do you agree with Dr. Sarlo that Mr. Parks can
2 be a firefighter right now?

3 MR. HOSMER: Objection. I think
4 that's beyond the scope of her report.

5 THE COURT: Overruled.

6 BY MR. STROKOVSKY:

7 Q. Do you agree with Dr. Sarlo that Mr. Parks can
8 be a firefighter right now?

9 A. I don't have an opinion about Mr. Parks'
10 aspirations. I believe he could accomplish things
11 that he wants to accomplish.

12 Q. If he wants to be a fireman, can he be a
13 fireman right now?

14 A. I don't know what the requirements are to be a
15 fireman.

16 Q. If he wants to be a bike messenger going
17 through the streets of Philly all day every day, is
18 that something he can do?

19 MR. HOSMER: Objection. Same
20 objection.

21 THE COURT: Overruled.

22 THE WITNESS: He rides a stationary
23 bike. I don't know if he is riding a regular
24 bicycle, but I have worked with many patients
25 with amputations who are more physically

1 active than that.

2 BY MR. STROKOVSKY:

3 Q. You would agree that Mr. Parks has complained
4 of residual limb pain over the last year since you
5 wrote your last report, right?

6 A. I would say it was periodic reports of some
7 residual limb pain that appeared to be the reasons
8 why they made the changes in the prosthetic and the
9 socket.

10 Q. Were you here when I cross-examined Dr. Sarlo
11 today?

12 A. For a portion of it, yes.

13 Q. Did you see when I went through the medical
14 records within the last two years with Dr. Tucker?

15 A. Well, I couldn't see the screen, but I did
16 hear a number of the references.

17 Q. So I will spare you going through the
18 references of his consistent complaints of residual
19 limb pain and phantom limb pain and move on.

20 MR. HOSMER: Objection to the
21 editorialization.

22 THE COURT: Overruled.

23 BY MR. STROKOVSKY:

24 Q. And you also agree that Mr. Parks isn't a fall
25 risk, right?

1 A. I think it would greatly depend on whether he
2 is wearing his prosthetic, whether his prosthetic
3 is well fitting, whether he is ambulating with the
4 crutches versus a cane, what kind of surface he is
5 ambulating on. I think there is many factors that
6 would determine his risk to fall.

7 Q. How about a history of falling; is that worth
8 while to know?

9 A. I think that, again, those factors in the
10 falls that were experienced are important to
11 consider.

12 Q. Do you think Mr. Parks will be at an increased
13 risk for falling when he is 60?

14 A. I think everyone is at an increased risk for
15 falling as we age.

16 Q. I appreciate you said that. Dr. Sarlo didn't.

17 MR. HOSMER: Objection.

18 BY MR. STROKOVSKY:

19 Q. Do you --

20 THE COURT: Overruled.

21 BY MR. STROKOVSKY:

22 Q. Did you think he's at an increased range for
23 70?

24 A. I think he is facing safety risks that we all
25 do.

1 Q. Are you aware that Mr. Parks was a CNA?

2 A. Yes.

3 Q. So he would actually help elderly people from
4 falling. Are you aware of that?

5 A. I'm aware of the responsibility of a CNA. I
6 can't speak to Mr. Parks' specific experiences.

7 Q. Are you aware that he treated amputees?

8 A. I don't remember there being a specific
9 reference to that.

10 Q. One way that older people or people who are
11 fall risks can avoid falling is to help in the
12 home; is that correct?

13 A. There is many ways to avoid the risks of
14 falling for all elders. And that would include
15 having proper floor coverings and having furniture
16 placed for support or having the supports available
17 like a walker, if necessary.

18 I think it's a pretty general statement to
19 make about why an individual might fall and what
20 they might need to prevent those falls.

21 Q. And if somebody is a fall risk and you're not
22 putting anything in your plan to help them prevent
23 falls, don't you think you should put something in
24 there to account for an emergency room visit in
25 case there is a fall?

1 A. That, again, by the standards of life care
2 planning would be considered a potential
3 complication. We can't know more greater than
4 50 percent that he will fall and require an
5 emergency room visit. Even with the falls that he
6 experienced, and, again, not knowing the specific
7 conditions of those falls, at this moment, they did
8 not require emergency room visits.

9 Q. If you see an amputee who has had to deal with
10 missing a leg for 40-plus years, do they reach a
11 point in life where if they don't have help in the
12 home, they have to go to a nursing home?

13 A. Some may and some do not.

14 Q. And you have nothing in your plan to send
15 Mr. Parks to a nursing home as he ages, correct?

16 A. No.

17 Q. So just to make sure I'm on the right pages as
18 you, when Mr. Parks reaches 70, you have for the
19 rest of his life, actually for the rest of his
20 life, period, you have nothing set aside for any
21 time of ER visits or any type of hospital visits
22 related to his amputation, correct?

23 A. Correct.

24 Q. When he is 60, do you have any home aides in
25 the home?

1 A. No.

2 Q. But last year when you made your report, you
3 included to have a home aide come to the home,
4 right?

5 A. Yes.

6 Q. But now because he's doing so much better, he
7 no longer needs any help in the home when he is 60;
8 is that correct?

9 A. Well, last year or at the time of my first
10 report Mr. Parks required assistance to put his
11 shoes on. Now he no longer needs assistance and he
12 is actually able to do many of the activities that
13 he wasn't able to do a year prior. So he is more
14 able and more aligned with others his age to do his
15 own personal care, to get about in the community,
16 to do the housekeeping tasks in his home. And, so,
17 yes, I did not see that he any longer needed
18 someone to come into the hospital to assist with
19 personal care.

20 Q. Not even for one hour a week?

21 A. I did not see he required any assistance
22 specific to personal care specific to his
23 amputation.

24 Q. How about when he is 70?

25 A. If he required assistance for personal care,

1 it could be any number of reasons involved with
2 aging, not specific to the amputation.

3 Q. So if he does need an aide later, it will be
4 something else other than his through-the-knee
5 amputation?

6 A. It couldn't be known with more 50 percent that
7 he could need assistance with personal care
8 specifically related to the amplification.

9 Q. Under your logic, really the future is
10 uncertain in every regard; is that correct?

11 A. No. It's not my logic. It's the standard of
12 life care planning.

13 Q. Are you aware that Mr. Parks still uses the
14 scooter when he goes out grocery shopping?

15 A. No, that wasn't specified in the records.

16 Q. Are you aware that he will use one of those
17 electronic scooters offered at Wal-Mart?

18 A. I think that's what you just asked.

19 Q. Well, Wal-Mart is a little different. I guess
20 we are splitting hairs here.

21 And a socket, you didn't -- you more or less
22 agreed with the pricing that Alex Karras listed for
23 sockets, correct?

24 A. Correct.

25 Q. That's about 17,000 a socket?

1 A. I don't recall. And it wouldn't be the socket
2 alone. It would probably be all of the components
3 that are necessary to replace the socket.

4 Q. And you were in agreement with the pricing of
5 Alex Karras for the Ottobock C-leg microprocessor?

6 A. Yes.

7 Q. As well as all other prosthetic maintenance
8 and supply costs?

9 A. Well, those are the charges that are typically
10 applied, so that was only information available.
11 But, yes, I agree.

12 Q. You agreed with the costs provided for a water
13 leg, right?

14 A. Yes.

15 Q. And same thing with that, same thing with
16 replacement costs or sockets, costs and maintenance
17 costs, you are in agreement with those prices,
18 right?

19 A. Actually, I think I may not have agreed with
20 the frequency of the socket replacement of the
21 prosthetic replacement for the water leg, only
22 because it's not utilized that often. It doesn't
23 get wear and tear.

24 Q. Do you know how many wheelchairs you
25 recommended for Mr. Parks?

1 A. One.

2 Q. Is that a new wheelchair or a wheelchair he
3 already has?

4 A. No, it's a new wheelchair. It's actually
5 quite an advanced one. It's not the new ones that
6 you see in the airport that fold up. It's \$1,400.
7 A lesser wheelchair that you can buy at Wal-Mart
8 would be more in line with \$500.

9 Q. That's a wheelchair that will last him his
10 whole life?

11 A. I don't expect he will depend on it often, so,
12 yes, it would last.

13 Q. How about you recommended crutches for him,
14 right?

15 A. Yes.

16 Q. How many pairs of crutches?

17 A. One.

18 Q. So he got one pair of crutches to last him a
19 lifetime, right?

20 A. In addition to the crutches he already has.

21 Q. When you reviewed the medical records, did you
22 see notes of when Mr. Parks reported that his
23 crutches broke?

24 A. I don't recall.

25 Q. Did you see references when his wheelchair

1 broke?

2 A. I don't recall.

3 Q. In other clients, other people that you treat
4 and see, do you notice sometimes that the
5 wheelchairs they have don't last 40-plus years?

6 A. I notice that they don't depend on that
7 wheelchair very often and many times can't remember
8 where in the basement that it is. So it really
9 does last a number of years until they have to dust
10 it out and bring it out to use it again.

11 Q. If I'm not mistaken, in your updated report
12 from last week, where his life expectancy was
13 reduced -- actually, strike that.

14 In your report, your final number for present
15 value of your recommendations is \$1,288,544; is
16 that correct?

17 A. Yes.

18 Q. And as you mentioned, that's the present
19 value, right?

20 A. It's current dollar value.

21 Q. That's not adjusted for inflation?

22 A. No.

23 Q. So that doesn't represent the future medical
24 costs over the next 40-plus years, correct?

25 A. Correct.

1 Q. Did you review any economic reports for this
2 case?

3 A. I did. There was an economic review provided
4 after Mr. Karras' first report.

5 Q. That's the only one you reviewed. I will
6 shorten it.

7 Did you review a report by defendant's own
8 expert economist, Olson, that was published about a
9 day or two after your report from last week was
10 published?

11 A. No.

12 Q. So you have no idea the future value that he
13 put in his report?

14 A. No.

15 Q. Are you aware that he's no longer going to
16 testify?

17 A. No.

18 Q. Are you aware that nobody at Temple is going
19 to say what the future medical value of your
20 one-point-two-eight-million-dollar future life care
21 plan?

22 A. That would not be information given to me.

23 Q. You did add something to your new plan,
24 though. In your report from last week, you now
25 agree that Mr. Parks could use a shower chair,

1 right?

2 A. Correct.

3 Q. So you're fine with him getting a new shower
4 chair every five years, correct?

5 A. Correct, which actually is something that Mr.
6 Karras did not include.

7 Q. And that helps eliminate the risk of falling?

8 A. In the shower.

9 Q. There is still a risk of slipping and falling
10 getting in the shower, right?

11 A. Always. That's why there is a recommendation
12 for grab bars added.

13 Q. Is it fair that amputees or a leg amputee is
14 at a higher risk of slipping and falling in the
15 shower than an otherwise able-bodied human?

16 A. I think it depends on the shower, the type, if
17 it's stepping over a tub, if it's walking in at a
18 level, it would not be. What the surface is like,
19 whether he is wearing a shower prosthetic at the
20 time, whether there are grab bars available.

21 Q. Well, you know Mr. Parks doesn't have a shower
22 prosthetic currently, right?

23 A. Yes.

24 Q. He wants one, but he can't afford one, right?

25 MR. HOSMER: Objection.

1 THE WITNESS: I would not know.

2 THE COURT: Overruled.

3 BY MR. STROKOVSKY:

4 Q. Is it fair that a amputee on one leg hopping
5 into a shower with water running is at a higher
6 risk in falling than an otherwise able-bodied
7 person?

8 A. Again, I think it depends on the type of
9 shower, the surface of the shower and whether there
10 is a shower chair available and grab bars.

11 Q. Even if all that is available, you still think
12 it's not harder for an amputee to get into the
13 shower?

14 A. I think if there is a transfer bench, it
15 should not be harder for someone to get into the
16 shower.

17 Q. Do you think Mr. Parks' functionality will get
18 worse when he reaches the age of 60?

19 MR. HOSMER: Objection. Beyond the
20 scope of expertise.

21 THE COURT: Overruled.

22 THE WITNESS: I wouldn't have no
23 information to know what other areas of
24 function might be compromised with Mr. Parks
25 aging.

1 BY MR. STROKOVSKY:

2 Q. You agree that Mr. Parks could benefit from a
3 device installed for his toilet, right?

4 A. Yes.

5 Q. Why is that?

6 A. Because it's harder to get up and down from a
7 low seated position like a toilet. Most toilets,
8 unless they're the senior citizen type, are at a
9 lower level. And without the benefit of grab bars,
10 it would be difficult for actually many people to
11 get up and down from it with any injury to their
12 leg.

13 THE COURT: Counsel, how much more?

14 MR. STROKOVSKY: Almost done, Your
15 Honor.

16 BY MR. STROKOVSKY:

17 Q. For your pricing of the current number of
18 \$1,288,544, did that include the heterotopic
19 ossification resection?

20 A. No. Did not include any surgical procedures.

21 Q. So even though and you agree your second
22 report has no mentioning that you took out those
23 surgical procedures, right?

24 A. In the narrative portion, that's correct.

25 Q. Is there anything else that you took out that

1 you didn't tell us when we are considering your
2 final number?

3 A. Not that I'm aware of. I wasn't aware of
4 that.

5 Q. And the neuroma resection procedure, that
6 wasn't considered in your final calculation; is
7 that correct?

8 A. That's correct. And that's in the addendum to
9 the report. So it is noted in the report that way.
10 It just isn't called out in the narrative portion.

11 MR. STROKOVSKY: I have no further
12 questions.

13 THE COURT: Counsel, anything?

14 MR. HOSMER: I have nothing, Your
15 Honor. Thank you.

16 THE COURT: Thank you very much,
17 ma'am. You can step down.

18 Counsel.

19 MR. HOSMER: That concludes our
20 witnesses, and subject to moving in exhibits,
21 we are resting.

22 THE COURT: Thank you, Counsel.

23 I'm going to remind you that it is
24 both parties' duty to file with the Court's
25 electronic docketing system all exhibits that

1 they moved into evidence and relied upon to
2 our permanent record.

3 Having said that, the defense has
4 rested. The case has been put at issue.
5 Ladies and gentlemen, I have a little setup
6 work for the closing arguments. Give me a few
7 minutes. Get a chance to stretch or use the
8 comfort station. We will keep moving with the
9 closings, and then I will give you my
10 instructions and we will be ready to set the
11 case before you.

12 Now, in addition to which, we have
13 two honored guests, our alternate jurors. I
14 have to say without you, many challenges in
15 reaching a full 12-person verdict as parties
16 are allowed to have, wouldn't happen.

17 So just the fact that I'm going to
18 excuse you, I know you will miss us all, but
19 it was critical and vital to the parties' case
20 that you're here watching, observing and
21 paying attention. So thank you very much, but
22 I'm going to have to excuse you from the next
23 step, which would be the deliberation with
24 these wonderful people.

25 So thank you so much. You have a

1 nice day.

2 (Jury exits courtroom at 2:52 p.m.)

3 THE COURT: Counsel for the defense,
4 do you have any motions or wish to be heard?

5 MR. HOSMER: Your Honor, I'd like to
6 move into evidence certain exhibits.

7 THE COURT: You may.

8 Counsel for the plaintiff, you have
9 already done that?

10 MR. STROKOVSKY: I did move them in.
11 I don't know if you're moving in any
12 medical records.

13 MR. HOSMER: I am.

14 THE COURT: Allow counsel to move
15 his exhibits in. I'm sure they have already
16 been subject to discovery and by agreement of
17 the parties, things like medical records are
18 generally identified by their general
19 identifier, which can be either a party marker
20 or Bates and large group numbers, whichever is
21 a defense counsel's preference.

22 MR. HOSMER: We would move for
23 admission of Exhibit 3, which are records of
24 Dr. Bradley Tucker; Exhibit 4, the records of
25 Allied prosthetics; Exhibit 5, the record of

1 David Lenrow, M.D.; the curriculum vitae of
2 Frank Sarlo, Exhibit 18; curriculum vitae of
3 Kathleen Kuntz, 19; the Exhibit 49,
4 photographs of Eddie Parks in Las Vegas; and
5 U.S. life table, Exhibit 52.

6 THE COURT: Without objection, they
7 will all be accepted in.

8 MR. STROKOVSKY: Well, I'd like to
9 object to the C.V.s. I can't recall if any
10 reports --

11 THE COURT: C.V.s are only marked
12 for purposes of the record. They are not
13 substantive evidence.

14 MR. STROKOVSKY: Okay. Understood,
15 Your Honor.

16 THE COURT: Am I right on that,
17 Counsel?

18 MR. HOSMER: That's fine.

19 MR. STROKOVSKY: And just to the
20 extent of any records he intends to -- or
21 counsel intends to use in closing argument,
22 just ask that they continue to be sanitized
23 the way we have been doing it through the
24 trial. There are --

25 THE COURT: I would have loved you

1 to ask counsel directly for these kind of
2 matters. It's really just appropriate for you
3 to talk to each other on those kind of issues.
4 The hour is here.

5 Counsel, do you have any other
6 motions you wish the Court to consider at this
7 point?

8 MR. HOSMER: No, Your Honor.

9 THE COURT: So the issue has been
10 developed regarding the MCARE charge, I'm
11 going to call it. And I had discussions with
12 counsel previously regarding how this jury can
13 adjust the amount of damages to account for
14 reasonably anticipated inflation and medical
15 care improvements.

16 Absent that, I have asked counsel to
17 help me understand how I can do that without
18 submitting the only expertise on the subject
19 matter of inflation that's been submitted
20 that's by the plaintiff. Is there any
21 solution that -- is there an exhibit that has
22 been marked and moved by your client that goes
23 to what the MCARE charge that you asked me to
24 give is reasonably anticipated to account for
25 inflation and medical care improvements?

1 How is it that I can allow the jury
2 to decide that matter without some specific
3 basis for which they could reasonably
4 calculate something like that on these 44
5 individual lines per year of future economic
6 losses?

7 MR. HOSMER: First of all, Your
8 Honor, the jury has not asked for it, so I
9 would suggest it not be sent out.

10 And even if they do ask for it, as I
11 said before, it basically tells the jury, puts
12 way too much emphasis on one sheet of paper
13 from one expert without the benefit of the
14 realization of the cross-examination that has
15 taken place. And further implies that they
16 should go out on full life expectancy to the
17 year 2066.

18 THE COURT: Hold on a second. I
19 already advised counsel that I was going to
20 give a range for the finder of fact of those
21 two life expectancy numbers. Do you recall
22 that?

23 MR. HOSMER: I do.

24 THE COURT: So that doesn't suggest
25 anything other than the finder of fact

1 determining that.

2 So, again, I'm asking based upon the
3 charge that the parties have submitted to use
4 as a basis for future economic medical and
5 other related expenses that are adjusted for
6 inflation and medical care improvements, what
7 is it of record that can be pointed to, other
8 than the plaintiff's testimony, and economist,
9 what else can the jury rely upon without being
10 caused to speculate or guess what that might
11 be in these 44 lines?

12 MR. HOSMER: It wouldn't call for
13 speculation and guess. They were attentive.
14 They heard what was said. They had notebooks.
15 They were writing down the numbers that they
16 were hearing.

17 Again, I think it would be, I'm
18 sorry to say, gross error to let that chart go
19 back to the jury, particularly if they didn't
20 even ask for it.

21 THE COURT: Particularly since we
22 have no economist supporting any of the
23 defenses as offered by the defendants. That's
24 my concern. That's unusual here. And yet the
25 chart specifically asks the jury to make a

1 decision that is based upon reasonable
2 anticipated inflation and medical care
3 improvements. We don't have a lick of this in
4 the defense case, which concerns me.

5 MR. HOSMER: But that doesn't make
6 Mr. Verzilli's numbers reliable. And you're
7 proposing to send back a potentially
8 unreliable exhibit and giving it the
9 prominence and the imprimatur of this Court by
10 sending it back here, they will look at it and
11 say, Judge Crumlish sent this back here. I
12 guess we better follow this because that's
13 what it says.

14 THE COURT: The plaintiff would have
15 to send me their burden of proof of providing
16 a factual basis for inflation and future
17 improvements as required by the medical MCARE
18 current standard charge. Isn't that what it
19 asks for me to just tell the jury to rely upon
20 and yet other than the plaintiff, they have
21 no -- they don't have any basis?

22 MR. HOSMER: I don't know what else
23 to say, Your Honor. It's -- I believe that
24 you're basically telling this jury if you send
25 that chart back there, ladies and gentlemen,

1 you got to find that Mr. Verzilli's numbers
2 are reliable. You're putting the imprimatur
3 of this Court on that chart and sending --

4 THE COURT: The alternative is to
5 ask them to guess for 44 calendar years some
6 number that they don't have any basis to
7 extrapolate.

8 MR. HOSMER: It would not be a case
9 of 5,933,000 that Mr. Verzilli prognosticated
10 to rely on and they can divide that by the 44
11 years or the 39 years of life expectancy.
12 They got their notes.

13 THE COURT: That's a line-by-line
14 question that is being put to them on the
15 verdict slip, right?

16 MR. HOSMER: Correct.

17 THE COURT: So they can't aggregate
18 or consolidate or guesstimate. Isn't this a
19 science that requires some expertise other
20 than outside the reach of layperson?

21 MR. HOSMER: No, Your Honor.
22 Because they may have concluded, and I hope,
23 from my perspective, I hope that they did
24 conclude that Mr. Verzilli's numbers are not
25 reliable. And by sending that chart back to

1 them, it's undercutting all of what I thought
2 was fairly decent cross-examination of Mr.
3 Verzilli pertaining to his numbers.

4 THE COURT: If you must say so.

5 Let me give plaintiff a chance. The
6 only alternative you're giving me is possibly
7 posttrial motion practice by either party, but
8 at least in this case, the real problem is
9 that the charge the parties have submitted
10 under the MCARE Act charge requires a
11 reasonable calculation by the finder of fact
12 of inflation and medical care improvements.
13 Other than Mr. Verzilli, there has been no
14 reasonable basis to make those calculations
15 that I can find.

16 MR. HOSMER: I would disagree with
17 that.

18 THE COURT: Let me hear from
19 plaintiff.

20 MR. STROKOVSKY: Your Honor,
21 respectfully, plaintiff has a position that it
22 would be unfairly prejudicial and a
23 miscarriage of justice if under these
24 circumstances, we could not send the jury back
25 with that exhibit, which has been admitted

1 into evidence. Defense counsel stated when he
2 got up here at the beginning of this trial,
3 I'm probably going to call an economist. We
4 know he didn't call the economist because the
5 numbers would have been --

6 THE COURT: Stop. I don't need you
7 to ever speak for counsel.

8 MR. STROKOVSKY: Well, defense had
9 an opportunity. They have an economist, in
10 fact, to cure this. If they would like to
11 submit the number that their economist found
12 and their economist they have a report --

13 THE COURT: The record is closed.
14 That's fantasy. I can't do that.

15 MR. STROKOVSKY: Understood.

16 But we were fine with doing one line
17 to cure any potential issue and defendant
18 adamantly opposed it. We should not be
19 unfairly prejudiced because defendant decides
20 not to use their own economist, which they had
21 at their disposal.

22 THE COURT: All right. So I'm going
23 to reserve for possible cure of this problem
24 posttrial. I'm going to deny your motion for
25 a mistrial, but I'm going to allow counsel to

1 make arguments based on the absence of
2 evidence of any competent economist or
3 calculation as to the cost of future medical
4 care improvements. Those are elements of
5 damages that the defendant does have a burden
6 of meeting once the plaintiff has established
7 that.

8 So if the jury asks for the specific
9 Verzilli or any other alternative piece of
10 information, I will deal with that with
11 parties present during the deliberations.

12 Understood?

13 MR. HOSMER: Understood.

14 MR. STROKOVSKY: Yes.

15 THE COURT: So I have revised the
16 proposed verdict slip. It does have the 44
17 lines, annualized lines for the future
18 economic damages, and with that, we will be
19 prepared. Ms. Sweeney I think you set up
20 podium where you want. Plaintiff obviously
21 goes first.

22 Is there anything else before I move
23 on to just the presentation of your
24 openings -- or your closings?

25 MR. HOSMER: No, Your Honor.

1 (Brief recess.)

2 (Jury enters courtroom at 3:15 p.m.)

3 THE COURT: Welcome back, ladies and
4 gentlemen.

5 As you know now, the parties have
6 closed the record and now the evidence is to
7 be before you when you begin your
8 deliberations and we are now going to invite
9 counsel to give their closing arguments. So
10 pay close attention, as they address maybe
11 some of the important issues that you're
12 focusing on.

13 Counsel.

14 MR. STROKOVSKY: Thank you, Your
15 Honor.

16 THE COURT: Counsel, during
17 counsel's closing, you can move your chair
18 over if you need to see any of the exhibits.

19 MR. HOSMER: Thank you.

20 MR. STROKOVSKY: Good afternoon.

21 First off, I just want to thank you
22 for being here. You didn't have to be here,
23 and just as Judge Crumlish said at the very
24 beginning of this process, you all took an
25 oath and you all are fulfilling your duty and

1 you are the whole reason why there can be this
2 thing called "justice." It is because of you
3 and we really appreciate that.

4 And we also know that this couldn't
5 have been easy. I mean, today was all expert
6 talk, but Thursday and Friday that was real.
7 That was raw pain. That was deep pain. That
8 was real emotion. And I submit and I'm
9 confident that everybody felt that in this
10 courtroom. And the fact that you all have to
11 leave your lives to come here and become a
12 part of this, that's a lot.

13 You may also, it would be perfectly
14 natural if you would be like what, what did
15 Temple do, what did Dr. Lorei do, the fact
16 that we are even here. It's been almost four
17 and a half years since Eddie Parks lost his
18 leg and it's been almost four years since we
19 filed a lawsuit. And it's only been up until
20 last week when defense goes we admit fault.
21 We caused the amputation. We caused the
22 presurgical procedures. We admit it all. We
23 disagree on the extent of damages. So because
24 of that, we are not bringing in experts to
25 talk about the mistakes that Dr. Lorei and

1 Temple made. We just can't do it. They
2 already admitted to it.

3 But their admission of fault one
4 week or days, or technically it was first day
5 of trial, when they officially admitted fault,
6 that's not justice. Just saying, Oh, we admit
7 fault. That's not justice for Mr. Parks. You
8 are the ones that will give us justice. And I
9 submit to you, I understand you don't know the
10 extent of the mistakes made and how they were
11 made, but they admit to those mistakes
12 100 percent, 100 percent. This is not a case,
13 Oh, well, it's this person a little bit or
14 that person's fault here. We got to mix it
15 all up. A hundred percent fault.

16 And Temple University Hospital,
17 Incorporated, they're a big corporation. It's
18 not easy for an amputee to go up against
19 Temple, let alone go through a lawsuit process
20 for four-plus years and show up to trial with
21 all your experts ready to go, Oh, no, we admit
22 the fault, oh, okay.

23 And it's not easy for Eddie Parks to
24 be going through what he is going through
25 always without his leg, always remembering the

1 three weeks were because of their mistakes.
2 He had this, this to look forward to, and I'm
3 sorry you got to see it. We have other
4 pictures. I didn't choose to show it to you.
5 I didn't want to overdo it. We only showed it
6 for a few seconds at a time. I'm sorry you
7 got to see this now. Eddie Parks had to see
8 this 24-seven for 21 days.

9 He's hoping his leg will get saved.
10 He is stuck in a hospital bed. His leg is
11 split open. He's in a hospital where they are
12 supposed to fix him and help him. Why me?
13 Why am I singled out? Why is this happening
14 to me? This should not be happening. He sees
15 his whole family come around, bawling. He is
16 bawling. He is in severe pain. He is
17 hallucinating.

18 And six surgeries, six times they
19 take him under anesthesia. They take him
20 back. They remove more of his own leg. I
21 hate to say it, but it's like a butcher shop.
22 This is like a horror movie, isn't it? This
23 is a horror movie, you go somewhere where
24 they're supposed to fix you all up. You have
25 instead things go horribly wrong.

1 Nobody tells you things went
2 horribly wrong. You know the very first time
3 there was any semblance, there ever was an
4 apology was the first day in trial four and a
5 half years. It wasn't even Dr. Lorei who
6 apologized or anyone from Temple. It was
7 their attorney. I don't know if you noticed
8 this, I certainly didn't, their attorney
9 didn't even look Eddie in the eye. He was
10 looking at you. Yeah, we are sorry for what
11 we did to Eddie Parks.

12 But this, we are here, the trial is
13 about fairness and fair value. We admit we
14 are at fault. We're good people and do the
15 right thing here. Eddie is over there. What
16 is going on?

17 Let me say for the record that
18 apology, unacceptable. That was not cool in
19 the slightest.

20 So we don't expect to get justice
21 from Temple. We expect to get justice here in
22 this courtroom from all of you.

23 And I get it, they're a hospital.
24 There are probably some really good people
25 there. I got family members in the medical

1 field. I like doctors.

2 But, also, you have to realize Eddie
3 was a health care professional, too. He was a
4 CNA. His mom was a CNA. His sister is a
5 nurse. And even if they try to say, Hey,
6 people make mistakes, it what it is. You know
7 what, people do make mistakes. When you make
8 mystics, especially as catastrophic as this,
9 and you give this man a life sentence of
10 severe pain, disability, basically took his
11 identity, they took his self. They took who
12 he was. Not to mention during all of this, he
13 has a son on the way. His son is born and
14 he's stuck in bed in pain like this. I don't
15 think that's how he planned out his future
16 with his son.

17 But what I'm trying to make clear to
18 you is even though we didn't get to parade our
19 experts in and make this a three-week trial
20 and prove about the mistakes that they made,
21 it doesn't mean they didn't make it. And even
22 if they tried to act nice and tried to get
23 away with a discount, that is not justice.
24 And if you we need justice for a full and fair
25 and complete accounting for everything that

1 that man has gone through in the past
2 four-plus years and everything that he is
3 going to go through for the next 44 years.

4 And I understand that's a very, very
5 tough concept to wrap your head around. How
6 do you value a person's life? How do you
7 value a person in their prime losing their
8 leg? How do you value the impact on namely,
9 his son, friends, your dreams, your ambitions?
10 He was in the prime of his life. And you are
11 tasked with valuing that. And I know it's not
12 easy. All that I ask is that you take your
13 time and you look at this case honestly and
14 thoroughly, and so at the end of the day
15 whatever verdict you reach, you know that you
16 gave Mr. Parks justice. You gave Eddie Parks
17 justice and he's never going to get his leg
18 back.

19 Never going to get a real apology
20 from Temple, which we don't really care about
21 by now, that number, it's not just what he is
22 entitled to under the law, which he is
23 entitled to it. You must compensate him for
24 every bit of his pain and suffering. His
25 embarrassment and humiliation for being who he

1 is now. Every single moment of the day where
2 everybody is looking at him differently. He
3 is all alone in this. You have to ask to
4 account for his life's pleasure, everything
5 that he enjoyed that he can no longer do.

6 He was hustling. He wanted to have
7 a food truck and a restaurant and they're all
8 over here. Frankly, it's degrading. Eddie
9 can do whatever he wants. Can you believe
10 that? Is that their sense of justice? Oh,
11 hey, we will admit fault on the day of trial.
12 We are going to parade in here and we will
13 nickel and dime him every single way we can.

14 Life expectancy, let's lop off five
15 years. I think that's the word they used,
16 "lop," which was quit sensitive, considering
17 they lopped off this man's leg.

18 But you need to use, as the Judge
19 will instruct you, your common sense, your
20 human experience. We are all humans here. We
21 all know what it's like to have a mom or be a
22 dad, to have family, to have friends, to have
23 dreams, to have ambitions, to just want to
24 wake up and not be in pain, to want to have
25 nice sleep one night, to just want to be

1 normal.

2 I understand it's a difficult task,
3 but if there is not a full and thorough
4 accounting for every bit of what he has gone
5 through and every bit of what he will go
6 through in a case where the hospital even
7 admits that it's their fault or the doctor
8 admits it's their fault 100 percent, if there
9 cannot be justice here, I hate to say it,
10 especially since this is my job, I don't know
11 where there can be justice frankly.

12 It's not just the money. As I said
13 in my opening, you are telling Eddie Parks
14 with your verdict, yes, Eddie, we heard you.
15 We felt you. We saw your family. We saw what
16 this is doing to you, and it's a hundred
17 percent their fault. They wronged you and we
18 are not going to let them prance in here and
19 think they are above the law, they got a get
20 out of jail free card that they get out of
21 this. You can hold them accountable. You can
22 tell them and tell Eddie Parks that they are
23 not above the law.

24 And it's going to be tough for
25 Eddie. Do you think he wanted to come here?

1 He did. He wanted to be here. In a lot of
2 ways he wanted his day in court, especially
3 since he was waiting four-plus years before
4 hearing, oh, wait, we are at fault. They were
5 denying that the whole time before that.

6 But when he was actually here, is it
7 tough for a person who lost their leg and is
8 chronic severe pain to have to sit in a chair
9 and have people coming in and staring at him,
10 to have a false apology, to have people, have
11 experts and people say, Hey, he's fine, he's
12 got a prosthetic. He can do exactly what he
13 did before.

14 Did you hear Dr. Sarlo? I read the
15 whole part when I asked him what he does in
16 the day. He stopped after the first three
17 notices. He wakes up -- I don't know if you
18 noticed it -- he hops, gets his son some
19 juice, gets his kid to school and that's it.
20 That's the day that Dr. Sarlo described that's
21 all he is doing. But, Dr. Sarlo, is Eddie
22 super motivated? He wants to do well. That's
23 absolutely right. He wants to do well.

24 Eddie doesn't want to be in this
25 situation. He would have his leg and have his

1 life. He would have manageable pain or no
2 pain at all and able to do something.
3 Instead, he's home all the time. The fact
4 they're like Eddie does fine, he can get his
5 kid juice, he can drive a car. Now he can
6 walk a little bit. He even can get on the
7 bike and go down the block. That's degrading.
8 That's degrading the way they make it sound
9 like he's fine now. He is not fine now.

10 And it's just incredibly tough. It
11 wasn't tough for me. I'm sure it was tough
12 for you. You had his father come in and his
13 mother come in, his ex, his child's mom come
14 in here and they basically say he is broken.
15 Eddie Parks that I know here is dead. He's
16 dead. Oh, we got to watch out. He gets in
17 moods now. He doesn't want to be in moods.
18 He's in so much pain he doesn't understand
19 what is going on. Can you blame him? He was
20 pinned down to a hospital bed for three weeks.
21 His flesh all around here, all around here,
22 inches, keep smelling it. They're putting him
23 in restraints. His dad is crying about I'm
24 going to undo the restraint so he can move his
25 arm a little bit. That's just the first three

1 weeks.

2 And you got to think to yourself,
3 what is full and fair compensation to go
4 through five minutes like that? What is five
5 minutes? Do you think Eddie Parks, hey,
6 Eddie, we got this really bizarre theme park
7 ride. It's called "go to hospital and we
8 slice open your leg and your whole life is
9 ruined after that." What do you pay to get on
10 that ride for five minutes? And he
11 experienced that every single moment of every
12 single day in that hospital.

13 And then they cut his leg off. And
14 I don't know if you noticed this. Did you
15 hear Dr. Sarlo? What pictures did you review?
16 I saw Eddie Parks at Vegas. Any other
17 pictures? No.

18 I thought it was the doctor's job to
19 understand what a person goes through. Didn't
20 see this. He loves talking about Eddie. He
21 doesn't have bad pain. He's fine. He doesn't
22 have residual pain. Oh, there is one note out
23 of hundreds where it says, oh, phantom limb
24 pain is rare. It's not as much this week.
25 He's still feeling his toes from the leg they

1 chopped off, but it's rare. Okay. It's going
2 to be gone.

3 The pain will be fine. The phantom
4 limb pain will be fine. Yeah, we know he had
5 it for the past four and a half years, but
6 that's not that long. He will be fine.
7 Everything in his life will be fine. He can
8 be a firefighter, a bike messenger, a barback
9 just jumping on kegs, lifting things up. He
10 can do whatever he wants in this world.
11 That's unacceptable.

12 And they tried to make this case
13 about future medical costs. Don't get me
14 wrong, future medical costs are important, but
15 that's just one component of this case. I
16 submit that's just the tip of the iceberg when
17 we talk about the grand scheme of damages.
18 But even when you consider that, they're
19 nickel and diming him left and right.

20 Did you hear at the beginning they
21 said, Hey, we will probably show you an
22 economist, Olson. Do you remember that? But
23 then do you remember when economist Verzilli
24 came up and said, Hey, you know if they keep
25 using what they have been doing, it's going to

1 be a higher number.

2 So Temple, that's supposed to be
3 here all about justice, right, they can't
4 stomach the fact that we're going to have an
5 economist and they will have a higher number
6 than their own economist. Now what we will
7 do? We will not call him. Many we will not
8 call him. We are going to bash on Verzilli,
9 even though we said we were going to call our
10 own.

11 You heard Verzilli. If you use that
12 economist's numbers, our figures would be
13 higher. They would be higher than 5.9
14 million. Instead, they bring in Nurse Kuntz,
15 who her first report said he needs that
16 surgery, he needs a scooter, a home health
17 aide. Over the last year since I saw him or
18 he needs like multiple socket replacements and
19 he's in pain and he has ingrown hairs and now
20 he is actually home by himself because he's no
21 longer with his girlfriend. Well, we actually
22 don't think he needs any help in the home
23 anymore. He doesn't need a surgery.

24 Dr. Sarlo says nothing in the
25 records that indicate surgery. Nurse Kuntz is

1 like I see records he will need the surgery.
2 A week before the surgery, no longer needs
3 surgery or no help, does he need a scooter?
4 No. How about when he is home alone at 60 and
5 he falls down the stairs, an ER visit? No, he
6 doesn't need anything. We got to give him
7 crutches, a wheelchair. We give him the legs,
8 he's fine. He will not be in pain. He will
9 be a firefighter. He can do whatever he
10 wants.

11 That's not justice. And just know
12 that figure that they float out, we have Alex
13 Karras' number, which was \$2,847,786.67
14 adjusted to inflation and you saw me go
15 through it. Verzilli's justification. It
16 makes sense. That over the course of 44
17 years, does more than double. Yes. That's
18 what inflation does. That's the number we
19 have, \$5,933,331. And I submit he deserves
20 every penny of that for his future medical
21 care. That is reasonable.

22 They could have factored in, well,
23 hey, if he doesn't get a nurse or scooter,
24 he's going to need to be in a nursing home
25 around the clock, or he will need a surgery to

1 replace his hip if you don't give him these
2 things to give him any chance. By them saying
3 now like he doesn't need any type of
4 surgeries, you're basically saying there is no
5 chance his pain will improve. What is this
6 stuff he will get better as he ages? Use your
7 common sense. Use your human experience.
8 Every single day he has to get up out of bed
9 like this. He has to hop to the bathroom like
10 this. You saw the prosthetic he has to put on
11 and take off throughout the day.

12 And then he walks like this. You
13 saw him walk. Do you think that's good on the
14 body? Do you think this is easy to walk like
15 this at all times? No.

16 He doesn't have back pain. He is
17 never going to have back pain. They're making
18 this case about back pain. Guys, I don't know
19 if you notice, you chopped off a guy's leg,
20 like he might have some back pain or there is
21 some back pain. We are focused on the leg
22 here. There were notes showing my picture,
23 other medical records about the leg. They
24 were showing Allied where it says patient
25 blank signature, no back pain.

1 Mr. Parks doesn't deserve anything
2 even though we are 100 percent at fault for
3 ruining this guy's life. He was 27 years old.
4 They ruined his life. He was a CNA. His job
5 was fulfilling to him. He was a cook. He had
6 a passion. He had a goal. He had a dream.
7 He had friends. He did things. He was
8 normal. He just found out he was going to be
9 a dad. They ruined his life.

10 As much as I would love to say,
11 Eddie, I would love to say this so much, I
12 hope things get a heck of a lot better for
13 you, but you just got to base it off the
14 evidence. He has been doing this for
15 four-plus years. It's not getting better.
16 Everybody even on the defense agrees he is
17 motivated, he wants to do well, to do good.
18 Guess what? It hasn't done anything. That's
19 not going to change.

20 And he wants to make his son proud.
21 Think of that from a human level, he wants to
22 make his son proud. He will try. I got to
23 tell you, Eddie, you're making your son proud
24 by being here today. There are not too many
25 people let alone with one leg, that will stand

1 up to one of the biggest corporations in the
2 area. He's not getting punked by Temple.
3 He's going to hold Temple accountable. By
4 holding them accountable, that's on you, and I
5 ask you to consider what he has been through,
6 that five-week hospitalization, waking up,
7 hey, where is my leg, I feel it, I can feel
8 it. The dad says, no, it's not there.

9 All the pain, all the suffering,
10 wondering if everybody is going to leave him.
11 Will he move on in life? The five weeks
12 alone, what is that worth? Being told his leg
13 will be cut off, cutting it off. What is that
14 worth? Going home, trying to go to the
15 bathroom with one leg and severe pain, falling
16 on yourself, soiling yourself, needing your
17 mom and girlfriend to wipe you and bathe you
18 and cook for you. Learning how to walk all
19 over again. Not being able to be there for
20 your baby. Still having issues.

21 Like, yes, yes, he went away for a
22 few days once a year, I guess he's healed.
23 You must be a very good amputee. He gets to
24 go to AC, spend a few days in Vegas. His life
25 is going exactly as he planned it to be.

1 Everything he went through you need
2 to account for at the last four-plus years,
3 but you also need to account for the rest of
4 his life. And we know it's going to occur for
5 the rest of his life because his leg is never
6 coming back.

7 And you heard Dr. Miknevich. She
8 was genuine. Her life's work is helping
9 amputees. She probably sees more amputees in
10 one month than Sarlo seen in his whole career.

11 I don't know if you heard that. His
12 primary job is working with people with back
13 and neck pain. He's a spine doctor in
14 Christiana Spine Center, we are solely focused
15 on the spine. He didn't like to admit that.
16 Well, I do other things. I guess you do, but
17 your practice then misleads the public.

18 Again, no economist. Nurse Kuntz
19 taking things out of her plan and not even
20 writing about it.

21 You also heard none of them knew the
22 medical records. Eddie just fell in 2019.
23 Oh, really, Dr. Sarlo. Just fell in 2019.
24 Oh, well, those records would have been
25 repeated. Let's see the other records. Let's

1 see them, then. Okay, Dr. Sarlo maybe you
2 were wrong.

3 How about pain? Pain is not too
4 bad. Every single time he sees his doctor,
5 ten out of ten pain. I'm showing the last
6 two-plus years. I didn't want to go from the
7 very beginning because I'm pretty sure that
8 even they would agree he was in really bad
9 pain at that point.

10 But from a human level, human
11 experience, common sense, you can't let them
12 get away with this. You can't let them. We
13 all leave here today. You all fortunately,
14 rightfully so, when you render a verdict, you
15 get to go on with your normal life. Temple
16 will still be in business. Me, even I'm very
17 much invested in this case, but I move on,
18 too. Defense lawyer moves on. Everybody
19 moves on, except that man and his family.
20 He's got to live with this forever.

21 So you think about having a
22 conversation with this Eddie Parks or you have
23 a conversation with this Eddie Parks. Or you
24 bump into that Eddie Parks at Wawa. Or you
25 run into Eddie Parks 20 years from now. Or

1 you bump into Eddie parks 40 years from now.
2 Can you look him in the eye? Can you look him
3 in the eye and tell him, Mr. Parks, we heard
4 all the evidence in the case. We heard what
5 you went through. We know that they were a
6 hundred percent at fault, and by law, a
7 hundred percent, they must be held
8 accountable. And that by law, he must get a
9 verdict that compensates him for every bit of
10 his loss for the last four years and for the
11 rest of your life.

12 And, Mr. Parks, we thought hard and
13 we were honest and we considered everything
14 and rest assure, you, Mr. Parks, we delivered
15 a verdict that gave you justice.

16 And maybe there will be a phone call
17 when all this is said and done, a call to
18 Temple, yeah, they held us fully accountable.
19 Mr. Parks is not below the law. Mr. Parks is
20 not undeserving of justice. However much we
21 might like it to be, our nickel and dime act
22 didn't work here. They rendered a verdict
23 that accounts for the rest of this man's life,
24 the rest of the struggle he's going to have
25 the rest of his life, the rest that he will

1 remember what happened to him at Temple,
2 remember the horrors that happened to him.

3 And, frankly, parts of this trial
4 was a horror. In fact, this will do to this
5 Court, the first time they ever tried to
6 apologize, they are looking at people that are
7 not him. Forty-four more years they want to
8 make this case about medical costs. Don't get
9 me wrong, he's entitled to all the medical
10 costs. That is the tip of the iceberg when
11 you consider his pain and suffering, every
12 moment, every day, everything that he has to
13 do through. His embarrassment and
14 humiliation, knowing he's inadequate.

15 His mom is worried about him. He
16 should be worried about his mom. He wants to
17 be a dad. I don't know if he can be the dad
18 he wants to be. His own dad calling him
19 broken and lost a lot of his friends are gone.
20 He is single now, too.

21 Eddie has his charm, but it's not
22 the easiest thing to bring on with your next
23 partner to say every time will you massage my
24 limb every time it's in pain. That's tough.
25 Or maybe he is walking like this and they

1 think maybe he has limp, and then he moves up
2 his leg and they see what is actually going on
3 and what he has to deal with.

4 And I hope the happy-go-lucky Eddie
5 comes back, but he's in a dark place. He
6 deserves justice. He lost everything for
7 something that a hundred percent was not his
8 fault.

9 And you all, as the Judge instructs
10 you, all were picked because you can be
11 impartial and "impartial" meaning treating
12 people equally under the law. So no doctor
13 gets breaks. No hospital gets breaks. No
14 massive corporations get breaks. No victims
15 get breaks. We don't want a handout. We
16 don't want you to punish them. But we want
17 you to feel his pain and suffering. We want
18 you to know what he is going through and will
19 go through the rest of his life. We ask for
20 justice.

21 Thank you.

22 THE COURT: Thank you, Counsel.

23 Counsel, you may proceed.

24 MR. HOSMER: Thank you.

25 Good afternoon, ladies and

1 gentlemen.

2 I will start my closing the same way
3 I started my opening. As I told you at that
4 time, Dr. Lorei made a misjudgment. He did
5 not in a timely way adequately comprehend that
6 Mr. Parks had a popliteal artery injury. And
7 although he tries to do his best for every
8 single patient with whom he deals, he made
9 that misjudgment and as a consequence of that,
10 unfortunately Mr. Parks lost his leg.

11 Dr. Lorei regrets his mistake,
12 regrets his misjudgment and as I've already
13 done, we communicated our sympathies to Mr.
14 Parks.

15 Now comes the point in time where
16 it's incumbent upon you. The law charges you
17 with the duty to determine what Judge Crumlish
18 will tell you is fair and adequate
19 compensation.

20 Before I go into the details of
21 evidence that you already heard, I do want to
22 take a minute to thank you for your time and
23 your patience and your attention during the
24 course of the trial. We understand that
25 you've taken time out from your busy

1 schedules. We understand it's inconvenient
2 for you to do that and we appreciate the fact
3 that you have done that and that you have
4 given us your time.

5 Now, the evidence, ladies and
6 gentlemen, in this case consisted of basically
7 what is taking place in the past several
8 years. We went through the history of
9 Mr. Parks for a very expressed purpose because
10 the history can tell us in hard, cold,
11 objective facts what took place, and then you
12 can use that as a guide to determine what is
13 fair and adequate compensation.

14 You heard that Mr. Parks got out of
15 Temple University Hospital in February of
16 2019. You heard from Dr. Miknevich, as well
17 as Dr. Sarlo, that he did not see Dr. Meta
18 until August of 2019, and during that entire
19 period of time, he was not taking any pain
20 medications.

21 You heard that subsequently, he went
22 to see Dr. Lenrow. Saw him on two occasions
23 in August and September of 2019. And at that
24 time you saw, because we put it up today, Dr.
25 Lenrow wrote denies difficulty with

1 ambulation, denies pain.

2 Moving on, in August of 2020,
3 Mr. Parks saw Dr. Bradley Tucker, the man who
4 has been managing him for the past four years.
5 Dr. Tucker wrote as of that time, that
6 Mr. Parks was capable of jogging and riding on
7 a stationary bicycle, and actually noticed
8 that he had the health and the strength and
9 vitality and the youth in order to make the
10 C-leg usable in order to allow Mr. Parks to
11 take advantage of his abilities. The C-leg
12 was ordered. He got the microprocessor,
13 state-of-the-art leg, and since that time, he
14 has become progressively more capable of doing
15 the things that he wants to do.

16 Specifically, if you recall from
17 June 3, 2021, when he was seen by Allied
18 Orthotics, they noted at that point in time
19 that he was -- we saw it today -- the
20 abilities that he had including shopping,
21 weight training, jogging, and a number of
22 other things. His endurance and his balance
23 and his activity level was rated as an
24 excellent. His gait was rated as normal with
25 an endurance of three hours.

1 As of August of 2021, Mr. Parks saw
2 Dr. Tucker, and at that time Dr. Tucker noted
3 that he was jogging, he was bicycling and he
4 said that Mr. Parks had his prosthesis with,
5 quote, without significant issues. And it is,
6 quote, working well for him.

7 We are pleased that Mr. Parks has
8 been able to make that kind of an adjustment,
9 make those kind of advances. And then they
10 continued.

11 In October of 2021, from the Allied
12 records, if you remember, page 73, said that
13 he was were going to the gym and, quote, feels
14 good.

15 Moving on to March 16 of 2022, Mr.
16 Parks again saw -- went back to Allied
17 Orthotics and at that time, again, he was
18 jogging, he was shopping, he was lifting
19 weights, engaging in aerobics and he was,
20 quote, taking long walks. So his activity
21 level was high. His endurance was good. His
22 gait was normal.

23 Moving on to the current period of
24 time, March of 2023. Dr. Miknevich saw
25 Mr. Parks and so did Mr. Sarlo. And if you

1 recall, ladies and gentlemen, Dr. Miknevich
2 said he is currently swimming at the YMCA.
3 He's using a stationary bicycle. He is
4 driving. He hadn't had a fall since January
5 of 2022. And he is able to take trips. He's
6 gone to Las Vegas, Atlantic City, Florida and
7 New Orleans.

8 Can you bring up those pictures,
9 Tim, of Las Vegas, please.

10 We are pleased and gratified that he
11 has been able to progress to the point where
12 he is able to do those things.

13 As you heard, ladies and gentlemen,
14 there is pictures -- Mr. Parks, in either
15 September of 2019 or September of 2020, spent
16 seven days in Las Vegas with Ms. Shearer.
17 These are the pictures of a man who is making
18 a good recovery and with good functionality.

19 Now, you heard Dr. Sarlo, ladies and
20 gentlemen. He testified in response to my
21 questions is Mr. Parks capable of performing
22 all the pre-amputation activities that he had
23 before he was before the amputation took
24 place. Is he currently able to do that? And
25 Dr. Sarlo told you to a reasonable degree of

1 medical certainty that he is.

2 Just as importantly, ladies and
3 gentlemen, Dr. Tucker wrote in March of 2022,
4 that Mr. Parks is, quote, highly functional
5 and Dr. Miknevich agreed that he is highly
6 functional, and Dr. Sarlo agreed that he is
7 highly functional. That has not been
8 challenged or refuted. It's evidence in the
9 case and there's nothing to contradict that.

10 Again, we are pleased that he
11 regained that functionality. The fact that he
12 is highly functional, however, doesn't mean
13 that he doesn't need future medical care. We
14 recognize that. That's why we put Ms. Kuntz
15 on the stand to talk about what his plan will
16 be in conjunction with Dr. Sarlo.

17 One of the threshold questions that
18 you have to address when determining future
19 medical care is what is his life expectancy.
20 Well, ladies and gentlemen, you heard about
21 two competing life expectancy tables. One
22 being one for all males in the United States,
23 and the other one being for, it's based on
24 gender, race and age.

25 Now, I thought it was somewhat

1 unfortunate that Mr. Karras chose to depict
2 the life table for African-American males as
3 racist. It's not. It would be like saying
4 they're also sexist because all the life care
5 tables show that women live longer than men.

6 The fact of the matter is that
7 Mr. Parks is a 32-year-old African-American
8 male and the life expectancy table that is
9 most appropriate for him is the one designed
10 for him which gives him a life expectancy of
11 39 years.

12 Now, based on that, you heard Ms.
13 Kuntz. She was in here today. She told you,
14 ladies and gentlemen, she laid out a plan for
15 his life care for the remainder of his life of
16 39 years, and the cost of it being \$1.2
17 million, and then some change.

18 I want to take a minute to talk to
19 you about, ladies and gentlemen, about what
20 you heard about the life care plan from the
21 plaintiff because the concept remains the
22 same.

23 Did the evidence that came from
24 those individuals, specifically, Mr. Karras,
25 is that the kind of evidence that you think

1 was designed to help you reach a fair and
2 impartial verdict as to what constitutes fair
3 and adequate compensation?

4 Judge Crumlish will tell you, ladies
5 and gentlemen, that you are permitted to
6 consider a witness' demeanor, as well as the
7 way they respond to questions. Think back to
8 yesterday when I was cross-examining Mr.
9 Karras. What did you think of his demeanor?
10 What did you think of the way he answered
11 Mr. Strokovsky's questions compared to the way
12 he responded to me? Did you get the sense,
13 ladies and gentlemen, that he was trying to
14 convey to you information that would help you
15 reach a fair and impartial verdict in this
16 case?

17 Take a couple of examples. Dr.
18 Miknevich testified that neuroma scar
19 injections would be necessary in the event,
20 one, that he had pain; two, that a pain
21 management specialist recommended it; and,
22 three, once he got one, they would have to
23 remain successful, the injections would have
24 to remain successful in order for him to
25 continue to get the injections.

1 But when we pointed it out to Mr.
2 Karras that he had plugged into his life care
3 plan 44 neuroma scar injections over the
4 course of 44 years, ladies and gentlemen,
5 that's inconsistent with what Dr. Miknevich
6 was laying out. I would submit to you it's
7 inconsistent with what you're charged to do,
8 which is come up with a verdict that awards
9 damages on the basis of fairness and adequacy.

10 Consider another example is a spinal
11 cord stimulator and the way Mr. Karras handled
12 that. If you recall, Mr. Karras was in the
13 courtroom at the time Dr. Miknevich was
14 testifying. I specifically asked Dr.
15 Miknevich how many spinal cord implantations
16 do you believe the patient will need,
17 Mr. Parks will need in the event that he needs
18 one at all. She said one.

19 And if you recall, I brought out
20 that to Mr. Karras' attention that he actually
21 plugged into his life care plan four spinal
22 cord implantations. When I said to him, Mr.
23 Karras, you were here at the time when Dr.
24 Miknevich testified. You heard what she said
25 about the spinal cord, the implantation of the

1 spinal cord stimulator. Do you remember what
2 his response was? I didn't hear it. I don't
3 remember. I heard something about battery
4 replacements, but I don't remember hearing
5 anything about the number of implantations or
6 being different than the four that he
7 prognosticated.

8 Well, again, ladies and gentlemen, I
9 submit to you that you need to consider that
10 when you determine whether you were getting
11 information from Mr. Karras that was designed
12 to lead to a determination as to what
13 constitutes fair and impartial -- fair and
14 adequate compensation in this case.

15 Consider the fact, ladies and
16 gentlemen, that I will point out that Dr.
17 Miknevich that she had prognosticated, as of
18 2021, when she wrote her first report, that
19 Mr. Parks was going to need a pain management
20 specialist four times a year, going to need
21 formal occupational and physical therapy four
22 times a year, in 2021, was going to need
23 lumbar epidural injections four times a year.
24 Pointed out to Dr. Miknevich, it was never
25 recommended by Dr. Tucker at any time between

1 2021 and 2023, nor did Mr. Parks undertake
2 having any of those treatment modalities.
3 And.

4 I said to Dr. Miknevich, well, in
5 light of the fact that the doctor has been
6 managing this patient, Mr. Parks, for four
7 years, doesn't recommend it, in light of the
8 fact that Mr. Parks himself never underwent
9 it, despite the fact that he had three socket
10 changes, doesn't that suggest to you, ma'am,
11 that perhaps he doesn't need those modalities?
12 And you can come to that conclusion, ladies
13 and gentlemen, if you think it's justified.

14 Consider this, those recommendations
15 by Dr. Miknevich made in 2021, were reiterated
16 by her in 2023, when she wrote her second
17 report. And if you recall, I said to Dr.
18 Miknevich, Doctor, inasmuch as the predictions
19 that you made in 2021 were near-term,
20 specifically pain management, orthopedic
21 consult, the lumbar epidural injections, the
22 physical therapy and occupational therapy, the
23 fact that it didn't occur, doesn't that
24 suggest to you that these, if you're incorrect
25 on the short-term predictions, there is an

1 even greater chance that your long-term
2 predictions will be incorrect. She said, I
3 don't believe I was incorrect, but she said, I
4 do agree that they could be that the expenses
5 for future medical care could be less.

6 Ladies and gentlemen, you heard the
7 evidence in regard to the future medical
8 expenses, and I, if you recall, cross-examined
9 or examined Ms. Kuntz about what she added up
10 were actual medical expenses. I was
11 attempting to move from the theoretical kind
12 of crystal ball predictions that is inherent
13 with any life care planner and try to get into
14 the actual real costs of what happened in 2021
15 and 2022 for the purpose of providing you a
16 guide for the rest of the remaining 39 years
17 of his life expectancy.

18 Now, I did the arithmetic during our
19 lunch break --

20 MR. STROKOVSKY: Objection.

21 MR. HOSMER: -- putting up the
22 numbers, one what actually happened and theory
23 under Dr. Verzilli.

24 THE COURT: It's argument. It's
25 closing argument. You can address it in your

1 rebuttal.

2 MR. HOSMER: Ladies and gentlemen,
3 you heard Mr. Karras testify and after some
4 jousting, he finally admitted that the medical
5 expenses in 2021, I believe, were \$8,060 and
6 in 2023, 6,581.

7 If you recall, ladies and gentlemen,
8 Mr. Verzilli testified that the rates of
9 inflation vary. All he can do is rely on the
10 medical, the life care plan provided to him by
11 Mr. Karras. Mr. Verzilli, well intentioned,
12 but he is hamstrung by the numbers he gets
13 from Mr. Karras.

14 So what I did as a result during the
15 course of cross-examination with Mr. Verzilli,
16 I took the percentage Mr. Verzilli
17 prognosticated in 2021, that medical expenses
18 would be \$97,611 and prognosticated as of
19 2021, medical expenses for 2022 at \$50,095.
20 It's a far cry, ladies and gentlemen, from the
21 actual expenses incurred.

22 As a matter of fact, it's such a far
23 cry, if you divide 8,060 by Mr. Verzilli's
24 number only 9 percent. If you divide the 2022
25 number by Mr. Verzilli's proposed predicted

1 number for medical expenses in 2022, it's
2 14 percent. So the medical expenses actually
3 incurred in 2021 and 2022, were only 9 percent
4 of what Mr. Verzilli was predicting for 2021,
5 and 14 percent of what he predicted for 2022.

6 Now, if you carry that forward, if
7 history repeats itself, and you take Mr.
8 Verzilli's number to the year 2066,
9 \$5,933,331, with a 44-year life expectancy,
10 and his costs to the year 2061, based on
11 39-year life expectancy, 41,858. I did the
12 arithmetic down here, the costs to 2061,
13 5,933,331, if you subtract out the last five
14 years of his Mr. Parks' life expectancy,
15 because of Table 14, that predicted life
16 expectancy of 39, that total reduces Mr.
17 Verzilli's number by \$1,778,755.

18 So if we take the mid point between
19 the 9 percent and the 14 percent that he was
20 off and just pick 12 percent and multiply that
21 by 5,933,331, that comes out to \$712,000 in
22 the year 2066 with a 44-year life expectancy.
23 If you take the diminished life expectancy of
24 39 years, multiply by 12 percent, \$498,495.

25 Now, ladies and gentlemen, I'm not

1 suggesting to you that you adopt these
2 numbers. The point is that the
3 prognostication, the predictions, the
4 assumptions that have to be made, rendered the
5 numbers that Mr. Verzilli presented to you as
6 not entirely reliable. Well intentioned, but
7 not entirely reliable.

8 So what I tried to do was bring it
9 down to the reality of what we know, hard,
10 cold facts. Specifically, medical expenses in
11 2021 of \$8,060, and 2022, \$6,581. If one
12 carries that forward, you get a much lower
13 diminished cost of life care plan.

14 But as I said, I'm not expecting you
15 to adopt those numbers, they're probably a
16 little bit higher, but at least they're
17 grounded in reality. At least they are
18 grounded in what we know already occurred in
19 2021 and 2022, and they're not grounded in
20 theoretical possibilities put forward by life
21 care planners based on dubious assumptions
22 about pain management consultants, orthopedic
23 consultants, physical therapy four times a
24 year, the neuroma scar injections, lumbar
25 epidural injections, based on what we actually

1 know.

2 Now, we did that because as you
3 heard Mr. Verzilli say rates of inflation
4 vary. We don't really know what inflation
5 will be in the future. We can only go by what
6 inflation has been in the past. If you
7 recall, Mr. Verzilli said, I went back ten
8 years, took the inflation rate and presented
9 the inflation rates that he did.

10 I'm suggesting to you, ladies and
11 gentlemen, if we will do it with rates of
12 inflation, let's do it with the medical
13 expenses, as well. We can't go back ten years
14 because he doesn't have ten years of medical
15 expenses. We have medical expenses for those
16 two years, they are grounded in reality,
17 ladies and gentlemen.

18 Now, when I appeared before you for
19 my opening stage, I said to you, you may hear
20 from Dr. Sarlo, you may hear from Kathleen
21 Kuntz, you may hear from Gerard Olson.

22 You're not hearing from Gerard
23 Olson. The reason is this. I basically spent
24 the last five to seven minutes telling you why
25 these numbers are so far out and so

1 speculative that it would seem hypocritical or
2 unseeming to bring Mr. Olson and then present
3 numbers like that. We are not doing that. We
4 are simply basing our argument on what we know
5 to be true, what we know to be actual
6 expenses, what we know to be reliable, because
7 Mr. Karras himself has told you those are
8 expenses that were incurred to a reasonable
9 degree of professional certainty.

10 So, ladies and gentlemen, the
11 question is still before you. What is fair
12 and adequate compensation for Mr. Parks'
13 unfortunate injuries and his difficulties? As
14 I said to you in my opening, the word
15 "fairness" implies just that. Fairness. It
16 means looking at the case, looking at the
17 facts in an actual, objective, dispassionate
18 manner free of overt sympathy, free of overt
19 emotion and arriving at a verdict that is
20 fair.

21 "Adequate," ladies and gentlemen,
22 means the amount of money necessary to
23 adequately cover his expenses, to fulfill the
24 needs that he has.

25 I'm asking you now and I appreciate

1 your time, patience and attention, but
2 whatever verdict you reach, please do so in a
3 dispassionate, objective, fair way, devoid of
4 sympathy, but one that adequately covers all
5 of his expenses for the future.

6 Thank you for your time, patience
7 and attention.

8 THE COURT: Thank you, Counsel.

9 MR. STROKOVSKY: Props to Chandler
10 Hosmer, everybody. That was unbelievable.
11 That was unbelievable, okay.

12 What he is saying is you will accept
13 my representation of that. Did we see any
14 actual billing records?

15 And that's why I made a point today
16 with Nurse Kuntz. Nurse Kuntz, you agree that
17 the cost of a socket replacement is \$17,000?
18 Yes. How many did Eddie get in the last three
19 years in addition to his prosthetic? Three.
20 That's \$50,000 right there.

21 He's just shown it's \$8,000, it's
22 \$6,000. That's why he didn't send his expert
23 up here to do the inflation numbers.

24 What he is also saying is these
25 numbers are dramatically less than Nurse

1 Kuntz' present value. So even though Nurse
2 Kuntz comes up here and tries to find every
3 single way to nickel and dime Eddie, he still
4 says don't even follow Nurse Kuntz. Follow my
5 math. Because the only -- he only did X, Y
6 and Z for the past year because Alex Karas
7 accepted my representation those are the
8 bills. Let's not factor in a prosthetic.
9 Let's not factor in socket replacements.
10 Let's not factor in getting home health aide
11 when he is 60. Let's not factor any of that.

12 You have to remember the very floor
13 of this case, and I submit to you that if you
14 weigh the evidence, you will follow the plan
15 that Alex Karas used based off Dr. Miknevich's
16 recommendations.

17 By the way, I don't know if you
18 noticed, Nurse Kuntz, she had no talks with
19 Dr. Sarlo. They were not working
20 collaboratively for her to figure out her
21 plan. That's why she disagreed with several
22 things that Dr. Sarlo said. They love saying,
23 Hey, I agree with Dr. Tucker with this when I
24 confront them. Didn't Dr. Tucker say that?
25 Oh, I don't agree with that.

1 The same way that their experts had
2 no idea what was going on. They think Eddie
3 got two amputations. They thought the guy who
4 cut off his leg was his primary care doctor.
5 They got all the dates wrong.

6 So did he. He just got up here
7 again and gave you wrong dates. He doesn't
8 know this case. He is not living this life.

9 And you will hear Nurse Kuntz say
10 she agrees with everything related to the
11 prosthetic. She agrees with a lot of things
12 in our plan. That's why her floor was about
13 1.2, 1.3 million. So that's the floor of
14 present value costs, not what Mr. Hosmer says.
15 Hey, like, we'll even throw this expert that I
16 took up here and got her under oath and
17 explained everything and worked with her over
18 the last two years, don't believe what she
19 says. Don't use her plan even when that was
20 also to a reasonable degree of medical
21 certainty. Use my plan. Well, it's just like
22 \$5,000 a year. Let's just add it up. People
23 will agree. That's why I didn't bring in my
24 own economist.

25 Even the law tells you. Judge

1 Crumlish will instruct you future medical
2 costs must be factored in for inflation. Not
3 somebody from King of Prussia coming in who
4 pretend they're an economist saying the math.
5 That makes zero sense. This is Philly. You
6 will not fall for that.

7 They didn't bring in an economist
8 because they didn't want an even larger number
9 because as much as they say Mr. Parks deserves
10 justice and a full and fair accounting for
11 what he has gone through, they don't want
12 that.

13 The fact that he had an economist
14 ready to come here, scheduled to come here.
15 The fact that they didn't bring him up here.
16 What a more fitting example. Do you get that
17 their sole purpose is to get as much of a
18 discount as possible.

19 Now, if this was last year when
20 their expert had the one inflationary rate
21 that was less than our expert, I'm sure he
22 would have come. Oh, I wrote figures less
23 than that. Follow that guy. Now that it's
24 high, oh, that guy is not here because I did
25 the math over the five-minute break because

1 I'm qualified to tell you at the end of this
2 what I had placed in front of Mr. Karas is
3 true, \$5,000 that was spent for medical
4 visits.

5 That's another thing, too. They're
6 basically taking advantage of Eddie for the
7 fact that he doesn't like going to hospitals
8 or going to doctors because of what they did
9 to him. You heard Dr. Miknevich testify he
10 doesn't want to go hospitals. He's afraid he
11 will get killed or never go back. Again, he
12 is hoping that will change over time.

13 But the way they try to nickel and
14 dime. Your plan hear says four physical
15 therapy visits and he didn't get any yet.
16 Then it's like, well, he's also scheduled
17 after he gets a socket to probably get 12 or
18 more sessions, so the average of four a year
19 will probably be hit.

20 You also have to understand some of
21 these costs, like they're attacking like the
22 smallest costs. Like the 20,000 here, the
23 20,000 here. That's what they are trying to
24 do, nickel and dime you. They don't mention
25 at all about the prosthetics because that's

1 what they're all in agreement with.

2 You heard me talk about Dr. Sarlo.
3 Dr. Sarlo and Nurse Kuntz, they all agree with
4 that stuff except they're further. Hey,
5 Dr. Sarlo, every three to five years. Do they
6 make an average every four years? No, let's
7 say five years. We will go with that because
8 that's more money we can save Temple. It's
9 like he hits 60, let's change the plan up.
10 Let's make it every eight years because we
11 will give him a power scooter so he can use
12 that instead of a prosthetic. Then we take
13 away the power scooter. You may need the
14 prosthetic once every eight years.

15 When you think about this number
16 here, 1.4, I wish we could use Mr. Hosmer's
17 logic. I wish we could use fuzzy math to
18 shock you, exploit the number. Eddie only had
19 his new prosthetic for two and a half years.
20 The recommendation for a replacement socket is
21 17,000 once every two and a half years. Up to
22 this point, he should only be having one new
23 socket. He's already on his third. So we can
24 very easily say, well, instead of needing one
25 every two and a half years based off of that

1 math, he needs a new socket every eight years.
2 So then we have to add the socket value up
3 three times, inflate this up to 2 million if
4 we follow their logic. They are trying to
5 nickel and dime you on a 20,000 figure to make
6 a 20,000 figure, to make a \$10,000 figure. If
7 you use their own logic, take a 1.4 million
8 figure and make it a 2 million verdict.

9 Could we show the verdict sheet,
10 please.

11 The verdict sheet actually has --
12 and they know this -- it has a line by line
13 item for each year in future medical costs,
14 not present, not what Nurse Kuntz put in
15 there, not what Alex Karras put in there.
16 It's future medical costs to adjust for
17 inflation.

18 They had an expert who was willing
19 to come in here and let you know every single
20 year what the life care plan would be
21 projected over the course of the next 40.

22 Next page.

23 The next page after that.

24 We had that. We came hear. We came
25 prepared. We are here to back up our claims.

1 They just want to save money. So like we are
2 not doing that. We will not have our expert
3 present yearly figures. We will send the jury
4 back there in the dark with zero evidence as
5 to how this 5.9 million breaks out year by
6 year. We want to confuse the jury. We don't
7 want to do that. We want them to give a
8 complete discount for what Mr. Parks is going
9 through.

10 That's not going to happen. I know
11 you will not let that happen.

12 They made a calculation that they
13 could get away with not bringing in an
14 economist. Their calculation is way off.

15 If you can show the top part of the
16 verdict sheet, please.

17 Take that down.

18 The verdict sheet is going to
19 show -- will ask you to put in a line item for
20 all this past pain and suffering, past
21 noneconomic damages, that pain and suffering,
22 embarrassment and humiliation, that loss of
23 life's pleasures, that disfigurement.
24 Disfigurement is his limp. Disfigurement is
25 his limb. It's everything that he is reminded

1 of when he wakes up and looks in the mirror
2 and sees who he is now and you need to give a
3 number that fairly and fully accounts for all
4 of his past damages, every single of those
5 subcategories.

6 And then the same way you see a line
7 by line year for future medical costs, you
8 only put in one number, there will be a line
9 for future noneconomic damages such as
10 physical pain, mental anguish, embarrassment
11 humiliation, the disfigurement.

12 Forty-four years, you heard two
13 different methodologies on which life
14 expectancy to use. I submit you should use
15 ours. And to even put salt on the wound on
16 that one is you notice the three-year drop
17 because of COVID. There is no, oh, well, we
18 cut off this guy's leg. We will use life
19 expectancy that is less than the overall for
20 males in this sector and we will not account
21 for COVID. God forbid. You know it's
22 COVID-19. We know the stats are skewed a
23 little bit. Let's give this guy one or two
24 years of medical care. In fact, they will not
25 even send in an economist. They're not going

1 do that.

2 Nothing has changed. Don't believe
3 the fuzzy math that's not backed up by the
4 law. It's not backed up by common sense.
5 Don't be deceived. This is here about justice
6 and, frankly, they could have played this case
7 a lot more honorable. I don't think they care
8 about justice, frankly. But it doesn't matter
9 if they care about justice. It matters if you
10 care about justice.

11 And you notice they spent all their
12 time again just talking about these numbers,
13 which I thought was incredible because, again,
14 future medical costs is just the tip of the
15 iceberg, just one component of this vast
16 component of damages that you are to calculate
17 and deliver a verdict on. And they're just
18 focusing on the medical future costs without
19 an economist.

20 And then they completely throw their
21 own experts under the bus, oh, yeah, well this
22 expert says to within a reasonable degree of
23 medical certainty 1.3 million, which is
24 already substantially less than our plan
25 because they don't include -- they took off

1 home health aide, took off when he is older,
2 give you a prosthetic and a couple of checkup
3 visits and so be it.

4 They don't care. They don't have to
5 care under the law. It doesn't matter if they
6 care or don't care. Doesn't matter. They
7 don't have to apologize. You see that again
8 and again. We express sympathies. He
9 couldn't even look at you when he said it that
10 time. That is unacceptable.

11 But that doesn't matter. That
12 doesn't matter. We are not here to punish
13 Temple University Hospital, Incorporated. We
14 are not here to punish Dr. Lorei. But as
15 Darla Dennis said, her son deserves justice.
16 Give him everything that he deserves. We
17 don't want anything more than he deserves, but
18 we don't want anything less than he deserves.
19 That's all we ask of you. Again, you're
20 impartial. Everything is equal. No one is
21 above the law. No one is below the law.

22 I just ask you to use your human
23 experience. I just ask you to use your common
24 sense. And I ask you to fully, fairly and
25 completely compensate Mr. Parks for everything

1 that he has gone through and everything that
2 he will go through until he breathes his last
3 dying breath, which is a long time from now.
4 He deserves justice.

5 Temple stipulated, they admitted a
6 hundred percent fault. They admitted that all
7 of those procedures are because of their
8 fault. They admitted the amputation is all of
9 their fault. And he's permanently -- will be
10 missing his leg because of that. And if you
11 think putting a picture on social media,
12 smiling, trying -- Eddie wants to get away.
13 He is going through a lot. He's allowed to
14 have a few days where maybe he can try a
15 different environment. The pain is not going
16 away. The disfigurement not going away. All
17 of his problems are not going away, but to
18 show a picture like that as some sort of
19 justification that they deserve a discount is
20 ridiculous.

21 THE COURT: Counsel.

22 MR. STROKOVSKY: Again, in the end I
23 thank you for your service. Eddie Parks
24 thanks you for your service. All we ask for
25 is accountability. All we ask is for you to

1 deliver a verdict that says, Temple, we heard
2 everything. We are holding you accountable.

3 Mr. Parks, we heard everything.
4 You're human. You deserve justice just like
5 everybody else does. And we truly believe we
6 did that for you for your past, for the rest
7 of your life.

8 Thank you.

9 THE COURT: Thank you, Counsel.

10 So, ladies and gentlemen, as I had
11 promised you, or warned you, this is the last
12 time that I will be speaking to you to give
13 you the guidance on the law to help you in
14 your deliberations.

15 So as you have seen, the evidence
16 presented to you was either direct or
17 circumstantial evidence. Direct evidence is
18 testimony about what a witness personally saw,
19 heard or did. Circumstantial evidence is
20 testimony about one or more facts that
21 logically lead you to believe the truth of
22 another fact.

23 You should consider both direct and
24 circumstantial evidence in reaching your
25 verdict. You may decide the facts in this

1 case based upon circumstantial evidence alone,
2 and I will give you a quick example of the
3 difference between direct and circumstantial
4 evidence.

5 If you were in my neighborhood this
6 weekend, you would have seen me in the
7 barbershop. You would have said, Judge
8 Crumlish is getting a haircut. That's direct
9 evidence.

10 If, however, you remember Friday I
11 had long hair and looked like a refugee from a
12 rock band, you would have said, Judge Crumlish
13 must have got a haircut over the weekend.
14 That would be circumstantial evidence.

15 Now, as judges of the facts, you
16 decide the believability of the witness'
17 testimony. This means that you decide the
18 truthfulness and accuracy of each witness'
19 testimony and whether to believe it all or
20 part or none of each witness' testimony. The
21 following are some of the factors that you may
22 and should consider when determining the
23 believability of the witnesses and their
24 testimony.

25 How well could each witness see,

1 hear or know the things about which he or she
2 testified? How well could each witness
3 remember and describe those things? Was the
4 ability of the witness to see, hear and know,
5 remember or describe those things affected by
6 age or physical, mental or intellectual
7 disability? Did the witness testify in a
8 convincing manner? How did the witness look,
9 act and speak while testifying? Was the
10 witness' testimony uncertain, confused,
11 self-contradictory or presented in an evasive
12 manner? Did the witness have any interest in
13 the outcome of this case or any bias or any
14 prejudice or any other motive that may have
15 affected their testimony? Was the witness'
16 testimony contradicted or supported by other
17 witness' testimony or other evidence? Does
18 the testimony make sense?

19 If you believe some part of the
20 testimony of a witness to be inaccurate,
21 consider whether that inaccuracy casts doubt
22 upon the rest of that same witness' testimony.
23 You should consider whether the inaccuracy is
24 one on an important matter or a minor detail.

25 You should also consider any

1 possible explanation for the inaccuracy. Did
2 the witness make an honest mistake or simply
3 forget, or was there a deliberate attempt to
4 present false testimony? If you decide that a
5 witness intentionally lied about a significant
6 fact that may affect the outcome of the case,
7 you may for that reason alone choose to
8 disbelieve the rest of that witness'
9 testimony, but you're not required to do so.

10 If you decide the believability of
11 each witness' testimony, you will at the same
12 time decide the believability of other
13 witnesses and the other evidence in the case.
14 If there is a conflict in the testimony, you
15 must decide which, if any, testimony you
16 believe is true.

17 As the only judges of the
18 believability of the facts in this case, you,
19 the jurors, are responsible to give the
20 testimony of every witness and all other
21 evidence whatever ever weight you think it's
22 entitled to receive.

23 Now, you may find inconsistencies
24 within the testimony of a single witness or
25 conflicts between the testimony of several

1 witnesses. Conflicts or inconsistencies do
2 not necessarily mean that a witness
3 intentionally lied. Sometimes two or more
4 persons witnessing the same event see, hear or
5 remember it differently. Sometimes a witness
6 remembers incorrectly or forgets. If the
7 testimony of the witness seems inconsistent
8 within itself or if the testimony given by
9 several witnesses conflicts, you should try
10 and reconcile the differences. If you can't
11 reconcile the differences, you must then
12 decide which testimony, if any, you believe.

13 If you decide that a witness
14 intentionally lied about a fact that may
15 affect the outcome of the case, you may for
16 that reason alone choose to disbelieve the
17 rest of the witness' testimony, but you're not
18 required to do so. You should consider not
19 only the lie, but all the other factors I have
20 given you in deciding whether to believe the
21 other parts of the witness' testimony.

22 Now, you may have heard evidence
23 that a witness made earlier statements
24 inconsistent with their testimony in court.
25 You may consider the earlier testimony or

1 statements to evaluate the believability. In
2 other words, the truthfulness and accuracy of
3 the witness' testimony in court. You may also
4 find the earlier statement was true.

5 You may have heard evidence that a
6 witness made statements consistent with their
7 testimony in court. You may consider the
8 earlier statement only to evaluate the
9 truthfulness and accuracy of the witness'
10 testimony in court.

11 Now, during the trial, you have
12 heard testimony from both fact and expert
13 witnesses. To assist juries in deciding cases
14 often such as this one involving scientific,
15 technical or other specialized knowledge
16 beyond that possessed by a layperson, the law
17 allows an expert witness with special
18 education and experience to present opinion
19 testimony. An expert gives their opinion to a
20 reasonable degree of professional certainty
21 based upon the assumption of certain facts.
22 You do not have to accept the expert's opinion
23 just because they're considered an expert in
24 their field.

25 In evaluating an expert's testimony

1 and in resolving any conflicting witness'
2 testimony, you should consider the following:
3 The witness' knowledge, skill, experience,
4 training and education, and whether you find
5 the facts the witness relied upon in reaching
6 their opinion were accurate. And all the
7 other believable factors I have given you.

8 Now, the expert witnesses were asked
9 to assume certain facts were true and to give
10 an opinion based upon these assumptions.
11 These are called "hypothetical questions." If
12 you find any important fact assumed by the
13 hypothetical question was not established by
14 the evidence, you should disregard the
15 expert's opinion given in response to that
16 question.

17 Similarly, if the expert has made it
18 clear that his opinion is based on an
19 assumption of an important fact that did not
20 exist and you so find that it did exist, you
21 should again disregard that opinion.

22 In resolving any conflict that may
23 exist in the testimony of experts, you're
24 entitled to weigh the opinion of one expert
25 against that of another. In doing that, you

1 should consider the relative qualifications
2 and reliability of the expert witness, as well
3 as the reasons for each opinion and facts in
4 the other matters upon which it's based.

5 Now, importantly, I have not
6 indicated any opinion on my part concerning
7 the weight you should give to the evidence or
8 any part of it. I don't want you to think
9 that I have. It is up to you and you alone to
10 decide the believability of each witness.

11 Now, in general, the opinion of an
12 expert has value only when you accept, as I
13 have said, the facts upon which it is based.
14 This is true whether the facts are assumed
15 hypothetically by an expert or they come from
16 the expert's personal knowledge or from some
17 other proper source or from some combination
18 of those.

19 Now, you heard me use the expression
20 "weigh the evidence." You must weigh the
21 evidence and evaluate the believability of
22 witnesses in order to decide the facts in this
23 case. The number of witnesses and the number
24 of exhibits offered by a party does not alone
25 decide the weight of evidence. The believable

1 testimony of one witness presented by one
2 party may outweigh the testimony of many
3 witnesses presented by another party. Only if
4 the evidence presented by the parties seem
5 equally believable in weight and
6 believability, should you consider the number
7 of witnesses presented by a party in reaching
8 your verdict.

9 Now, the parties agree that Dr.
10 Lorei was negligent, and the parties agree
11 that the negligence caused harm to Eddie
12 Parks.

13 Further, it is agreed that Temple
14 University Hospital was the principal of Dr.
15 Lorei.

16 You must award damages for Eddie
17 Parks' harm. The parties do, however,
18 disagree on the extent of the harm caused by
19 Dr. Lorei's negligence. You must decide the
20 extent of the harm Dr. Lorei's negligence
21 caused and return a verdict that fully
22 compensates Eddie Parks for all harm
23 sustained.

24 If you find Eddie Parks' injuries
25 will endure in the future, you must decide the

1 life expectancy of Mr. Parks. According to
2 the statistics compiled by the United States
3 Department of Health and Human Services, the
4 average remaining life expectancy of all
5 persons of Mr. Parks' gender, race and age is
6 between 44 and 39 years.

7 This statistic is only a guideline.
8 You're not bound to accept it if you believe
9 Mr. Parks will live longer or less than the
10 average individual in his category. In
11 reaching this decision, you must determine how
12 long he will live, considering his health
13 prior to his injuries, his personal habits and
14 lifestyle, and other factors you find will
15 affect the duration of his life.

16 In a civil case, the plaintiff has
17 the burden of proving their claim for damages.
18 The plaintiff must prove their claim by a
19 legal standard called "a preponderance of the
20 evidence." Preponderance of the evidence
21 means a claim is more likely true than not.

22 Think about, for example, this
23 balance scale I have up here on the bench. It
24 has two pans to hold objects on both sides.
25 Imagine using the scale as you deliberate in

1 the jury room. Place all the evidence
2 favorable to Mr. Parks in one pan. Place all
3 the evidence favorable to the defendants in
4 the other. If the scales tip even slightly to
5 Mr. Parks' side, you must find for Mr. Parks.
6 If, however, the scales tip even slightly on
7 the defendant's side, or if the two sides of
8 the scale balance equally, then you must find
9 for the defendants.

10 In this case, Eddie Parks has the
11 burden of proving the extent of damages caused
12 by defendant's negligence. Now, you must
13 determine the amount of money damages that
14 fairly and adequately compensates Mr. Parks
15 for all the physical and emotional harm and
16 financial damages caused by defendant's
17 negligence. The amount must completely
18 compensate Mr. Parks for all damages sustained
19 in the past, as well as all damages you find
20 Mr. Parks will sustain in the future. There
21 are lines for you to record on the verdict
22 slip as each item of damages I'm now
23 describing for you to follow along.

24 The damages include future medical
25 expenses, pain and emotional distress,

1 embarrassment and humiliation, the loss of the
2 ability to enjoy the pleasures of life and
3 disfigurement.

4 Future medical expenses include all
5 reasonable medical expenses that you find
6 Eddie Parks will reasonably incur in the
7 future for diagnosis and treatment of his
8 injuries. In awarding future damages for
9 medical and other related expenses, you must
10 determine an amount of Eddie Parks' life in
11 which he will incur such damages. You should
12 adjust the amount to account for reasonably
13 anticipated inflation and medical care
14 improvements.

15 The verdict sheet contains separate
16 lines for you to decide these future medical
17 expenses by year. You should complete this
18 form by filling in a dollar amount that fully
19 and fairly compensates Eddie Parks for all
20 medical expenses you find will be incurred on
21 each year based upon Mr. Parks' life
22 expectancy. Future payment for medical and
23 other related expenses will terminate upon the
24 death of Mr. Parks.

25 Mr. Parks is also entitled to

1 recover past and future money damages for the
2 following types of harm, each of which I will
3 describe in more detail.

4 Physical and mental pain and
5 suffering, embarrassment, humiliation, loss of
6 the ability to enjoy the pleasures of life and
7 disfigurement.

8 Pain and suffering includes any
9 physical discomfort, mental anxiety, emotional
10 distress and inconvenience that you find that
11 Mr. Parks has endured in the past and will
12 endure in the future as a result of his
13 injuries.

14 Embarrassment and humiliation refers
15 to any feeling of shame, inferiority,
16 inadequacy or any perception by Eddie Parks
17 that others regard him with disfavor or
18 dislike that Eddie Parks has endured in the
19 past and will endure in the future as a result
20 of his injuries.

21 Loss of the ability to enjoy the
22 pleasures of life includes past and future
23 losses or diminishment of Mr. Parks' ability
24 to participate in any hobbies, recreational
25 interests, pleasurable pursuits or other

1 activities that he previously enjoyed.

2 Disfigurement includes any scarring,
3 deformity, limp or other observable defect
4 that Mr. Parks has endured in the past and
5 will endure in the future as a result of his
6 injuries.

7 In determining past and future
8 damages, you should consider the following
9 factors: Mr. Parks' age, the severity of his
10 injuries, whether the injuries are temporary
11 or permanent, how much the injuries have
12 affected and will affect his ability to
13 perform the basic activities of daily living
14 and other activities he previously enjoyed,
15 the type of medical treatment he has undergone
16 and how long the treatments will be required,
17 the extent of physical and mental pain and
18 suffering that Mr. Parks that he endured and
19 will endure in the future. Mr. Parks' health
20 and physical condition prior to the injuries.
21 The type of disfigurement and how it has and
22 will affect Mr. Parks.

23 Now, there is no mathematical
24 formula or schedule for you to use in
25 determining fair and reasonable money damages

1 for the type of harm I have discussed.
2 Pennsylvania law prohibits lawyers from
3 suggesting a specific figure or amount for
4 these type of damages. You won't hear any
5 such figure or amount being mentioned by
6 lawyers during their closing arguments. You
7 should use your common sense, human experience
8 and collective judgment to determine an amount
9 representing a fair and reasonable recovery
10 for these type of damages. Your verdict for
11 past noneconomic damages and future
12 noneconomic damages should be recorded as a
13 separate amount as provided on the verdict
14 slip.

15 Now, the verdict slip lists a series
16 of questions you should answer and must answer
17 each of these questions one by one. Your vote
18 on each question does not need to be
19 unanimous. However, at least 10 out of 12 of
20 you must agree on an answer to each question.
21 Any 10 of you who agree on a question
22 constitutes a sufficient majority for that
23 particular question. And you need not vote
24 the same on each question.

25 Now, finally, you now have heard the

1 rules of law to properly reach a verdict in
2 this case. In a few minutes you will begin
3 your deliberations. Before you do so, I'd
4 like to give you a few final guidelines on
5 conducting your deliberations and properly
6 arriving at a verdict.

7 My responsibility as Judge here is
8 to decide all questions of law. Therefore,
9 you must accept my rulings and instructions as
10 to matters of law. But I'm not, as I told you
11 before, the judge of the facts. You, the
12 jurors, are the only judges of the facts, so
13 your responsibility is to consider the
14 evidence and decide what are the true facts.
15 By applying the rules of law as I have given
16 them to you to the facts as you find them, you
17 must decide whether Mr. Parks has proven his
18 claims.

19 The decision in this case, I'm sure
20 you understand, is a matter of considerable
21 importance. Your responsibility as jurors is
22 to reach a verdict based upon the evidence
23 presented during the trial and upon your
24 evaluation of that evidence. You must
25 consider all of the testimony you have heard

1 and all the other evidence presented during
2 this trial in order to decide the facts.

3 In deciding the facts, you may
4 properly apply common sense and draw upon your
5 own everyday practical knowledge of life. You
6 should keep your deliberations free of any
7 bias or prejudice. All parties have the right
8 to expect you to consider the evidence
9 conscientiously and apply the law as I have
10 outlined to you.

11 Now, before you begin to deliberate,
12 you should select one of your group to be
13 foreperson. The foreperson will announce the
14 verdict in the courtroom after you finish
15 deliberating.

16 If during deliberations you have a
17 serious doubt about some portion of these
18 instructions, write your question in a note,
19 signed by the foreperson, give the note to my
20 court officer and she will give it to me for a
21 response. You should not, however, reveal to
22 anyone during your deliberations how the jury
23 stands numerically.

24 The verdict should be rendered only
25 after careful and thoughtful deliberations.

1 In the course of your deliberations, you
2 should consult with each other and discuss the
3 evidence freely and fairly in a sincere effort
4 to arrive at a just verdict. It's your
5 obligation to consider the evidence and the
6 issues presented with a view towards reaching
7 an agreement, if you can do so without
8 violating your own individual judgment.

9 Each juror must decide this case for
10 themselves after examining the issues and the
11 evidence with a proper regard to the opinions
12 of other jurors. Proper consideration of
13 issues before you means that you should be
14 able and willing to re-examine your views and
15 change your opinion if convinced it's
16 erroneous, but you're not required to
17 surrender an honest conviction as to weight or
18 effect of the evidence only because of another
19 juror's opinion, or solely for the purpose of
20 just getting a verdict.

21 Your verdict must represent the
22 jury's considered final judgment. While the
23 view of every juror must be considered, the
24 verdict need not be unanimous. A verdict
25 considered by five-sixths of the jury shall

1 constitute a verdict of the entire jury.
2 Five-sixths of 12 is 10. So when 10 of you
3 have agreed and reach a verdict, indeed you
4 have. You should tell the court officer and
5 we will reconvene the court to accept your
6 verdict.

7 Please keep in mind, as I have said
8 before, the dispute between the parties is for
9 them a most serious matter. They and the
10 Court rely upon you to give full and
11 conscientious consideration to the issues and
12 the evidence before you. Importantly, neither
13 sympathy nor prejudice may influence your
14 deliberations. You should not be influenced
15 by anything other than the law and the
16 evidence in this case, together with your own
17 judgment and evaluation of that evidence.

18 As I may have told you before, all
19 parties stand equally before this Court and
20 each is entitled to the same fair and
21 impartial treatment in your hands.

22 I'm well aware in your daily life
23 you may regularly communicate with friends and
24 family through electronic devices. Remember,
25 you must not communicate about this case in

1 any way electronically or by any other means
2 during your deliberations.

3 I'm also well aware in our daily
4 life that many of us use the Internet to
5 obtain all sorts of information. As I told
6 you at the beginning of the trial, anyone can
7 put anything on the Internet and that
8 information may not be accurate or reliable
9 and probably would not have been admissible as
10 evidence during this trial.

11 During this trial, I have had to
12 decide that the facts you have heard was
13 sufficiently reliable to be admissible under
14 the rules of evidence and the law. Relying on
15 any information you obtained outside the
16 courtroom is not only a violation of the
17 rules, it's just plain unfair because the
18 parties would not have had an opportunity to
19 refute it, explain it or correct it.

20 So, again, please don't use any
21 electronic devices to search for or research
22 on-line any information that may exist about
23 this case, the parties, the attorneys,
24 including information that may even appear on
25 the court website. If someone should try to

1 communicate with you about the case during
2 trial, or if you find one of these rules was
3 broken, including the rule prohibiting
4 independent research, please report it to me
5 or Ms. Sweeney so I may evaluate the problem
6 and decide what we must do.

7 So thank you very much, ladies and
8 gentlemen. I now command you to begin your
9 deliberations.

10 Anything, Counsel, before I
11 discharge the jury for deliberations?

12 MR. HOSMER: I didn't want to say it
13 in front of the jury. There was one thing we
14 did talk about with earnings.

15 THE COURT: Let me see you at
16 sidebar just to make sure.

17 (Sidebar not reported.)

18 THE COURT: So I'm reminded, I know
19 I told you this before, in this case wage loss
20 is not the subject of recovery. So that's not
21 to be considered.

22 So I think I got everything else
23 right.

24 So, again, now, ladies and
25 gentlemen, I will command you to begin your

1 deliberations. Ms. Sweeney, of course, can
2 answer any questions about schedules and
3 whatnot. Thank you so much. Please respect
4 the sanctity of your fellow jurors'
5 deliberative process, so don't research or do
6 anything outside, and I appreciate your time
7 and efforts on behalf of your community and
8 your neighbors. Thank you so much.

9 (Jury exits courtroom at 4:50 p.m.)

10 (Court adjourned at 5:00 p.m.)

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1 I hereby certify that the proceedings and
2 evidence are contained fully and accurately in the
3 notes taken by me on the trial of the above cause,
4 and that this copy is a correct transcript of the
5 same.

6
7 - - -

8 Louise M. Zingler, RPR, RMR
9 Official Court Reporter

10 - - -

11 The foregoing record of the proceedings upon
12 the trial of the above cause is hereby approved and
13 directed to be filed.

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