

4 objection to that.

5 There was one other issue that we were discussing
6 and that is where do you want this? (Indicating)

7 MR. ASHLEY: He's going to use that towards the end
8 of his testimony. At that point, do you want us to put it
9 up there so everybody can see it?

10 THE COURT: Where there's a vantage point that you
11 can all see it. If you can put it there and if you can see,
12 that will be fine.

13 MR. ASHLEY: I'll put it there now.

14 THE COURT: The officer will do that.
15 Get the jury, please.

16 THE COURT: Plaintiff's exhibit 28 is for I.D. at
17 this juncture.

18 (Plaintiff's Exhibit 28 is received and marked for
19 identification.)

20 THE COURT: The life care plan is now marked as
21 exhibit 28 for I.D. It's being offered. It will be
22 admitted subject to redactions which we'll do later.

23 (The jury enters the courtroom.)

24 THE COURT: Please be seated. Welcome back, jurors.
25 Mr. Ashley, you have a witness for us?

0

Dr. Kincaid - Direct - Ashley

679

1 MR. ASHLEY: Yes, your Honor.

2 This morning I'm calling Dr. Charles Kincaid.

3 THE COURT: Doctor, please come forward to be
4 sworn.

5 D R. C H A R L E S K I N C A I D, called as a

6 witness by and on behalf of the Plaintiff, having
7 been first duly sworn, was examined and testified as
8 follows:

9 THE COURT: What is your full name and your address,
10 please? Loudly so they hear you in the back.

11 THE WITNESS: Charles Kincaid, One University Plaza,
12 Suite 510, Hackensack, New Jersey, 07601.

13 THE COURT: You may inquire.

14 DIRECT EXAMINATION

15 BY MR. ASHLEY:

16 Q Good morning.

17 Can you tell the jury what is your specialty in?

18 A Yes, I'm a life care planner. I'm also a vocational
19 evaluator and counselor and I'm an assistive technology
20 practitioner.

21 Q Can you tell the jury what your education and training
22 in the field has been?

23 A I have a Bachelor of Arts in psychology from the
24 University of Wisconsin-Milwaukee, a certificate in
25 rehabilitation management from DePaul University, a master's

□

Dr. Kincaid - Direct - Ashley

680

1 degree in criminal justice administration from the university of
2 Wisconsin-Milwaukee, a PhD in rehabilitation counseling from
3 Syracuse University, a certificate in life care planning from
4 Capital University Law School.

5 Q I'm going to call you Dr. Kincaid because you have the
6 PhD degree. That's acceptable?

7 A That's fine.

8 Q Can you tell the jury what professional licenses and

9 certifications you have?

10 A Yes, I'm licensed in the State of New Jersey as a
11 rehabilitation counselor. I'm a certified rehabilitation
12 counselor. I'm also certified as a life care planner. I'm
13 certified as a vocational expert and as a life care planner, I
14 think I mentioned, and assistive technology practitioner.

15 Q What does that mean "assistive technology
16 practitioner"?

17 A That's a designation that's granted by the
18 Rehabilitation Engineering Society of North America. It means
19 I'm qualified to evaluate people for their assistive technology
20 needs both in the home and in the workplace, passed the
21 standardized tests and have the experience necessary to be a
22 qualified evaluator.

23 Q Are you a member of any professional organizations?

24 A Yes, I'm a member of the National Rehabilitation
25 Association, the Vocational Evaluators for Workers Compensation,

□

Dr. Kincaid - Direct - Ashley

681

1 American Board of Vocational Experts, International Association
2 of Rehabilitation Professionals, both the life care planning
3 divisions and the rehabilitation, and the International Academy
4 of Life Care Planners.

5 Q Can you tell the jury what your employment history has
6 been in the fields of vocational and rehabilitation life care
7 planning?

8 A I've been involved in the field for over 30 years.
9 I've worked for both private organizations, public and state
10 agencies providing both vocational evaluation and rehabilitation

11 counseling, life care planning as well as assistive technology
12 evaluation and plans for individuals with catastrophic and
13 developmental difficulties. I've worked in a variety of
14 organizations providing those services.

15 Q As part of your practice you perform these evaluations
16 in this kind of medical/legal environment?

17 A Yes, I do.

18 Q Do you do work for both plaintiffs and defendants in
19 terms of evaluation and testimony?

20 A Yes, I do.

21 Q About what percentage of your practice for each?

22 A About 60 percent for plaintiff attorneys and 40 percent
23 for defense attorneys.

24 Q Are you being compensated for your time here in court
25 today?

Dr. Kincaid - Direct - Ashley

682

1 A Yes, I am.

2 Q About how much?

3 A Three thousand five hundred dollars.

4 Q In connection with your work, did my office send you
5 certain records regarding Robert Messina?

6 A Yes, you did.

7 Q And, Doctor, you have your file with you today?

8 A Yes, I do.

9 Q If you need to refer to it, please feel free to.
10 what did those records include?

11 A They included medical records from Staten Island
12 University Hospital, also medical records from New York
13 University Hospital. It included legal documents, bill of

14 particulars as well as depositions of Mr. and Mrs. Messina and
15 doctors.

16 Q In connection with those records, did you also visit
17 with the Messinas?

18 A Yes, I did.

19 Q When was that?

20 A That was on February 25, 2011.

21 Q About how long were you with them that day?

22 A I was with them about three hours that day.

23 Q Did you get kind of a history from the Messinas?

24 A Yes, I did.

25 Q What is contained in your history?

□

Dr. Kincaid - Direct - Ashley

683

1 A In my history, I inquire about the person's educational
2 background, their work history, their current life-style, about
3 their limitations that they may be experiencing due to injuries
4 or illnesses. I also toured their home to look at how
5 accessible it was and what, if any ways, that that can be
6 improved upon.

7 Q Did you perform an evaluation for Mr. Messina?

8 A Yes, I did.

9 Q What is the purpose of your evaluation?

10 A The evaluation is to arrive at what are the necessary
11 medical and independent living needs for the individual I'm
12 evaluating, to determine what those are so that I can prepare a
13 life care plan for that individual which will lay out all of
14 those needs.

15 Q Did you find Mr. Messina to have any physical

16 limitations?

17 A Yes, I did.

18 Q What were those?

19 A He had limitations for standing and walking, stooping,
20 crouching, kneeling, bending, also for sitting for extended
21 periods of time.

22 Q Did you find any --

23 THE COURT: Doctor, keep your voice up. This blower
24 is competing with you.

25 THE WITNESS: I'm sorry.

□

Dr. Kincaid - Direct - Ashley

684

1 THE COURT: Thank you.

2 Q Did you find any limitations that he had regarding his
3 daily life or his activities of daily living?

4 A Yes, I did. He needed assistance with dressing,
5 bathing, with preparing food to eat, with driving, being
6 transported to various appointments. He was unable to drive.
7 He had limitations for walking any distances. He was using a
8 wheelchair. He was restricted to the first floor of his home
9 because he was unable to ascend the stairs to the second floor.

10 Q As part of your evaluation, do you determine a life
11 expectancy for clients?

12 A Yes, I do.

13 Q Did you do that for Mr. Messina?

14 A Yes, I did.

15 Q What was the life expectancy that you determined?

16 MR. CASTELLO: Objection, your Honor. He should
17 state his basis.

18 THE COURT: Foundation, please.
Page 8

19 Q What is the basis for your calculation?

20 A I contacted Mr. Messina's treating physician, Dr.
21 Mignola, who indicated that in his opinion Mr. Messina would
22 have a normal life expectancy and then based on that
23 information, there's information from the U.S. Census Bureau,
24 the National Vital Statistics Center which indicates based on a
25 person's age and gender and race what their normal life

□

Dr. Kincaid - Direct - Ashley

685

1 expectancy would be on average.

2 MR. CASTELLO: I'm going to object to this then,
3 your Honor. The person is not before us who gave him that
4 basis.

5 THE COURT: It is the basis that he would have a
6 normal life expectancy. It's going to be an issue of fact
7 for the jury.

8 we'll give you further instruction on life
9 expectancy in the final charge. It is up to you to
10 determine, based upon all of the evidence that you hear
11 here, whether the life expectancy of Mr. Messina is going to
12 fit within the statistical average that we will quote you
13 and I trust the doctor has his own quote on that. You may
14 compare the two if they're different. I don't know.

15 And based upon your experience and the testimony
16 that you hear, based upon his health conditions, his habits,
17 you'll determine whether he is going to have that normal
18 life expectancy.

19 So I will allow you to give your opinion as to what
20 the life expectancy would be and the jury would determine if

21 he has something other than a normal life expectancy.

22 You may proceed.

23 Q Dr. Kincaid, what did you determine his life expectancy
24 to be?

25 A When I interviewed him and did my evaluation, he was 63

Dr. Kincaid - Direct - Ashley

686

1 years of age and according to the U.S. Census Bureau, he would
2 have an additional 18.6 years of life, age 81.6 on average.

3 Q Did you formulate a life care plan for Mr. Messina?

4 A Yes, I did.

5 Q What is a life care plan?

6 A A life care plan is a report which lays out the future
7 medical and independent living needs of an individual along with
8 associated costs. So it's a cost for all of their medical needs
9 from doctor visits, medication, therapy visits, to assistive
10 technology, wheelchairs, modifications to their homes, anything
11 that is necessary for that person to function in their living
12 situation as well as medically take care of them.

13 Q Can you tell the jury what your general methodology is
14 in terms of formulating this kind of life care plan?

15 A Yes, I review the individual's medical records. I seek
16 information from their treating physicians to determine what the
17 long-term care needs will be for the individual.

18 As an assistive technology practitioner, I also
19 evaluate the person for technologies, modifications that can
20 assist them to live more independently and in their current
21 living situation.

22 So it's a combination of researching medical records,
23 talking to physicians, doing research as well in terms of cost

24 within the local area for the individual. So when I know what
25 the needs are of that person, I research cost by determining

□

Dr. Kincaid - Direct - Ashley

687

1 three sources of cost information for each of the items, the
2 services that the individual needs. Then I compile that into a
3 life care plan which lays out all of the person's needs over
4 their life span.

5 Q Doctor, I have a blank board with us here today and
6 markers. If you could show the jury your conclusions with
7 regards to Mr. Messina's life care plan? Feel free to use the
8 board as you need.

9 A Yes.

10 THE COURT: Can you see that?

11 MR. CASTELLO: I can see the board. It depends on
12 where Dr. Kincaid stands.

13 THE COURT: Jurors, you can all see the board?

14 THE JURY: Yes.

15 A In doing a life care plan, we break it down into
16 different categories of services. We also divide it in terms of
17 services that the person is going to need on an annual basis
18 versus one-time costs.

19 So for Mr. Messina, there were several one-time costs.
20 I'll do those first before we do the annual. So these would be
21 things that he would only need one for shorter duration.

22 The first is physicians and in this category he would
23 need a pain management evaluation. He reported that he's taking
24 medications on a regular basis for pain. So I've added in one
25 pain evaluation for him and the cost of that is \$345.66.

Dr. Kincaid - Direct - Ashley

1 The second is therapeutic evaluations.

2 Q What's in that category, Doctor?

3 A In that category is a nutrition evaluation and I'm just
4 going to go back to that section. Yes, we have a nutritional
5 evaluation as well as a handicapped driver evaluation. Mr.
6 Messina is not driving now because he's unable to, but by having
7 a driver evaluation, they can determine what would be essential
8 for him, what type of modifications, whether he'd be a candidate
9 for driving. So the cost of that is \$356.

10 Then we have therapies. Under that category, this
11 would be his driving training. If after the evaluation, he
12 would need training in terms of learning how to use any
13 modifications to a vehicle, if he had a modified van or
14 modifications to his car, he would have to have training on how
15 to use those before he could be licensed to drive those. The
16 cost of those are \$693.

17 Then we have home health care needs. The cost of those
18 -- that includes wound care. Mr. Messina still has decubiti
19 ulcers on both of his legs that he's receiving care twice
20 weekly, so I've included care for two to three years for those
21 decubiti ulcers and the cost of that is \$22,750.

22 Then we have the cost of home modifications. Mr.
23 Messina's home is not accessible to him. He does have an
24 elevator in the back of the house that he can use to access, but
25 if there were any fires in these situations where he could not

1 use that elevator or it broke down, he has no way of getting in
2 and out of the house without assistance from two or more
3 people. So this would be providing for modifications for that,
4 giving him a ramp.

5 Plus his bathroom, the doors to the house are not
6 accessible. They're not wide enough for him. So this would be
7 home refinements. The cost of those are \$78,258.06.

8 The total one-time cost would be \$102,402.72. Those
9 are one-time costs. So they would not be recurring.

10 Q Then there are recurring costs for Mr. Messina as
11 well?

12 A Yes.

13 Q What are included in that category and what are those?

14 A I'll just turn this over here.

15 Q Now this category is going to be the annual costs?

16 A Yes, these would be annual.

17 Q Which means they occur each year?

18 A That's right, exactly.

19 Here the first would be physicians and the cost is
20 \$3,496.56. For physicians, there are several different doctors
21 who are providing care to Mr. Messina. They include his general
22 practitioner who sees him once a month, his vascular surgeon who
23 is seeing him four times yearly, a nephrologist who sees him
24 four times yearly as well, an infectious disease specialist who
25 is seeing him four times a year and a podiatrist, also four

0

1 times a year. So the total cost of all of those doctors, the

2 visits would be \$3,496.56.⁰⁵²⁴¹¹

3 THE COURT: What's that number again?

4 THE WITNESS: \$3,496.56.

5 A Then for diagnostics, we have \$2,981.80. Under
6 diagnostics, this encompasses lab work. He needs regular blood
7 work, checks for both his blood count as well as for
8 coagulation. So the cost of that over a year is \$2,981.

9 The next category is evaluations. The cost of those
10 are \$229.99. Now under evaluation, we have a physical therapy
11 evaluation. His doctors recommended that he receive ongoing
12 physical therapy as well as occupational therapy. So every year
13 we have an evaluation to reassess his treatment in what types of
14 therapy he needs to be receiving.

15 The next is hospitalizations. Here the cost is \$14,574
16 per year. That is to account for the fact that he has recurring
17 decubiti ulcers and is likely to need hospitalizations each year
18 for treatment of those. So I put in a range of 7 to 21 days per
19 year. Fourteen thousand is the middle range. It's \$1,041 per
20 day for hospitalization, for care of decubiti ulcers.

21 The next category is medications and here we have
22 \$8,829.35. This includes -- he's on six different medications,
23 both for pain and for managing his blood, blood thinning, as
24 well as for gastric reflux. So the cost of those six
25 medications over the course of a year is that figure.

□

Dr. Kincaid - Direct - Ashley

691

1 Then we have aids for independent living. The cost of
2 that is \$1,263.85. Under that category we have several
3 different items. Here we have for Mr. Messina, he is unable to
4 access his bathroom and use of the shower. So I put in a shower

5 chair, heavy duty for him, a hand-held shower. Also a reacher
6 because he's confined to the wheelchair. It's a device that
7 allows you -- it has two prongs and a person can pick things and
8 bring items to himself. It also includes a walker. He uses a
9 walker and I've also included Roho cushions which are cushions
10 to help prevent decubiti ulcers, to sit on them. I also have a
11 transport board and lifeline services for him.

12 The next category is durable medical equipment and that
13 is \$1,959.58. The items included there include his manual
14 wheelchair and also electric wheelchair for use outside of the
15 home. It includes maintenance for those wheelchairs. They need
16 annual maintenance. Also there's an electric Hoyer lift. Mr.
17 Messina has difficulty arising from bed when he's lying down.
18 So he needs a lift that assists him to get out of bed. That's
19 the annual cost of those.

20 Next is home care and the cost of that is \$55,246.40.
21 That encompasses a home health aide. His treating physician,
22 Dr. Mignola, indicated that he would need a home health aide
23 eight hours a day to assist him and the cost of that over a year
24 is \$55,000.

25 Next is home maintenance and this includes both

692

Dr. Kincaid - Direct - Ashley

1 housecleaning -- I'll give you the cost first. It's \$8,607.16.
2 That includes housecleaning. It also includes house
3 maintenance, lawn care, snow removal, and maintenance for his
4 elevator. He purchased the elevator on his own, but it will
5 need maintenance to keep it in tip-top shape.

6 Although his spouse is doing some of the housecleaning

7 and the home maintenance, when doing a life care plan, we can't
8 assume she'll always be available to continue to perform those
9 duties, so they're provided for.

10 I also put in the transportation in a modified van.
11 Mr. Messina indicated that he would like to drive. He's
12 dependent on others now and can't drive his automobile, but with
13 a modified van he would be able to independently drive himself.
14 The annual cost of that is \$6,222.06.

15 I also have case management. A case manager would make
16 sure that the plan is being carried out. If there were any
17 adjustments, they would make sure he was receiving the
18 appropriate service. They would also help with cost
19 containment.

20 Q First, what is the cost for case management?

21 A Oh, I'm sorry, I forgot to put that in. That's
22 \$1,800.

23 Then the total cost per year is \$126,647.98.

24 Q Doctor, on your chart, I know you're taking it from
25 your chart in your report. You left out one category for

□

Dr. Kincaid - Direct - Ashley

693

1 supplies for \$634.89. I know that total is off by that number.

2 A Thank you. Let me put it right here. Thank you for
3 catching that.

4 That includes both vitamins for him, Ace bandages,
5 things that are recommended to help him maintain his health.

6 Q Again, these are yearly costs for all these products?

7 A That's correct, products and services.

8 Q And then do you have the calculations for what those
9 would be over his life span?

10 A Yes, I do. Over his life span, using that 18.6 years
11 of life expectancy, the costs for the annual would be
12 \$2,355,652.37. And then the one-time costs, if you added those
13 in, the \$102,402.72, the total is \$2,458,055.09.

14 Q Those are the requirements for the life care plan that
15 you developed for Robert Messina?

16 A Yes, they are.

17 Q Doctor, are your conclusions based to a reasonable
18 degree of certainty in the field of life care and rehabilitation
19 planning?

20 A Yes, they are.

21 MR. ASHLEY: I have nothing else, your Honor.

22 THE COURT: You want some time?

23 MR. CASTELLO: Just a few minutes, your Honor.

24 (The jury leaves the courtroom.)

25 (A short recess was taken.)

□

Dr. Kincaid - Cross - Castello

694

1 THE COURT: Okay, get the jury.

2 Doctor, you can resume the stand.

3 (The witness, Dr. Charles Kincaid, resumes the
4 witness stand and testifies further as follows:)

5 (The jury enters the courtroom.)

6 THE COURT: Please be seated.

7 Cross-examine?

8 MR. CASTELLO: Thank you, your Honor.

9 CROSS EXAMINATION

10 BY MR. CASTELLO:

11 Q Good morning, Doctor.

- 12 A Good morning.
- 13 Q Except to talk to you for a moment, it's fair to say
14 we've never met?
- 15 A That's correct.
- 16 Q And we've never spoken other than for a moment this
17 morning?
- 18 A That's correct.
- 19 Q Now you testified, I think, that your compensation in
20 connection with this case was \$3,500?
- 21 A Yes, for my time today.
- 22 Q Just for today?
- 23 A Yes.
- 24 Q Have you received other compensation before today?
- 25 A Yes.

□

Dr. Kincaid - Cross - Castello

695

- 1 Q How much was that?
- 2 A That was approximately \$3,500.
- 3 Q So your total that you expect to get for this case is
4 \$7,000?
- 5 A I've been paid \$7,000, yes.
- 6 Q I believe you said in direct examination, when Mr.
7 Ashley was asking you questions, that you take three sources to
8 get these costs?
- 9 A Yes, I do.
- 10 Q What are those sources?
- 11 A They're sources within the individual's loca⁷
12 I've called in order to get cost information for
13 items, the services that are provided.
- 14 Q And then do you take the lowest of th.

- 15 A I take the average of those.
- 16 Q Well, can you tell us, if you took the lowest cost for
17 all of those things, what would that have been?
- 18 A I would have to go through the -- I would have to do
19 the calculations. I couldn't tell you offhand.
- 20 Q So you'd have to do the entire calculations again if
21 you went for the lowest?
- 22 A Yes, exactly.
- 23 Q Do you have any sense of the relationship between the
24 average and the lowest?
- 25 A Each item is different. I can tell you by item, but I

□

696

Dr. Kincaid - Cross - Castello

- 1 didn't do an analysis of lowest to highest. I did the average.
- 2 Q Generally speaking, if Mr. Messina was purchasing these
3 items for himself, isn't it fair to say that he would probably
4 go for the lowest rather than pay the average?
- 5 A It depends on the individual. He may want to go for
6 the best quality product, the one that would best meet his
7 needs, so it would depend.
- 8 Q Well, the one that's the lowest of the three, are you
9 saying that you found that in each case the lowest was in some
10 way deficient from the average?
- 11 A No, that was the cost that the vendor was charging for
12 that item or that service, not that it was deficient in any
13 way.
- 14 Q And the process, I take it, is that you review certain
15 records?
- 16 A Yes, I do, the medical records as well as the legal

17 records.

18 Q In this case, did you -- withdrawn.

19 Do you review records before the interviews or after
20 the interviews?

21 A Before the interviews.

22 Q Is that sort of the first thing that you do?

23 A That would be the first thing. I will receive a set of
24 records which I would review to get a sense of the individual in
25 the case, the medical history.

□

Dr. Kincaid - Cross - Castello

697

1 Q And then you conduct interviews?

2 A Yes, I do.

3 Q Who did you interview in connection with this case?

4 A I interviewed Mr. and Mrs. Messina at their home. I
5 also obtained information from his treating physician, Dr.
6 Mignola.

7 Q Did you speak to him?

8 A No, he provided a written response to questions that I
9 submitted to him.

10 MR. CASTELLO: Your Honor, I would like to have
11 that.

12 Q Was that in that file that you showed me this morning?

13 A Yes, it is.

14 Q Oh, okay.

15 Then the purpose, I think you say on page two of your
16 report, you might remember this, but you might not, "The purpose
17 of this evaluation is to assess the extent to which disabling
18 conditions following medical procedures on August 31, 2006, will
19 impact this individual's future, medical, educational,

20 vocational, activities of daily living and independent living
21 needs."?

22 A That's correct.

23 Q Do you, yourself, identify the procedures that caused
24 the problems?

25 A No, I do not.

0

Dr. Kincaid - Cross - Castello

1 Q Are you just given a date from which you work forward?

2 A Yes, that's correct.

3 Q And do you, yourself, make an effort to determine the
4 patient's conditions before the procedures?

5 A No, I don't. I look at the person as they are at the
6 time I'm interviewing them to determine their future needs for
7 both medical and independent living.

8 Q Aren't you supposed to be looking at what their needs
9 are as a result of something that was done to them?

10 A I'm looking at their needs going forward. That's the
11 tryer of the facts. My understanding is that it's their role to
12 determine what caused those. I'm looking at the person as they
13 are.

14 Q All you're looking at is what this person needs to live
15 daily?

16 A Their medical and independent living needs, yes, as
17 they're presented to me in the medical records and through
18 interviews and in talking to their physicians.

19 Q And you don't look back to find out how they were
20 living before something happened?

21 A Well, I do question the individual about their

22 life-style beforehand, what they were capable of doing versus
23 their current situations. So I do try to get a sense of their
24 life-style to determine what they may have lost in terms of
25 their activities, how well they were able to function, were they

□

699

Dr. Kincaid - Cross - Castello

1 working or were they a contributing member to the household.
2 Those types of things I do inquire about.

3 Q How is it that the date is pinpointed -- here you
4 pinpointed August 31st. How is that pinpointed?

5 A That was the date that I understood from the verified
6 bill of particulars was the date of the incident, the medical
7 incident, starting then.

8 Q And I believe on page 10 of your report, you call that
9 the date of the accident?

10 A It should really be "incident" rather than "accident".

11 Q Is it fair to say that you need actuarial figures to be
12 determined by an economist?

13 A Yes. These figures are just in today's values, so the
14 figures that I gave you was in 2011. So if you were to project
15 those forward, they would have to be done by an economist.

16 Q You're not an economist?

17 A No, I'm not.

18 Q Now in terms of what medical records you received, do
19 you ask for certain things?

20 A I ask for whatever medical records are available to
21 review.

22 Q Did you review Golden Gate Nursing Home's records?

23 A No, I did not.

24 Q Are you aware that Mr. Messina was also at Golden Gate

25 in-between some of the admissions to Staten Island University

□

700

Dr. Kincaid - Cross - Castello

1 Hospital?

2 A Yes.

3 Q Did you ask for those records?

4 A I asked for whatever medical records were available to
5 review.

6 Q So it's your understanding that Golden Gate was not
7 available in some fashion?

8 A They were not presented to me, so I based my analysis
9 on the records that I did review.

10 Q Did you review records from Staten Island University
11 Hospital that postdated October 27th?

12 A Of 2008?

13 Q 2006.

14 A 2006, no.

15 Q So you only looked at Staten Island University Hospital
16 records from August 31st to October 27th?

17 A I just want to double check and make sure that I'm
18 being accurate.

19 (Short pause.)

20 A That's correct.

21 Q Do you know that he was in the hospital many more
22 months after that?

23 A Oh, yes. I was aware of that.

24 Q Did you ask for those records?

25 A I asked for whatever records could be provided to me.

Dr. Kincaid - Cross - Castello

1 Q You were aware that he was in the hospital past October
2 27th, right?

3 A Yes, and I have records through -- yes, I am aware.

4 Q And you asked for everything that could be available to
5 you?

6 A Yes, I did.

7 Q Are you saying that you were told past October 27,
8 2006, was not available for you?

9 A This was what was provided to me.

10 Q Did you review any depositions?

11 A Yes, I did.

12 Q Whose depositions did you review?

13 A I just want to be accurate again.

14 Defendant Bartolo Perloro, defendant Joseph DeBlasi,
15 defendant Giulio Bianchi, defendant Dr. Neville Mobarakai and
16 the deposition of Karen Farid were the depositions that I
17 reviewed.

18 Q Did you review any deposition of Mr. Messina?

19 A No, I do not have any here from him.

20 Q Did you think that might be something that would be
21 helpful for you in determining what his condition was like
22 before August 31st?

23 A Occasionally that's helpful, but I can cover that in my
24 interview where I do an extensive interview about the person and
25 their background, how their condition is affecting them. So I'm

Dr. Kincaid - Cross - Castello

1 able to get that through an interview.

2 Q Is the interview under oath?

3 A No, it's not.

4 Q Do you understand that the depositions are under oath?

5 A Oh, yes.

6 Q Don't you think it would be better to have somebody's
7 deposition under oath than an interview with them?

8 A Not necessarily. If I have them, I will check one
9 against the other, but I do the interviews which are fairly
10 extensive, so I feel comfortable and I state in my report the
11 information that I relied on that I obtained. So it's set
12 forth.

13 Q Did you interview Mr. and Mrs. Messina separately?

14 A No, they were together.

15 Q Don't you find that a more reliable method, if you're
16 going to check one against the other, is to interview the one
17 and then interview the other?

18 A I'm not necessarily checking what they're telling me
19 against each other. I said that in reference to a deposition
20 transcript where I would check to see what was said in
21 deposition versus what the person was saying in the evaluation.

22 Q Did you ask them for any documents to support things
23 they said to you in the interview with you?

24 A No, I did not.

25 Q For example, did you ask them to show you a gym

□

Dr. Kincaid - Cross - Castello

703

1 membership since he said he belonged to a gym?

2 A No, I did not.

3 Q You just accepted what they had to say?

4 A Yes, I did. I thought they were being accurate and
5 true in their statements.

6 Q Is it fair to say that, at least to some extent, your
7 life care plan is only as reliable as Mr. and Mrs. Messina are
8 reliable?

9 A Not necessarily. Some of the information I observed on
10 my own, the equipment they were using, the medications they were
11 taking. I also spoke with his physician.

12 So there are some items of information that I was
13 relying on that they were accurate too, but much of it I either
14 verified with their physician or with observation.

15 Q Did you talk to the physician?

16 A No, I asked for written information.

17 Q Did you ask for medical records of Mr. Messina for his
18 condition before August 31st?

19 A No, I did not.

20 Q Wouldn't that be helpful to you in trying to get him
21 back to the condition he was in, in terms of with your
22 assistance?

23 A My goal as a life care planner is to try to provide for
24 his medical needs and his best level of functioning that would
25 be possible with his current condition.

□

Dr. Kincaid - Cross - Castello

704

1 Q But if you had certain medical conditions before and
2 you don't know what they are, isn't it very possible that you're
3 giving him something for a condition that preexisted August
4 31st?

5 A I did ask him about conditions that he did have before
Page 26

6 August 31st and the plan provides for his medical needs going
7 forward.

8 Q He told you that there was no accident, injury, or
9 illness prior to the accident on August 31st, if you look at
10 page 10?

11 A Yes, I believe that's correct.

12 Q So you felt no need to talk to his primary care
13 physician who saw him for five years before this incident?

14 A I did request information from Dr. Mignola.

15 Q The primary care physician who saw him before this, Dr.
16 Manaro, is that somebody you got any information from?

17 A No, I did not.

18 Q So it's fair to say that you have no documentation as
19 to what Mr. Messina's condition was prior to August 31st?

20 A I have no medical documentation, that's correct.

21 Q Do you have any documentation as to what his medical
22 condition was prior to August 31, 2006?

23 A No, I do not.

24 Q So it's not just no medical documentation.

25 You have no documentation of his condition before

□

Dr. Kincaid - Cross - Castello

705

1 August 31st?

2 A That's correct.

3 Q Were you aware that he was morbidly obese before August
4 31, 2006?

5 A I knew in my questioning of him that his weight was
6 high, yes.

7 Q You say his weight was high, but were you aware that it

- 8 was morbidly obese?
- 9 A He would fit that definition, yes.
- 10 Q Were you aware for the preceding five years he weighed
- 11 300 pounds or so?
- 12 A I wasn't aware that for the preceding five years, but I
- 13 knew before the incident on 2006 he was overweight.
- 14 Q You're aware that health issues can result from a
- 15 serious obesity issue, is that fair to say?
- 16 A Yes, that's true.
- 17 Q Is it fair to say that can affect life expectancy?
- 18 A It can, depending on the individual. Each situation is
- 19 different. Each individual is different.
- 20 Q Is it fair to say that the obesity, itself, can cause
- 21 other medical conditions?
- 22 A From my readings, yes, I have seen literature to that
- 23 effect.
- 24 Q Are you aware that in this case there's been testimony
- 25 that Mr. Messina's morbid obesity did cause high blood

0

Dr. Kincaid - Cross - Castello

706

- 1 pressure? Are you aware of that?
- 2 A I have not seen any of the testimony in this case.
- 3 Q Are you aware that there is testimony in this case that
- 4 his morbid obesity also was a factor in him having diabetes?
- 5 A No, I was not aware of that testimony.
- 6 Q Were you aware of his high blood pressure?
- 7 A Yes, I was.
- 8 Q Were you aware of his diabetes?
- 9 A Yes, I was.
- 10 Q Were you aware that on August 31st, he presented at the

11 hospital with an altered mental state?

12 A Yes, I was.

13 Q Did you factor into his life expectancy his morbid
14 obesity?

15 A No, I relied upon his treating physician for a
16 prediction of what his life expectancy would be.

17 Q The answer is the same for his high blood pressure?

18 A That's correct.

19 Q And his diabetes?

20 A Yes.

21 Q His altered mental state?

22 A Yes.

23 Q Are you aware that in the hospital, when he first
24 presented that day, there was respiratory failure?

25 A Yes, I'm aware of that.

□

Dr. Kincaid - Cross - Castello

707

1 Q Did that factor into your life expectancy decision at
2 all?

3 A No.

4 Q Are you aware that he had kidney failure?

5 A Yes, I'm aware from the records.

6 Q And he also was on dialysis?

7 A Yes.

8 Q I think one of the physicians that you listed as
9 somebody he had to see several times a year was a nephrologist?

10 A Yes, that's correct.

11 Q Is that a doctor who deals with kidney problems?

12 A Yes, they do. They would deal with kidney, liver,

13 organs.

14 Q Are you able to say whether the kidney problems that he
15 is having now, whether they have anything to do with his issues
16 when he first presented to the hospital?

17 A I'm not able to say that with certainty. I can only
18 say that he's going to need those services going forward through
19 his life span.

20 Q What you don't know is whether he would have needed
21 those services even if he hadn't gone to the hospital?

22 A That would be a medical decision. I'm not a doctor.

23 Q So do you have any information on that?

24 A I have no opinion on that.

25 Q Do you have any information on that?

□

Dr. Kincaid - Cross - Castello

708

1 A No, I don't.

2 Q Are you aware that Staten Island University Hospital
3 saved his life in that admission that you saw between August
4 31st and October 27, 2006?

5 A I understand it was a life threatening situation. The
6 medical care brought him through it.

7 Q Are you aware that Mr. Messina had multiple conditions
8 that were frankly killing him while he was in that hospital?

9 A I don't know about the terminology you're using. I
10 know he had multiple medical conditions, yes.

11 Q And that he almost died?

12 A That it was life threatening, yes.

13 Q Now you say that the purpose of the evaluation is to
14 assess the extent to which disabling conditions following
15 medical procedures on August 31, 2006 will impact future needs?

16 A Yes.

17 Q And I didn't say everything you wrote there, but future
18 needs.

19 Are you aware of what the medical procedures were on
20 August 31st on 2006?

21 A I believe from what I've read in the legal documents
22 that there's a claim that there was medical malpractice.

23 Q On August 31st?

24 A No, through the course of the treatment.

25 Q So is the claim that beginning August 31st, there was

□

709

Dr. Kincaid - Cross - Castello

1 medical malpractice, is that your understanding?

2 A No, that was the beginning of his hospitalization, but
3 it was throughout the process is my understanding.

4 Q But when you're trying to assist him, aren't you trying
5 to take -- pinpoint as the time period, the time period where
6 malpractice takes place? Isn't that going forward what you
7 should be trying to help him with?

8 A I'm looking at his needs going forward as of the time I
9 evaluated him. I'm looking at his condition, what he needs in
10 terms of medical needs, durable medical equipment, independent
11 living aids.

12 Q So you look at him the day you met him and you say
13 here's the things he needs, right?

14 A Yes.

15 Q What you don't do is try to determine whether those
16 needs resulted from malpractice?

17 A That would not be my job. My job is to look at his

18 life care needs going forward. Understanding that that's the
19 tryer of facts. (Indicating)

20 Q Just so it's clear, you're not saying that those needs
21 resulted from malpractice, the things you've written on the
22 board?

23 A I'm saying those are his needs going forward. My
24 understanding is that that's the basis of this litigation today,
25 to determine whether there is a case.

□

Dr. Kincaid - Cross - Castello

710

1 Q But you're not saying those are his needs as a result
2 of malpractice?

3 A I'm saying those are his needs going forward. My
4 understanding is that there's a claim that there was malpractice
5 that caused those needs.

6 Q I understand that, but I just want to know what you're
7 saying here in this courtroom so it's clear to the jury what
8 your testimony is.

9 You're not saying that he requires -- and I need my
10 glasses for this -- \$3,996.56 (sic) a year for physicians as a
11 result of malpractice? You're not saying that?

12 A I'm saying those are his needs going forward. As I
13 said, that's what I understand is the basis of this litigation.

14 Q Listen to my question. What I'm asking is, just so
15 it's clear, are you saying that close to \$4,000 -- let me put it
16 this way.

17 Is it fair to say you're not saying that he needs
18 \$4,000 in physicians each year as a result of malpractice?

19 MR. ASHLEY: Objection, your Honor. They've been
20 back and forth on it. The answer is going to stay the same.

21 MR. CASTELLO: He hasn't answered the question yet.

22 MR. ASHLEY: I disagree. I think he has answered the
23 question. It's up to the jury to decide if those are as a
24 result of malpractice.

25 THE COURT: I'll let him clarify his answer.

□

711

Dr. Kincaid - Cross - Castello

1 Q I'm trying to clarify this point.

2 I understand that what you're saying is that that's
3 what he needed going forward and into the future, right?

4 A Yes.

5 Q And what I'm trying to clarify is, to make sure I
6 understand what you're not saying, you're not, yourself, telling
7 us that -- yourself, telling us that he needs these needs as a
8 result of the malpractice? Is that a fair statement?

9 A What I'm saying is that following the hospitalization
10 and alleged malpractice, he has these needs going forward.
11 Again, I can't -- it's up to the jury. So --

12 Q Are you saying --

13 THE COURT: Let him finish.

14 A It's up to the tryer of fact whether that, in fact, is
15 the cause.

16 Q So you're not saying that these are needs -- yourself,
17 as a witness, saying that these are needs based on malpractice.
18 That is something somebody else is deciding, is that fair to
19 say?

20 A That's correct, but these are his needs going forward.
21 That's what I'm saying.

22 Q Are you trying to determine what his needs will be

23 because he was hospitalized on August 31st?

24 A I'm trying to determine what his needs are going
25 forward from that hospitalization. These are the needs that he

712

Dr. Kincaid - Cross - Castello

1 has medically and otherwise.

2 Q On page three you talk about certain activities in the
3 background information, certain activities that he was doing
4 prior to injury?

5 A Yes.

6 THE COURT: Doctor, keep your voice up. We can't
7 hear you.

8 A Yes, I did.

9 Q Did you note how often he did these things?

10 A No, just that he did them. I don't think my notes
11 contain the exact number of times, just that these are things
12 that he enjoyed. It mentioned cruises. They went on several
13 over the years. They enjoyed that extensively.

14 Q what is the purpose of having that information?

15 A That tells me about the person's life-style that they
16 enjoyed in terms of looking at their future. It's to try to
17 help them live the highest quality of life and as independently
18 as possible, so if there's any way to help him return to those
19 or find alternatives. It gives me a sense about the person as
20 well.

21 Q Now you put in there that he was working out at the gym
22 which he states he's no longer able to perform at pre-injury
23 levels, right?

24 A That's what I stated.

25 Q Did you check for how often he was going to the gym

Dr. Kincaid - Cross - Castello

1 before August 31, 2006?

2 A I don't have a note to that effect. I don't recall a
3 specific conversation about it.

4 Q Were you aware that he had low exercise tolerance when
5 he was seeing Dr. Manaro, his primary care physician?

6 A I understood that he was trying to exercise to the best
7 of his ability by going to the gym.

8 Q But you don't have -- you didn't even look to see if he
9 had a gym membership, is that fair to say?

10 A No, I took him at his word that he was a member.

11 Q Now in terms of the cost items that you put up there on
12 the white board -- excuse me, on the board, you put down his
13 need for doctors, for physicians, right?

14 A That's correct.

15 Q That's that \$3,996.56 (sic)?

16 A Yes.

17 Q Do you have any idea how much he was spending on
18 physicians before August 31, 2006?

19 A No, I don't.

20 Q Wouldn't that be helpful in determining what needs he
21 had as a result of August 31, 2006?

22 A Again, I'm looking at his needs going forward and that,
23 again, is something that's not in my purview.

24 Q When you say not in your purview, what do you mean by
25 that?

Dr. Kincaid - Cross - Castello

1 A That means it's up to the tryer of fact in terms of
2 what is related to medical malpractice.

3 Q The same with medication, are you aware of the
4 medications he was taking before August 31, 2006?

5 A Yes.

6 Q What was the cost of his medications before August 31,
7 2006?

8 A I didn't assess those. I assessed the ones going
9 forward.

10 Q How about diagnostic? Did you check to see what his
11 diagnostic costs were before August 31, 2006?

12 A No, I didn't.

13 Q You noted on page 22 of your report physical therapy
14 and occupational therapy evaluation, right?

15 A Yes, that's correct.

16 Q Did you consider that he might have needed physical
17 therapy or occupational therapy as a result of the illnesses
18 that brought him to the hospital?

19 A I looked at his needs going forward. These were as a
20 result of his current condition. He would need these.

21 Q You noted that he would need a nutritionist, on page
22 23?

23 A Yes, yes, two times a year.

24 Q Are you aware that another one of his treating
25 physicians prior to August 31st, Dr. DeBlasi, requested that

0

Dr. Kincaid - Cross - Castello

1 he see a nutritionist? Are you aware of that?

- 2 A Prior to August 31st?
- 3 Q Correct.
- 4 A No, I'm not.
- 5 Q Then I guess you don't know that he didn't see a
6 nutritionist as his primary care physician recommended, right?
- 7 A I'm not aware of that.
- 8 Q By the way, did you ask him whether he had seen any of
9 these kinds of doctors before or any of these kinds of doctors
10 or other people before August 31st?
- 11 A Not before August 31st.
- 12 Q On page 24 you talk about costs of hospitalizations due
13 to decubitus ulcers and other infections?
- 14 A Yes.
- 15 Q I think you said that they were on his legs?
- 16 A Yes.
- 17 Q Are you aware that when he left Staten Island
18 University Hospital on October 27, 2006, he had no ulcers on his
19 legs?
- 20 A I don't recall that.
- 21 Q On home maintenance, is that the one that deals with
22 page 30?
- 23 A Yes, that would be -- yes.
- 24 Q Housecleaning, right?
- 25 A Yes, home maintenance.

□

Dr. Kincaid - Cross - Castello

716

- 1 Q I think you said that Mrs. Messina contributes to
2 housecleaning now?
- 3 A Yes.

4 Q But you can't count on her being able to do that in the
5 future?

6 A Whenever I'm doing a life care plan, this condition of
7 the spouse, they may be providing the service, but we can't
8 count on them always being there. They may have their own
9 illness or health issues.

10 Q So let me get this straight.

11 In terms of housecleaning and home maintenance, you
12 took into account that Mrs. Messina might have health issues
13 going forward, but you did not take into account that Mr.
14 Messina might, is that fair to say?

15 A In terms of -- I'm looking at his condition and his
16 needs going forward, irregardless of family members or any other
17 resource that he would need based on his condition.

18 Q You're predicting that he would need these things of
19 home maintenance through the age of 81.6, right?

20 A Yes.

21 Q Did you take into account that maybe at 80, he wouldn't
22 be cutting the grass?

23 A I looked at him as being capable through his life span.

24 Q The same with shoveling the snow.

25 At 80 you count on him being the one who would shovel

1 the snow but for what happened on August 31, 2006; is that
2 right?

3 A I included it through his life span.

4 Q And you had case management. What page is that on?

5 A That would be at page 33.

6 Q The case management person is \$1,800 a year?

7 A Yes, that's right.

8 Q What does that person do?

9 A That person coordinates with the party who needs the
10 services with their doctors, with the providers, to make sure
11 that the plan is on track, if there's any adjustments to
12 advocate for the person, to make sure that the cost -- there's
13 cost containment, that there's enough in the budget of the life
14 care plan. They assist the person. They help manage the
15 allocation of the plan, the resources.

16 Q Mr. Messina, is there anything about him that would not
17 permit him to do that for himself?

18 A You cannot be sure that he will be able to continue
19 doing that. Plus the case manager is someone who knows the
20 medical system, knows how to obtain services. He would be a lay
21 person. This would be someone who would be knowledgeable in the
22 area of health care service, provisions, how to find them.

23 Q Is it fair to say that you're giving him something in
24 case management that none of us are able to get?

25 MR. ASHLEY: Objection.

□

Dr. Kincaid - Cross - Castello

718

1 MR. CASTELLO: That's a fair question, your Honor.

2 MR. ASHLEY: He's giving him a lot that none of us
3 have to get.

4 THE COURT: Yes, okay.

5 A It's based on his needs. So someone with that
6 extensive in needs would definitely benefit from a case manager.

7 Q I understand someone would benefit from it, but you're
8 saying that this is a requirement. All these things in here are

9 things that he requires?

10 A Based on his needs, yes, he needs a case manager to
11 help him manage all of those various services and equipment.

12 Q Now if the jury finds -- if the jury is asked this
13 question and finds that his life expectancy, let's say, is half
14 of what you've projected it to be, is what they're supposed to
15 do then, if they agree with everything else you say, divide the
16 final number in half? Is that the idea?

17 A It's based on life expectancy, so if it was determined
18 that it would be half, then it would be half the cost, yes.

19 Q And a third, it would be a third?

20 A That's correct.

21 Q Now in terms of life expectancy, isn't an important
22 factor in determining life expectancy family history of life
23 expectancy?

24 A Occasionally it can be, yes, but I rely on the
25 physician who's treating the individual to give me a good

□

Dr. Kincaid - Cross - Castello

719

1 estimate of what would be the person's life expectancy.

2 Q You had the deposition of Mr. Messina -- no?

3 A No, I did not.

4 Q Okay, I'm sorry.

5 Are you aware that -- well, let me ask you this.

6 Did you ask him about his family history?

7 A No, I did not.

8 Q Are you aware that in his deposition he was asked
9 questions about family members and their lives, how long they
10 lived?

11 A I have not seen his deposition.

12 Q I realize you didn't see it, but did anybody make you
13 aware of that?

14 A No, they did not.

15 Q Did Dr. Mignola make you aware of his family history?

16 A My understanding is being his family physician, he
17 would have taken a detailed history from Mr. Messina.

18 Q My question is, did he pass that on to you?

19 A No, he did not.

20 Q Are you aware that Mr. Messina testified in his
21 deposition that his mother did not live to 81, she only lived to
22 78?

23 A No, I was not.

24 Q And she died of emphysema?

25 A No, I was not.

□

Dr. Kincaid - Cross - Castello

720

1 Q Are you aware that his father only lived until 60?

2 A No.

3 Q And he died of cancer?

4 A I was not aware.

5 Q Are you aware that he has two uncles who died of heart
6 attacks at the age of 65?

7 A No.

8 Q So I take it those weren't factors that you considered
9 in deciding what his life expectancy would be?

10 A I relied upon his treating physician for an estimation
11 of his life expectancy.

12 Q And that treating physician said that he had a normal
13 life expectancy, right?

- 14 A That's correct.
- 15 Q And that's even today, in the condition he's in, he has
16 a normal life expectancy?
- 17 A That was as of March, 2011.
- 18 Q I'm sorry, you wouldn't have known today, but as of
19 March, when you last interacted with the physician, he said that
20 at that time he had an expectation of a normal life expectancy?
- 21 A That's correct.
- 22 Q Did you ask Mr. Messina if he had smoked cigarettes?
- 23 A I asked him if he smoked now and he said he did not.
- 24 Q Did you ask the next question which is did you ever
25 smoke?

Dr. Kincaid - Cross - Castello

- 1 A No, I don't recall asking him that.
- 2 Q So you're not aware or maybe you are, I don't know.
3 Are you aware that he smoked for about 40 years?
- 4 A No, I was not.
- 5 Q Are you aware that when he did smoke, he smoked two to
6 three packs per day?
- 7 A No.
- 8 Q Are you aware he only quit in 2001?
- 9 A No, just that he had quit when I interviewed him.
- 10 Q Isn't it important in terms of life expectancy to
11 figure out how long a person smoked?
- 12 A Again, I rely on their treating physician who would
13 have the most intimate knowledge of the individual and their
14 condition to give a good estimate of their life expectancy.
- 15 Q Why did you ask him if he smoked?
- 16 A Sometimes that can be a factor in terms of their needs

17 going forward. So if they're smoking, I always look at that as
18 something in terms of their life-style.

19 Q What needs would somebody who smoked have? What needs
20 would he have if he did smoke?

21 A If he was smoking currently, I would have wanted to ask
22 his physicians about whether there were any respiratory
23 complications from that or potential conditions that could arise
24 from it. I would include that in my plan as a potential
25 complication.

722

Dr. Kincaid - Cross - Castello

1 Q When you say "complication", something additional that
2 he could get?

3 A That he could need, so I've met his accounting for it.

4 Q So you're trying to account for a need that he has in
5 an activity that he does that's unhealthy for him. That's what
6 you would do?

7 A Yes, I would put that in my plan as a potential
8 complication for that individual.

9 Q That's a complication that you would, based on your
10 charts, ask a defendant to pay for if he did currently smoke?

11 A Oh, no, not at all. I would put it in -- to be
12 complete and accurate, I would put -- there's a complication
13 section in the report and I would note it there, but I would not
14 add that as a cost to the plan because that typically isn't
15 related to the individual's injury or accident.

16 Q But I thought you didn't make a decision as to what was
17 related to his injury, just looked at what he needed?

18 A That's correct. I looked at his needs going forward.

19 If it had been something like smoking, if he was a current
20 smoker, I would have put that in potential complications.

21 Q You didn't put any potential complications in your
22 report?

23 A Yes, I did. On page 34, I put in that Dr. Mignola said
24 he may need additional plastic surgery in the future, but it was
25 uncertain. It was just a possibility, so I didn't add any cost

□

723

Dr. Kincaid - Cross - Castello

1 in for that.

2 Q But if he could have given you numbers for that, you
3 would have included it?

4 A If the plastic surgeon had said definitely that this is
5 something that would be in his future, then I would have put
6 numbers in, yes.

7 Q That's something that you would have, if there was
8 liability on the defendant's part, asked that the defendant pay?

9 A Well, I put it in my plan as far as what that person's
10 needs are.

11 Q Let's go back to the smoking.

12 If the person smoked and the doctor told you there's
13 complications that result from that, that's something you would
14 put in your plan under "Complications"?

15 A Yes, I would. Not asking to be paid for, but just
16 indicating that that's a need for the person going forward.

17 Q Let me ask you -- you're testifying here as an
18 expert -- a hypothetical.

19 Being aware, if it's true, that Mr. Messina is morbidly
20 obese, was so on August 31st, that he had the smoking habit I
21 described, diabetes, high blood pressure, respiratory failure,

22 knowing those things, if those are true, would you reduce the
23 life expectancy -- he smoked for 40 years, two to three packs a
24 day -- would you reduce his life expectancy?

25 A I think that's a medical decision. I would rely upon

D

724

Dr. Kincaid - Cross - Castello

1 his medical doctors to make that determination.

2 Q So for life expectancy, you just ask somebody and you
3 put that number?

4 A I asked the individuals who are treating him, who know
5 his medical condition and the complications from that going
6 forward, to give an estimation. In my experience, they are the
7 best people to give that estimation.

8 Q I didn't mean just ask anybody on the street. I mean
9 you rely on what somebody else tells you?

10 A Right.

11 MR. CASTELLO: I have no other questions.

12 THE COURT: Mr. Ashley?

13 MR. ASHLEY: Sure.

14 REDIRECT EXAMINATION

15 BY MR. ASHLEY:

16 Q When you testified just now that you looked at Mr.
17 Messina going forward, it's from when you met him?

18 A Yes.

19 Q So you didn't go into, you know, into his time and
20 service in Vietnam either; is that right?

21 A That's correct.

22 MR. CASTELLO: Objection, your Honor.

23 THE COURT: Yes, sustained.

24 MR. ASHLEY: If you want to talk about what happened
25 in the past, your Honor, let's talk about all of it.

Dr. Kincaid - Redirect - Ashley

725

1 MR. CASTELLO: My objection is it should be relevant
2 things that happened in the past.

3 THE COURT: Sustained. It should be relevant.

4 Q When we talked about what condition he went to the
5 hospital on August 31st, do you recall that testimony just now?

6 A Yes.

7 Q Did you also, when you talked to Mr. Messina, did you
8 find out that before that date he worked on his own out of the
9 house?

10 A Yes, my understanding was that he was working. He was
11 employed.

12 Q And he was able to get around on his own?

13 A Yes.

14 Q And he was able to use a car by himself?

15 A Yes. He was productive and an active person.

16 Q And he could use the bathroom within his own house on
17 his own?

18 A Yes, that was my understanding.

19 Q And when you talked about -- by the way, the dollar
20 values you gave, just to be clear, those are present value?

21 A Yes, right, those are values in 2011 -- March of 2011
22 for those services and items.

23 Q Now the case manager that was talked about, that
24 person, one of their functions is also to contain costs?

25 A That's correct. There's a budget for the life care

Dr. Kincaid - Redirect - Ashley

1 plan costs. So to help that person stay within that budget so
2 they don't overspend and not have enough money to cover their
3 costs in other areas, they help manage that going forward.

4 Q The case manager is not an average person. This is a
5 person who has specialized knowledge in the field of medicine
6 and costs in regard to a life care plan?

7 MR. CASTELLO: Objection, your Honor, leading.

8 THE COURT: Sustained.

9 Q What is the qualification of a case manager?

10 A They have to be trained in case management. There are
11 special designations for case management, certified case
12 managers. So they have the training, the education, the
13 background on how to prepare these plans, how to monitor them.
14 There's standards of practice for doing this.

15 It could be a rehabilitation counselor, it could be a
16 nurse, a social worker, someone who has the background and
17 training in putting these plans or monitoring them, making sure
18 that that person receives all of their needs.

19 Q And the number you gave us for life expectancy, that
20 comes from the Bureau of Census?

21 A The U.S. Census Bureau, National Vital Statistics
22 Center.

23 Q Fair to say that someone could live longer than that
24 number that they give them or they could live shorter?

25 A That's an average number for an individual of Mr.

1 Messina's age, gender and race.

2 Q When you met with Mr. Messina, did he have cancer?

3 A Not that I'm aware of.

4 Q When you talk about that's an average number, going
5 back to your numbers that you gave, you said that's the average
6 of the three numbers that you collected, right?

7 A I research at least three cost centers for each item.
8 So it's the average of the three.

9 Q So it's fair to say that the numbers you gave, if we
10 picked the most expensive item in each category, the numbers you
11 gave would be too low?

12 A Yes, if you use the most expensive, they'd be higher.

13 MR. ASHLEY: Thank you. I have nothing else.

14 MR. CASTELLO: Very briefly, your Honor.

15 RE CROSS EXAMINATION

16 BY MR. CASTELLO:

17 Q When you're talking about the Census numbers, it's the
18 average life expectancy for someone who has a normal life
19 expectancy; is that right?

20 A It's for everyone within that age group. So he's 63,
21 so for the average 63 year old, they would have an additional
22 18.6 years of life. It's everybody within that age group.

23 Q It doesn't take into account specifically any health
24 issues he has?

25 A It just looks at that age as a group.

□

Dr. Kincaid - Recross - Castello

728

1 Q Is it fair to say it does not take into account any
2 specific health issues?

3 A No, that would be the normal life expectancy for
4 someone of that age.

5 Q Not taking into account specific health issues?

6 A It looks at people across the full spectrum of
7 individuals, with and without health conditions.

8 MR. CASTELLO: No other questions.

9 MR. ASHLEY: I have nothing else, your Honor.

10 THE COURT: Thank you, Doctor. You may step down.
11 (Witness excused.)

12 THE COURT: Mr. Ashley, do you have anything else?

13 MR. ASHLEY: Nothing else, your Honor, nothing for
14 today.

15 THE COURT: Anything else?

16 MR. ASHLEY: No. I would just like to approach
17 before we continue for a moment.

18 THE COURT: Okay.

19 (An off-the-record discussion was held at the
20 bench.)

21 MR. ASHLEY: At this point the plaintiff would rest,
22 your Honor.

23 THE COURT: Ladies and gentlemen of the jury, the
24 plaintiff has put in their case. You'll hear no other
25 testimony on their case or any evidence. We will start

□

Proceedings

729

1 tomorrow with the defense case.

2 we're going to release you for the day. Tomorrow we
3 have a witness at what time?

4 MR. CASTELLO: 10:00, your Honor.