

1 (Whereupon, the jury enters the courtroom.)

2 THE COURT: Well, you may all have a seat. We're
3 waiting for one more juror. He's on his way down.

4 Well, good morning everyone and welcome.

5 THE JURORS: Good morning.

6 THE COURT: Now, we will continue with
7 plaintiff's case. Counsel?

8 MR. MALLAS: Your Honor, I call Dr. Joseph Carfi.

9 (Whereupon, the witness takes the witness stand.)

10 THE CLERK: Please remain standing for me,
11 Doctor. Please raise your right hand, place your left hand
12 on the bible.

13 D R. J O S E P H C A R F I, a witness called
14 on behalf of the Plaintiff after having been first duly
15 sworn and having stated his address as 2001 Marcus Avenue,
16 Lake Success, New York 11042, took the witness stand and
17 testified as follows:

18 THE CLERK: Thank you. You may be seated.

19 Please state your name.

20 THE WITNESS: Joseph Carfi, M.D.

21 THE CLERK: And spell your last name.

22 THE WITNESS: C-A-R-F-I.

23 THE CLERK: And give us your work address.

24 THE WITNESS: 2001 Marcus Avenue, Lake Success,
25 New York 11042.

a-vm

PROCEEDINGS

607

1 THE CLERK: Thank you.

2 THE COURT: You may begin.

3 MR. MALLAS: Thank you, Your Honor.

4 DIRECT-EXAMINATION

5 BY MR. MALLAS:

6 Q. Good morning, Dr. Carfi.

7 How are you?

8 A. Good morning. Well, thank you.

9 Q. I'm going to ask that you keep your voice up this way
10 our last juror over here, Mr. Huntley, can hear you. Okay.

11 Now, you were retained to do an examination of life
12 care plan for Mr. Peat in this case; correct?

13 A. Yes.

14 Q. Before we get to that, can you tell the jury are you
15 licensed to practice medicine in the State of New York?

16 A. I am licensed in New York State, yes.

17 Q. Is there any specific area of medicine that you
18 practice?

19 A. Yes, my specialty is physical medicine and
20 rehabilitation.

21 Q. And can you tell the jury what physical medicine and
22 rehabilitation is?

23 A. Yes, basically it's two different things. The
24 physical medicine side of what I do is more managing pain
25 related conditions whether it's due to a pinched nerve or it's a

a-vm

DR. CARFI - PLAINTIFF - DIRECT

608

1 shoulder problem, we diagnose, treat and you get better.

2 The other side, the rehabilitation side, is taking
3 care of people who have permanent disabling conditions like
4 spinal cord injuries, amputations, strokes, multiple sclerosis,
5 things of that nature which impair function. And what we're
6 trained to do is take care of a human being that has the
7 disabling condition. Meaning many times there are psychological
8 issues because their life has been devastated by this injury; or
9 there may be a social familiar vocational issues. So we're
10 trained to take care of the whole -- the holistic approach to
11 this person.

12 Q. And can you tell the jury how long you've been
13 practicing?

14 A. I've been practicing since 1984.

15 Q. And can you tell the jury about your educational
16 background?

17 A. I have a bachelor of science in biology, that's from
18 the State University of New York in Albany. I have a master of
19 chemistry from Rensselaer Polytechnic Institute, that's in Troy,
20 New York. My medical degree was from the Mount Sinai School of
21 Medicine and I did my specialty training in physical medicine
22 and rehabilitation at the Rusk Institute for Rehabilitation, New
23 York University.

24 Q. And can you tell us a little bit about your
25 professional background?

a-vm

DR. CARFI - PLAINTIFF - DIRECT

609

1 A. Yes, well, I -- right out of residency I entered a
2 small private practice. I was a junior doctor. My associate
3 was the senior doctor in the practice. This was in Westchester
4 County. Did that for a couple of years and I went back to a
5 full time academic practice at Mount Sinai, my medical school
6 alma mater. I joined the department there, became an assistant
7 professor of rehabilitation medicine. About a year later I
8 became the associate director of the department, associate
9 clinical director of the department. Did many functions while I
10 was at Mount Sinai.

11 After I left Mount Sinai I became medical director of
12 an outpatient brain injury facility in Great Neck. Did that for
13 a couple of years. Simultaneously I was developing a small
14 private practice after hours, weekends, that sort of thing. And
15 then after a couple of years of that I went into strictly
16 private practice in 1992. 1992, yes. And that's what I've been
17 doing since.

18 Q. Now, can you tell the jury what board certification
19 is?

20 A. Well, board certification means that you've take --
21 first of all, you've completed a sanction residency program and
22 then you've passed certain standardized examinations that is
23 offered by the board of your particular specialty. In my
24 specialty case is a two-part examination, it's a written
25 examination at the end of your residency training program. Then

a-vm

DR. CARFI - PLAINTIFF - DIRECT

610

1 if you pass that, you then are eligible to sit for the oral
2 examine which typically takes place a year later.

3 Q. And are you board certified?

4 A. I am board certified, yes.

5 Q. What specialty?

6 A. In physical medicine and rehabilitation.

7 Q. And are you at a staff at any hospitals?

8 A. Yes, I am.

9 Q. Can you tell the jury what hospitals you're staffed
10 at?

11 A. Winthrop Hospital in Mineola and I have maintained a
12 position at the Mount Sinai Medical Center as well in Manhattan.

13 Q. Now, during your experience as a physician, have you
14 had experience dealing with patients who have been injured by
15 burns?

16 A. I have, yes.

17 Q. And have you treated any patients who have been
18 severely burned including having grafting and scarring on their
19 body?

20 A. I have taken care of some patients like that, yes, I
21 have.

22 Q. And now, can you tell the jury what a life care plan
23 is?

24 A. Life care plan is a document which organizes and
25 presents the medically necessary needs such as medical care,

a-vm

DR. CARFI - PLAINTIFF - DIRECT

611

1 medications, equipment, therapies things of that nature, for
2 someone who has been seriously and catastrophically injured.

3 Q. And do you have experience -- rather tell the jury
4 your experience in life care planning for serious injuries?

5 A. Well, the basis of my experience is, first of all, my
6 training in and knowledge and experience in taking care of
7 people with disabling conditions.

8 I'm the one that prescribes the therapy and the
9 equipment, make the recommendations for psychological
10 intervention if that's necessary, et cetera.

11 Now, I've been doing formal life care plans, the
12 documents, for about 20 years now. And it's just a matter of
13 organizing my training, my knowledge and experience on to a
14 piece of paper so that everybody can understand what the needs
15 are and then what that costs.

16 Q. And did you do a life care plan for Christopher Peat?

17 A. I did.

18 MR. MALLAS: Your Honor, I offer Dr. Carfi as an
19 expert witness in physical medicine and rehabilitation.

20 THE COURT: So deemed.

21 Q. And, Doctor, before we get to your life care plan and
22 your examination of Christopher Peat, have you ever testified
23 for me before?

24 A. No.

25 Q. Are you being compensated for your time here in court

a-vm

DR. CARFI - PLAINTIFF - DIRECT

612

1 today?

2 A. I am, yes.

3 Q. Now, I want to bring you to your examination of
4 Christopher Peat.

5 You did, in fact, examine him on March 24, 2009; is
6 that correct?

7 A. That would be correct.

8 Q. Why did you examine him?

9 A. I'm sorry?

10 Q. Why did you examine him?

11 A. Well, I examined him A, so that I could actually see
12 what the degree of his injuries were and confirm what I had seen
13 in the medical records, see it for myself. Also to get a sense
14 of what his functional limitations were in terms of his self
15 purport, what pains he was suffering, things of that nature so
16 it assisted me in developing the life care plan for him.

17 Q. And prior to your examination of Mr. Peat, did you
18 review his medical records?

19 A. I did review records, yes.

20 Q. Now, can you tell the jury what your examination
21 revealed?

22 MR. MALLAS: And, Your Honor, may he refer to his
23 report?

24 THE COURT: To refresh his recollection, yes.

25 THE WITNESS: Thank you, very much.

a-vm

DR. CARFI - PLAINTIFF - DIRECT

613

1 A. Well, first part of an examination of course is the
2 history that the patient presents. Every doctor takes --
3 listens to your scoring. And basically what Mr. Peat was
4 telling me was that he had these disfiguring scars all over his
5 body about which he was certainly self conscious, he was having
6 pain, he was having back pain, pain in the shoulders, hips and
7 knees. He had restriction of movement especially his right
8 dominant elbow. So we discussed these injuries a bit.

9 His pain, of course, would change depending upon his
10 activities. We would have good days and bad days but he had
11 pain all the time. In fact, on his worst days he told me it
12 felt as if he was being burned or it reminded him of when he was
13 having the skin debridements when they had to clean the burn,
14 push it away while he was in the hospital, that was the level of
15 his pain. And weather changes, cold weather, inclement weather
16 would certainly exacerbate his pain.

17 He was telling me -- let me just check my report
18 please. He described his hands as grotesque. That's how he
19 described them. That he had feelings of inferiority and
20 worthlessness because of his particular situation. But he was
21 getting treatment for that emotional side of things. He avoided
22 open flames, makes him very anxious. He had nightmares about
23 his incident. He would think about the accident quite
24 frequently. Also determined that although previously he lived
25 independently and had a girlfriend at the time I saw him, he was

a-vm

DR. CARFI - PLAINTIFF - DIRECT

614

1 living with his dad, that was his living situation, he was not
2 working. And he was able pretty much to take care of himself.

3 His level of activity was limited. He could do some
4 light housekeeping. He had some difficulty because of his right
5 dominant arm would not bend very much so he had to cover his
6 buttons with fasteners especially from the chest level he could
7 not reach essentially. Let me just check one more thing.

8 We talked a little bit about previously he was a very
9 active fellow. He was working full time. He had been a floor
10 finisher for ten or 15 years. He was in the army before that.
11 He also was very active, worked out in the gym, enjoyed playing
12 basketball, member of a social club, so involved in a lot of
13 activities with that club, he did charitable types of work but
14 he really couldn't do these things any longer. Typically he
15 would spend most of his time at home. He did do some cooking.
16 He had taken some culinary classes. So he enjoyed doing some
17 cooking and reading his culinary books. That was the history
18 portion.

19 And then in examining him clearly he had extensive
20 scarring all over his body.

21 Q. What parts of his body?

22 A. Well, certainly his back was extensively scared. His
23 chest I describe it almost like a sleeveless T-shirt kind of
24 distribution on the front of his body, extensive scarring around
25 both arms, both legs, buttocks. Face he had scarring on his

a-vm

DR. CARFI - PLAINTIFF - DIRECT

615

1 nose, over his eyes, cheek, lips. He actually had a little
2 defect in his right ear from his burn as well. His --

3 Q. This -- I'm sorry, go ahead.

4 A. Okay. So checking range of motion he had good lower
5 back range of motion but he did complain of pain throughout the
6 range. He did have an unusual click when he bent to the right
7 side I believe, yes.

8 Q. Doctor, before we get to your findings, you know we
9 have had some other medical testimony about range of motion.

10 Just briefly describe to the jury what this means the
11 range of motion, you know, with a particular body part?

12 A. Oh, sure.

13 Well, he certainly had -- he had restriction of a
14 shoulder range of motion, both shoulders. Raising and rotations
15 were below what would be expected of normal. And the most
16 significant one was the right elbow. He lacked about 30 degrees
17 of full extension and he could only bend it to 90 degrees
18 basically the right angle so that would impair his ability to
19 function.

20 I took a measuring tape to measure the circumference
21 of his arm, the right dominant arm, the upper arm was thinner
22 than the left non-dominant arm. It certainly speaks to his lack
23 of ability to use that arm.

24 Q. Is there a medical term for one side most of his
25 muscle lose?

a-vm

DR. CARFI - PLAINTIFF - DIRECT

616

1 A. That's called atrophy. So clearly the right arm is
2 atrophied.

3 Q. Can you tell the jury what atrophy is indicative of?

4 A. Well, atrophy in this particular situation is
5 indicative of a lack of use. It could be neurological but with
6 Mr. Peat he can't use the arm because of the fact of the muscle
7 straints because he can't exercise it with any significant
8 degree.

9 The other significant thing is the sensory examination
10 because in his lower back he didn't have any tenderness even
11 though he had back pain, he had no tenderness in the muscle. In
12 the midline along the spine, yes. But he didn't have no
13 sensation. He didn't feel pressure, he didn't feel light touch,
14 he didn't feel my safety pin that I used in the lower back.

15 And the other scared areas legs and arms front was
16 kind of patchy in some places. He can perceive the pin prick in
17 other places, he couldn't -- generally he could feel a light
18 touch and pressure. His back of his hands were affected. His
19 extensive scarring over the back of both hands and also over the
20 palm aspects as well.

21 Q. Now, is -- that condition you just described is there
22 a degree of sensory --

23 A. Yes.

24 Q. Now, what are arthrology?

25 A. Arthrology is just a term that means joint pain.

a-vm

DR. CARFI - PLAINTIFF - DIRECT

617

1 That's all it means.

2 Q. Did your examination reveal any joint pain in Chris
3 Peat?

4 A. Yes, it did. In fact, when I was doing his strength
5 testing of his arms he would complain of pain, you know, in the
6 various joints of his arms that I have to apply resistance in
7 order to see how strong he is. When I checked the legs, he did
8 complain of back pain. As I was putting pressure against the
9 knees and hips, he did complain of a lot of back pain.

10 Q. And can you tell the jury what hypohydrosis is?

11 A. Hypohydrosis is something else that he has and that is
12 a decrease in sweating because his skin has been so extensively
13 damaged he lost the sweating ability in most of those burned
14 areas. So as a result he does tend to overheat easily because
15 he can't sweat to get that heat out.

16 Q. As a result of your examination, did you come to an
17 impression, diagnosis, of Christopher Peat?

18 A. I did, yes.

19 Q. What was that?

20 A. My diagnosis this is a gentleman 42 years old who
21 status post extensive second and third degree injuries over a
22 great part of his body, required multiple surgical procedures.
23 He had both physical and emotional scars from this very
24 traumatic and painful incident. He had multiple arthralgias,
25 joint pain. Hypohydrosis, lack of sweating, loss of sweating

a-vm

DR. CARFI - PLAINTIFF - DIRECT

618

1 ability. He had lost significant range of motion in his right
2 dominant arm with atrophy of that arm. He was also depressed
3 and suffering from post traumatic stress disorder for which he
4 was getting treatment at the time that I had seen him, post
5 traumatic stress disorder.

6 Q. Is that it?

7 A. That's -- that's pretty much -- those are my
8 diagnoses.

9 Q. Now, did you come to a diagnose whether Christopher
10 Peat was disabled?

11 A. I did, yes.

12 Q. What was that diagnosis?

13 A. Well, basically I feel that he is disabled with
14 respect to any sort of gainful employment because of his
15 functional restriction.

16 MR. DOODY: Objection, Your Honor. Employment
17 irrelevant.

18 THE COURT: I'm going to allow it.

19 A. And the fragility of the skin which cracks easily for
20 him.

21 Q. Now, Doctor, do you have an opinion with a reasonable
22 degree of medical certainty whether the injuries, the residual
23 effects and the symptoms which you described will cause you to
24 relate it to the fire of July 1, 2003?

25 A. Yes, I do have such an opinion.

a-vm

DR. CARFI - PLAINTIFF - DIRECT

619

1 Q. And what is that opinion?

2 A. That opinion is that, yes, these residuals are from
3 the burns which he suffered at the time of that accident in July
4 of '03.

5 Q. And do you have an opinion that the injuries and the
6 residual effects are permanent?

7 A. I do and yes, they are permanent.

8 Q. Now, based on your examination did you also come to a
9 prognosis?

10 A. Yes.

11 Q. And what is it?

12 A. Well, the prognosis is that his -- that his injuries
13 are permanent. I would not expect him to get any better than he
14 currently is as far as his physical situation is concerned
15 unless there's perhaps some surgical intervention but otherwise
16 what he has is what he has.

17 Q. Now, did you come to a determination as to whether or
18 not Chris will need medical care in the future?

19 A. I did, yes.

20 Q. And what is that determination?

21 A. Well, that he will need medical care for the rest of
22 his life which is detailed in the life care plan that I
23 developed with, you know, all the various cares and equipment
24 and et cetera.

25 Q. Now, you did develop a life care plan you said;

a-vm

DR. CARFI - PLAINTIFF - DIRECT

620

1 correct?

2 A. Yes.

3 Q. Now, I'd like to go over that life care plan.

4 MR. MALLAS: With the Court's permission, I'd
5 like to have Dr. Carfi step down. And his life care plan
6 has been marked as 41A through J. I'd like him to step
7 down and explain to the jury.

8 THE COURT: Certainly.

9 Do you need the easel?

10 MR. MALLAS: Yes, and I will offer it just for
11 demonstrative purposes, Your Honor.

12 MR. DOODY: I've seen it. My only issue, Judge,
13 is that it's three years old.

14 THE COURT: Okay.

15 THE WITNESS: May I step down, Your Honor?

16 THE COURT: Yes.

17 Q. Before we start going step by step, I want to ask
18 you --

19 THE COURT: First of all, could everyone read or
20 see?

21 THE JURORS: Yes.

22 THE COURT: Okay. You may proceed.

23 Q. All right. You went over all the medical care that
24 Christopher Peat would require in your opinion; correct?

25 A. Yes.

a-vm

DR. CARFI - PLAINTIFF - DIRECT

621

1 Q. And you developed this life care plan; correct?

2 A. I did, yes.

3 Q. Okay. And you broke it down into sections?

4 A. Yes, I did.

5 Q. Okay. What's the first section that we're looking at?

6 A. The first section -- the first page here is various
7 medical care that he would require because of the burns and
8 other issues.

9 First thing is a rehabilitation specialist. That's
10 someone like myself who would basically monitor the various
11 equipment that we're going to go over a little bit later. His
12 therapies. We can help with his pain, you know, things of that
13 nature. At four times a year it's \$165 a treatment, that's \$660
14 on an annualized basis.

15 Q. Let me ask you a question just so we understand as
16 we're going along on this page: The frequency four times a year
17 is four times a year he needs to see someone such as yourself;
18 correct?

19 A. Correct, yes.

20 This particular column it says resource, just so you
21 understand, you're going to see a series of numbers that refers
22 to basically an index that tells you where I got the money, the
23 costs from. Okay. So in the back we have a page that has
24 numbers like this with resources so you can see where all the
25 numbers came from.

a-vm

DR. CARFI - PLAINTIFF - DIRECT

622

1 Orthopedist just to monitor his elbow, that elbow
2 doesn't move well, his other joint pains, once a year \$165.

3 Dermatologist, I put this in here because he has a
4 very serious skin condition. So a skin doctor should have a
5 look at him. Christopher cannot feel his back. He can't see
6 his back very well so somebody needs to look at that who has the
7 knowledge in that area. There may be prescription creams that
8 can help him. It's once a month \$80 a treatment times 12 months
9 is \$960 annualized.

10 Psychiatrist, he is taking Zoloft which is an
11 anti-depressant medicine. So a doctor has to monitor that, may
12 have to change it at some point, but that's what he was taking
13 when I saw him. And that's once a month a doctor typically
14 monitors medication that he prescribe, \$175 times 12 months is
15 \$2,100 for the psychiatrist.

16 He was getting psychotherapy once a week to help with
17 his situation. That's \$123.33 per treatment. That's once a
18 week times -- that's 52 times that number comes out to
19 \$6,413.16.

20 If Christopher or his doctors recommend they should do
21 anything about that elbow that doesn't move that would require a
22 surgical intervention, it's a one-time cost which would cost
23 approximately \$20,900 to try and free up that elbow. So that's
24 the medical care sheet.

25 The next category is medications of which he was

1 taking two. Now, hydrochlorothiazide, 25 milligrams, is a blood
2 pressure medicine. The reason it is in here is that he didn't
3 have high blood pressure before this incident and he was clear
4 about that. And I'd ask him well, were you getting any kind of
5 medical care because a man who doesn't get medical care isn't
6 going to know necessary. And he said no, he got medical care
7 and he was never told he had high blood pressure until after he
8 had the burns and he was treated subsequently. So that's why
9 it's related to this certain situation. So he takes that
10 25 milligrams once a day. The costs is \$15.96 for 200 pills, so
11 that's \$29.13 on an annualized basis.

12 The next is the Zoloft, that's the depression
13 medicine, 100 milligrams, once a day, that's \$317.61 for 90
14 pills and doing the math that comes out to \$1,288.06 for the
15 year.

16 Also understand this was prepared in 2009 so these are
17 2009 dollars just so you know that.

18 The only lab work I have here -- next session is lab
19 work, the only thing is the elbow x-ray to monitor that elbow.
20 And once every couple of years just to keep an eye on that \$32
21 divided by two is \$16 on an annualized basis.

22 Okay. The medical supply and equipment is also a very
23 short list for him. What I have here is a reacher which will
24 allow him to reach things which, you know, he can't straighten
25 the elbow, it's a dominant hand so to get things out of the

a-vm

DR. CARFI - PLAINTIFF - DIRECT

624

1 cabinet and what have you, it's \$18.99 to be replaced every two
2 years so divided by two is about \$9.50.

3 Now, 60, what I did here is at 60 years old what's
4 happening to Mr. Peat is that he's going have the normal process
5 of aging superimposed on his already damaged and hurt body, his
6 joint pains, et cetera, he's going to start having more mobility
7 issues when he gets older. So I put an electric scooter so that
8 he can get to long distances. Once he gets some place he can
9 get up and move around in that environment. But this will allow
10 him to go long distances and reducing his pain. So that's a
11 \$1,699 item that's divided by a five year life expectancy for
12 the equipment is \$339.80. Again, that starts at 60 years old.

13 The next one is some home equipment and adaptation
14 types of things. It's a little bit longer list. It's
15 relatively simple stuff. You have a urinal so that's at night
16 because he has the hip pain and the knee pain and the back pain.
17 If he's got to use the bathroom, it's just easier for him to use
18 the urine bottle instead of struggling out of bed and getting
19 himself in the bathroom. This is for his comfort and
20 convenience. It's a \$4.95 item. You replace it every six
21 months. They are plastic so you got to get rid of it after a
22 while. That's \$9.90 for the year.

23 Next the shower chair this will allow him to sit.
24 Because of painful back, hips and knees he can sit down while
25 he's showering instead of standing. \$77.95 divided by a

a-vm

DR. CARFI - PLAINTIFF - DIRECT

625

1 three-year life expectancy for that item that's \$25.98
2 annualized.

3 Now, because he's sitting, he needs the shower head to
4 be mobile. So this is a hand-held shower. It's one of those
5 showers on a cable thing. That's \$65.95. Again, the
6 replacement every three years or so that's a \$21.98 item on an
7 annualized basis.

8 This is a very important item. This is a thermostatic
9 shower slash bath control. What this does is this moderates --
10 controls the temperature of the water. So when you turn the
11 water on, it's always at that same temperature. So he doesn't
12 have to worry about burning himself because of the sensory
13 issues with his delicate skin. This will take care of that for
14 him. This is for his safety so nothing happens. So it's an
15 expensive item \$508.45 lasting about ten years so that's a
16 \$50.85 item.

17 Okay. Long handle bath brush, exactly what it sounds
18 like so he can access the various areas without having to bend
19 over too much, et cetera. He can get under his left armpit with
20 his right hand that sort of thing. That's \$22.99. You replace
21 it on an annual basis so that's what it will cost annualized.

22 Long handle shoehorn. Same idea. He's able to get
23 the shoes on, you know, these things are good -- 18 inches,
24 2 feet long so you have to bend over so far plus he doesn't have
25 to worry about his elbow not being able to quite straighten out,

a-vm

DR. CARFI - PLAINTIFF - DIRECT

626

1 so just assist him in getting dressed, \$10.99. Every ten years
2 or so that's \$1.10.

3 Grab bars in the shower and the tub area. Again,
4 that's just a safety item. Something for him to grab on to as
5 he's getting into and out of the shower area. And that's
6 \$139.69 for a kit of two, replace every ten years or so that's
7 \$13.97.

8 Then again at 60 years old, for the same reason I told
9 you before, you have the aging process we're imposing on his
10 situation. I put in for an electrical hospital bed just to give
11 him a little bit easier positioning and comfort in bed and
12 that's \$843 item divided by a ten-year life expectancy so on an
13 annualized basis that's \$84.30.

14 So we're getting close to the end now.

15 Next is maintenance physical therapy and that's just
16 for helping him with his joint pains, with his range of motion,
17 general strength, things of that nature. Once a week at \$80 a
18 treatment, that's \$4,160 on an annualized basis.

19 Occupational therapy is more focused on upper limbs,
20 hands, arms, shoulders, also functional stuff in terms of
21 ability to do things for yourself. So the same once a week, \$75
22 a treatment is \$3,900 on an annualized basis.

23 This is the last sheet that has numbers on it. This
24 is basically the home care to give him some help at home, a home
25 health aid. At age 42 until he's 60 I put in two hours a day.

1 What are they going to do for him? They're going to help him
2 around the house. He has good days and bad days. On bad days
3 he can barely -- he doesn't want to do anything, he barely can
4 function. So this person will help him with any errands that
5 need to be done, any of the heavier housekeeping. If he needs
6 any personal assistance, if he's having trouble that day because
7 of mobility, it gives him somebody to depend on to help him.

8 Then as he ages, again, for the reasons we discussed
9 before, I increased the help. So it's from 60 to 70 I increased
10 it to four hours a day. Let me back up. The hourly rate at
11 \$16.67 so at two hours a day annualized is \$12,169.10. At 60 I
12 increased it to four hours a day, same hourly rates. It's now a
13 \$24,338.20 on an annualized basis. And then at 70 years old I
14 bring it up to eight hours a day. Same hourly rate so now the
15 annualized cost is \$48,676.40.

16 This is that index sheet I told you about. It tells
17 you where all the numbers came from. That's what this is for so
18 you can see where the dollars come from.

19 And then the last page, it's just a summary page and
20 all it does it takes the categories we discussed, medical
21 treatment, equipment, et cetera, and I just give you some number
22 so you can see a nice total for all that stuff.

23 And that's the plan.

24 Q. You can have a seat, Doctor.

25 MR. DOODY: Judge, I'd like to use them.

a-vm

DR. CARFI - PLAINTIFF - DIRECT

628

1 MR. MALLAS: They are right behind you.

2 Q. Okay. Doctor, now, this life care plan that you gave
3 us, you already told the jury that it is costs from 2009 because
4 that's when you did it; right?

5 A. Yes.

6 Q. Now, that doesn't take into account any growth from
7 2009 to 2011; correct?

8 A. That's correct.

9 Q. And it certainly doesn't take into account any growth
10 from 2011 into the future when Chris is 60, 70, 80 down the
11 line?

12 A. That's correct.

13 Q. And this plan, I know we just saw it but it's a
14 moderate thing, you're not talking about the highest end of
15 medical care; is that correct?

16 MR. DOODY: Objection.

17 A. That's correct.

18 THE COURT: Overruled.

19 Q. Now, Doctor, do you have any opinion with a reasonable
20 degree of medical certainty whether the fire of July 1, 2003 was
21 the competent producing cause of Chris' injuries and their
22 residual effects?

23 A. Yes.

24 Q. Okay. What is that opinion?

25 A. That the -- the burn did cause the second degree and

1 third degree -- I mean, the fire did cause the second degree and
2 third degree burns which resulted in the extensive scarring and
3 all the injuries that we have seen and discussed.

4 Q. Do you have an opinion with a reasonable degree of
5 medical certainty whether or not the care that you outlined for
6 the jury will be needed by Chris?

7 A. I do and it will be needed by him, yes.

8 Q. And do you have an opinion with a reasonable degree of
9 medical certainty whether or not these injuries are permanent?

10 A. I'm sorry?

11 Q. Whether the injuries are permanent.

12 A. Oh, yes, the injuries are permanent, yes.

13 Q. And do you have an opinion with a reasonable degree
14 the medical certainty if the care that you outlined for us was
15 necessitated by the fire of July 1, 2003?

16 A. Yes, I do have an opinion. And it was necessitated by
17 that fire, yes.

18 MR. MALLAS: Nothing further.

19 MR. DOODY: May I, Your Honor?

20 THE COURT: Yes.

21 MR. DOODY: Is it okay if I grab the easel?

22 THE COURT: Absolutely.

23 CROSS-EXAMINATION

24 Q. Good morning, Dr. Carfi.

25 A. Good morning, sir.

1 Q. You testified on direct that you've been preparing
2 life care plans for approximately 20 years now; is that correct?

3 A. Yes.

4 Q. And the life care plan that you generally prepare are
5 in instances such as this related to medical/legal issues;
6 correct?

7 A. Generally speaking, yes, that's correct.

8 Q. And what would you say -- how many you do a year, over
9 100?

10 A. Every year is different. It probably ranges between
11 60 and 100 on an annual basis. More recently in the, you know,
12 80 to 100 range, yes.

13 (Continued on next page.....)

14

15

16

17

18

19

20

21

22

23

24

25

th-b
Dr. Carfi - Plaintiff - Cross (Doody)

631

1 Q. So one hundred a year. And it would be fair to say
2 that approximately, or at least ninety-five percent of those are
3 for plaintiffs, correct?

4 A. Yes, that's correct.

5 Q. Okay. And what generally do you charge -- what did you
6 charge to prepare the life care plan in this instance?

7 A. \$2,650 is my fee.

8 Q. Sorry?

9 A. \$2,650 is my fee.

10 Q. That is to go through medical records, meet with Mr.
11 Peat and come up with a life care plan, correct?

12 A. That is just for the plan itself. I do charge for the
13 examination and my time.

14 Q. Okay. Do you know how much -- tell me -- if you have
15 your file before you, please feel free to refresh your
16 recollection.

17 What materials did you review before you prepared your
18 life care plan?

19 A. The Jacobi medical records, the FDNY ambulance report,
20 Burke Rehabilitation, Dr. Head, Dr. Crane and Archer Consultants.

21 Q. So with respect to treating doctors, you reviewed the
22 Jacobi and Burke records, correct?

23 A. If those were the only treating doctors, yes.

24 Q. And those records have nothing more recent than
25 November 2004, correct?

th-b
Dr. Carfi - Plaintiff - Cross (Doody)

1 A. Well, I recently reviewed some additional records which
2 certainly confirm my opinions, but yes, at the time I had
3 prepared that the records I just stated were the ones I had.

4 Q. And what records did you review recently?

5 A. I looked at Dr. Goldstein, Dr. Hausknecht, Dr.
6 Ladopoulos, and also Wendy Cummings I saw a report.

7 Q. And with respect to Hausknecht, Ladopoulos and
8 Goldstein, those are not treating physicians, correct?

9 MR. MALLAS: Objection, Judge, as to one of them.

10 Q. All of those three doctors were retained by plaintiff's
11 counsel, correct?

12 MR. MALLAS: Objection.

13 THE COURT: Sustained.

14 MR. MALLAS: I will stipulate to two of the three.

15 Q. Goldstein and Hausknecht were retained by plaintiff's
16 counsel. We will talk to Dr. Ladopoulos.

17 A. I don't recall. I don't know.

18 Q. Okay. The most recent record you had seen before you
19 conducted your examination of Mr. Peat from 2004, some five years
20 before you met with him, correct?

21 A. In terms of hospital records, yes, that's correct.

22 Q. And in addition to that, did you reach out to any of
23 the doctors? Did you have any discussions with them?

24 A. I did not, no.

25 Q. Okay. And other than you, for the purposes of this

th-b
Dr. Carfi - Plaintiff - Cross (Doody)

633

1 litigation, has Mr. Peat seen a rehabilitation specialist outside
2 of Jacobi Hospital since 2004?

3 A. I don't know whether he has or hasn't. But he should
4 be if he hasn't. But I don't know.

5 Q. Okay. You didn't read his -- did you read his
6 deposition testimony?

7 A. I did not.

8 Q. Did you read his trial testimony in this case?

9 A. No, I have not.

10 Q. Are you aware if he is getting any medical treatment at
11 the present time?

12 A. I am not aware of whether he is or isn't, no.

13 Q. And are you aware of any medical treatment that he has
14 gotten other than Dr. Ladopoulos since 2004?

15 A. I am not aware, no.

16 Q. And are you aware of what medications he is on at
17 present?

18 A. At present, no.

19 Q. But yet you put in costs for medications that you don't
20 even know if he is taking, correct?

21 A. I put in what he was taking in 2009. I don't know what
22 he is taking now, correct.

23 Q. What he was taking in 2009. You have in your report
24 that he told you he had high blood pressure, is that anywhere in
25 his medical records? Are you aware of any doctor who prescribed

th-b
Dr. Carfi - Plaintiff - Cross (Doody)

634

1 high blood pressure medication for him?

2 A. I don't recall, no.

3 Q. So he's gotten no rehabilitation specialist services,
4 correct? And certainly not for the last two years?

5 A. If you say so. I told you I don't know.

6 Q. Okay. So that -- two years at \$660 per year are out
7 already, right?

8 MR. MALLAS: I am sorry. I didn't hear that
9 question.

10 Q. Two years at \$660 a year since he didn't get the
11 treatment are out, since you did this two years ago, correct?

12 A. That is what he should be getting.

13 Q. But he didn't get it. So you can't charge a cost that
14 hasn't been incurred, can you?

15 A. No. I guess not.

16 Q. Let's talk a little bit about the elbow surgery. You
17 indicate if recommended by treating doctors.

18 What treating doctor did you have in mind when you put
19 that down there?

20 A. Treating orthopedist, if he has one.

21 Q. Does he have one?

22 A. Again, I don't know what sort of care he has been
23 getting since I saw him. He should be seeing someone, whether he
24 is or isn't.

25 Q. Are you aware of any doctor that is recommending that

th-b
Dr. Carfi - Plaintiff - Cross (Doody)

635

1 he undergo elbow surgery?

2 A. I know of no one that recommended it. That is why it's
3 put in those terms.

4 Q. Are you aware that Dr. Goldstein recommended no future
5 surgeries for him, are you aware of that?

6 A. Not specifically, no.

7 Q. And if you were aware of that, would that change your
8 opinion as to whether or not that was ever necessary? If Dr.
9 Goldstein said there were no future surgeries necessary, can we
10 take that out at \$20,900?

11 A. That is just one doctor's opinion. In my opinion he --
12 his right dominant arm is not functioning properly and he would
13 get better functioning, but I am not the orthopedist.

14 Q. That's right. You are not the orthopedist, are you?

15 A. I am not, no.

16 Q. Okay. You know the names of any of his treating
17 physicians at present?

18 A. Sorry. Didn't hear you.

19 Q. Do you know the names of any treating physicians at
20 present?

21 A. I do not, no.

22 Q. That's all right. Let's talk a little bit about the
23 medications that you indicate he's going to need.

24 You don't know if he is taking high blood pressure
25 medication at present?

th-b
Dr. Carfi - Plaintiff - Cross (Doody)

1 A. At present I don't know.

2 Q. And now with respect to the Zoloft, where did you get
3 Zoloft one hundred milligrams from?

4 A. He told me. That is part of my history.

5 Q. He told you that?

6 A. Yes. That is where the medications come from.

7 Q. And did he tell you he was taking it in 2009?

8 A. When I saw him in March of 2009 these were the
9 medicines he told me he was taking, yes.

10 Q. And do you know if he is taking any medication for
11 depression presently?

12 A. I don't know.

13 Q. Now, you indicate there that Zoloft, one hundred
14 milligrams, \$1,280 per year; is that correct?

15 A. Yes.

16 Q. You are aware that there is a generic Zoloft, are you
17 not?

18 A. There is a generic, but this is what he said he was
19 taking so that is what I wrote down.

20 Q. But all prescriptions in New York State will be filled
21 generically unless the doctor specifically requires it to be
22 dispensed as written, correct?

23 A. That would be correct.

24 Q. Did you price the generics Sertraline for the Zoloft,
25 did you price it?

th-b
Dr. Carfi - Plaintiff - Cross (Doody)

637

1 A. I did not. This is what he said he was taking, Zoloft.

2 Q. Did you ask him if he was taking any generic of Zoloft?

3 A. I did not specifically ask that question.

4 Q. Now, would you agree with me that the generic is quite
5 a bit less expensive?

6 A. Absolutely.

7 Q. Probably fifteen times less expensive, does that sound
8 about right?

9 A. I don't know significantly, but yes, less.

10 Q. So probably more realistic number if he were to take
11 generic, probable somewhere in the order of fifty, sixty bucks a
12 year?

13 A. I don't know specifics, but much less, yes.

14 Q. Who got you that price? Did you do that yourself?

15 A. I did that myself.

16 Q. You chose obviously to price the more expensive item,
17 correct?

18 A. I used Drugstore.com. That is what I used.

19 Q. Okay. I am sorry. I am sorry if I went off on a
20 tangent. I apologize. We were talking about how much do you
21 charge for -- how much do you charge to prepare a life care plan
22 in 2000?

23 A. \$2,650 for the plan itself.

24 Q. And for your time?

25 A. \$300 --

th-b
Dr. Carfi - Plaintiff - Cross (Doody)

1 Q. Testifying today -- for your time coming and joining us
2 today?

3 A. My testimony today is \$4,250.

4 Q. You speak very fast, Doctor.

5 A. \$4,250.

6 Q. And do you know how much time you took to review the
7 materials you were provided for in this case, and to meet with
8 Mr. Peat?

9 A. The review took about five and a half hours for a
10 medical record review. And that is \$300 an hour, because I know
11 you are going to ask me. And examining Mr. Peat is \$630.

12 Q. Okay. So approximately another 2,500, sound about
13 right?

14 A. Okay. That is about right.

15 Q. Approximately \$9,500 billing in this matter; is that
16 correct?

17 A. That would be about right, yes, sir.

18 Q. Okay. And you said you do about one hundred of these a
19 year, one hundred life care plans?

20 A. At this time it's between ninety and one hundred.

21 Q. You don't testify in all of them obviously, correct?

22 A. Yes, that's correct.

23 Q. And so generally it's one hundred a year at five
24 thousand per, sound about right?

25 A. No. They don't all take as long as far as the medical

th-b
Dr. Carfi - Plaintiff - Cross (Doody)

639

1 review. Each plan is 2,650 but sometimes the -- sometimes it's
2 an hour. Mr. Peat had a good two feet of records, something like
3 that.

4 Q. What percentage of your practice would you say is the
5 type of work you are doing with us today, and what have you done
6 with Mr. Peat?

7 A. I spend about sixty percent of my time medical/legal,
8 various types, whether it's like this or independent medical
9 evaluations or Department of Health State of New York. About
10 sixty percent of my time is forensic we will call it and forty
11 percent is clinical.

12 Q. Meaning you see patients forty percent of the time?

13 A. Correct.

14 Q. And you said you have admitting privileges in two
15 institutions?

16 A. I did not say that.

17 Q. I am sorry?

18 A. I said I was affiliated with two hospitals. I do not
19 admit, no.

20 Q. So you don't admit any patients, correct?

21 A. Not anymore, no.

22 Q. Okay. You -- generally psychiatrists do not provide
23 for the therapy, correct?

24 A. Generally speaking a psychiatrist does not provide the
25 psychotherapy, the counseling part. Psychologist or perhaps a

th-b
Dr. Carfi - Plaintiff - Cross (Doody)

640

1 social worker would do that.

2 Q. And do you know when the last time, if any, that Mr.
3 Peat received, if at all, Mr. Peat was seen by a psychologist?

4 A. Well, when I saw him he was getting counseling once a
5 week, I believe.

6 Q. And do you know by whom?

7 A. That was back then.

8 Q. By whom?

9 A. That I don't know.

10 Q. And in the last two years, or at any time since he got
11 out of Burke outpatient, are you aware of any -- are you aware of
12 Mr. Peat having any physical therapy?

13 A. I am not aware, no.

14 Q. And how about occupational therapy?

15 A. I am not aware.

16 Q. Are you aware that he does an exercise program at home?

17 A. I am not aware what he does exercise-wise at home, no.

18 Q. You had mentioned a scooter. Are you aware of any
19 ambulatory problems he is experiencing now?

20 A. Other than the pains he has in his knees, hips and
21 back, not specifically although I expect that to get worse as he
22 gets older.

23 Q. He is forty-four now. So you are saying in sixteen
24 years he will need a scooter.

25 Is that what you are saying?

th-b
Dr. Carfi - Plaintiff - Cross (Doody)

641

1 A. That is what I am suggesting, that is what I am saying,
2 yes.

3 Q. Okay.

4 (Brief pause.)

5 Q. Are you aware whether or not since you prepared your
6 report Mr. Peat has any home health aid assistance?

7 A. I am not aware that he does or he doesn't, no.

8 Q. You said you have done -- you worked in some burn
9 injury patients.

10 How many in the last five years?

11 A. Very rare. I would say probably in my career I have
12 dealt with ten or a dozen. In the last five years I could think
13 of only one. Most of these people tend to go to burn centers and
14 see the doctors at burn centers. It's unusual in the community
15 to actually see somebody. A lot of what I did was more when I
16 did inpatient work. My academic career. A few since then but
17 not many. Not very common.

18 Q. You testified on Direct that your numbers don't take
19 into account any growth rates, correct?

20 A. That is correct.

21 Q. And but you are aware, are you not, that your numbers
22 will be reviewed by an economist and growth rates apply then,
23 correct?

24 A. That's correct.

25 Q. This is not done in a vacuum?

th-b
Dr. Carfi - Plaintiff - Cross (Doody)

642

1 A. That's correct.

2 Q. And the economist in order to reach his projections
3 must have reliable numbers to begin with in the first instance,
4 wouldn't you agree with that?

5 A. Yes.

6 Q. And you're projecting physical and occupational therapy
7 for the remainder of his life, correct?

8 A. Yes.

9 Q. From two years ago until what is his life expectancy,
10 how many years?

11 A. Shouldn't be any reduction. So I would say
12 approximately at least another thirty years or so.

13 Q. And you've budgeted a urine. Did he ever advise you
14 that he had problems going to the bathroom?

15 A. Only as far as the hips and knee pain I felt it would
16 be easier and more functional for him to have that available to
17 him.

18 Q. You would agree with me that he is not bedridden?

19 A. Oh, no. He is not.

20 Q. Would you agree with me that he is able to take care of
21 his activities of daily living, correct?

22 A. Generally-speaking he did. He has some difficulties
23 because of that right arm. Activities such as home maintenance,
24 the cleaning and things of that nature, he has difficulties with.
25 His personal care he takes care of pretty much except the

th-b
Dr. Carfi - Plaintiff - Redirect

1 limitation of his right arm.

2 Q. You increase his home health aid requirements as he
3 gets older into the future, correct?

4 A. I did, yes.

5 Q. And you give him a hospital bed when he turns sixty,
6 correct?

7 A. I did do that, yes.

8 Q. And you are not aware of any difficulty he is having
9 getting in and out of bed, is that true?

10 A. At this time, no. That is why I projected it down the
11 road a bit.

12 Q. Just one other question and it's more for me, Doc.
13 Can you tell me what the entry in a hospital record "AO
14 X3" is?

15 A. "AO X3" generally means alert and oriented. Time,
16 person and place.

17 MR. VANETTEN: No questions.

18 MR. JONES: No questions.

19 REDIRECT EXAMINATION

20 BY MR. MALLAS:

21 Q. Now, with regards to the treatments Mr. Peat has gotten
22 in the past two years, wouldn't you agree that he needs these
23 treatments?

24 A. I would agree.

25 Q. And, in fact, when you do an analysis of your own

th-b
Dr. Carfi - Plaintiff - Redirect

1 patients there are many treatments that they haven't gotten,
2 correct?

3 A. Yes.

4 Q. That doesn't mean that he doesn't need them, correct?

5 A. Yes.

6 Q. And all these treatments you talk about are because of
7 the fire on Fordham Hill in July 2003, correct?

8 A. Yes.

9 Q. Whether or not he needs generic or brand name drugs,
10 all of those are because of what they did, correct?

11 MR. DOODY: Objection.

12 Q. Because of the fire on 2003?

13 THE COURT: Rephrase.

14 Q. All of those medications that he needs are because of
15 July 1st, 2003, correct?

16 A. Yes, that's correct.

17 Q. Okay. And the costs you gave the doctors, for example,
18 the orthopedist, okay, you are not factoring in the top notch
19 orthopedist or Hospital for Special Surgery or Joint Disease or
20 any one of those hospitals, correct?

21 A. Yes.

22 Q. You are taking the median, correct?

23 A. I am taking the community where I am, yes.

24 Q. And so if you wanted one of your patients to see the
25 very best, it would be significantly more than that, correct?

th-b
Dr. Carfi - Plaintiff - Redirect (Doody)

1 MR. DOODY: Objection.

2 A. That would be correct.

3 MR. MALLAS: Nothing further.

4 RE-CROSS-EXAMINATION

5 BY MR. DOODY:

6 Q. Doctor, I will not yell at you, Doctor.

7 Dr. Carfi, Mr. Peat had no back problems before -- that
8 you are aware of, did he?

9 MR. MALLAS: Before they caused them, Judge?

10 Q. Before the fire, correct?

11 A. That's correct, yes.

12 Q. So he could have bent down and checked the pilot light?

13 MR. MALLAS: Objection, Judge. Objection.

14 MR. DOODY: Nothing further.

15 THE COURT: All right.

16 MR. JONES: No questions.

17 THE COURT: You are excused.

18 (Witness excused.)

19 MR. MALLAS: Your Honor, may we approach?

20 (Whereupon, an off-the-record side-bar conference
21 was held.)

22 THE COURT: The plaintiff has not rested in his
23 case.

24 MR. MALLAS: I haven't, Judge.

25 THE COURT: Has not.