

Proceeding

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(The Court recessed for lunch and resumed in the afternoon.)

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A-F-T-E-R-N-O-O-N S-E-S-S-I-O-N

COURT OFFICER: Okay, Judge.

THE COURT: Let's go.

COURT OFFICER: All rise, jury entering.

THE COURT: Let's proceed.

MR. WALKER: Thank you, Judge.

Your Honor, I'd like to call Dr. Richard Schuster to the stand please.

D R. R I C H A R D S C H U S T E R, a witness called on behalf of Plaintiff, having been duly sworn by the Court Clerk, was examined and testified as follows:

COURT CLERK: Please be seated.

In a loud and clear voice, what is your full name? Spell all the names.

THE WITNESS: Richard Schuster -- S-C-H-U-S-T-E-R.

COURT CLERK: Business address?

THE WITNESS: 275 Madison Avenue, New York, New York.

COURT CLERK: Zip code?

THE WITNESS: 10016.

COURT CLERK: Thank you.

Dr. Schuster-Direct-Mr. Walker

1 DIRECT EXAMINATION

2 BY MR. WALKER:

3 Q Good afternoon, Dr. Schuster. How are you?

4 A Good afternoon.

5 Q Would you tell us a little bit about your  
6 educational training, sir?

7 A My initial training is in psychology,  
8 neuropsychology, and rehabilitation.

9 My education is City College of New York. I  
10 graduated in 1968, majored in psychology, graduated Phi Beta  
11 Kappa and went on for my PhD in clinical psychology at New  
12 York University graduating in 1973.

13 Since that point I have not been back to school  
14 for additional formal degrees but have been ongoing in  
15 continuing education in the field of psychology,  
16 neuropsychology and rehabilitation on a regular basis since.

17 Q Do you hold any certifications, sir?

18 A Of course. I'm a certified psychologist in New  
19 York State, and I applied for national board certification  
20 in the field of neuropsychology case management, vocational  
21 neuropsychology, and medical psychotherapy.

22 Q Would you just briefly describe those fields for  
23 us?

24 A Neuropsychology is a subspecialty of clinical  
25 psychology which was the original field that I was of course

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1 trained in.

2           Neuropsychology represents understanding of brain,  
3 behavioral relationship, and is fundamental to your  
4 mentality.

5           The neuropsychologist works with people who have  
6 some type of brain dysfunction in the same types of ways  
7 that a clinical psychologist would work with people who have  
8 some type of mental illness.

9           So it would be working at a brain injury unit.  
10 It's doing neuropsychological testing as opposed to  
11 psychological testing.

12           It would be doing cognitive remediation, working  
13 with people with brain injury in terms of getting them back  
14 to work, their rehab; the same type of woes that a clinical  
15 psychologist would deal with people who have mental illness.

16           Q     And your other certifications?

17           A     That's one of my certifications.

18           Q     Have you explained them all now?

19           A     The other ones?

20                     Oh, the vocational neuropsychologist deals with  
21 people who have some type of brain damage or brain  
22 dysfunction.

23                     The relationship to the world of work case  
24 management, it deals with working with the managing or care  
25 of people with disabilities, whatever they may be. It would

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1 include discharge planning and life care planning which is  
2 developing a plan of care for the person from now until the  
3 anticipated time of their death concerning their future  
4 various needs related to disability and medical.

5 Psychotherapy is dealing with people who have  
6 physical disabilities in terms of psychotherapeutic care and  
7 counseling.

8 Q All right, in your vocation and training and  
9 actual practice, Dr. Schuster, did you have occasion to deal  
10 with young people that have different types of disabilities?

11 A Sure.

12 Q Could you tell us a little about your experience  
13 in that?

14 A Well, after my four years at the VA Hospital here  
15 in New York, during my graduate school time the first  
16 position was with the New York State Drug Abuse Control  
17 Commission in an adolescent unit in Manhattan inpatient unit  
18 with kids who have drug problems, psychiatric learning  
19 disabilities, brain damage, multiple disabled kids; and of  
20 course I was involved with the rehabilitation needs of these  
21 children.

22 It was during that time that I began working with  
23 the State rehabilitation agency here in New York. This is  
24 now the early to mid '70s.

25 At that point the State rehabilitation agency was

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1 called OVR which stands for office of Vocational  
2 Rehabilitation. About 20 years ago the name changed to  
3 VESID which stands of Vocational Educational Services for  
4 Individuals with Disabilities. About two months ago, they  
5 changed the name to ACCES, Adult Continuous Career Education  
6 Services. It's the same organization.

7           There was an OVR counsel located in the facility,  
8 and I began working with the counselor in terms of  
9 developing appropriate discharge vocational and educational  
10 plans for these adolescents upon leaving the facility. We  
11 obviously were not going to let these kids just go out in  
12 the community. We were going to have a rehab plan for them.

13           I was at Cooper Rehabilitation Center for about  
14 two years in the mid '70s. My day job was with Family Court  
15 of New York City. I was the director of the Bronx Family  
16 Court mental health clinic, and of course it's with children  
17 obviously, and chief psychologist for the entire mental  
18 health service for the City of New York.

19           We fundamentally did the evaluation that the Court  
20 requested in terms of addressing the needs of Family Court,  
21 and that was my day job from the mid '70s to the mid '80s.

22           Simultaneously I did a private practice that was  
23 in the field of rehab. I became an independent consultant  
24 for OVR for health insurance plan. This is mostly with kids  
25 with learning disabilities or emotional problems, for social

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1 security disability, for worker's Comp and whatever.

2 I would see about ten people per week for  
3 vocational rehabilitation assessments during those years in  
4 my private practice.

5 In the mid '80s I left Family Court and moved  
6 completely to the private rehab sector. That was about the  
7 past 25 years or so.

8 I'm still an active consultant of VESID, of ACCES.  
9 I see a couple of people a day on average who are scheduled  
10 for dealing with vocational issues; neuropsychological  
11 assessment one or two a week for people with some type of  
12 brain dysfunction or brain damage; kids with learning  
13 disabilities; or people with strokes, traumatic brain  
14 injury, whatever, gearing them toward their appropriate  
15 vocational rehabilitation plans.

16 I am a consultant for the Board of Ed for the City  
17 of New York as a special evaluator for children with special  
18 needs.

19 Basically, if you believe that the individual  
20 education plan created by the Board of Ed is inadequate, you  
21 have a chance to have an independent evaluator evaluate your  
22 child and come back with recommendations about what are  
23 appropriate educational needs for the child.

24 I do evaluations for private citizens, kids with  
25 learning disabilities, stroke victims, psychological

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1 evaluations.

2 I get involved in legal cases like this with a  
3 rehabilitation focus; about two percent or so. A very small  
4 percentage of cases that I see will have something to do  
5 with my work in Family Court; also, the neuropsychological  
6 focus as well.

7 Q Is evaluating persons with disabilities and doing  
8 a vocational rehabilitation analysis and plan; is this  
9 something that you do regularly?

10 A Eight, ten, 12, times per week for the past 30  
11 years. I've done literally tens of thousands of these. I  
12 have been doing them since the mid '70s.

13 Q And you mentioned that you have also been  
14 requested to do this in connection with a Court case in the  
15 past?

16 A I have.

17 Q Has the City -- by the way, has the City of New  
18 York actually used you in the past?

19 A Yes.

20 MS. COYNE: Objection.

21 Q How many times?

22 THE COURT: I'm sorry?

23 MR. WALKER: That was an objection.

24 THE COURT: I didn't hear. What was the  
25 question?

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1 MR. WALKER: Had he been retained by the City  
2 previously?

3 THE COURT: Overruled.

4 A Yes, I have been.

5 Q Now, were you retained by my office to evaluate a  
6 young man by the name of Anthony Turturro?

7 A I was.

8 Q For what sort of evaluation?

9 A Standard procedure; everything. If you're going  
10 to be seeing somebody at a point in time, the first thing  
11 that I want to know is what happened up until that moment.

12 So you would get an idea about how the person has  
13 developed, what the problems have been, what kind of  
14 strengths and weaknesses they have upon physical exam; for  
15 example their condition may have changed.

16 So I ask for whatever records are available. I  
17 received a very large stack of records of which I didn't  
18 bring all of them, but a large percentage. I went through  
19 those in detail. They would use Anthony's pre-injury  
20 educational records, his medical records, and school records  
21 for testing as well.

22 After I reviewed that, I then would see the  
23 client, and I conduct an evaluation that's going to be  
24 geared to the client's capacities and to answer the types of  
25 questions that I'm looking at. That's going to change with



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1 the client's age; the disability claim and the questions  
2 that I need to do an evaluation.

3 After I finish that assessment, I may write a  
4 report. I may request other experts to get involved or  
5 specialists to get involved to understand the case, and I do  
6 a late analysis. It's going to depend of course on the  
7 specific questions that I was asked at that moment.

8 Q Let's talk about Anthony's case. You got records.  
9 That was the first step. We have them in evidence.  
10 Yesterday we had a Dr. Shields.

11 You know Dr. Shields?

12 A I do.

13 Q He's testified in great detail about a summary of  
14 the boy's condition, so I'm not asking you to resummari-  
15 ze, but if there is something that's relevant to your aspect of  
16 it, by all means I'm not precluding you from referring to  
17 it. What was the next step in your evaluation of Anthony?

18 A I went to Anthony's house and evaluated him. I  
19 had a conference with his family and went through an  
20 evaluation with Anthony.

21 Q Tell us in terms of evaluation of Anthony how you  
22 did that, and if there is any relevant finding?

23 A Sure. well, there are two things that are  
24 important to assess to begin with when one is doing this  
25 type of evaluation with somebody who has some type of what I

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1 would characterize as an output channel deficit.

2 Now, Anthony has two. He has a motoric problem  
3 with his hands and ambulations, but he works very slowly  
4 with his hands.

5 He also had an -- which was probably more  
6 pronounced when I saw him. He couldn't speak at all for all  
7 practical purposes. He had to write answers to me; very  
8 significant expressive language problem. So I specifically  
9 chose an IQ test to get an understanding.

10 If I want to look at his -- the way his brain  
11 works, I want to give him a test that's not going to have  
12 these characteristics potentially contaminating the results.

13 So if I give him a test that requires language  
14 which most people could handle that requires a lot of  
15 speaking, he may do poorly on it because of his expressive  
16 problem with talking even though he may have the knowledge  
17 encapsulated within his head.

18 So I want to give him a test also that doesn't  
19 require any changes in the standard administration. Once  
20 you change the way you administer the test, comparing that  
21 person to other people who took the test becomes invalid  
22 because they have had a different administration.

23 So one of the previous examiners for example  
24 instead of giving Anthony the part of the test where he has  
25 to express himself, they gave it to him in multiple choice

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1 fashion which of course channels the whole multiple choice  
2 if he's going to get one out of four correct just by chance  
3 alone.

4 Recognition is much easier than recall. So  
5 however he performed on that test would have no -- you  
6 couldn't compare it to the people that it was performed  
7 against because they really had a different assignment.

8 So I chose an IQ test in which there was only a  
9 one word response and verbal assignment, so he would either  
10 write it, or if he could, verbalize it; or in the nonverbal  
11 assignment, just point in untimed fashion to bypass those  
12 expressive motoric deficits.

13 Q You're doing this to get a more accurate read of  
14 his actual --

15 MS. COYNE: Objection.

16 MR. WALKER: I will withdraw it, Judge.

17 THE COURT: Why did you -- for what purpose  
18 did you do that?

19 THE WITNESS: To get an accurate  
20 representation of how his brain is working.

21 Okay, I know that he has --

22 THE COURT: Thank you.

23 Q What did you find, Doctor?

24 Had you finished your answer? Is there something  
25 else?

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1           A     Yes. Looking at these tests, his overall  
2 intelligence fell at the approximate 10th or 11th  
3 percentile.

4           Q     Was does that mean?

5           A     It means about 89, 90 percent of kids his age  
6 across the United States did better than him.

7                     Now, looking at his pre-injury standardized  
8 testing, his scores were at the -- in the average to the  
9 high average range so that his scores on pre-injury testing  
10 range from a low of the 64 percentile to a high of the 86  
11 percentile, meaning on these tests that were given to him  
12 before he was injured, he did better than about two -- at  
13 least better than two out of three kids his age up to better  
14 than about 85 percent of kids his age.

15                     So there was a very significant global drop in his  
16 basic level of intellect, and even on these assignments  
17 requiring some skill and ability, the range of some were  
18 very deficient which is what you would expect to see with  
19 someone who has a traumatic brain injury. Part of their  
20 brain is still not injured and are at least reminiscent of  
21 where they would have been if this didn't happen to him.

22                     I gave him a test of processing speed. Let's see  
23 how quickly he can do something that doesn't require a lot  
24 of thinking, just rapid processing; and I chose a test again  
25 that required a simple one simple stroke as opposed to other

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1 processing speed assignments that require more fine motor  
2 control; again, to try to bypass or minimize his motoric  
3 problem.

4 His score on this and these assignments were  
5 severely deficient; below 99.9 percent of kids his age  
6 across the United States.

7 Oh, by the way, these scores were similar to  
8 scores noted throughout most of his educational testing. I  
9 want to make that vary clear. His functions were borderline  
10 to average; again, like many of his scores centered around  
11 the low average range. He had a severe deficit in  
12 processing speed and relative deficits in working memory,  
13 concentration, and attention as well.

14 I gave him a test of motor skills to see how he  
15 did with picking up little pegs and putting them on boards.  
16 Scores were severely impaired with both hands; well below  
17 the first percentile when compared to males 15 to 20 years  
18 of age. He was 15 at the time that I saw him. He had a  
19 problem with upper dexterity ability in terms of execution.

20 Academic skills were in the low average range in  
21 reading and math test; on a fourth to fifth grade level at  
22 the time that I saw him. These scores again were very  
23 similar to all the scores administered previously.

24 I also had Anthony and his mother fill out  
25 inventories in which they gave their impression of Anthony

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1 from his mother's prospective, and Anthony giving his  
2 impression of himself.

3 Poor self-esteem. Feelings of inadequacy emerged  
4 from Anthony's profile.

5 No severe acting out problems. Consistent.  
6 Characterized as very nice, hard-working, good kid. That's  
7 the way that he is portrayed; his mother saw him as being,  
8 and Anthony admitted attention problems.

9 His mother saw him as being in an at risk category  
10 in terms of anxiety and depression. She saw him as having  
11 some more adjustment problems than Anthony himself  
12 purported. His mother additionally completed an inventory  
13 in which she rated Anthony's adaptive competence.

14 MS. COYNE: Objection to this, your Honor, if  
15 we can approach.

16 (Off-the-record bench conference.)

17 Q Dr. Schuster, just forgive me for interrupting. I  
18 just want to make clear. These assessments and tests that  
19 you're giving are part of a standard evaluation?

20 A Yes.

21 Q Of a patient?

22 MS. COYNE: Objection, your Honor. Form.

23 THE COURT: I'll allow it; and the mother's  
24 reaction is part of this testing process?

25 THE WITNESS: Oh, absolutely.

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1 THE COURT: Thank you.

2 Q Okay, we just needed to lay that foundation. You  
3 can continue.

4 A That behavior scale is typical. So his mother is  
5 rating his ability to deal with living skills; how well he  
6 can negotiate the community; how well he can communicate;  
7 social abilities; how well he can participate in leisure  
8 activities compared to other children his age across the  
9 United States, and he displayed less adaptive competence  
10 than 96 percent of children his age; again, commensurate  
11 with previous adaptive behavior skills which in fact found  
12 him more impaired than previous times, but certainly  
13 highlighted significant abilities in -- particularly in  
14 daily living skills and communication areas in terms of his  
15 ability to function effectively in the community as well.

16 Q Okay, any other significant testing that you did  
17 as part of your workup with him?

18 A No. Basically, these results were -- he was two  
19 years post-injury, and already these results were leveling  
20 off from what you would have expected to see from the  
21 previous courses pretty much incongruent from previous  
22 testing as well.

23 Q Dr. Schuster, what's the significance that some of  
24 the testing revealed some of the brain function that your  
25 tests are normal or near normal and others are so far out of

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1 normal?

2 MS. COYNE: Objection. Form.

3 THE COURT: I will allow it.

4 A well, one thing, it highlights where Anthony could  
5 have been if he didn't have a brain damage. You could see  
6 remnants of his more adequate brain functioning in that way,  
7 but it also indicates the types of areas where we could  
8 expect to see deficits in and where you need a task to be  
9 accomplished.

10 You need to look at both his strengths and his  
11 weaknesses to see if he has all the components to do that  
12 assignment, and he may have some ability to do something,  
13 but not the other part of it, and so the task can't be  
14 accomplished because the essential part of that task is  
15 devastated by his brain injury, and he can't do that type of  
16 assignment.

17 Q Okay. Now, did you form any conclusions or  
18 opinions as a result of your assessment?

19 A well, I did two things here in terms of his  
20 vocational abilities. I looked at his pre-injury testing  
21 and family background and discussions with the family, and I  
22 developed his pre-injury vocational profile.

23 what this is is that the U.S. Department of Labor  
24 has taken every job within this country, 20,000 different  
25 occupations, over 12,000 different occupational titles, and



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1 characterized them; rated them on what you need to do this  
2 type of work; how many educational levels do you need to do  
3 this; how much general intelligence?

4 Does this job require verbal skills, numerical  
5 aptitude, special mechanical ability, clerical speed and  
6 active skills; upper dexterity motor skills? How much?

7 Does the job require sedentary, light, medium,  
8 heavy; very heavy work? These are very specific definitions  
9 from the Department of Labor.

10 How much work requires climbing, balancing,  
11 stooping, kneeling, crouching, crawling, reaching, handling,  
12 talking, hazardous work, whatever; several different  
13 variables or thereabout.

14 And I took the information I had from Anthony from  
15 his pre-injury testing, his family background, even his  
16 current intratest variability, and I developed his profile.

17 I said at least he was going to be of average  
18 intelligence; at least of unimpaired ability physically at  
19 least, and at least a high school graduate to at least some  
20 type of post-high school level training at least; maybe  
21 higher.

22 He was talking about he wanted to be an engineer  
23 to creative writer. I said, I'm not going to even go that  
24 route. At least high school, community college. Average  
25 intelligence certainly would be within his repertoire.

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1 I took that profile and ran it through the entire  
2 New York State labor market. I take the top 25 percent of  
3 the jobs that are matches of the 250 job titles. I average  
4 them together. I said, this is the type of job, the type of  
5 earning potential that Anthony could have done, and of  
6 course this is everything from a policeman, a fire fighter,  
7 a carpenter, an electrician, a chemical engineer,  
8 technician; whatever jobs pay on average.

9 When I average all of them together I will tell  
10 you, it's \$47,507.97, and that's in 2004 wages. I did this  
11 in 2006. This is also a year or two behind government  
12 statistics. This was 2004 wages. Forty-four percent of the  
13 jobs in the New York State labor base were matched.

14 Then I said what can we reasonably expect for  
15 Anthony now? So his intelligence now is low average. He  
16 has -- his processing speed is extremely poor. I said  
17 academic skills were unlikely to get better than 9th grade  
18 based on when I saw him at that point.

19 He has severely impaired motor ability. It would  
20 have would to be a sedentary job. He can't do a job that  
21 he's going to be walking around a lot. It has to be  
22 something where he's sitting. He's going to have problems  
23 with a job requiring climbing, balancing, stooping,  
24 crouching, crawling.

25 Any job that requires him to work efficiently with

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1 his hands would be eliminated. Talking, he would have  
2 restrictions as well. He couldn't be a salesman. Couldn't  
3 be an attorney. Talking all the time, these types of jobs,  
4 even if he had the intellectual ability to do so would be  
5 something that would be precluded by his language  
6 communications, expressive language limitations. I ran that  
7 through the entire competitive labor market. No jobs.  
8 Zero.

9 To compensate for his physical and output channel  
10 deficits you'd have to have a very, very, very much higher  
11 intelligence for something to pop up if you have this degree  
12 of very, very poor processing speed. He worked ponderously  
13 slowly. Can't work with the hands effectively. Can't talk.  
14 How is he going to produce a product? And that's what comes  
15 up is, No.

16 Even when it was -- I ran it through with even  
17 high school level skills, still nothing comes up. Even if  
18 we ran the educational skill from what I originally thought,  
19 no jobs pop up. So what would this mean for Anthony?

20 It means just like he is in school now, with all  
21 types of special accommodations, paraprofessional working  
22 during the day, speech therapy, occupational therapy,  
23 physical therapy, tutoring after school. With all of these  
24 types of support services he's able to function in school.

25 So what we are going to have to do is create the

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1 same thing for him vocationally if he's going to be able to  
2 do something. He's not going to be able to go out and get a  
3 job and function efficiently, so he is going to need a  
4 specially devised vocational setting called a supportive  
5 work setting. These types of job I said he would do  
6 somewhat better than expected for most people with this  
7 because of some retained abilities.

8 This is back in 2006 wages at \$10 an hour, and he  
9 was probably going to work two-thirds less. It's going to  
10 be very hard to find a job working part time. You have to  
11 find a supportive employer who is going to take you in. You  
12 have to go to a state rehab agency for them to develop a  
13 vocation for you. So that is with school.

14 He's going to need some type of specially devised  
15 work setting for him; something that would be more of a  
16 therapeutic get him out of the house, socialize, do  
17 something productive than really that he's going to support  
18 himself. Obviously that's really the purpose of it, but his  
19 ability to negotiate the competitive market would remain  
20 nonexistent.

21 Q These are your opinions with reference to the  
22 vocational implication?

23 A Correct.

24 Q I think you alluded to that you subsequently saw  
25 his school records from Adelphi?

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1 A I did.

2 Q And I think you said you upgraded even looking for  
3 a job?

4 A I upgraded it as well in terms of the even  
5 assuming he had high school level academic achievement.

6 Q You've had a chance to review those records, sir?

7 A I did.

8 Q Was there anything of significance to you in  
9 there?

10 A I think what was significant is he is with all --  
11 and I didn't mention of course the dog that helps him as  
12 well as all of these multiple, multiple systems.

13 He is able to function in school, and I am, you  
14 know, relying a large part upon the remnants of his brain  
15 that is still relatively intact, and with all of these  
16 gigantic support systems he's able to get by in school. All  
17 that he does is show the same five things we're talking  
18 about.

19 He needs this type of support system in line to  
20 work if he's going to be able to function at all. If you  
21 take this away, he's obviously not going to be able to do  
22 anything, and he's still going to be limited by his deficits  
23 in other areas that would make it impossible for him to  
24 function independently either at work or in the community.

25 Q I know he's had surgery. That's helped his speech

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1 a little bit. We had a chance to observe him. He's still  
2 slow in his speech, that part of processing. Is that what  
3 you are talking about, the slow processing by the way?

4 A No. The slow processing is that even if you avoid  
5 the speech, his ability to do anything rapidly is severely  
6 impaired; even simple assignments so that if you asked him  
7 to do something that he intellectually has the capability of  
8 doing, let's say in the job situation, he does it in such a  
9 ponderously slow fashion that it would not be at a  
10 competitive pace.

11 You have somebody stuff envelopes, he can stuff  
12 envelopes, but he can only do one every three minutes.  
13 You're not going to hire him as an envelope stuffer when the  
14 average person does five envelopes a minute, you know. You  
15 have to be able to work at a competitive pace, and his  
16 motoric skills with his hands work the same; ponderously  
17 slow.

18 His execution is ponderously slow. The speech,  
19 his expressive language is ponderously slow. Well, I say  
20 nonexistent for all practical purposes, but he speaks now  
21 apparently in a slow, laborious fashion.

22 Q And is this what you mean when you say in a  
23 competitive employment environment? Are you talking about  
24 in the real world?

25 MS. COYNE: Objection, your Honor.

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1 THE COURT: Overruled.

2 Q I had asked if that was what you were talking  
3 about when you mentioned the competitive work environment?

4 A Yes, right. He would need -- someone would have  
5 to create a work situation for him to, or he would work at a  
6 pace where they're not really expecting him to provide a  
7 competitive workout unless they're going to -- he's going to  
8 have someone, a job coach similar to a paraprofessional that  
9 he has at work -- at school rather who is going to help set  
10 up the system for to help him do the job there so that he's  
11 able to function to a certain degree within a specially  
12 devised situation as he's able to function to a certain  
13 degree within his school system with all the specially  
14 devised situations.

15 Q Okay, I think I understand what you're saying. So  
16 summarize for us, Doctor, your opinions with respect to the  
17 vocational ramifications comparing what would have -- what  
18 could have been had Anthony not been injured and in non-  
19 competitive employment.

20 MS. COYNE: Objection, your Honor.

21 THE COURT: Overruled. In one sentence.

22 A Conservatively 47,507.97, 2004 wages unimpaired  
23 work life, pre-injury.

24 Post-injury, non-competitive \$10 an hour,  
25 two-thirds reduction of lifetime workforce participation.

Dr. Schuster-Direct-Mr. Walker

1 Q And what does that latter mean, the two-thirds  
2 workforce reduction?

3 A Well, if he would have worked an average let's say  
4 40 years before, you add up all the years that he worked,  
5 work life now is going to be two-thirds.

6 THE COURT: 26, 27?

7 THE WITNESS: Are going to be lost. It's  
8 one-third left. You know 13 to 14 years, your Honor,  
9 would be left.

10 A And that means basically he's going to work  
11 probably more part-time jobs. If you work four hours a day  
12 instead of eight hours a day, you have a 50 percent  
13 reduction in your work life whatever, and typically that's  
14 what happens in these types of situations. People work more  
15 part-time work. There are longer times between employs.  
16 You need a specially devised workplace. He's going to work  
17 a lot less than what would have been the case if he didn't  
18 have anything wrong with him.

19 Q Understood.

20 Now, Doctor, did you also formulate a life care  
21 plan for Anthony in terms of what his needs will be?

22 A I did.

23 Q First of all, describe for us, what is that  
24 process and what is that?

25 A A life care plan is a future needs analysis of the



Dr. Schuster-Direct-Mr. walker

1 probable care that a person is going to need related to  
2 their disability from now until the day of their death and  
3 how much these services are likely to cost; the probable  
4 cause of these services as well.

5 Q All right, did you consult with Dr. Shields in  
6 connection with this to determine medical issues, etc.?

7 A I did; and lastly of course after Dr. Shields saw  
8 Anthony for the last time. There had been some changes in  
9 his status since I saw him most prominently.

10 He developed a seizure disorder in those years he  
11 didn't have when I saw them. So those medications and those  
12 needs have been included, and he has the service dog which  
13 was not there when I saw him as well, so Dr. Shields  
14 reviewed the whole report.

15 Q And is that these additional -- a few other little  
16 items?

17 THE COURT: One moment.

18 Q I'm sorry, Doctor?

19 A A few other small items were added to the plan as  
20 well, and then to make it exactly congruent with  
21 Dr. Shields as he recently saw him, about what Anthony will  
22 require now and in the future.

23 MS. COYNE: Objection, your Honor. May we  
24 approach for a moment?

25 THE COURT: Yes.

Dr. Schuster-Direct-Mr. walker

1 (Off-the-record bench conference.)

2 MR. WALKER: Judge, so the jury could follow,  
3 could we have the doctor -- I have a blowup of his plan  
4 so the jury can see.

5 MS. COYNE: May we approach, Judge?

6 THE COURT: Yep.

7 (Off-the-record bench conference.)

8 Q Dr. Schuster, if you would, let's go through with  
9 your life care plan. what would be easiest? I have blowups  
10 of it so they can follow.

11 A That would be the best.

12 MR. WALKER: Judge, we have previously had  
13 these marked. They're a series of 29, 29A through -- a  
14 bunch of them.

15 Q why don't you, Doctor, whatever order you would  
16 like to go through. Just -- I would ask you as you get a  
17 new exhibit, just look on the back and tell us what you are  
18 going to be referring to.

19 THE COURT: The jury wants a break.

20 COURT OFFICER: Jury exiting.

21 (Jury exits courtroom.)

22 MS. COYNE: Apparently there is stuff in that  
23 report that was not testified by Dr. Shields.

24 THE COURT: we will do what is necessary.  
25 well, we'll find out about it.

Dr. Schuster-Direct-Mr. Walker

1 MS. COYNE: I think he's wrong to put that  
2 before the jury, Judge. Before Dr. Shields  
3 specifically testified and he reviewed it and proofed  
4 it. Judge, this is subject to cross.

5 (Brief recess.)

6 \* \* \*

7 Dr. Schuster.

8 COURT OFFICER: Ready, Judge?

9 THE COURT: Yes. All I need are the lawyers.  
10 Let's go.

11 COURT OFFICER: All rise. Jury entering.

12 MR. WALKER: May I proceed, your Honor?

13 THE COURT: Yes.

14 MR. WALKER: Thank you.

15 DIRECT EXAMINATION

16 BY MR. WALKER: (Cont'd)

17 Q Dr. Schuster, you're starting with Exhibit 29A.

18 A Let's just -- the plan is to prevent in many ways,  
19 and also to try to not just address difficulties when they  
20 arise, but hope we prevent them before they arise.

21 In terms of enhancing Anthony's quality of life in  
22 a reasonable way, a physiatrist specializes in physical  
23 medicine and rehabilitation, and this would be the person  
24 that would be monitoring and coordinating his care; a  
25 rehabilitation doctor once a year 350 for an evaluation.

Dr. Schuster-Direct-Mr. Walker

1 Q You actually researched all of these?

2 A These prices would be actually equal to the  
3 practitioners in his area. We call up, and if we can find  
4 three of that specialty and take the middle price, whatever  
5 range, it comes out to represent the fair and reasonable  
6 cost of what this service would go for in Anthony's area.  
7 Remember. This is 2006 dollars.

8 Neurologist once a year, 412.50. Thereafter as  
9 indicated.

10 Pediatrician/Internal Medicine at least once a  
11 year, \$150.

12 Neuropsychological evaluation. Now at age 21,  
13 once every two years, \$1,300. Little blurbs there about why  
14 they are required obviously; neuropsychological evaluation  
15 vocational planning.

16 THE COURT: Take that blurb out. All I want  
17 are the numbers on there.

18 THE WITNESS: Just the items and numbers on  
19 there; sure.

20 THE COURT: Go ahead.

21 MS. COYNE: I have a black magic marker,  
22 Judge. Do you want me to give it to him?

23 THE COURT: Sure. All I want are the  
24 numbers, not the blurbs.

25 MS. COYNE: You want it done before the jury

Dr. Schuster-Direct-Mr. Walker

1 sees it?

2 THE COURT: On the others; yes. Leave this  
3 alone for the moment.

4 Q Doctor, why don't you continue?

5 A Orthopedic surgeon one time, \$350. Thereafter as  
6 indicated.

7 Gastroenterologist one time, \$350.

8 The ENT doctor one time, \$450. Thereafter only if  
9 he has some unusual problem. Thereafter, as indicated.

10 Physical therapist yearly, \$297.

11 Occupational therapist, age 18 which would  
12 actually be at this point completed because he's 18, and  
13 then thereafter every five years, \$150 for a session; and  
14 again, giving speech therapist at this point if indicated.

15 So you have different costs for evaluation  
16 followup.

17 Obviously the followup visits for the physiatrist  
18 one to three times a year, \$150.

19 Cognitive therapy 25 to 50 sessions every  
20 five-year period, \$200 a session?

21 Neurologist and the internist as needed.

22 On this, it's gastroenterologist. So there is no  
23 additional cost included for those physical therapists.

24 It's going to be now to age 21, five to seven times a week  
25 at \$154 a session, and 20 sessions every year thereafter.

Dr. Schuster-Direct-Mr. Walker

1 Occupational therapist now to age 21, three to  
2 five times a week at a \$150 a session. Again, 20 sessions  
3 every five-year period thereafter.

4 The speech therapist at age 21, two to three times  
5 a week; \$100 a session?

6 And the Community Life Coach once a month, \$190 a  
7 visit.

8 The internist three extra visits a year, \$100 a  
9 visit.

10 And psychologist 25 to 50 sessions. I have a  
11 five-year period at \$130 per session.

12 Lamotrigine once a day, \$29.99 for a hundred  
13 tablets.

14 And Concerta only as needed.

15 Again, the heterotopia; that surgery which he had  
16 had one time in 2006 has already taken place. All of these,  
17 there is no additional cost. It would only be a potential  
18 complication, and surgery has already been taken care of.

19 Q So you didn't included any projected costs?

20 A No cost would be included for that.

21 Special education, no cost.

22 However, the tutor, after school work, 150 to 200  
23 sessions a year, \$43 an hour.

24 And then vocational training, supportive  
25 employment, age 18 to 21; will probably be age 21 to age 65,

Dr. Schuster-Direct-Mr. walker

1 25 to 50 sessions every five-year period; \$1,800 to  
2 \$6,000.00 each time for 25 to 50 sessions every five-year  
3 period.

4 Light weight wheelchair and seat cushion once  
5 every five years, \$1,950; and the cushion, one every two  
6 years, 68 to \$160.

7 Q why you include a wheelchair, Doctor?

8 A For extended community transportation. So if he's  
9 going to go let's say to a park of some type or like a Great  
10 Adventure or something like that, obviously he could not  
11 walk around the whole day. He would need some type of  
12 extended transportation for the community.

13 And then extra wheelchair accessories, 100 bucks a  
14 year.

15 And then bring the time -- this is like 30 years  
16 from now when he's 55 to 60, some type of motorized device  
17 would then be necessary.

18 So a scooter, \$2,787 to \$3,577.

19 And then he's going to need some type of adaptive  
20 transportation to take this to wherever he is going to  
21 utilize it. So the adapted van one time, \$39,995 one time.

22 And the portable ramp, age 55 to 60 through life;  
23 again one time, \$372 to \$508.

24 Orthopedic equipment. Knee orthosis to be used at  
25 night; just one time, \$283.

Dr. Schuster-Direct-Mr. walker

1 Q What was that Doctor? I'm sorry. I didn't hear  
2 what you said.

3 A Knee orthosis, the knee brace; one time, \$283.  
4 Rolling stand-up walker.

5 Folding walker with wheels.

6 And easy stand.

7 One time every 15 years, \$752.

8 One time every five to ten years, \$98.00.

9 And one time Easy Stand, I have \$2,050.

10 Q That was for?

11 A Orthopedic adaptive equipment; and then just  
12 additional equipment for daily living.

13 Home safety/home exercise accessories equipment  
14 every year; \$100, \$200, and \$200 for each of those  
15 categories.

16 Q And what type of home exercise equipment? What  
17 are you considering?

18 A Well, he's going to continue with the home  
19 exercise program, physical therapy, so it would be  
20 everything from -- well, home exercise accessories to  
21 Therabands/weights/physio balls to cognitive retraining  
22 tools such as memory exercise boxes and things like that as  
23 well.

24 Q This would be tools the therapist suggested that  
25 he use at home?



Dr. Schuster-Direct-Mr. Walker

1 A Yes.

2 Q We're presuming that Anthony is going to  
3 eventually move out on his own. He would need -- we haven't  
4 got -- well, maybe we should do the support care first  
5 because the support care goes back to why he would need the  
6 residence.

7 Even at this point he requires extra assistance  
8 throughout the day that is being handled by his family.

9 This 30 extra hours a week cost of that care is at  
10 \$16.50 per hour to age 21.

11 If he was to move out on his own, he would get a  
12 live-in person, someone there during the day to monitor him.  
13 At nights, would not be -- just be on call at night. There  
14 during the day to take care of his needs.

15 \$200 a day for a live-in attendant.

16 For the personal care, \$10.50 a day.

17 Obviously you're going to need a house for him and  
18 obviously a room --

19 THE COURT: Why don't you return here and  
20 let's discuss that up here?

21 MR. WALKER: Just one more before he goes up  
22 here.

23 A And the service dog which he has lives every ten  
24 to 15 years. \$6,500 for the cost of the dog. The upkeep of  
25 the dog is \$75 to \$100 a month, but the veterinary expenses

Dr. Schuster-Direct-Mr. Walker

1 are no charge; animal medical center.

2 Q How much are the expenses for the dog?

3 A \$75.00 to \$100.00 per month for food and whatever  
4 is necessary; leashes, whatever you're going to need for the  
5 dog, no charge for the veterinary services. They're done  
6 for free.

7 From that price is taken the cost of an apartment  
8 rental. He would have to have an apartment to live in any  
9 way. So it's only extra space, a larger home to accommodate  
10 him and his aide at this point?

11 And then eventually particularly throughout his  
12 life is going to be some modifications necessary to the  
13 house as well. Some are going to be necessary first even in  
14 terms of ideally a bathroom with the built-in shower stall  
15 and things like that to start out with, and likely changes  
16 as he ages as well for an extra \$35,000 to \$40,000 to  
17 accommodate his disability and problems that are likely to  
18 happen as he ages and becomes less capable.

19 And then home maintenance \$1,500 a year.

20 And housekeeper for housekeeping chores weekly for  
21 four hours a week at \$15.15 per hour.

22 Q What did you project housing costs as, Doctor?

23 A The housing cost was an extra --

24 MS. COYNE: Note my objection, your Honor.

25 A -- \$2,204.

## Proceeding

1 THE COURT: I asked you to come up here.  
2 what you projected for his housing is what  
3 I'm trying to understand.

4 THE WITNESS: Well, I presumed, your Honor,  
5 that since he was unimpaired he would at least have  
6 lived in a one-bedroom apartment, so that cost would  
7 have to be subtracted; but he needs a house now that --

8 THE COURT: When you say the word house, what  
9 I'm getting at is why the word house rather than  
10 dwelling, apartment?

11 THE WITNESS: Well, I think he's going to  
12 modify this house too as we will --

13 THE COURT: I'm trying to get you to explain  
14 why is the word house.

15 THE WITNESS: If you have the house, you're  
16 able to modify. If you rent an apartment, you can't  
17 break it down to modify it to make it accessible to his  
18 needs. If you're renting an apartment; if you own an  
19 apartment, you can't break it down to the way that  
20 you'd like to be able to as if you own your own house.

21 THE COURT: Have you done as part of this  
22 survey a review of the housing market in New York City  
23 because my own impression is that there are such places  
24 available; or are there not? Tell me what you've done  
25 with the housing market, the survey.

## Proceeding

1 THE WITNESS: Okay, there is handicapped  
2 accessible housing, but there are two problems with  
3 that.

4 One is that they are on a waiting list and  
5 not readily accessible. You don't have a choice often  
6 where you're going to live. If Anthony was completely  
7 blind, it would be a lot easier to find a place for him  
8 to live.

9 I'm trying to normalize this person's life.  
10 He would be able to live where he wanted to live; go  
11 where he wanted to go; have a person there to --

12 THE COURT: Are you suggesting that there are  
13 no facilities in the various neighborhoods in this  
14 county? Is that what you are saying; that you have  
15 done a survey of that in order to make that  
16 determination?

17 THE WITNESS: There are facilities, but then  
18 he would not be in the community. You want to put him  
19 in a nursing home, or you want to put him in a group  
20 home?

21 THE COURT: I'm asking you a question. Are  
22 there any other facilities that are not -- that are  
23 made for this kind of situation?

24 THE WITNESS: There are facilities that are  
25 made for these situations and they would be notably

Proceeding

1 more expensive to put him in that facility than what  
2 I'm creating for him.

3 THE COURT: That's what I'm asking you.

4 You may continue.

5 DIRECT EXAMINATION

6 BY MR. WALKER: (Cont'd)

7 Q Had you finished explaining, Doctor, why you  
8 projected the housing cost the way you did?

9 A Yes.

10 Q And is that the full life care plan?

11 A That's it.

12 Q Okay, and I think you mentioned this; that what  
13 you're trying to do is literally plan out for an entire  
14 lifetime?

15 MS. COYNE: Objection, your Honor.

16 THE COURT: Overruled.

17 A Yes.

18 Q All right, so some of this stuff -- for instance  
19 you had things as Anthony ages. As we all age, we may need  
20 different kinds of medical care, or different things may  
21 happen to us. You've included all that into his future as  
22 best you can project; correct?

23 A Correct.

24 Q Okay, all of the research -- I asked you one  
25 question earlier. You mentioned that you tried and called

Dr. Schuster-Direct-Mr. Walker

1 those providers. Did you do that for each of these numbers  
2 and costs that you've projected here to try and get the  
3 actual dollar costs?

4 A Except for the medication or equipment which could  
5 be a major supplier.

6 Q And you did all this leg work to document the cost  
7 of all of these things that you testified to?

8 A On the back of the report is exactly who we  
9 called.

10 MR. WALKER: Thank you very much, Sir. Last  
11 thing. I assume you expect to be paid for this.

12 MS. COYNE: Objection. Form.

13 THE COURT: What was the question?

14 MR. WALKER: I said, I assume you expect to  
15 be compensated.

16 THE COURT: As an expert coming to court and  
17 testifying, are you paid for your services?

18 THE WITNESS: I am, your Honor.

19 Q How much are you being paid, Sir?

20 A \$300 an hour.

21 Q And did you also charge for the evaluation of  
22 Anthony that you did?

23 A Yes.

24 THE COURT: How much did you charge for that?

25 THE WITNESS: \$300 an hour.

Dr. Schuster-Direct-Mr. walker

1 MR. WALKER: Okay, thank you very much, sir.  
2 That's all I have, your Honor.

3

4 CROSS-EXAMINATION

5 BY MS. COYNE:

6 Q Good afternoon, Sir.

7 A Good afternoon.

8 Q Okay now --

9 THE COURT: Counsel, before you start I'd  
10 like to show you something. All of you come up here.

11 (Off-the-record bench conference.)

12 Go ahead.

13 Q Good afternoon, Sir.

14 A Good afternoon.

15 Q Do you have a file today, Sir?

16 A I do.

17 Q Can I take a look at that file?

18 Are these all your records by the way on this  
19 case?

20 A That's all the records that we kept. There are  
21 more records, but they're listed in the report.

22 Q And I just want to make sure that I understand.  
23 You examined Anthony once; correct?

24 A Correct.

25 Q And that was, I believe, in 2006?

Dr. Schuster-Cross-Ms. Coyne

- 1 A Correct.
- 2 Q December 2006; correct?
- 3 A Correct.
- 4 Q And you did a report after that; correct, sir?
- 5 A I did.
- 6 Q And that report was approximately 43 pages;
- 7 correct, sir?
- 8 A I guess so.
- 9 Q Do you want to take a look at it?
- 10 A I presume you're right. It sounds about right.
- 11 Q These are the same reports I have. I don't need
- 12 to see that.
- 13 A Forty-three pages; right?
- 14 Q Okay, and when you wrote that report, did you get
- 15 paid for doing a report as well, sir?
- 16 A Of course.
- 17 Q How much did you get paid for the report, the
- 18 49-page report?
- 19 A I don't know exactly. I would estimate that this
- 20 probably took 20 hours to put together; something like that.
- 21 Q what is that approximately; about six grand?
- 22 A About.
- 23 Q That's not including the actual examination;
- 24 correct?
- 25 A That would include the examination. It would be



Dr. Schuster-Cross-Ms. Coyne

1 about 20 hours, 22 hours. I don't remember exactly, but  
2 that's about right.

3 Q And also let me ask. Have you been paid that six  
4 grand by the way?

5 A I believe so.

6 Q And then you did another report very recently;  
7 correct?

8 A I did.

9 Q You did one in March 2011.

10 A I did.

11 Q By the way, those reports, who are they addressed  
12 to?

13 A Mr. Nolan -- N-O-L-A-N.

14 Q At that time somebody at the plaintiff's law firm?

15 A Correct?

16 Q you knew when you were hired that this was for a  
17 lawsuit; correct?

18 A Absolutely.

19 Q And you knew in fact this was for the plaintiff in  
20 the lawsuit; correct, sir?

21 A Of course.

22 Q Is that all you ever deal with is plaintiffs in  
23 lawsuits?

24 A Two to one, plaintiff to defense.

25 Q You do twice as many plaintiffs as you do defense?

Dr. Schuster-Cross-Ms. Coyne

1 A Absolutely.

2 Q Okay, and would you say that a fair substantial --  
3 withdrawn.

4 A substantial amount of your income is these types  
5 of cases; correct?

6 A Sure.

7 Q How much of your income would you say?

8 A I'd say about 60 percent of my income.

9 Q So actually more in the lingo world if you will  
10 than you were actually doing rehabilitation for actual  
11 patients; correct?

12 A No. That's wrong. Eight percent of clients I see  
13 have nothing to do with legal cases, but those cases are  
14 much lengthier, and perhaps we're able to bill more than the  
15 State pays or than other people pay for those nonlegal  
16 cases.

17 Q How many times have you testified in court?

18 A Hundreds of times.

19 Q How many times?

20 A Over the past 25 years.

21 Q How much? About 500? More than 500? Less than  
22 500?

23 A I'd say about 20 times a year give or take.

24 Q Over how many years?

25 A The past 20 years.

Dr. Schuster-Cross-Ms. Coyne

1 Q That would be over 625 times; correct?

2 A Give or take in 20 years; correct.

3 Q That's how you testify, but you do a lot more work  
4 than just testifying; correct, sir? You don't just do these  
5 cases. You don't always come in and testify -- wait your  
6 turn, then you can answer just Yes or No.

7 Is it fair to say that you do not testify in every  
8 case that you are hired to represent somebody in a lawsuit;  
9 correct?

10 A Correct.

11 Q In fact, there are more cases that you actually  
12 are hired by a lawyer that you don't testify in than you do  
13 testify in; correct?

14 A Correct.

15 Q Okay, so that's 600; and whatever over 600 cases,  
16 that was just testifying; correct?

17 A Correct.

18 Q And there could be over a thousand or so times  
19 that you have been retained pursuant to a lawsuit; correct?

20 A I would say that's about right.

21 Q Would you say it's over a thousand?

22 A I get retained ten, 15 times per month.

23 Q Per month?

24 A For some type of legal cases and about, you know,  
25 40 per month from the nonlegal cases.

Dr. Schuster-Cross-Ms. Coyne

1 Q And 300 bucks an hour; correct?

2 A Actually now -- it's actually now 325 an hour at  
3 this stage; obviously a hundred dollars an hour when I  
4 started doing this 20 years ago.

5 Q I'm asking you now. It's 325; correct?

6 A Yes. That's my rate as of 2011.

7 Q That you are getting paid to be in court today?

8 A No. I started -- I continued with that rate  
9 daily. I don't think it's \$300 an hour. I think it would  
10 be 285 an hour. We take the rate, whatever it was when I  
11 started the case. It's probably 285 an hour is what I'm  
12 getting paid today.

13 Q You did this report in 2006?

14 A 2006. That would be right.

15 Q You did get six grand about. You think you got  
16 about six grand?

17 A About give or take.

18 Q The second report that you did was March 2011.  
19 That was about 16 pages; correct?

20 A Correct.

21 Q Have you been paid for doing that report?

22 A I presume so.

23 Q Okay, do you know approximately how long that took  
24 you and how much you got?

25 A I'd say it's probably about three hours, four

Dr. Schuster-Cross-Ms. Coyne

1 hours to put together those, review those medical records  
2 and handwrite that addendum.

3 Q Let me ask you this. I see you have the Adelphi  
4 Academy records in your possession. You didn't have those  
5 in your possession when you wrote your March 2011 report;  
6 correct?

7 A No. I just got those recently.

8 Q And in your first report you had written about  
9 your examination of Anthony; correct?

10 A I did.

11 Q Now Anthony -- this first examination that you  
12 had -- let me withdraw that. It's the only examination you  
13 had?

14 A That's correct.

15 Q And that was in December of 2006; correct?

16 A Correct.

17 Q Anthony had only been home from St. Mary's Rehab  
18 facility for three months and -- I think three months;  
19 correct?

20 A I don't remember exactly when he came home from  
21 St. Mary's. It was two years; about two years post-  
22 accident.

23 Q Okay, but he hadn't been home that long, if you  
24 recall?

25 A I don't recollect.

Dr. Schuster-Cross-Ms. Coyne

1 Q Okay, fair enough. But when you did your report  
2 in March 2011, you didn't see him again?

3 A Nope. I reviewed the record first. I was told  
4 that Dr. Shields was going to see him for an update. I  
5 reviewed the record, and I felt that there was nothing new  
6 really to require another evaluation.

7 Q Nothing new. Okay, let me ask you this. You said  
8 you reviewed records. You hadn't reviewed the Adelphi  
9 Academy records; correct, Sir?

10 A No, not yet.

11 Q And you said you just got them recently in the  
12 past few weeks; correct?

13 A Correct.

14 Q So you didn't take that into account obviously;  
15 correct, Sir?

16 A I didn't have those records.

17 Q Okay, you also said that you didn't think there  
18 were a lot of changes that had occurred; is that correct,  
19 Sir?

20 A That's correct.

21 Q Let me ask you this. First of all, I think  
22 Dr. Shields had examined Anthony in March 2011, but  
23 Dr. Shields wasn't looking at him from a rehabilitation  
24 point of view.

25 A Not really.

Dr. Schuster-Cross-Ms. Coyne

1 Q He's not a vocational rehabilitation expert, is  
2 he?

3 A No, but obviously his medical issues would impact  
4 upon the vocational ramifications of this young person.

5 Q Okay, but he wasn't doing an assessment of him,  
6 was he?

7 A Not directly, only indirectly. I would use his  
8 information indirectly.

9 Q He was doing a neurological examination; correct?

10 A Correct.

11 Q He wasn't, you know, examining him or doing the  
12 test that you performed on him in 2006; correct?

13 A No.

14 Q Okay, and you would agree though that you are  
15 giving an opinion on vocational rehabilitation. Ideally you  
16 would like to in fact do this sort of examination you did on  
17 Anthony in 2006; correct?

18 A Or have the information related to it.

19 Q Okay, so you're saying then -- let me ask you this  
20 then -- withdrawn.

21 Since Dr. Shields also had examined him at some  
22 point in 2011; correct --

23 A Yes.

24 Q -- you could have just went on his report there;  
25 correct?

Dr. Schuster-Cross-Ms. Coyne

1           A     I would have like to have seen additional IQ  
2 testing and educational testing.

3           Q     And you would have liked to have seen him  
4 yourself; correct?

5           A     No. I needed -- I would like -- if you aren't  
6 going to ask me to state an opinion about his functioning, I  
7 would have liked to have seen some recent testing which was  
8 available.

9           Q     Let's talk about at your first visit. Anthony did  
10 not have the service dog; correct?

11          A     Correct.

12          Q     And in fact Anthony -- I believe he still had a  
13 wheelchair; is that correct?

14          A     That's correct.

15          Q     And he had been -- he was ambulating without the  
16 wheelchair. He still had a walker; correct, in 2006?

17          A     He did.

18          Q     And he was in special education at that time;  
19 correct?

20          A     He was.

21          Q     In fact, he was -- you're aware he's in the 11th  
22 grade now; correct?

23          A     I am.

24          Q     Isn't it in fact in your first report, Sir -- and  
25 you could take a look at it if you want. You state -- first



Dr. Schuster-Cross-Ms. Coyne

1 report, page 17 -- you state that Anthony will likewise  
2 continue in a special education program with a full-time  
3 paraprofessional.

4 Did you say that, Sir?

5 A Yes.

6 Q In fact, he has been in general education for  
7 several years now; correct, Sir. Did you learn that?

8 A That's not quite correct. He's in a -- it's true.  
9 It's a special school.

10 Q Excuse me?

11 A Please. It's a private school. He's in very  
12 small --

13 Q The question was, is he in special education, or  
14 is he in a general education class?

15 A He's in a special private school as part of his  
16 IEP.

17 Q Okay, let me get back to the question. I asked if  
18 he is in a general education class, or is he in special ed?

19 A I can't answer the question the way you phrased it  
20 because he's in -- it is a --

21 Q No. If you can't answer it, you can't answer it.  
22 I think the record -- did you read -- you have now read his  
23 Adelphi Academy record; correct?

24 A Yes.

25 Q He does have a full-time paraprofessional.

Dr. Schuster-Cross-Ms. Coyne

1 A He does.

2 Q Also, in your report, you had made some comment  
3 that you did not believe that he would actually get out of  
4 junior high school, I believe.

5 A No. That's not what I said.

6 Q Okay, let me see. I'll find the exact words.

7 By the way, before I even get to that; the  
8 paraprofessional, that is somebody that helps him with his  
9 educational needs; correct?

10 A Primarily.

11 Q Primarily. Okay, paraprofessional. That's how  
12 you define it; as someone who is almost like a tutor, if you  
13 will, for an individual at school if you will?

14 A It could be. It could also help you with going to  
15 the bathroom or transportation or other physical needs as  
16 well.

17 Q Did you ever speak to his paraprofessional?

18 A No.

19 Q By the way, when you saw him in December of '06,  
20 he was still on a feeding tube; correct?

21 A I think it was removed just before.

22 Q It had just been removed; okay. He wasn't having  
23 a normal diet though at that point though; is that correct,  
24 and eating solids?

25 A I think he was eating solids. It may have been

Dr. Schuster-Cross-Ms. Coyne

1 pureed to a certain extent, but I believe he was eating  
2 normally.

3 Q I'd like to point out page 13 of your March 13,  
4 2007 report. Did you say, Sir --

5 A March -- okay, 2007.

6 Q 2007.

7 A Page 13?

8 Q Page 13. And it says -- referring to Anthony.

9 His academic achievements is unlikely to be better  
10 than upper elementary to junior high school level; is that  
11 correct, Sir?

12 A That's correct.

13 Q Okay, you're aware that he is in the 11th grade  
14 now; correct?

15 A Yes. That's not what sentence reads. It doesn't  
16 mean -- you could be in the 11th grade but still only have  
17 5th grade math.

18 Q Did you see anything in his record that indicates  
19 that he's in 5th grade math in the Adelphi Academy record?

20 A The only thing that channeled which I found  
21 remarkable.

22 Q No, no. My question was very specific. Did you  
23 find anything?

24 A No. The teacher said he had 10th grade reading  
25 and 10th grade math.

Dr. Schuster-Cross-MS. Coyne

1 Q Okay, thank you.

2 And by the way, in getting back to that question  
3 I'd asked you before. I believe it states in your 2011  
4 report; it says that he is in a general education class.  
5 Are you aware of that?

6 A I understand what you're saying. I'm not  
7 disagreeing with that I'm saying, but you're not quite  
8 understanding the whole -- the ramifications of it.

9 He's placed within the school specifically because  
10 of his special needs. Although it is a general class, it is  
11 is not -- it is only because -- he's there because of a  
12 special need. So it's kind of like --

13 Q But my question, Sir was, is he in a general  
14 education class?

15 A It is technically a general education class.

16 Q Technically?

17 THE COURT: Thank you. I think we have  
18 explained it, and I think the jury is ahead of all of  
19 us; as usual.

20 Q Adelphi Academy. That's a private school;  
21 correct?

22 A Private school.

23 Q It's a school for just children with special  
24 needs?

25 A No, it's not.

Dr. Schuster-Cross-Ms. Coyne

1 Q This is children that have -- general mainstream  
2 children who are in that private school; correct, sir?

3 A Correct.

4 Q And since you have seen the reports, Sir, I'm sure  
5 that you are aware that Anthony had, I think, been student  
6 of the month in December 2010. You've seen this; correct?

7 A Yes.

8 Q And again, Adelphi Academy which is as you said,  
9 it is not a special needs school, but a school for -- anyone  
10 can go there. Mainstream children can go?

11 A It's a private school with small classes.

12 Q Now, when you had written that in your report,  
13 your 2007 report; Getting out of the elementary or upper  
14 secondary --

15 A That's not what I said.

16 Q Let me read it exactly then. That was page 13 was  
17 that?

18 You said that, Anthony has low average cognitive  
19 abilities to bear with academic achievement unlikely to be  
20 better than upper elementary to junior high school levels?

21 A That's correct. That's what I said.

22 Q And he's in the 11th grade; correct?

23 A Correct.

24 Q You've seen his report card?

25 A Yes.

Dr. Schuster-Cross-Ms. Coyne

1 Q This is his latest report card for 11th grade, and  
2 he's passing all of his classes?

3 A Yes, he is.

4 Q In fact, I think his lowest grade is a C in math,  
5 and looks like English; correct?

6 A I can't see it but I will take your word for it.

7 Q You saw it previously. I'm not showing you  
8 something new; correct?

9 A Correct. There is an F there also.

10 Q No. That's F on the exam, but his term grade,  
11 he's passed everything if you'd like to take a look.

12 A Great. He passed everything. I know he did.  
13 Absolutely.

14 Q And by the way, everything that he passed, just so  
15 we are perfectly clear, it also has 11 after it. It's the  
16 11th grade.

17 Yes?

18 A Fine.

19 Q And isn't what you're sort of doing, sir, in your  
20 analysis with your plan, your health care plan or your life  
21 care plan, you're sort of looking at the condition as now  
22 and making predictions for the future; correct?

23 A That's correct.

24 Q And in 2006, that's what you did; correct?

25 A I did that too.

Dr. Schuster-Cross-Ms. Coyne

1 Q 2006 you wrote this 49-page report all about your  
2 prediction for the life of Anthony Turturro; correct?

3 A That's correct.

4 Q And that was the part that I'd read about the  
5 upper elementary to junior high school level; correct?

6 A In terms of academic achievement I expected him to  
7 go to school up to -- yes.

8 THE COURT: Just answer the question.

9 A Yes.

10 Q Okay, let's talk a little bit about your life care  
11 plan.

12 Your plan has Anthony moving into his own home at  
13 age 21; correct?

14 A Correct.

15 Q Anthony is 20 today; correct?

16 He's 19. He'll be 20 in December. Okay, so  
17 you have him turning -- not this December, but next December  
18 he's going to move into his own \$609,000 home; correct?

19 A He would be able to do that if he did everything  
20 else that was established in the plan.

21 Q Okay, well let me ask you this.

22 A The issue obviously is he doesn't have to. He  
23 also can stay at home. He could move out.

24 Q Let me ask you this, Sir. You agree that not all  
25 21-year-olds live by themselves; correct, Sir?

Dr. Schuster-Cross-Ms. Coyne

1 A Of course.

2 Q They don't.

3 A Of course they don't.

4 Q And is it in fact fair to say there are not too  
5 many 21-year-olds in New York City that have their own  
6 \$600,000 house; correct, sir?

7 A That's correct. If he was unimpaired, he would be  
8 likely moving into an apartment.

9 Q Well, hold on.

10 A That's what we would have expected him to do;  
11 enter into a community college as I projected. Twenty, 21  
12 and healthy he will move into his own place, get a one-bed  
13 room apartment, early 20s. That's what I probably  
14 projected.

15 Q No. You projected a \$609,000 house for him when  
16 he's 21 years old.

17 Yes?

18 A That's only because he can't live by himself in an  
19 apartment.

20 Q So you're giving him more than he would have had  
21 had he not had the accident?

22 MR. WALKER: Judge, I object to the form of  
23 that.

24 MS. COYNE: In terms of the home.

25 THE COURT: More than he would have had?



Dr. Schuster-Cross-Ms. Coyne

1 MS. COYNE: In terms of a house; yes.

2 Q In terms of a house.

3 THE COURT: I'll allow you to answer it, but  
4 you may explain.

5 And please don't interrupt the answer.

6 MS. COYNE: I'm not.

7 A If Anthony is going to be able to follow a  
8 semblance of what his life would have been like if he didn't  
9 have this condition, he requires excessive services; living,  
10 dwelling support services, medical care, whatever the  
11 community life coach has; all this type of stuff that's put  
12 in there, otherwise he can't -- he couldn't live by himself.

13 THE COURT: Thank you.

14 Q So okay, so you're saying you then took this --  
15 let me ask you this.

16 He couldn't in fact live by himself if he was in  
17 an apartment; correct?

18 A Now?

19 THE COURT: At 21.

20 THE WITNESS: By himself if he was  
21 unimpaired, of course he could live by himself.

22 Q Even unimpaired and he has all these other things  
23 you drew up for him, he could -- in fact could still live in  
24 a two-bedroom, two-bath apartment; correct?

25 A Probably minimally at this point he could do it.

Dr. Schuster-Cross-MS. Coyne

1 Q well, houses. You have him in a ranch, so there  
2 would be no steps; correct?

3 A No steps; correct.

4 Q If he's in an apartment, it could have an  
5 elevator. There would be no steps; correct?

6 A If the bathroom is modified, he'd be getting the  
7 types of things the Judge was talking about he could do it.

8 Q Okay, and let me ask you this. If he's on the  
9 first floor, we don't have to worry about the elevator. He  
10 would obviously be able to get to that; correct, sir?

11 A Could be. Technically.

12 Q Now, you also allocated here home modification of  
13 35,000 to 40,000; correct, sir?

14 A Over his lifetime; correct.

15 Q Are you aware that his -- withdrawn.  
16 You've read Dr. Shields' report; correct?

17 A I have.

18 Q And isn't it a fact that aside from putting a  
19 shower chair in their bathroom and a rod or a bowl, they  
20 haven't done any other modifications since this accident in  
21 2004; isn't that true?

22 A That's true.

23 Q And he has been -- I want you to assume yesterday  
24 Dr. Shields said that all his needs have been adequately  
25 met; that he hasn't been in want of anything.

Dr. Schuster-Cross-Ms. Coyne

1           A     I think I was explaining that that was  
2     modifications. It says life.

3           Q     It says 21 to life. He's going to be 21 not in  
4     December, but next December; correct?

5           A     That's correct.

6           Q     So next December you have him spending 35,000 --

7           A     No, I don't.

8           Q     -- to 40,000 on -- let me finish; on modifications  
9     for this \$609,000 house.

10          A     No.

11          Q     So that's incorrect?

12          A     If that was the case it would have said age 21  
13     now. Then you would be right.

14                 It says 21 to life because I don't expect him to  
15     need any -- I mentioned modifications of a significant  
16     degree now, but likely over his lifetime there are going to  
17     be changes made to his house to accommodate his needs, as I  
18     believe his physical status will deteriorate as he ages.  
19     That's why it says 21 to life, not now.

20          Q     Is it fair to say all of our physical status kind  
21     of deteriorates over time; correct, Sir?

22          A     That's correct.

23          Q     Some of us wind up in wheelchairs; could be 100  
24     percent fine now.

25                     MR. WALKER: Judge, objection. That's not

Dr. Schuster-Cross-Ms. Coyne

1 the issue here.

2 THE COURT: We all get old. Let's go on.

3 Hey. wait a minute; and some of us  
4 unfortunately are unlucky and we don't get old.

5 Q So you took the cost of the apartment, a  
6 one-bedroom apartment, \$875?

7 A Correct.

8 Q You subtracted it from that?

9 A Yes.

10 Q So that actually by subtracting that makes the  
11 cost of the home a little less?

12 A Correct.

13 Q Fair to say, sir, that \$875 is pretty cheap in  
14 today's market for one bedroom; correct?

15 A That's 2006 dollars first of all.

16 Q Even in 2006 that's a little on the cheap side.

17 A That's what -- in his area of Brooklyn, that's  
18 what it goes for.

19 Q Okay.

20 A We did a survey.

21 Q By survey, what did your research consist of;  
22 picking up the phone, or you picked up the newspaper and  
23 just looked?

24 A We go through real estate listings.

25 Q So you -- and where did you get the real estate

Dr. Schuster-Cross-Ms. Coyne

1 listings from?

2 A Online real estate listings. The first three that  
3 came up met the criteria of what we are talking about.

4 Q which was what, an apartment in Gerritsen Beach?

5 A You have to look on the back of the report, but  
6 basically that's --

7 Q You tell me. You did it. Why are you making me  
8 look through this? Can't you tell me what it was?

9 A I can't remember. It was almost five years ago.

10 Q How many cases have you been on since you did that  
11 research, Sir?

12 A About ten to 15 per month.

13 Q Per month; and so that would be times -- 12 months  
14 times six years; correct?

15 A 2006. December 2004 years is a little bit more  
16 than four years; right, give or take?

17 Q Can you tell us what you did?

18 A That's how we do it. We'll go and look at their  
19 area they live in, and we'll go through the real estate  
20 pages, the real estate pages online or in the --

21 Q Realtor.com?

22 A Online.

23 Q You're looking at the newspaper online?

24 A Whatever; yes.

25 Q Well, I'm just going --

Dr. Schuster-Cross-Ms. Coyne

1           A     That's what it says. That's what we did on that  
2     date.

3           Q     Fair enough; and the personal home care.  
4                     Let's continue with the house for one moment, sir.  
5                     This is all assuming that -- your plan here is  
6     assuming that Anthony doesn't want to stay with his family  
7     when he's 21; correct?

8           A     I'm assuming; right, that he would want to move  
9     out as he normally would have done if he was an unimpaired  
10    kid.

11          Q     Do all 21-year-olds -- some of them live at home,  
12     particularly nowadays where everything is expensive;  
13     correct?

14          A     Some do.

15          Q     But you had him as one that's going out into the  
16     world living on his own; correct?

17          A     That's my presumption that he was going to finish  
18     school and move out on his own; that is correct.

19          Q     And you also have a personal care attendant with  
20     him; correct?

21          A     Now.

22          Q     Oh, now.

23          A     Now to 21 there is someone a few hours a day to  
24     provide care for him.

25          Q     You know that both of his parents work full time;

Dr. Schuster-Cross-Ms. Coyne

1 correct?

2 A Yes.

3 Q Outside of the home?

4 A Yes.

5 Q So there is nobody there during the day; correct?

6 A Right.

7 Q And also he's at school all day; correct, sir?

8 A Right.

9 Q Fair enough.

10 Then you have a housekeeper for him as well. You  
11 have the personal care attendant now until 21 which he  
12 doesn't actually have now; correct?

13 A No. His parents are providing that chore.

14 Q He's not actually incurring that cost is what I'm  
15 saying.

16 A His parents. That's the replacement cost of his  
17 parents. His parents are providing a service that never  
18 would have been provided if Anthony was totally unimpaired,  
19 but that's what the replacement cost of that service is that  
20 his parents are providing for right now.

21 Q It's fair to say that today the parents still do  
22 services for children even if they are unimpaired.

23 A Yes, but not the type of services that is going to  
24 be necessary for a 15 or 18-year-old.

25 Q Okay, you also have now from thereafter.

Dr. Schuster-Cross-Ms. Coyne

1           Okay, you have -- here you have someone living in  
2 with him 24 hours a day, seven days week, personal care  
3 attendant.

4           A     Correct.

5           Q     He does not have that now; correct?

6           A     He does not need that now. His parents are  
7 live-in personal care attendants in fact.

8           Q     What about when they are at work all day and he's  
9 at school?

10          A     Well, obviously it would be the same thing. Now  
11 Anthony is going to another place as well.

12                     But then someone would be there to provide. He'll  
13 be taken care of, the shopping taken care of, light  
14 housekeeping chores, helping in the morning, helping in the  
15 evening, whatever; and being there to provide supervision at  
16 night for him in case there is an emergency or need.

17          Q     I got you. I said housekeeping chores. Don't you  
18 also have housekeeper for him from age 21 to life; correct?

19          A     That's correct.

20          Q     So when you have this personal care attendant and  
21 you have it thereafter, what you mean is 21 to life;  
22 correct?

23          A     Correct.

24          Q     So you have that person, and you said his parents  
25 are doing that now, their housekeeping, doing all that



Dr. Schuster-Cross-Ms. Coyne

1 stuff; and then you also have housekeeping, age 21 to life.

2 A Correct.

3 Q And then you have home maintenance. Home  
4 maintenance, \$1,500; correct?

5 A Yes.

6 Q And is it fair to say if you have an apartment; if  
7 Anthony lives in an apartment with all these people here  
8 with him, he doesn't have to incur that \$1,500 maintenance  
9 because he will have a superintendent; correct?

10 A Depending if he rents an apartment.

11 Q Also, there are different costs you have in your  
12 detailed house for Anthony at 21 years old. You have a  
13 down payment, and then you have him financing with a  
14 mortgage for the rest of the time; correct?

15 A Correct.

16 Q So there are actually interest rates that are not  
17 there; correct, Sir?

18 A Of course.

19 Q And also insurance you have to pay; correct?

20 A There would be, but there is just the cost of  
21 taxes and the mortgage on that.

22 Q Okay, but if you get a rental, you walk in a  
23 two-bedroom rental apartment, two-bedroom, two bath, same  
24 like this ranch house here, and he rented that, he would not  
25 have to pay those property taxes; correct?

Dr. Schuster-Cross-Ms. Coyne

1 A There would be included in the rental price.

2 Q But fair enough, is it correct to say that?

3 THE COURT: It's either or.

4 THE WITNESS: He would not personally pay  
5 them, and obviously it would be incorporated in the  
6 rental price.

7 Q He would not pay them.

8 A The landlord would incorporate it.

9 Q It's true when you get mortgage on an apartment or  
10 a house you have to have insurance. The bank requires it;  
11 correct?

12 THE COURT: What?

13 MS. COYNE: The bank requires you to pay  
14 insurance on it.

15 THE COURT: Counsel.

16 MS. COYNE: For your mortgage. In order to  
17 obtain a mortgage.

18 THE COURT: You mean liability and property  
19 insurance?

20 MS. COYNE: Yes, in case there is a fire.

21 THE COURT: Please be specific.

22 Q You know what I'm talking about, sir.

23 A I don't know. I'm not sure about that if they  
24 absolutely require that you get it, frankly.

25 Q But you do know when you rent an apartment you're

Dr. Schuster-Cross-Ms. Coyne

1 not paying that; correct? There is no such requirement.

2 A As far as I know it's -- you could certainly get  
3 your own home owner insurance, absolutely, if you rented an  
4 apartment.

5 Q But it's a choice.

6 A But I believe -- I don't know one way or the other  
7 about that.

8 Q what I'm trying to find out is, is it more costly  
9 to actually own a house with that two-bedroom, two-bathroom  
10 ranch style than to actually have an apartment that's  
11 two bedroom, two bath.

12 A All things being equal, that's probably right.

13 Q So it's more?

14 A That's probably right.

15 Q But you didn't calculate that two-bedroom,  
16 two-bath apartment in your life care plan; correct, sir?

17 A No, because I think he needs -- no, I didn't do  
18 it. I didn't do it.

19 Q And you have it set up so that there's two  
20 bathrooms in this house; correct?

21 A Correct.

22 Q So Anthony has one, and whoever is saying there,  
23 the personal care attendant has one?

24 A That's correct.

25 Q It is fair to say that here in New York City many

Dr. Schuster-Cross-Ms. Coyne

1 people are sharing bathrooms in their apartment; correct,  
2 sir?

3 A Absolutely.

4 Q So it's fair to say if he got an apartment, the  
5 two-bedroom apartment with one bathroom it would probably be  
6 even cheaper; correct?

7 A You could say that, and if he --

8 Q Yes or No?

9 A And if --

10 Q Yes or No?

11 A Of course you can continually cut it down so that  
12 they're both living in one bedroom together with one  
13 bathroom, and that would be cheaper too.

14 THE COURT: Sir. Sir. Stop it.

15 Strike that please.

16 Q All I'm saying is there are cheaper alternatives.  
17 You chose the most expensive.

18 A Am I allowed to respond to that?

19 MS. COYNE: I will withdraw it.

20 THE COURT: Because she is making a speech,  
21 of course you may respond.

22 MS. COYNE: I said I'll withdrew it, Judge.

23 THE COURT: No. You may not. That was a  
24 comment more appropriate.

25 This is a serious case, and I don't want to

Dr. Schuster-Cross-Ms. Coyne

1 make light of anything, but I have been cautioning you  
2 both all not to make these comments.

3 Now, the question here is, have you chosen to  
4 do the most expensive lifestyle for this life care  
5 plan?

6 MS. COYNE: No. I think it was residence,  
7 Judge.

8 THE COURT: In the residence.

9 THE WITNESS: By necessity based upon his  
10 disability.

11 Q Were there cheaper alternatives that were feasible  
12 such as an apartment with two bedrooms, two baths?

13 A Not practical. I would say at least three  
14 bedrooms; but regardless, without it, it would not have been  
15 practical. The way Anthony's life could change in age, it  
16 would require as he ages.

17 Q I believe the Judge was questioning you about  
18 group homes; is that correct?

19 A Yes.

20 Q A group home -- well, withdrawn.

21 The way you have it set up now is Anthony is not  
22 living with any families or friends; correct?

23 A Right. He's living alone.

24 Q You set it up as he'll never live with friends or  
25 never have any sort of companionship the way you have it set

Dr. Schuster-Cross-Ms. Coyne

1 up; correct?

2 A Yes, that is correct.

3 Q well, if he marries -- presumably if he got  
4 married or whatever, he had a close friend that he moved in  
5 with, some of these needs would be taken care of as they are  
6 now by his parents; correct?

7 Yes or No, Sir?

8 A It would be taken care of.

9 The same question about what kind of replacement.  
10 The cost of those services; is somebody going to provide the  
11 services to Anthony that would be necessary? If so, fine.

12 Q You would agree though, Sir, if he was in a group  
13 home environment he would have some sort of companionship?

14 MR. WALKER: Judge, objection. I mean --

15 THE COURT: If he were in a group home  
16 environment? I think you've asked the question.

17 Please answer it; what the cost would be in  
18 an appropriate group home.

19 MS. COYNE: That wasn't my initial question,  
20 Judge.

21 THE COURT: What was the question?

22 MS. COYNE: What companionship a group home  
23 would provide him.

24 THE COURT: You're bringing it out or asking?

25 MS. COYNE: I'm asking him on cross-

Dr. Schuster-Cross-Ms. Coyne

1 examination.

2 THE COURT: Is a group home an appropriate  
3 setting for his circumstances?

4 THE WITNESS: That's the question?

5 THE COURT: Yes.

6 THE WITNESS: You're going from a least  
7 restrictive environment to a more restrictive; and  
8 you're more restricted and it's more expensive.

9 Q Sir, a group home, they would have a personal care  
10 attendant on staff; correct, Sir?

11 A If that's the type of group home that you have;  
12 yes.

13 Q That's the type of group home I would have in  
14 mind. They would also have -- presumably, the facility  
15 would have modifications to accommodate all of the  
16 necessities; correct?

17 A Correct.

18 Q There would be housekeeping, and home maintenance  
19 would be taken care of?

20 A That's correct.

21 Q And they would probably prepare his meals,  
22 correct; make his meals and prepare them?

23 A Generally speaking.

24 Q And they would also, if you will, Sir, give you an  
25 option. If you want, you can leave the facility to go to

Dr. Schuster-Cross-Ms. Coyne

1 work and then come back. Some of the group homes have that?

2 A Yes.

3 Q And also he would have -- sometimes they even give  
4 you transportation; correct?

5 A They could put the transportation in also.

6 Q And, again, that would be transportation that has  
7 the certain needs that Anthony has; correct, sir?

8 A That they too would provide transportation.

9 Q The paraprofessional, that is not a home health  
10 aide person; correct, sir?

11 A Paraprofessional is different from a home health  
12 aide.

13 Q Basically what he has in school now; correct?

14 A Yes.

15 Q By the way, did you see Dr. Shields' -- you read  
16 his report; correct?

17 A Yes.

18 Q I assume he testified that his latest examination  
19 of March 2011 -- withdrawn.

20 Anthony was dependent on others when you saw him  
21 in December 2006 for his activities of daily living;  
22 correct?

23 A Well, to a certain extent.

24 Q He needed somebody to assist him doing little  
25 personal grooming; correct?



Dr. Schuster-Cross-Ms. Coyne

1           A     Yes. He was able to eat by himself; do certain  
2 things by himself. Certain things he needed assistance  
3 with.

4           Q     I'm asking you specifically though. He had some  
5 troubled with his personal grooming; had some trouble with  
6 going to the bathroom. He needed assistance going to the  
7 bathroom when you saw him in 2006; correct?

8           A     Correct.

9           Q     He also needed assistance in brushing his teeth,  
10 his hair, all personal grooming type stuff; correct?

11          A     I don't know if all personal grooming.

12          Q     Take a look at your report.

13          A     What?

14          Q     Bottom line is you did the report in '06 when he  
15 was having a lot of difficulties. He was in a wheelchair;  
16 correct?

17          A     Yes.

18          Q     And then you looked at all these additional  
19 records in 2011; correct?

20          A     Correct.

21          Q     And in 2006 -- by the way, you wrote -- this is  
22 where you wrote that life care plan; correct?

23          A     Yes.

24          Q     All those things that he needs was placed upon  
25 your evaluation of him in 2006?

Dr. Schuster-Cross-Ms. Coyne

1 A Correct.

2 Q Then in 2011 you didn't see him but you learned  
3 from Dr. Shields that he is now according to Dr. Shields  
4 able to do his activities of daily living independently?

5 MR. WALKER: Objection, Judge. That's not  
6 completely true.

7 MS. COYNE: That is what the testimony said.

8 THE COURT: The jury's recollection is what  
9 controls.

10 You can answer the question, assuming that  
11 you know whether he is able to do his activities of  
12 daily living independently.

13 Is that in accord with your last examination?

14 THE WITNESS: No.

15 Q It's completely different; correct?

16 A If he's completely independent now.

17 Q Well, let me show you something. You did read  
18 Dr. Shields' report; correct?

19 A I did.

20 If you give me my folder back I can find it.

21 Q Excuse me?

22 A It's in my folder.

23 Q Page 13 of Dr. Shields' report, second to last  
24 paragraph, first sentence.

25 THE COURT: That's his last report?

Dr. Schuster-Cross-MS. Coyne

1 MS. COYNE: Yes.

2 Isn't it a fact, Sir, that Dr. Shields had  
3 reported that he does his personal grooming and activities  
4 of daily living unassisted?

5 A That's what he said.

6 Q And that's something you said you had relied upon  
7 in coming up with your plan; correct, Dr. Shields' report?

8 A I would rely upon it.

9 Q And let me ask you this, Sir.

10 These changes between 2006 when you saw Anthony  
11 and 2011 -- I know you didn't see Anthony, but you did not  
12 make one change -- well, actually you added things to your  
13 life care plan; correct?

14 A Yes.

15 Q You didn't find that he had made sufficient enough  
16 progress between 2006 and 2011 such that any of this stuff  
17 would have changed; correct?

18 A That's correct.

19 Q Okay, and I see you have a lot of stuff. I think  
20 you said -- oh, in fact, I think this is what you added;  
21 correct, Sir?

22 A Yes.

23 Q So you did make changes to your plan between '06  
24 and 2011?

25 A On Dr. Shields' recommendation.

Dr. Schuster-Cross-Ms. Coyne

1 Q Okay, but you didn't factor in any of the progress  
2 that was noted by Dr. Shields.

3 Are you aware that Dr. Shields had testified  
4 yesterday that Anthony had made some significant progress?

5 A I presumed he would.

6 Q Between 2007 and 2011 you presumed he would in the  
7 plan, and you're not a medical doctor; correct, sir?

8 A I am not.

9 Q NO nursing background?

10 A No, not by education.

11 Q Well, and what kind of nursing background do you  
12 have if it's not by education?

13 A A case manager.

14 Q Okay, have you ever had a job as a nurse?

15 A NO. NO, I'm not a nurse. I have training in case  
16 management.

17 THE COURT: Could you have covered some  
18 nursing duties?

19 THE WITNESS: There is an overlap. That's  
20 all I'm saying.

21 Q Your formal education was neuropsychology and  
22 psychology; correct?

23 A Correct.

24 THE COURT: Counsel, please approach; all of  
25 you.

Dr. Schuster-Cross-Ms. Coyne

(Off-the-record bench conference.)

1  
2 We're under budget constraints folks. We  
3 have to be out of here by 4:30. It will be an  
4 inconvenience for the witness, but I have no control  
5 over that. This is the product of the budget that the  
6 Court system was given and the steps we had to take to  
7 do it. I don't control that.

8 Q On your plan, sir, you said you had relied on  
9 Dr. Shields' report?

10 A On his review of the plan.

11 Q Okay, his review -- because isn't it a fact, sir.  
12 By the way, did you speak to Dr. Shields?

13 A I did.

14 Q About this case?

15 A I did.

16 Q Okay, isn't it fact that he never made any  
17 recommendation for gastroenterologist?

18 A I don't know specifically. I can't recollect  
19 specifically what he recommended, but Dr. Shields  
20 specifically looked it over. That's all I can say.

21 Q But you did say you read Dr. Shields' two reports;  
22 correct?

23 A One report. I didn't see the first one actually.

24 Q You didn't see the first one?

25 A No.

Dr. Schuster-Cross-Ms. Coyne

1 Q Okay, but you wrote your plan. You did write your  
2 plan, sir, in 2007 without seeing Dr. Shields' plan in 2007  
3 when he examined Anthony in 2007?

4 A I did, and I didn't see the initial report.

5 Q This is your analysis report of what he needed?

6 A As of that date.

7 Q Well, the only things that are changed as much  
8 that date is the extra page that you added for the service  
9 dog and the drugs that he takes; correct?

10 A Dr. Shields' recommendation?

11 Q The second one.

12 A Yes.

13 Q Okay, community life coach. Isn't it a fact, sir,  
14 there was never any mention about a community life coach  
15 from Dr. Shields?

16 A I don't know what Dr. Shields recommended in terms  
17 of this testimony.

18 Q Okay, you spoke to him; correct?

19 A Often.

20 Q You said you spoke to him about this case?

21 A Yes.

22 Q Did you say, I have community coach that you think  
23 they need or another gastroenterologist?

24 A Dr. Shields had the whole report to review. I  
25 didn't go through every item with him. He reviewed this.

Dr. Schuster-Cross-Ms. Coyne

1 Q when did you speak to Dr. Shields?

2 A On the phone.

3 Q When?

4 A Oh, I can't recollect.

5 Q Was it before or after he did his second exam of  
6 Anthony?

7 A It was after the second exam.

8 Q Okay, you have down here somewhere in your report  
9 a cost for an ear doctor; is that correct?

10 A I think I just listed as needed.

11 Q Are you aware -- first of all, I think you were  
12 the one in your report that noted that Anthony had this --  
13 some hearing problem before this accident?

14 A That may be.

15 Q You want to take a look at your report, page one,  
16 first report, 2007 March?

17 A We have wax in his ear.

18 Q Excuse me?

19 A Extra wax in his ear indicated.

20 Q He had to go see a speech therapist four times?

21 A That's correct.

22 Q And his speech was slightly delayed because?

23 A Wax. He wasn't hearing well.

24 Q You put it in your plan about the ear doctor;  
25 correct, in light of that?

Dr. Schuster-Cross-Ms. Coyne

1 A Ear, nose, and throat. He had wax in his ears.

2 Q where is it?

3 A It's in ENT.

4 Q what does it say, sir?

5 A Problem with his oral function, dysphasia.

6 Problem swallowing.

7 Q Oh, Yes, sir, that, you did it?

8 A Those are the issues.

9 Q Because you have on page 22 under the -- and  
10 that's the otolaryngologist. You have under there,  
11 developed hearing loss.

12 A From --

13 Q So when you wrote -- your report had some issues  
14 with whether or not he was having a problem with his  
15 hearing; is that correct?

16 A Typically you'd want to rule out any person who  
17 has expressive or language problems to make sure they don't  
18 have any hearing deficit.

19 Q Okay, but just a second ago you said to the jury  
20 that you had recommended an ENT doctor because of his speech  
21 delays. Is that not true?

22 A Back -- if you are asking now, yes. Back then  
23 there was -- he wasn't speaking. There was a question about  
24 his considerable lack of language function. At this point,  
25 I would -- let me just take a look at this. what does it



Dr. Schuster-Cross-Ms. Coyne

1 say?

2 THE COURT: This is a very good time. Have a  
3 nice weekend folks. See you Monday morning.

4 (Jury exits courtroom.)

5 MS. COYNE: Judge, I trust that nobody will  
6 be speaking to the witness while cross-examination is  
7 pending.

8 THE COURT: I don't discuss that.

9 MS. COYNE: Even on an expert witness?

10 THE COURT: They have to talk to him in order  
11 to schedule.

12 MS. COYNE: I know that. That's fine. I'm  
13 talking about the substance of the testimony.

14 THE COURT: Counsel, I don't do that, and I  
15 never have.

16 (The case was adjourned to May 16, 2011.)

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