IN THE CIRCUIT COURT
FOURTH JUDICIAL CIRCUIT
IN AND FOR DUVAL COUNTY, FLORIDA

RHIANNA MCKENZIE, as parent and natural guardian of D.J.B.

Plaintiff,) CASE NO. 2014-CA-006977

vs.) DIVISION: CV-D

UNIVERSITY OF FLORIDA BOARD OF TRUSTEES and BAPTIST MEDICAL CENTER OF THE BEACHES, INC.,

Defendants.

Deposition Duces Tecum of
JAN L. KLOSTERMAN, RN,
on behalf of Defendant
Baptist Medical Center-Beaches
January 31, 2017

DISCOVERY LITIGATION SERVICES, LLC
One Atlantic Center, Suite 2300
1201 West Peachtree Street
Atlanta, GA 30309
855.847.0999

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Defendants.

Deposition Duces Tecum of JAN L. KLOSTERMAN, RN, taken pursuant to Notice, being produced, sworn and examined on the 31st day of January, 2017, between the hours of 8 o'clock in the forenoon and 6 o'clock in the afternoon of that day, at Klosterman & Associates LLC, 410 Sovereign Court, Suite 11, Ballwin, Missouri, before Laura Lynn Murphy, Certified Court Reporter No. 764 within and for the County of St. Louis, Missouri, in a certain cause now pending in the Circuit Court, Fourth Judicial Circuit, In and For Duval County, Florida, Rhianna McKenzie, as parent and natural guardian of D.J.B., as the Plaintiff, and University of Florida Board of Trustees and Baptist Medical Center of the Beaches, Inc., as the Defendants; on behalf of the Defendant Baptist Medical Center-Beaches.

APPEARANCES

For Defendant: SMITH HULSEY & BUSEY
Baptist Medical Center - Beaches
225 Water Street
Suite 1800
Jacksonville, Florida 32202
By: Ms. Megan R. Heiden
Attorney at Law

For Plaintiff: HARDESTY, TYDE, GREEN & ASHTON, P.A.
320 North First Street
Suite 703
Jacksonville Beach, Florida 32250
By: Frank Ashton
Attorney at Law

*****

(At 9:50 a.m., the following proceedings were had:)

JAN L. KLOSTERMAN, RN,

being produced, duly sworn, and examined on behalf of the Defendant Baptist Medical Center - Beaches testifies as follows:

DIRECT EXAMINATION

BY MS. HEIDEN:

Q. Miss Klosterman, we met but my name is Meg Heiden. I represent Wolfson -- I'm sorry, I represent Baptist Medical Center of the Beaches in this matter and I understand that you are going to give us some expert testimony regarding the future medical care needed by Devin Jean Baptiste. Is that fair?

A. Yes.

Q. Would you describe your training in the field of life care, please.

A. Okay. And it -- well, it -- you're -- it's required that you are a registered nurse with a license in good standing. And my certification came after, well, I guess 25 years of nursing. And you were required to have case management background or rehab background, no less than five years clinical experience.

Q. Okay.

A. And you could take the certification class and exam. The class was 120 hours or so and then the exam.

Q. All right. So you started out as a registered nurse, correct?

A. Correct.

Q. What kind of patients did you take care of when you were a registered nurse -- when you were working as a nurse, I should say.

A. I'd say over a span of 25 years, all kinds. I had most -- I would say large majority were adults but I had some kids and some teens.

Q. Did you work in an acute care hospital?

A. I did.

Q. Okay. Did you work in any other contexts?

A. In the hospital, it was critical care areas. Outside of the hospital, I worked for a home health company as case manager. I did a very brief stint which overlapped with my hospital experience in a cardiologist's office. And I also worked in post-anesthesia recovery in an outpatient surgery center.

Q. All right. And what made you decide to become a life care planner?

A. Well, after my home care training, I started reviewing cases with a legal nurse consultant and learned about the process of life care planning. Nurses do lots of different kinds of plans of care but there's

always plans of care wherever nurses practice, and this was a lifetime extension of that.

I thought my skills to a nurse -- as a nurse to date, particularly the case management and experience over the different continuums of care, that that would lend itself to being a good life care planner.

Q. So tell me about when you started reviewing cases as a nurse consultant in the legal arena. When did you start doing that?

A. That was probably 1998.

Q. Did you join any organizations or do anything else to establish yourself as a nurse -- a legal nurse consultant?

A. I belong to the St. Louis Chapter and the National Chapter of the American Association of Legal Nurse Consultants.

Q. Okay. And did you take any kind of training?

A. For legal nurse consulting?

Q. Yes, ma'am.

A. No.

Q. What did you do, what tasks did you perform as a legal nurse consultant?

A. I reviewed medical records. I identified experts that would help to shed some light on happenings in a particular case. I did a lot of chronologies for

attorneys just to summarize their records. Let's see.

Q. Did you identify ways in which you believed nurses had breached the standard of care?

A. I did. And I also testified as a nurse expert in a couple of those cases.

Q. In which you were testifying as to the manner in which nurses had breached the standard of care?

A. Correct.

Q. When did you stop practicing nursing in a patient care capacity?

A. Well, under the roof of an institution would be 2001, but I practice nursing every day as a life care planner so I haven't stopped.

Q. Well, when was the last time you provided direct patient care as a nurse?

A. In my post-anesthesia recovery job in 2001.

MR. ASHTON: I'm sorry, 2009?

WITNESS: 1.

MR. ASHTON: 1. Okay.

(Discussion off the record.)

Q. (By Ms. Heiden) All right. I had an opportunity to review some previous depositions that you gave. Would you still say in hindsight that you were reviewing more cases for plaintiffs as a legal nurse consultant than you were reviewing as -- for defendants?

A. I believe, yes, we did review more plaintiff than defense but back in the beginning, I -- we did a lot more defense cases.
Q. Okay. Do you still work as a legal nurse consultant performing the activities we discussed of reviewing records, preparing chronologies and criticizing nurses?
MR. ASHTON: Let me just object to the form, but you can answer.
WITNESS: Well, I'm not -- never was it my intention to criticize any nurses as part of my job. It's about identifying the standard of care. But, no, I do not actively participate in legal nurse consulting, only in the capacity of an administrator whose company has those services.
Q. (By Ms. Heiden) So your company, what is your company?
A. Klosterman & Associates.
Q. Okay. How many employees does your company have?
A. Eight.
Q. When did you found Klosterman & Associates?
A. 2006.
Q. Is it the continuation of a previous business venture that you were in with a partner?
A. Yes.

Q. What was the name of the previous venture?
A. Rodenbaugh, R-o-d-e-n-b-a-u-g-h, & Klosterman Consulting.
Q. And when was Rodenbaugh & Klosterman Consulting founded?
A. Oh, gosh, we were -- had another name initially. That was 1998 or '99.
Q. All right. And, I'm sorry, how many employees did you say that Klosterman & Associates presently has?
A. Eight.
Q. How do you advertise the services of Klosterman & Associates?
A. We have a website where there's information about our nursing and services. We don't pay for any kind of advertising anywhere. We have a brochure that sits in the closet. And we attend some defense and some plaintiff conferences, either one or the other, on an annual basis.
Q. What was the most recent conference you went to?
A. I, personally, probably the Missouri Trial of Association -- MATA, Missouri Association of Trial Attorneys.
Q. When was that?
A. Last summer.
Q. Is that a plaintiff's organization?

A. Yes.
Q. And what did you do at that meeting?
A. I actually was asked to be a life care planner in a mock trial situation.
Q. Did you have a booth or an exhibition?
A. I did.
Q. How much did you have to pay for the right to exhibit at that conference?
A. Probably $700.
Q. Did you prepare any written materials as part of that?
A. No.
Q. What services does Klosterman & Associates offer?
A. We offer life care planning, legal nurse consulting, medical case management and Medicare Set-Aside Allocations.
Q. Very briefly, what is a Medicare Set-Aside Allocation?
A. That's used primarily in work injury cases where there's a settlement greater than a dollar amount and a plan is drawn up which identifies future medical care that would be covered under Medicare. And then if, indeed, it is reviewed by Medicare, it can go as far as setting that dollar amount aside to pay for the worker's injury that would be covered under Medicare.

Q. So in that context, it is a workers' compensation generally situation where someone has been injured and received a settlement to compensate them?
A. Yes.
Q. Medical case management, is that similarly a situation in which someone has been injured and received a sum of money to compensate them and you are assisting them and identifying medical care?
A. Yes.
Q. And life care planning, again, is a situation where someone's been injured and you are attempting to predict the care that they will need in the future?
A. Yes.
Q. Okay. And legal nurse consulting we've already talked about. That is the situation where your employees and I think you said rarely yourself are attempting to identify -- you're preparing chronologies and attempting to identify a manner in which a healthcare provider has breached the standard of care?
A. Correct.
Q. So is it fair to say that a hundred percent of your income through Klosterman & Associates is litigation-related?
A. All but, perhaps, a small portion of our medical case management.

Q. Can you think of any patients that you are managing from a case management perspective who do not have settlements or funds that have been provided to them because of some injury?
A. No, they all have some funds.
Q. Do you do case management for any patients whose families are funding their care out of the family's own pocket and not any kind of litigation or resolution funds?
A. About once or twice a year, we get a call from a family to come in and make an evaluation and some recommendations, you know, about various different aspects of care. It could be related to home mods or how much attendant care is needed or do we have mom placed in a -- in the right, you know, setting. So private individuals have paid us to do that but not ongoing, you know, month-to-month management.
Q. So the case management services that you have are really an -- aside from the odd kind of one-off consultation, the case management services you provide on an ongoing basis are a follow onto litigation.
A. They follow, yes. Litigation is not going on any longer.
Q. In other words, you don't provide any ongoing case management to patients who have not received money

from litigation.
MR. ASHTON: I'll just object to the form. When you say litigation, are you including both lawsuit and settlement before a suit even was filed?
MS. HEIDEN: Yes.
MR. ASHTON: Okay. All right.
Q. (By Ms. Heiden) Yeah, I think we had defined that but I'll ask a better question.
A. Okay.
Q. The only case management services that you provide are to individuals who have received funds through a settlement or litigation, correct?
A. For the most part, yes.
Q. What percentage of your income comes from your medical/legal work?
A. Me personally or company as a whole?
Q. You personally to start.
A. Well, this is the only employment I have so my total employment is paid by Klosterman & Associates.
Q. So what percentage of your income comes from your medical/legal work?
A. 100 percent.
Q. Okay. And how about Klosterman & Associates, what percentage of its income comes from medical/legal work?

A. Well, I don't usually include case management in that but it's not really relevant because that only represents maybe 10 to 20 percent of our revenue. So 80 to a hundred can be from litigation-related activities.
Q. When was the last time you prepared a life care plan for a healthcare provider, on behalf of a healthcare provider?
A. I personally have not.
Q. You've never prepared a life care plan on behalf of a healthcare provider?
A. No.
Q. When was last time you testified in court on behalf of a healthcare provider?
A. Testified in court? I just gave a deposition but I can't -- trial where I've actually gone to trial in a defense case has been, oh, a couple years probably.
Q. How many?
A. I would have to refer to my testimony log.
Q. Okay. Do you have that in these materials?
A. I do.
Q. Okay. We will find that. Which one? I will clearly do better by letting you find it in your own pile.
MR. ASHTON: I was going to say but, you know, you seemed to know where you were going.

MS. HEIDEN: It's all about creating the illusion of competence.
WITNESS: Well, there was a deposition in December of '16. There's another deposition 9 -- September 2014 on behalf of a healthcare provider. February 26, 2014, I went to trial on behalf of the defendants but I don't know who the party was that -- I don't think it was a medical provider. I think it was a company, a construction company or some other kind of business entity.
You want me to keep going?
Q. (By Ms. Heiden) No. What is the doc --
MR. ASHTON: Well, the only thing is that the question, though, you probably need to keep going just so that you get a complete answer because, otherwise, it just --
WITNESS: Okay. It would be prior to the cutoff of my four-year log.
Q. (By Ms. Heiden) All right. May I see that document. I'm going to mark this as Exhibit 1. And I believe you said this is a four-year list of testimony that you've given.
A. Yes.
Q. Okay. And I'm just going to -- 147 episodes of testimony, does that sound right?

A. I watched you count them. I'm assuming you were accurate.
Q. Okay. So out of 147 times that you've testified in the last four years, three of those occasions were for the defense, correct?
A. That's correct. My participation with the defense is often behind the scenes and doesn't require testimony so there would be -- and I would expect to have a very low incidence of defense testimony in my log.
Q. Okay. Ma'am, but my question was a little bit different. You've testified 147 times in the last four years and three of those occasions were for the defense; is that correct?
A. Yes, it is.
Q. Let's go to your -- why don't you walk me through the process of how you set up a file here. And I believe you had a -- maybe a folder of correspondence from Mr. Ashton.
A. I do. That's one file folder. I usually have the person I'm doing the life care plan on. Their name is on all of the tabs of the whole file. And then this one has the law firm name and Mr. Ashton's name on it and I -- we refer to it as the correspondence folder.
Q. All right. So -- and I'll be happy to pass this

back to you in a moment, but you have -- do you recall when Mr. Ashton contacted you in this matter?
A. The date he called me is on the new intake referral sheet on the inside cover in the corner to your right, up top corner.
Q. Okay. Mr. Ashton called you on September 29, 2016; is that --
A. Correct.
Q. Okay. So that's what that date means. And there's been a circling of -- you've got a number of different letters I guess, abbreviations here. What is CP?
A. Cost Protection.
Q. LCP, Life Care Plan?
A. Correct.
Q. MSA, Medicare Set-Aside?
A. Correct.
Q. Consulting, Merit Review. What's EXP.REF.?
A. Expert Referral.
Q. So you might help someone find an expert for their case?
A. Correct.
Q. Chronology?
A. Summarizing medical records.
Q. And IME?

A. Independent Medical Exam, and that would be attending an exam, an independent exam, with an attorney's client.
Q. Okay. Do you perform Independent Medical Examinations?
A. I don't -- I don't perform them.
Q. Oh, I see. So you would be going. For example, if one of our experts was going to perform an examination of this child, you might go and observe that process. Is that what you're describing?
A. Correct, correct.
Q. Do you ever go to observe another plaintiff's expert performing a medical examination?
A. Another plaintiff's?
Q. For example, when Dr. Dietzen examined this child, would you ever go along in those circumstances to observe?
A. It depends what the circumstances are.
Q. Uh-huh.
A. I've ended up at the person's house with the doctor who's doing -- we're kind of doing our assessments in tandem. It just depends how it works out. I have attended doctors' appointments with life care plan clients to have some interaction with treating physicians.

Q. Did you do that in this case? Did you attend any of Devin's doctors' appointments?
A. No, I did not.
Q. Do you know how Mr. Ashton was referred to you in this case?
A. I believe by a Dr. Dietzen.
Q. Have you ever done any work with Mr. Ashton or his law firm before?
A. I have not.
Q. Have you ever done any work in the state of Florida before?
A. I have.
Q. What law firms have you worked with in the state of Florida?
A. Oh, gosh, I don't know if off the top of my head I can name them. I would have to refer to my mailing list or something to give you their names.
Q. All right. And you have a bill here for $15,509; is that correct?
A. Yes.
Q. Okay. And that appears to be current through January 6 of 2017.
A. That's correct.
Q. Do you have any other time that is outstanding in the case?

A. No, other than just preparation for today.
Q. How much time did you spend in preparation for your deposition today?
A. An hour and a half.
Q. Okay. And what rate will you bill that time?
A. The regular life care planning rate for this case was 185 an hour. And I do have some hours that I talked and collaborated back and forth with Dr. Dietzen.
Q. Since this was created?
A. Yes.
Q. Since this invoice?
A. It's about an hour and a half.
Q. So an hour and a half to prepare for the deposition and an hour and a half in coordination with Dr. Dietzen so 3 hours at 185?
A. Yes.
Q. How much are you charging for your time during the deposition today?
A. It's a flat fee of a thousand dollars for three hours.
Q. Why do you charge $333 an hour for deposition and only $185 an hour for your life care planning services?
A. Because it takes more time and is -- frequently can take you out of the office and it's some --
Q. Well, ma'am, we're in your office today, correct?

A. Well, today we are.
Q. And you say it takes more time but an hour is an hour, right, whether $185 or 333?
A. It is.
Q. So why are you charging me $333 per hour instead of $185 an hour?
A. The wear, the tear, the time that's lost in between.
Q. I see that you have some blank authorizations to release confidential medical information that have been signed by the patient's mother but don't have any healthcare providers filled in.
A. That's what those are.
Q. Is that your standard practice, to have the patient sign blank authorizations to release?
A. Yes, it is.
Q. Okay. Are you a HIPAA-covered entity?
A. We are.
Q. Okay. And then if you were to testify at trial in this case, it looks like you would charge $3500 for out-of-town testimony --
A. Correct.
Q. -- correct? Plus expenses of your flight and your hotel?
A. Correct.

Q. When you fly down for examinations and trial testimony, do you fly sardine class?
A. Yes.
Q. Not any fun, is it?
A. No.
Q. I would like to mark this folder as composite Exhibit 2, please. Is it all right if I affix the sticker to the outside of your folder just so you can kind of keep it -- keep track of it?
A. Sure.
Q. Okay.
MR. ASHTON: What's the name of that folder, Meg?
MS. HEIDEN: It is entitled -- it just says Frank Ashton; Hardesty, Tyde, Green and Ashton on the -- underneath Devin's name.
MR. ASHTON: Okay.
Q. (By Ms. Heiden) All right. Let me see; may I have those. Thank you. So what is your process after you get a request from a law firm like what Mr. Ashton sent you?
A. Well, after they have sent me the medical records, I review them before doing the on-site assessment in the patient's home.
Q. Do you prepare the summary of medical records

that is the first number of pages in your life care plan or is that prepared by one of your employees?
A. That -- after my review, it's passed off to another nurse who actually enters the chronology sequence. And then as we get additional records, I generally add them so I know what has come in. But I also edit and work on the chronology after they have it prepared.
Q. All right. Do you communicate with the child's physicians before or after your home visit?
A. After.
Q. All right. And in this case -- well, let's start out with your normal practice. Is it your normal practice to observe the child in the home environment?
A. Yes.
Q. Why is it important to you to observe the child in the home environment?
A. They're just more comfortable in familiar surroundings. A lot can be gleaned from kind of the way the family lives and how they're coping. And particularly, not so much in this case, if there are any safety issues or environmental barriers as the result of a person's disability, accessibility types of things, it's helpful to see their home.
Q. You didn't have the opportunity to observe Devin

in his home in this case, did you?
A. No. It did not exactly occur the way it usually does.
Q. And why is that?
A. Because mom forgot about the assessment.
Q. Was she at work when you got there?
A. No, she was sleeping.
Q. What time did you arrive?
A. Close to 11.
Q. Did you evaluate the home while you were there with mom?
A. Yes.
Q. And you had a chance to speak with mom after she woke up and faced the day?
A. Yes. I was there about two hours.
Q. So you spent -- so you were at the home with Miss McKenzie from a little before 11 to around 1 o'clock p.m.?
A. No, we probably got there closer to 12 with the time change because we spoke -- we talked about two hours, and it was about 2 to 2:15-ish when we left to go observe Devin at school.
Q. So Miss McKenzie went with you?
A. Yes.
Q. While you were examining Devin's home, did you

find any problems or safety hazards or the like?
A. Well, he does -- there's no -- with his level of function, there's no obstacles, you know, that need to be -- anything that needs to be modified him -- modified for him to move about the home. There -- they have very little storage space and they have a lot of belongings.
And there's lots of I would have to say temptations sitting around that Devin can get into, not that that would be dangerous. I didn't see any, you know, sharp objects laying around. We specifically talked about cleaning products that are kept up and things that he could hurt himself being out of reach.
Q. So you're not recommending any change in his home, correct?
A. No.
Q. No home modifications?
A. No.
Q. What are Devin's diagnoses? And this isn't a memory test so if you want me to pass you any of your papers, I'd be happy to do so.
A. Well, the major diagnosis we're addressing in the plan are on the front cover of the life care plan. And he has cerebral palsy with spastic diplegia, gross motor and fine motor deficits, apraxia, communication impairment, intellectual disability. He has a

ventriculoperitoneal shunt which was inserted for hydrocephalus.
Q. What grade have Devin's physicians assigned to his cerebral palsy?
A. I can't say that I recall right off the top of my head.
Q. Are you familiar with the GMFCS designations for children with cerebral palsy?
A. I know what those are. I see the physicians assign those. I don't, as a nurse, assign those grades myself.
Q. So if Devin's physicians have assigned him a GMFCS level, you would not be in a position to dispute that, correct?
MR. ASHTON: I'll just object to the form. You can answer.
WITNESS: No, it's not something I would assign much like a diagnosis. I would not disagree, I mean.
Q. (By Ms. Heiden) Do you know what GMFCS stands for?
A. It has to do with gross motor function and something else. Again, it's not a scale that I use.
Q. Well, the scale allows the physicians to anticipate and work with the family about what the child

is able to -- likely to achieve in terms of motor skills and coordination, correct?
A. Correct.
Q. So I'd like you to look at this and we'll mark this as Exhibit 3.
(Exhibit No. 3 marked.)
Q. What does this tell you that Devin's physicians think he will be able to achieve between ages 6 and 12?
A. Between the ages of 6 and 12 --
MR. ASHTON: Let me just object to the form of the question.
Q. (By Ms. Heiden) All right. Ma'am, well, let me lay a little bit more. I don't know if that one needs to be -- let me take that back, please.
MR. ASHTON: Is it -- I mean, the objection is with respect to, I mean, you know, you're just basically saying across the board, all physicians. If there's a particular physician, then, you know, I probably wouldn't have the same objection.
Q. (By Ms. Heiden) All right. Ma'am, are you aware that Drs. Spierre, Thorogood and Lewelt of the University of Florida Spasticity Management Clinic have diagnosed Devin with a GMFCS Level I cerebral palsy?
A. I'm sure that's part of their medical records.
Q. And are you aware that Nemours Pediatric

Neurology has, likewise, diagnosed Devin with GMFCS Level I cerebral palsy?
A. That's the score they're assigning him.
Q. I'll hand you this because I don't want it to be a memory test but based on this document that we've marked as Exhibit 3, what does that tell you that Devin's physiatrist and pediatric neurologists think he will be able to achieve between his 6th and 12th birthday?
MR. ASHTON: I'll just object to the form.
WITNESS: That the child can walk at home, at school and outdoors in the community. They can climb stairs without the use of a railing. They can perform gross motor skills such as running and jumping, but speed, balance and coordination are limited.
Q. (By Ms. Heiden) And as part of Exhibit 3, what would be the anticipations for Devin's abilities between ages 12 and 18 to the extent that he is a GMFCS Level I cerebral palsy patient?
MR. ASHTON: Same objection. You can answer.
WITNESS: I'll read you what the definition is or the descriptor, "Youth walk at home, school, outdoors and in the community. Youth are able to climb curbs and stairs without physical assistance or a

railing. They perform gross motor skills such as running and jumping but speed, balance and coordination are limited."
Q. And GMFCS Level I, that is the lowest level of impairment that a physician can assign to a cerebral palsy child on the GMFCS scale; is that correct?
A. Well, yes, it is for the assessment of gross motor function in of itself.
Q. And the GMFCS documents don't start talking about children's requiring wheelchairs or assistance with mobility for things like stair climbing until they reach GMFCS Level II or higher; is that correct? I'll be happy to hand these back.
A. I know that to be true, yes.
Q. I'd like to ask you some questions about the introduction to your plan and I'm on page 3. You state that "A Life Care Plan is a concise projection of reasonable and necessary needs." Is that correct?
A. Yes.
Q. Okay. What do you mean by reasonable and necessary?
A. Well, reasonable and necessary for their level of function --
Q. Okay.
A. -- or to address their condition.

Q. So it should not include anything that's unreasonable, correct?
A. Correct.
Q. And it shouldn't include anything that's unnecessary?
A. True.
Q. And then you say it includes the care and goods that are required because of the onset of an injury, correct?
A. Correct.
Q. Does not include care or costs for normal health maintenance, pre-existing conditions or co-morbid conditions.
A. Correct.
Q. What's a co-morbid condition?
A. Can occur -- a condition that occurs alongside of other conditions.
Q. So it doesn't include anything that would be the normal medical care or treatment received by a child who's uninjured, correct?
A. True.
Q. And it doesn't included anything that would be necessitated for an injury or a health problem that is not the result of the medical negligence claimed?
A. Correct.

Q. How do you pars that out?
A. Well, I -- there's some things I know and if I have questions about it, I run it by the physicians.
Q. And when you say reasonable and necessary, does that mean more likely than not an item will be required?
A. Yes, for everything except surgical procedures.
Q. Okay. Why do you include surgical procedures that are less than 50 percent likely to be needed?
A. Well, sometimes it's unknown how likely or not or it hasn't been -- they're not in the planning stages yet. And it's kind of an all-or-nothing, you know, thing.
I usually use a range of for surgic (sic) procedures that's not planned yet but there's increased risk of it needing to be done, but I assign it a zero to 1 or zero to how many other procedures are antic -- could be anticipated to the best the doctors can tell me.
So we're kind of allowing for no surgeries to be included and, yet, the opportunity stays there on the high end of the cost range.
Q. So you have -- the surgeries, some of the surgeries that you've included in this plan, no physician has testified or stated that they are more than 50 percent likely to be needed.

A. I'd have to kind of go over my conversation with Dr. Dietzen. I don't put surgeries in here on my own accord. It's physician-directed.
Q. We can come back to that as we go through the plan. You say in a collaborative effort, you contacted Devin's physicians, Dr. Simmons, Dr. Aldana, Dr. Spierre and Dr. Thorogood I think kind of together because they practice together and Dr. Childers.
You say, "All treating physicians agreed to participate but have not completed this task to date." And so that was as of January 6, 2017. Now, I see that Dr. Aldana appears to have a form that's come in. Have you received any communications back from any other treating healthcare providers?
A. Dr. Sim -- or Simmons. That's the pediatrician --
Q. Uh-huh.
A. -- initially said that they were going to participate and then they called and said that they were not so we have confirmed that he will not be participating.
Q. Dr. Simmons' records show -- and Dr. Simmons is Devin's primary care provider, correct, his pediatrician?
A. Right.

Q. And his records show that he has documented that Devin is developing appropriately for his age; isn't that correct?
A. Well, if it's -- if it states it like that, you know, it's not a descriptive development in what ways or in how many ways or there's no qualifier there so that doesn't tell me a lot of information.
Q. All right. Well --
MR. ASHTON: Let me just object to the form of the previous question. Go ahead.
Q. (By Ms. Heiden) Did you review this summary of medical records this morning before your deposition?
A. No, I did not.
Q. Would it be important to you to know what Devin's pediatrician -- how Devin's pediatrician has assessed and documented Devin's level of function?
A. Yes, and I have reviewed the records and I've reviewed the chronology a number of times. I did not sit and reread it before today.
Q. Dr. Dietzen, he's not a treating healthcare provider, right?
A. That's correct.
Q. Do you see on September 11, 2015, on page 50 of your chronology where Dr. Simmons has documented -- or I suppose your employee has summarized Dr. Simmons'

documentation to say that Devin was noted to have normal vision and normal hearing with development assessment normal for age, top of page 51?
A. That's what it says.
Q. And Dr. Simmons has declined to participate in your life care planning process?
A. Yes.
Q. Any other treating healthcare providers that have responded to your inquiries other than Dr. Aldana?
A. No.
Q. I'd like to mark the physician communication documentation as Exhibit No. 4.
(Exhibit No. 4 marked.)
Q. And I'd like to talk to you a little bit about Dr. Aldana's documentation. He describes Devin as having posthemorrhagic hydrocephalus of prematurity requiring VP shunt placement, correct?
A. Correct.
Q. Okay. The last time Dr. Aldana assessed Devin, he noted that Devin was doing well without signs or symptoms of increased intracranial pressure, and that Devin was to follow up in two years with an MRI prior to the visit, correct?
A. Correct.
Q. How often have you prescribed in your life care

plan that Devin should see a pediatric neurologist -- or pediatric neurosurgeon?
A. Annually.
Q. Why do you want Devin to see a pediatric neurosurgeon annually when his pediatric neurosurgeon only wants to see him every other year?
A. Because his neurosurgeon did not participate until after the plan was complete. And without completion of the collaborative process, I was not -- I knew there would be some changes once the additional opinions of the -- his treaters came in.
So I put annual because in most pediatric settings, the most frequent it would be would be annually. But there's no established pattern of or standard in the literature, you know, to rely upon so I put annually because that's the most frequent it would be until the time Dr. Aldana had registered his opinion.
Q. Okay. Well, he responded in two weeks from your inquiry, right?
A. Well, he did.
Q. Okay. Do you plan on removing the -- or reducing the frequency of Devin's pediatric neurosurgery evaluations in your plan?
A. I do. And my plan does say that on receipt of additional collaboration, that adjustments may or may

not be necessary. And it appears they are necessary.
Q. Okay. Even though this form came in before your plan was finalized?
A. It didn't. That may be when he signed it, but that's not when it reached my desk.
Q. Okay. And you ask about "Do you anticipate that he will require emergency room evaluations to rule out shunt complication?" And he doesn't answer that but he says it is impossible -- he says Devin has required two shunt revisions in the past. It's impossible to determine if any further revisions will be needed. Is that correct?
A. That's what he says.
Q. So will you be removing shunt revisions from your life care plan?
A. Well, right now it's stated as zero to 1 so I have incorporated his opinion on the low end of the range.
Q. Okay. But you can't say that it is within a reasonable degree of medical probability that Devin will require any shunt revisions in the future, correct?
A. Well, we have 60 to 70 odd years to go. The doctor has already talked to mom about the potential for revision.
Q. All right. Ma'am, but that's not my question.

Can you say within a reasonable degree of medical probability that Devin will require a future shunt revision?
A. I cannot.
Q. Okay. And based on his form that he's completed that you sent him, Dr. Aldana, Devin's treating neurosurgeon, also says it would be impossible to predict whether he'll need further revisions of the shunt, correct?
A. So he can't predict a number of times. He may or he may not have a shunt revision. And I'm interpreting that as he's not sure of the number. It's certainly something out there he's at increased risk for and so zero to 1 is what I represented in the plan. I believe that represents what's happening here.
Q. Even though Dr. Aldana says, and I quote, "Impossible to determine if any further revisions will be needed"?
A. Well, we have a whole lifetime to go.
Q. So you interpret his saying "Impossible to determine if any further revisions will be needed" to mean that he thinks Devin will need some revision in the future?
A. He may or he may not is what that is saying. That is what happens in real life with shunts. It's

very difficult to predict. But the children who have had more trouble with complications up front are the ones that run into the problems later on with the shunts.
So I am merely reserving the possibility that it would need replacement or revision once in his lifetime, either no times or one time. And I believe that is the safe and appropriate way to address it.
Q. Similar question with respect to Devin's scoliosis surgery: Have any of his treating physicians said that within a reasonable degree of medical probability, he will need scoliosis surgery in the future?
A. Not that I've seen in their records.
Q. What is the basis of your opinion that Devin will need scoliosis surgery in the future?
A. That recommendation was created in collaboration with Dr. Dietzen. And, again, it's zero, may not need, totally has had no problems to date yet, but he hasn't entered his rapid growth years. And we have zero to 1 in the event it is needed due to his increased risk.
Q. And what is the cost that you have ascribed to that one possible scoliosis surgery?
MR. ASHTON: Are you on a particular page, Meg, that you're looking at?

MS. HEIDEN: No.
MR. ASHTON: Okay.
WITNESS: Let's see; the range in the community is $144,600.74 to a high of $193,000 $814 -- I'm sorry, and 3 -- and .52.
Q. (By Ms. Heiden) And that includes just the cost of the, you know, surgery, anesthesia and the surgeon to perform it?
A. Correct, and the facility cost.
Q. Hospital or ambulatory surgical center?
A. Yes.
Q. Where did you get those costs? I'll be happy to -- I don't know which folder they would be in.
A. The easiest way to look is on an Excel spreadsheet. There are multi -- to cost all those things because it's facility, anesthesia, doctor, it takes multiple resources to cost a surgery. And I have used a combination of published database resources by zip code as well as American Hospital Directory, which tells us what the hospital admission charge is, and then an on-line subscription for charge data for anesthesia that was from Equian.
Q. So how do you break it down? What costs of the procedure do you ascribe to the different elements?
A. Well, you have to look up the CPT codes for the

procedure, and then you have to assign a DRG code to the type of hospital admission. On AHD, we can actually go to particular hospitals and look at their charge data. And then the anesthesia is an estimate based on time.
Q. Which hospital did you look at for the price on this one?
A. And we're talking the scoliosis surgery. Okay. The data we looked at was from the Mayo Clinic in Florida, Baptist Medical Center, St. Vincent's.
Q. And how much was the Mayo Clinic charge?
A. I guess we -- that we did not use the Mayo Clinic. There was something askew about their data. So it was Baptist and St. Vincent's.
Q. All right. What was the charge from St. Vincent's?
A. St. Vincent's represents the low, 120,151.
Q. And Baptist?
A. $167,075.
Q. What codes are you using to look up those procedures?
A. Well, there is a whole list of codes which I have listed on my --
Q. Okay. May I see?
A. -- document. I think it starts on this page at the bottom and then --

Q. Okay.
A. -- carries over.
Q. Facility fee, MS DRG?
A. Right.
Q. What is MS DRG?
A. That is a diagnosis code that they use for hospital admissions for each particular, I guess, type of admission with or without complications.
Q. And that's diagnosis-related group, correct?
A. Yes.
Q. 459-460, are you using two diagnostic-related group codes?
A. Right, because one's with complications and the other is without.
Q. Those are going to be different numbers, correct --
A. Different --
Q. -- from your database?
A. Different DRGs and different costs.
Q. Correct?
A. Yes.
Q. Three to ten days of admission?
A. Yes.
Q. What is the basis of your prediction that he'll need three to ten days of admission?

A. Based on the hospital stays, based on what the hospital's reporting is their average charge and their average length of stay.
Q. But this is just for a diagnosis-related group 459 spinal procedure, correct?
A. Right.
Q. You've not drilled down into the specific type of spinal procedure?
A. Well, you really as far -- you can with the physician charges but the DRGs are more general categories. I mean, you would go in there and you would see a whole list of DRGs regarding different spinal or neuromuscular procedures or whatever. And you fit the one that best describes what you're accomplishing here. And this would be spinal fusion and that's what scoliosis surgery is.
Q. At what age would Devin potentially be having this spinal procedure?
A. It would be unknown years. I mean, it's more likely to happen after his rapid growth in his late teen or kind of adolescent years would be when I expect it, but I'm not assigning it to any particular year.
Q. So how are you including it in your plan?
A. Well, let me look. I just anticipated that it would be sometime in the pediatric versus the adult time

frame and I divided it for calculation purposes over the first 16 years of the life care plan.
Q. Oh, so there's money in the life care plan next year to help pay for this scoliosis surgery?
A. Well, it's divided -- yes, it's divided. There's a little bit in every year between 1 and 16.
Q. Okay. So for the year of 2017, there would be money in the plan to pay for the spinal surgery?
A. Right, because it's annualized over the entire pediatric kind of -- I don't want to confuse the issue but I guess during the pediatric years.
Q. If you believe that this surgery is to be performed, if at all, during pediatric years, why have you gotten cost quotes from hospitals that don't admit children?
A. Well, this --
MR. ASHTON: Let me just object to the form. You go answer.
WITNESS: Part of it is where we have -- where we're able to get data. I mean, you can call around. The hospitals are not very gracious in providing surgical costs and so I have to utilize the data that's available to me.
Q. (By Ms. Heiden) Are you familiar with orthopedists who are part of the group that provides

Devin's ongoing care performing scoliosis procedures in outpatient surgical centers?
A. Well, that's a -- again, that's a judgment call that's made at the time based on the child's condition and the anticipated procedure and where the doctor has privileges. And so it may or may not be an outpatient surgery.
Q. How would that affect the cost if it was an outpatient surgery?
A. Well, I don't -- I can't think of a situation where there's a spinal fusion and you don't stay overnight. I would not venture to say, given all the pediatric spinal fusions, that many of them go home the same day.
Q. All right. But my question was a little bit different, ma'am. If the surgery was performed on an outpatient basis, how would that affect the cost?
A. Well, it --
MR. ASHTON: Object to the form, but you can answer.
WITNESS: It may be less or more comparable to the cost we used for the shorter stay.
Q. (By Ms. Heiden) You think that the facility charge for an outpatient surgical facility would be between $120,000 and $167,000?

A. Well, that's inclusive of the doctors' fees and the anesthesia and the facility. These are inpatient stays. An outpatient, yes, it would be less.
Q. Ma'am, you just told me that those prices that you had for the 120 to the 167 were just the facility fees.
A. Well, you still -- you don't have the overnight days but you still have all the O.R. charges, all the, you know, fluoroscopy in the O.R. and all the -- the doctors' assistants and all the charges. I mean, it would be some less but, I mean, a spinal fusion is a spinal fusion.
Q. But you can't say he's going to need this at all, right, possible, not probable?
A. He's at increased risk. I would leave that to the physicians. I --
Q. What makes you say --
A. I'm not a surgeon.
Q. What makes you say that he's at increased risk?
A. Because of alterations in tone, what happens with rapid growth.
Q. I'll hand you that back. We'll need to mark that in a moment. Can you say that it's more likely than not that Devin will ever need scoliosis surgery?
MR. ASHTON: Object to the form. You can

answer.
WITNESS: As a nurse, I'm just saying I know he has increased risk. I spoke with Dr. Dietzen. He says, yes, it's good, he has no prob -- he's had no problems to date, but that is something that we need to surveil and it may or may not end up in surgery. And that is how we came to the zero to 1 procedure.
Q. (By Ms. Heiden) All right. Ma'am, but that is not the question that I asked you. Can you say that it is more likely than not that Devin will need scoliosis surgery?
MR. ASHTON: Object to the form.
WITNESS: I will defer to Dr. Dietzen.
Q. (By Ms. Heiden) That's not -- again, that's not my question. Can you say that it is more likely than not that Devin will need scoliosis surgery?
MR. ASHTON: Object --
WITNESS: As a nurse --
MR. ASHTON: Wait, wait, wait, object to the form. You can answer.
WITNESS: As a nurse, I would not make that diagnosis or prognosis so I guess the short answer is, no. I would have to defer to a physician, which I did.
Q. (By Ms. Heiden) Okay. What is this item?
A. That is a set of preliminary grids that I sent to

Dr. Dietzen for the purpose of discussing future care the first time around.
Q. What do you mean by the first time around?
A. Well, he had seen the patient. I had seen the patient. I had made a list of what I thought the needs were. And then we were going to work off of what I had presented to -- that wasn't to finalize, to establish what we wanted the future plan of care to include.
Q. What depositions have you reviewed in this matter?
A. I believe Dr. Dietzen, mom and dad and the grandmother.
Q. Have you reviewed Dr. Sullivan's deposition?
A. No, I don't believe I had been provided his deposition. I had his report.
Q. Okay. Would that be important to you to know what Devin -- what the Plaintiff's expert neuropsychologist believed Devin's prognosis is as far as his ability to live and work in the community?
A. Yes.
MR. ASHTON: You at a reasonable breaking point any time soon, Meg? We've been going a little over an hour.
MS. HEIDEN: Sure, let me just mark this.
Q. All right. I am going to mark this as, I

believe, Exhibit 5 which is the documentation related to what you described as your initial discussion with Dr. Dietzen which is dated January 3, 2017.

(Exhibit No. 5 marked.)

MS. HEIDEN: And we can take a break.

MR. ASHTON: Okay.

(Brief recess.)

Q. (By Ms. Heiden) All right. You have a folder here that is labeled Physician Care. Could you tell me what is in that folder?

A. Well, all correspondence with the physicians was in there, but we've removed some of those and made them exhibits. And the rest should be either life expectancy tables or cost information.

Q. What is a geographic multiplier?

A. I use three resources, three different publications of charge data, and they are national fees that are adjusted to zip code. That would be the geographical multiplier.

Q. So 322 zip code, which covers most of Jacksonville, gets 0.993 so that means our costs are actually a hair under the average, correct?

A. Correct.

Q. So you would have reduced the costs?

A. Yes.

Q. In cases like Devin's where he's already receiving care from multiple disciplines like neurosurgery and physiatry, have you used the invoices that show the charges from his previous visits to identify the cost?

A. It depends how updated my billing is. And most often, I just call for the current cost. And so for all the physician visits, I have his own physician's cost as well as three different publications that have been adjusted by that geographical multiplier.

Q. Under psychiatrists, could you explain the "Don't really need - have another" note there? Can you tell me what that means?

A. I suppose we already had a -- a cost and someone wasn't calling back and we decided not to use that provider.

Q. So what other psychiatrist have you identified?

A. It's not on this page so I will have to look back here.

Q. Oh, is that where you're going with the Baptist Behavioral Health?

A. Yes.

Q. And the physical medicine and rehabilitation, I think you put -- you've got Dr. Spierre and Dr. Thorogood and then you have an adult physical medicine

and rehabilitation physician, correct? Is he -- is your plan that he would transition from Dr. Spierre to an adult physician at some time in the future?

A. Yes.

Q. We will mark this Physician Care folder as Exhibit 6, please.

(Exhibit No. 6 marked.)

Q. Now, Exhibit 7, which looks like you pulled a page out of my book and spilled some coffee on it.

A. That was juggling a cup of coffee in the airport on top of my file and I thought you would still want to see the originals.

Q. Oh, yes, I do.

A. So, I apologize, that's a little messy. It gets worse.

Q. Oh, you don't need to apologize. That's -- I regularly do this to my papers.

MR. ASHTON: Most of the stuff she files with the court's got coffee spilled on it.

MS. HEIDEN: It's true. I even do it through the E-Port although it's a special talent.

MR. ASHTON: I'm only kidding.

Q. (By Ms. Heiden) All right. So siblings, Dymia, age 13, straight A student, left ear hearing loss. And you have the grandmother. Now, what is Devin's

custodial situation?

A. I don't know that there's any formal agreement but he's with his mom during the week and with his father on the weekends. Sometimes he works on the weekends but it's no less that two weekends a month.

Q. Who has filled out this form? Is this your writing or Miss McKenzie's writing or both?

A. The top part is my assistant, that top information. The rest of it is mine.

Q. Is it significant to you the age at which a child starts to walk?

A. It can be a sign of delay when you reach your milestones, if they're on time or late.

Q. Does it matter to you in this case how old Devin was when he started to walk?

A. Let me take a look. I think he was at the kind of -- he didn't start to walk until three. That's late so that would be a delayed developmental milestone.

Q. Are any of your predictions predicated on the information that he didn't start walking until he was three?

A. Not in a specific way.

Q. So if his medical records showed that he actually started walking a year before that, that wouldn't be significant to you one way or the other?

A. Well, it would be still delayed if it was at two.
Q. Yes, ma'am, I was asking you about the discrepancy.
A. I mean, it was commensurate with what I was reading and what they were describing in the records.
Q. And based on your notes, Devin is gone from 8:30 in the morning when a bus picks him up at his home to 3:55 in the afternoon when a bus returns him to his home, correct?
A. Yes.
Q. And he has a dedicated aide on the bus?
A. Yes.
Q. And he is receiving physical therapy, occupational therapy, speech therapy and vision therapy at his school?
A. He is.
Q. Did you based on your observation of Devin in the classroom have any concerns about his situation at school?
A. I'm not sure I know what you mean about concern about his situation.
Q. Well, did you meet his teacher?
A. I did.
Q. Did you like her?
A. I don't think that's relevant but, yes, I did.

Q. Did you have -- did she seem to interact well with Devin?
A. Yes.
Q. And there's only two other children in his class; is that correct?
A. Correct.
Q. So he has a teacher and an aide and two classmates, correct?
A. True.
Q. And he was interested in interacting with his classmates when you were there?
A. He's very sociable, yes.
Q. So is enjoys being around others?
A. He does.
Q. Were you able to understand Devin's speech?
A. Parts of it. I'd have to say 50 percent.
Q. 50 percent?
A. That's what I would rate what I could ascertain.
Q. Okay. What did you observe Devin doing during your observation? I think earlier we were talking about the sequence of events on the day that you went to do your home evaluation. You said it was sometime around 2:15 that you and Miss McKenzie left the home and I think your notes say that Devin's class is dismissed at 3.

So how long were you able to -- well, put it this way: If you left the McKenzie household at 2:15, what time did you arrive at his school?
A. That's where a problem occurred with the traffic. It took twice as long as it -- Rhianna had indicated it would to get there. So we were getting there maybe 15 minutes before dismissal.
Q. Okay. So you arrived at the school around 2:45?
A. Yes.
Q. And Devin's dismissal was around 3 o'clock?
A. Correct.
Q. What time -- what did you get to observe during that time?
A. We just stood in the back of the classroom and they were finishing up on an activity. And there's quite a variety of level of function between the three children that were in the class. Devin was working on a puzzle that had three pieces in it. And the teacher was going around kind of individually help each child. Devin only had one more piece to put in his puzzle and he was trying to turn it.
Q. Reorient it?
A. Yeah, to be able to put it in. That was his last actual activity other than following commands to, you know, put things away and get ready to go home.

Q. And he was able to do that?
A. With cuing. He didn't just automatically know what to do. He needed to be directed.
Q. So if the teacher said, you know, "Devin, take your puzzle and go put it away," he would be able to do that?
A. Take the puzzle, put it on the table, he did that.
Q. Okay. Did Devin leave the school with you and Miss McKenzie or did he ride the bus?
A. He went with us.
Q. So did you go back to the McKenzie's household?
A. Well, we kind of stood and talked a little longer at school. And then we had -- we walked out and got Devin in the car and we talked and interacted with Devin on the way to -- back to the apartment and, again, stood there outside on the lawn for a few minutes before I left. I did not go back in the house after we had returned there.
Q. Did you observe Devin interacting with his sister at all?
A. No, she was not --
Q. She was not present?
A. I didn't meet her and she wasn't home from school. We didn't cross paths with her outside.

Q. Were any photographs taken at any point during your evaluation of Devin or his home?
A. No.
Q. Any video?
A. No.
Q. What was Devin doing while you and Miss McKenzie were standing chatting outside the school?
A. Just stand -- pretty much just standing there.
Q. What was he doing while you all were standing out on the lawn outside the apartment?
A. Again, we were standing right next to the parking lot so mom was holding his hand because she didn't want him to go in the street so he couldn't really go anywhere.
Q. So he just stood there and held Miss McKenzie's hand while you all chatted for a few minutes?
A. Yes.
Q. I'd like to mark this as Exhibit 7, please. This is the folder labeled Home Assessment.
(Exhibit No. 7 marked.)
MR. ASHTON: Is that 7 or is that going to be 8?
MS. HEIDEN: The top one I see over here is No. 6. Am I missing a No. 7?
MR. ASHTON: Okay. I don't know. It just

-- I'd written a No. 7 but maybe you just referenced it earlier and didn't just specifically name it. I just didn't know.
Q. (By Ms. Heiden) And while we're at it, I will go ahead and see how much of the rest of this stuff I can mark. This is a medication list for Devin. Are these the prices that you were able to obtain from pharmacies in Jacksonville?
A. Yes.
Q. Okay. We'll mark that as No. 8.
(Exhibit No. 8 marked.)
Q. Medical Equipment and Supplies, I see here that you've got a couple of different car seat options. How long will Devin require a car seat?
A. Well, I would keep him in a car seat as long as possible, at least through the -- into the pediatric years, the next 10 years or so. Part of it is his ability to comply with keeping his -- when's the appropriate time to put him in a seat belt, that he will be able to put it on and/or keep it on and not try to move around in the car while it's moving.
Q. So what age is your sort of stop date for him having a car seat?
A. Year 10.
Q. Okay. Which would be age 16?

A. That's the amount of years I divided it over. There's only one car seat --
Q. Correct.
A. -- to use in that time so --
Q. So I'm asking how old he will be when he stops using the car seat based on your plan?
A. Well, it's based on when is the appropriate time. I just divided one car seat over that number of years and it's when it's appropriate to him, you know, to be able to be safe in a seat belt. And that's going to have to be assessed by mom. I haven't assigned a specific year to it.
Q. Why have you given Devin a Columbia car seat versus a, you know, regular car seat?
A. Because they accommodate more poundage and taller measurements than a traditional baby seat.
Q. And one of the points that you made in your plan in your report is that he's very small; is that correct?
A. He is.
Q. So don't you think that he could go into one of the car seats that's made to fit a child up to 75 pounds?
A. Well, at some point in time, he's going to cross over. The other problem is the car seats, they go by weight and by height. And if he has a growth spurt, his

height might not match up to the specifications on a regular seat.
Q. And you also have a special Tomato push chair in here, correct, a wheelchair basically?
A. It's a medical kind of stroller.
Q. A medical stroller. Didn't the GMFCS Level I information say that those children don't require a stroller or a wheelchair for ambulating long distances?
MR. ASHTON: Object to the form.
Q. (By Ms. Heiden) I'll be happy to provide it to you again.
A. Well, here's my thought on that: There -- that's a general guideline. He has spastic diplegia. He can walk at school. He can walk at home. He can run. He can play outside. But the mechanics of his gait take up more energy because of his spasticity.
And so for a long day out in the community such as going to Disney World with which they have a season pass, he's -- he starts limping and starts slowing down and starts having more difficulty walking at the -- in a prolonged day out in the community. And they are currently using a stroller in that application.
Q. Well, ma'am, is it not your experience that a five-year-old or six-year-old child with no physical deficits will start to limp and be tired and have

difficulty walking after a full day at Disney World?
MR. ASHTON: Object to the form.
WITNESS: Well, I'm not saying -- some may, some may not. I wouldn't say all six-year-olds need a stroller at Disneyland.
Q. (By Ms. Heiden) But some do, some don't, right?
A. They may or they may not.
Q. Regardless of whether they have cerebral palsy?
A. It just depends on the child and what's -- you know, I -- we're not -- we don't have any qualifiers here of these other children.
Q. What else is Devin going to need to use that chair for besides going to Disney World?
A. Well, other long community outings. It's there to be available to them when they need it. The other problem we encounter here is as he gets older, a little older, a little bigger, if he's out in public with his mom or dad and he doesn't want to go somewhere or he doesn't want to leave the book department or toy department or whatever, from a behavioral standpoint, he may be easier to get out of Target or Wal-Mart or whatever if he's in a medical stroller or some kind of device where he can't get away from you. He can't run out into the street. If he's obstinate about wanting to leave, there's other purposes other than just mobility

to utilize this.
Q. So it's possible they would need it for things other than Disney World?
A. Yes.
Q. How often do they go to Disney World?
A. They have a season pass. I didn't ask the number of times they use their pass.
Q. You have a folder labeled Therapies and Services. Does that relate to your efforts to obtain cost projections for the therapies and service that Devin is going to require?
A. That's correct.
MS. HEIDEN: Mark that as Exhibit No. 9.
COURT REPORTER: Well, I think this one might be 9.
MS. HEIDEN: So this will be 10.
(Exhibit No. 10 marked.)
Q. And 11 will be your folder labeled Adaptive Equipment/Orthotics.
MR. ASHTON: Is it -- did we -- was there a 10 or was there --
COURT REPORTER: 10 was the Therapies and Services.
MR. ASHTON: Okay.
COURT REPORTER: And 9 was the Medical

Equipment and Supplies.
MR. ASHTON: All right. Go ahead.
(Exhibit No. 11 marked.)
MR. ASHTON: I'm sorry, Meg, what is No. 11?
MS. HEIDEN: This is the folder labeled Adaptive Equipment/Orthotics.
MR. ASHTON: Okay.
Q. (By Ms. Heiden) Has Devin ever been to a camp for special needs children?
A. No, he has not.
(Exhibit No. 12 marked.)
Q. This will be Exhibit 12. That's the folder labeled Future Care/Therapeutic Recreation. And I think maybe that document that you have there goes in this Calculations & Master Copy; is that correct?
A. Yes.
Q. So this is the -- this I will label No. 13.
(Exhibit No. 13 marked.)
Q. This folder is labeled Calculations & Master Copy and this contains I think a copy of your life care plan as well as the sources for your costs.
A. But it's not really a copy of the life care plan, it's just the supporting calculations for the annual and lifetime cost summary.
Q. And what is that other folder that you have over

there?
A. Well, this one has Diagnostics and Procedures. We already talked about that but it's not marked.
Q. This will be No. 13 -- or No. 14, sorry, labeled Diagnostics/Procedures.
(Exhibit No. 14 marked.)
Q. This is a -- looks like a rough draft of the life care plan.
A. It was a draft that was sent -- well, actually it -- a copy of that was sent to Dr. Dietzen and we discussed it line by line. And there are some proofing -- is mostly proofing, punctuation. He's -- the discussion was very detailed but it didn't result in any changes to any recommendations.
Q. What is hippotherapy?
A. It's horse therapy. It's a kind of therapy for disabled children and adults and it helps them with social skills, cognitive skills, balance. It's shown to reduce lower extremity spasticity and increased strength in trunk balance and trunk control.
Q. I'll mark this as Exhibit 15.
(Exhibit No. 15 marked.)
Q. Has Devin ever done hippotherapy before?
A. He has not.
Q. Have any of his physicians prescribed

hippotherapy?
A. Not that I'm aware and I -- I'm not sure you need a, like, a prescription or an order to sign up for that activity.
Q. When you interviewed Miss McKenzie, and you said I think you spent about two hours interviewing her, did she tell you about anything that any treating healthcare provider for Devin has recommended that she has not been able to get for him?
A. Not that comes to mind.
Q. When you were reviewing Devin's medical records, what was the volume of those records, do you have any idea?
A. Well, it's kind of hard to tell when they're all electronic but there was a lot.
Q. Fair enough. When you reviewed Devin's medical records, did you identify any items that his treating healthcare providers have prescribed or recommended that he has not received?
A. No.
Q. All right. Have you reviewed any of the testimony of Dr. Balducci in this case?
A. No, I have not.
Q. Have you made any efforts to separate the medical care that is required -- that you believe is required

for Devin due to his intraventricular hemorrhages from the medical care that is required because of his extreme prematurity?
A. No, I have not.
Q. So, for example, the eye care issues related to retinopathy of prematurity, you have included those in his -- in the life care plan?
A. I have -- I don't have a retina special in there but I have ophthalmology in there.
Q. Have you ever done a life care plan for a child who was extremely premature -- and by extremely premature, I mean born before 28 weeks gestation so a child who was extremely premature -- that did not have intraventricular hemorrhages?
A. As I sit here, I don't recall. I have several I'm working on now. It was kind of odd but this happens now and then where you get a couple kids that have kind of a similar history. And the other person I'm working on was premature and had a hemorrhage as well but didn't require shunting so, I mean, I could go back and find the answer to that. But as I sit here, I don't know.
Q. When you evaluated Devin and when you observed him, did you make any effort to identify his functional abilities or assess his functional abilities?
A. Well, I certainly had the opportunity to watch

him try to put his jacket on and to walk and to answer questions. It was a little bit limited by the setting that I was seeing him in.
I did have Dr. Dietzen's full and thorough physical exam that I had actually reviewed right before the assessment. So it was -- you know, I observed what I could and had the opportunity to.
Q. When you were reviewing records and consulting with Dr. Dietzen, did you identify any ways in which Dr. Dietzen's assessment of Devin differed from the assessment of Devin's treating healthcare providers?
MR. ASHTON: Let me just object to the form but you can answer.
WITNESS: Well, that wasn't the purpose of our conversation and, no, we didn't.
Q. (By Ms. Heiden) Well, ma'am, you've reviewed all of Devin's medical records, correct?
A. Correct.
Q. And you had one of your employees summarize them.
A. I have.
Q. And you have reviewed Dr. Dietzen's report, correct?
A. I have.
Q. And discussed his assessment of Devin's condition?

A. Yes.
Q. So have you identified any discrepancies between Devin's medical records and the way his treating healthcare providers have described and assessed him and the way Dr. Dietzen has described and assessed him?
MR. ASHTON: Object to the form. You can answer.
WITNESS: Well, just using the example we were looking at before, his pediatrician who says he's developmentally fine at age four, well, at age six, he doesn't know his ABCs, he doesn't know his colors, he doesn't know all the shapes or animals, things that six-year-olds know. And so I would disagree that he was -- he's developmentally on target.
Q. (By Ms. Heiden) But that wasn't my question. So did you identify any discrepancies between the description of Devin's abilities from his treating healthcare providers and the description from Dr. Dietzen?
MR. ASHTON: Well, let me just object to the form. I think that's what she answered, but you can answer it again.
WITNESS: Well, I would answer in the same way because I think I answered the question.
Q. (By Ms. Heiden) Well, ma'am, I wasn't asking for

your assessment of who's right and who's wrong. I was just asking you what discrepancies, if any, you've identified.
A. Well, that would be one that I have identified.
Q. Any others?
A. But I did not have a separate conversation with Dr. Dietzen to identify all the discrepancies.
Q. Are you aware that by age three years, eight months that Devin was able to walk over level surfaces sideways, up and down a ramp, up and down a curb, up and down one exchange addition and over grass/soft mat?
A. Great, yep.
Q. Devin was able to run 30 feet in one second on level surfaces.
MR. ASHTON: Let me object to the form.
WITNESS: I've read those records and I have seen those observations.
Q. (By Ms. Heiden) So that's in --
A. And it doesn't have any bearing on anything in particular at the moment.
Q. The manner in which Devin's treating healthcare providers have assessed his level of physical function does not have any bearing for you?
A. Well, it does but just the -- in that limited list. It's not an all-inclusive list. It's also

occurring in a therapy situation which is a little bit different than real world.
Q. Ma'am, how is jumping with two feet in therapy different from jumping with two feet on the sidewalk?
A. It isn't -- that particular skill is not different, but he -- physically he moves around. He does have the spastic diplegia which interferes with his gait. It makes it abnormal. It makes it more difficult.
But he can jump. He can run. He can climb up on this tall chair that they have at their kitchen table. I mean, there's a lot of things he can do physically. I would not disagree with that.
Q. He can feed himself?
A. He's really messy but, yes, he does.
Q. Okay. And he can drink out of a cup with a lid on it or a straw?
A. Yes.
Q. Can he manipulate an iPad or a tablet?
MR. ASHTON: Let me just object to the form in terms of what you mean by manipulate.
Q. (By Ms. Heiden) Can he interact with games on a tablet?
MR. ASHTON: Object to the form, but you can answer.

WITNESS: That's not something I personally assessed.
Q. (By Ms. Heiden) Can he ride a little foot pedal car around the house?
A. No, he doesn't pedal.
Q. Well --
A. He pushes with his feet.
Q. A foot pushing car, can he ride a little foot pushing car around the house?
A. Yes, he does.
Q. What did his mom tell you he likes to do around the house?
A. He doesn't play a lot with his toys. If he does, it's for a very limited amount of time. He doesn't really pay attention a lot to TV shows but he just goes from room to room and gets into things, empties all the drawers, pulls things down, looks at them, kind of sounds like a little wrecking ball that goes around the house and gets into things.
Q. But that's based on mom's report, not your own observation, correct?
A. Correct.
Q. Did Devin when you were in the classroom observing him, was he performing the task that his teacher was sort of cuing him to do or was he wandering

around the classroom like a wrecking ball?
A. He was sitting in a chair and he was trying to do what he was supposed to do.
Q. You noted in your report that there have -- that you believe Devin needs some kind of medication for attention deficit concerns; is that correct?
A. That is recommended and -- by Dr. Dietzen and represented in the plan.
Q. Who is the appropriate physician to prescribe those medications? What kind of physician?
MR. ASHTON: Object to the form. You can answer.
WITNESS: Some pediatricians prescribe it. I've seen PM&R prescribe it. Sometimes a neurologist will prescribe it. It just depends who is involved and what specialties are involved, sometimes a psychiatrist.
Q. (By Ms. Heiden) Did Devin's mom tell you that she's made any efforts to obtain those medications for him?
A. No, I was -- I did not discuss medicines with her.
Q. You didn't discuss with her whether he's receiving treatment or whether --
A. Oh, we discussed what treatments and medicines are ordered currently, but I didn't discuss with her

other possibilities.
Q. What medications is he currently receiving?
A. He just has some respiratory medications and an antihistamine.
Q. And how often does he have to use the respiratory medications and the antihistamine?
A. He was doing a lot better this year. He only had one episode where some sort of upper respiratory infection, you know, really required intervention. I need to have my home assessment folder.
Okay. His medications are all p.r.n. at this point and there was just one respiratory issue that required this little constellation of medicines which includes Albuterol, Bromfed and Flonase nasal spray.
Q. Do you know why Devin has not received any treatment for his attention deficit concerns?
A. No, I don't.
Q. Have you ever implemented one of your life care plans that you've prepared?
A. Yes.
Q. What are the circumstances of that?
A. This is a patient who's currently a case management patient. We've had for -- her for, oh, I would say approximately eight years. And she has had a brain injury and spastic quadriplegia from a B vitamin

deficiency. It's called Wernicke's encephalopathy.
Q. Was she involved in a lawsuit?
A. She was.
Q. Medical malpractice lawsuit?
A. Yes.
Q. Did you prepare the life care plan?
A. I did.
Q. What year did you prepare the life care plan?
A. I would have to look that up, probably 20, I don't know, 10 so -- or maybe even before that, 2009. I could check for you.
Q. That's okay. Have you purchased for her as a case management patient everything that you identified in the life care plan?
A. Well, I personally don't have the purchase power. The trust person at the bank does, but we manage her medically and have facilitated implementing. Yes, I would say we -- we are right on target with what we projected and with what she currently is using.
Q. Is there anything in the life care plan that you projected that she has not received?
A. As I sit here, I'm not sure because I don't -- I'm not the person managing her. I can't think of anything.
Q. I noticed that you have ranges for many of your

numbers and just, for example, I'm looking at page 78 of your plan where there is a line item for Baclofen, 10 milligrams, 60 pills. And you have a range in cost of $8 to fill that prescription all the way up to 39.99. How do you account for that range, that $31 discrepancy?
A. Well, it's not a discrepancy, it's just the difference between the retail or usual and customary price that the particular pharmacies are charging. Some of them have lists of generic meds that they offer at a discount.
Q. Uh-huh.
A. That has been in practice for quite a number of years and ordinarily we don't use discounted rates in the care plan. But because that practice is alive and well across the entire United States, I go ahead and use whatever -- the store's list or whatever.
So apparently one of these has that on one of their lists which drops the price really low. And other people may not have it on their, you know, preferred list and it's the usual and customary price.
Q. Your plan includes things that are reasonable and necessary, correct?
A. Correct.
Q. Would a reasonable person choose to pay $31 more for a medication?

MR. ASHTON: Object to the form.
WITNESS: Well, there's lots of things I could say about that. Many times patients just use the place closest to their house and they don't check the price. Many times they will use who delivers. They don't commonly check -- call and check all the prices at the pharmacy. That would be something a case manager does.
But I always wouldn't expect a patient to have a list of, you know, four or five medications and go to three different pharmacies in order to get the best price. People don't do that.
Q. (By Ms. Heiden) If you were coordinating care for a patient like Devin, would you assist the patient in obtaining the medications at the lowest price they could reasonably be obtained?
A. Well, reasonable, is it reasonable for someone to have to run around to a bunch of different pharmacies? No. What I would do is take a look at the list and take a look at the pharmacies and see the combined totals, kind of where you could get the best rate. And then that's what I would recommend.
Q. Okay.
A. And that may change over time, too, because I think the pharmacies price a little bit on the volume

they do with certain kinds of medications. So it's something that needs to be periodically rechecked.
Q. So it's not predictable from this point in time what the prices will be in the future?
A. Well, they fluctuate. They don't -- it's something as time goes on, the prices go up. Sometimes they change places. Some appear on the list that's discounted, others not.
So the average is kind of part of creating a budget, also, to work within as changes to the treatment plan occur with changed doses or a substitute of a -- let's say, we go -- Baclofen's not working so much anymore. Let's change to Tizanidine. So the budget, the total budget, should cover those kinds of minor fluctuations.
Q. Because there's a lot of unpredictability about what's going to happen or what's going to be needed in the future, right?
MR. ASHTON: Object to the form. You can answer.
WITNESS: I think it's reasonable to say as we sit here today with the degree of spasticity that he has, he will need medication across his life expectancy for spasticity. It could be Baclofen. It could be Tizanidine. It could be 30 milligrams or 4 milligrams

depending on the drug so there will be fluctuations.
But what is predictable is his ongoing needs for spasticity. And to the best you can calculate that today using current prices which will be adjusted by an economist for growth rates and whatever else, that is how, that is the procedure, that is the methodology for calculating medications in a life care plan.
Q. (By Ms. Heiden) Okay. Are you aware that Devin is currently receiving treatment from the University of Florida Spasticity Management Clinic?
A. Yes.
Q. What have they prescribed so far for treatment of his spasticity?
A. They are doing Botox right now and casting.
Q. Have they prescribed any oral medications for him?
A. Not to this date.
Q. Let's talk about attendant care. I'm on page 80 of your plan and I'd like you to walk me through what you are recommending because I had a little trouble following it.
A. It's -- because of the skill level and the school days and the summer days, it does get a little difficult. Okay. First off, in the ages -- between the ages of 6 and 11, we have an aide eight hours per week,

which is approximately two hour -- it can be however the family wants it scheduled but about two hours every other day.
Then as he's to the age of 12 through 21, he's still in school. He has an aide during the school year because it's a very short time after school and mom could be in and out during that time frame.
And then during the summer when she's working, there's an LPN and that is because she is gone away from the house for long periods of time, which for medications and behavior management is -- an upper skill level is required.
Q. All right. So from ages 6 to 11, there will be an aide for eight hours a week, 48 weeks a year?
A. Correct.
Q. What is the aide going to do?
A. The aide is going to mainly assist with bathing and dressing, any linens pertaining to him, not the rest of the family, occupy him with purposeful activities, ensure his safety, provide a light snack.
Q. Occupy him with purposeful activities, does that just mean entertain him?
A. Or ensure that he doesn't get into the drawer that has the scissors and knives or cleaning products or that he doesn't, you know, hurt himself or leave the

house.
Q. All right. So that's an aide from ages 6 to 11 for eight hours a week, 48 weeks a year?
A. Correct.
Q. And then from ages 12 to 21, we have an aide for four hours a day?
A. Yes.
Q. During the school year?
A. Correct.
Q. What is the aide going to do for Devin for four hours a day?
A. Well, that's after school care. It allows mom to be able to work. Someone's there when he gets off the bus to engage him in activities. They can do his personal care then. They can prepare and give him a snack and basically make sure he doesn't get into trouble or leave the house before mom gets home from work.
Q. Is Miss McKenzie working full time?
A. Well, right now she can't. She doesn't have anyone to watch him so she's limited her part-time hours to four to six hours during the day when Devin is at school.
Q. Was she working the day that you went to perform your home assessment?

A. No.
Q. What was she doing that day while Devin was at school when you arrived?
A. She was sleeping.
Q. So the aide -- Devin gets home from school around 3:45 p.m.; is that correct?
A. Yes.
Q. And so the aide would be there from approximately 3:45 until approximately 7:45 every day?
A. Yes.
Q. And four hours of day on the weekends as well?
A. Yes.
Q. So the aide would be in the house at the same time that Devin's sister, Dymia, is in the house?
A. Maybe, maybe not.
Q. And for at least some of the time while Miss McKenzie is in the house?
A. She would -- might be home for a portion of that time.
Q. And then in the summer, we have an LPN who is going to be there for nine hours a day, seven days a week?
A. Correct.
Q. And what is the LPN going to do?
A. That is manage his day while his mom is at work,

provide personal care, leisure activities, any laundry related to him personally, straightening up his personal area, assisting him with diaper changes if he needs that or toileting. I think we've already said snack but supervision is the big item.
Q. What does LPN stand for?
A. Licensed Practical Nurse.
Q. What kind of education and training does that person have?
A. They have -- most LPNs have a one to two-year program.
Q. And they have to take a licensure examination?
A. They do.
Q. So an LPN is a healthcare provider?
A. Yes.
Q. What is this healthcare provider going to do that an aide cannot do?
A. Manage behaviors, dispense medication.
Q. Just those two things?
A. Triaging the emergency that would arise.
Q. Okay. Dispensing medications. What medications?
A. Well, he is anticipated by Dr. Dietzen to benefit from Baclofen and/or an attention deficit medication. In the future, he could have any number of needs unrelated to his cerebral palsy.

Q. So an aide cannot manage behavior?
A. They are --
MR. ASHTON: Object to form.
WITNESS: No, they do not do that well. They are unskilled. They are -- they have minimal tasks they are -- they're trained on. And for significant behavior issues or performing an assessment, they do not have the skills to do that.
Q. (By Ms. Heiden) Has Devin had any significant behavior issues?
MR. ASHTON: Object to the form.
WITNESS: Not that have required treatment but -- to date, but that's one thing I discussed at length with Dr. Dietzen. As these kids get older and bigger and stronger and have ideas of their own and the frustration with communicating, their behaviors become difficult to manage.
Q. (By Ms. Heiden) Triaging an emergency, what kind of an emergency is the LPN going to triage?
A. Well, he's at risk but has not had seizures and any other kind of fall or, hopefully, heading off any kind of, you know, personal injury type thing with something sharp or something poisonous or -- that he gets into or hurting himself by using some object in a way it wasn't meant to be used.

Q. Well, isn't that part of the supervision piece?
A. Right.
Q. Can an aide -- well, don't you have an aide performing that same kind of supervision on other days of the year?
A. There are shorter periods of time where during the time frame, mom is expected to be coming -- perhaps coming and going from the house or be in the house.
Q. How about on the weekends in the summer because you have an LPN there for nine hours a day seven days a week. Do you think mom's going to be gone for nine hours a day seven days a week?
A. Well, she has another child. She does work right now in an industry that requires seven-days-a-week kind of scheduling. She is working for a fast-food outlet. So, yes, that gives her the opportunity to manage her work schedule and/or attend activities and address the needs of her other child.
Q. What about when Devin's at his dad's house, what's the LPN going to do then?
A. The LPN can -- I mean, these are hours as -- I mean, it's the supervision Devin needs. If he's at his dad's for the weekend, then he gets the care hours. It will follow Devin.
Q. Oh, so you think dad wants the LPN to supervise

Devin when it's his turn to spend time with him?
MR. ASHTON: Object to the form. You can answer.
WITNESS: He might get a regular visitation schedule that way so that if he is working on a weekend, he can still have his weekend with Devin. It's the same as -- the same things they're doing at mom's they'll do at dad's.
Q. (By Ms. Heiden) Well, you've said that you don't need an LPN if the parent is expected to be coming and going, correct?
A. Correct.
Q. So do you think that Devin's father is going to leave for nine hours a day on his day to spend with Devin?
A. If he's working that weekend, yes.
Q. Are you aware that the father is not making a claim in this lawsuit?
A. I didn't know one way or the other.
Q. That the father has not requested any assistance caring for Devin?
MR. ASHTON: Object to the form.
WITNESS: Well, I'm not -- I have no knowledge of what he has or has not requested.
Q. (By Ms. Heiden) You haven't met the father, have

you?
A. No. I've read his deposition but I've not met him.
Q. And you haven't spoken with him?
A. I have not.
Q. Have you been provided any photographs or video of Devin?
A. No, but I know there are some that I would like to review.
Q. You and me both. Tell me about dispensing the medications. Why can't an aide dispense medications?
A. Because they're not licensed.
Q. What's the -- what can an aide do with respect to the medications in Florida?
A. They can cue the patient to tell them to take the medicine. If they have to get -- like, if they're dispensed already in, like, a medicine box, they can take the patient over to the medicine box, but they're not to take them out of there or put them in their mouth.
Q. If you handed Devin a piece of candy, can he put that in his mouth?
MR. ASHTON: Object to the form.
WITNESS: Well, he's physically able to go from hand to mouth.

Q. (By Ms. Heiden) So what makes you think that he can't pick up his medication or have it put in his hand from a little cup and put it in his mouth?
MR. ASHTON: Object to the form.
WITNESS: Well, what if he doesn't cooperate with that? What if he spills it on the floor and steps on it? What if he tries to get it out of a container and spills them all and mixes them up? The aide has no ability or authority or licensure to correct that situation.
Q. (By Ms. Heiden) What does Devin's mom do if he refuses to take his medications?
A. Probably tries again another time.
Q. LPN respite care, tell me about the respite care.
A. Respite care is to provide caregiver relief or cover absence of time, you know, patient -- moms or dads, other caregivers are away. It could be used if Rhianna or Carvin I guess is how you pronounce his name would be temporarily disabled or ill or hospitalized or needing to be away with an activity related to other siblings.
Q. Does Devin have any siblings on his paternal side?
A. I don't know. I don't think so.
Q. And some of the time you said I think is going to

be related to -- you probably know where this is better than I do. These hours can also provide a rest as it can be physically and emotionally exhausting caring for a child with a significant disability.
A. That is correct.
Q. So the time is in case Miss McKenzie is away from the home or in case she's ill or if she needs to rest.
A. Or injured or needs to travel or has obligations with other family members.
Q. Are you able to predict with any reasonable degree of medical probability whether she's going to be ill or disabled?
A. I have not delved into her medical history, no, but these are the kinds of things that happen particularly as parents age.
Q. Yes, ma'am, but that wasn't my question. Are you able to predict with any reasonable degree of medical probability that she is going to be disabled, ill or injured?
MR. ASHTON: Object to the form.
WITNESS: At some point in time, yes, I would say it's more likely than not these kinds of things would occur.
Q. (By Ms. Heiden) 28 days a year?
A. 28 days a year.

Q. How did you come up with that number, that 28 days a year?
A. Well, that's equivalent to four weeks or if -- it depends how you use it. You can use it for a weekend to be away, a week to be away. It's just the amount of time that potentially could, you know, kind of cover both households.
Q. And why does she need a rest from caring for Devin?
A. Because Devin is a 24/7 job. If he gets up in the night, she has to get up in the night. If he gets up at 5:30 in the morning, she has to get up. And it's unrelenting. I mean, you have got to watch him with increased vigilance because he gets into things.
Q. All right. But he's gone for eight hours a day at school, right?
A. Yes.
Q. And then there's going to be several hours a day of an aide who is helping with those things.
A. Correct.
Q. And didn't she tell you that Devin sleeps well through the night and that night wakefulness has not been a problem for him?
A. To date.
Q. All right. Let's go to his future care options.

MR. ASHTON: You at a breaking point here, Meg, for just a minute?
MS. HEIDEN: Okay. Sure.
(Brief recess.)
Q. I'd like to talk to you about your future care options for Devin, well, just to tie up what we were talking about because we talked about the attendant care that Devin would receive I think while he's school-aged essentially, correct, from now until he's age 21 when he ages out of the school system?
A. Correct.
Q. So starting at age 21, you have several different options but I notice that you did not include an option for a supportive living situation that is sort of a lower level of support than a group home.
A. I don't believe that would serve him appropriately.
Q. Well, if his treating neuros -- or if his, sorry, strike. Start over again. Are you familiar with the apartment complexes that are run by organizations like ARK that provide a supportive living environment for the intellectually-impaired adults?
A. I am.
Q. Okay. If Dr. Sullivan, the neuropsychologist who evaluated Devin, testified that such a living situation

might be appropriate for Devin or would be appropriate for Devin, how much would that cost?
A. That's what I --
MR. ASHTON: Object to the -- let me just object to the form. Go ahead, you can answer.
WITNESS: That's what I have, that's what I have costed in the plan.
Q. (By Ms. Heiden) Well, I believe you have an adult group home; is that correct?
A. Right, it's -- I call it a group home. It's supported living for developmentally disabled in the community.
Q. What does the support consist of at the level that you're including in the plan?
A. 12 to 24 hours of supervision and those are staffed, you know, to assist the residents in whatever they need as a group to accomplish their activities of daily living. There is also medication administration available. There is nighttime assistance available. There is some minor transportation available.
Q. Minor transportation, what does that consist of?
A. Well, if the group is going to community outing or whatever, there would be transportation for that.
Q. If Devin is able to work in a supportive environment or in an environment with a benevolent

employer, would that reduce the number of hours of supervision he needed each day?
A. It would eliminate the -- I don't think he's going to have gainful employment that he's going to be gone every day for eight hours. But if he did something sheltered or something part time with a lot of supervision, you could eliminate the day program.
Q. And you've not reviewed the testimony of Dr. Sullivan; is that correct?
A. I have not.
Q. As a legal nurse consultant and a nurse life care planner, would you defer to a neuropsychologist's assessment of whether Devin is able to have supported or benevolent employment?
MR. ASHTON: Object to the form.
WITNESS: Yes, I would.
Q. (By Ms. Heiden) Would you defer to a pediatric neuropsychologist about what the most appropriate placement would be for Devin from -- let me strike that and try and ask it a little bit better. Would you defer to a neuropsychologist as to what future placement would provide the maximum psychological benefit to Devin?
MR. ASHTON: Same objection. You can answer.

WITNESS: I would -- well, I have to say it depends.
Q. (By Heiden) On what?
A. It depends how well they know what services are available and all the different levels of care. It would depend on the test results.
Q. Well, that's not my --
A. I generally collaboratively discuss that. They don't generally spell that out in the recommendations after a -- an assessment.
Q. Well, you haven't talked to Dr. Sullivan, correct?
A. I have not.
Q. And you've not read his deposition.
A. I didn't know there was a deposition.
Q. So if Dr. Sullivan testified as to what placement he believes would make -- would be better for Devin psychologically between being at home with his family or being in a group living facility, would you defer to him, to Dr. Sullivan, on that?
MR. ASHTON: Object to the form.
WITNESS: I am not going to say I'm going to defer until I know what the opinions are and on what basis he's making that recommendation.
Q. (By Ms. Heiden) Why didn't you talk to Dr.

Sullivan?
A. I want to think I attempted to and didn't get a call back. And I had his report and knew there would be depositions so I let it go.
Q. Well, you didn't ask for his deposition?
A. Well, I knew it would be taken at some time. I didn't know it had been taken or when it was taken.
Q. How do you account for the basically $8,000 difference in price from the low end to the high end of your price range on group homes?
A. There's a wide variance from home to home from organization to organization. And so that the family has a choice and something to select from that they're comfortable with, I try to represent the full range.
Q. How many different group homes did you solicit prices from?
A. I want to think there's -- I have three. I attempted to get four and that after several calls, the one group never called back so there were three.
Q. Okay. What were those group homes?
A. A group called BASCA, B-A-S-C-A.
MR. ASHTON: Can you spell that for me again?
WITNESS: B-A-S-C-A.
MR. ASHTON: Okay.

WITNESS: Duvall Group Homes and ResCare.
MR. ASHTON: What was the last one?
WITNESS: ResCare, R-e-s-C-a-r-e.
MR. ASHTON: Thank you.
Q. (By Ms. Heiden) ResCare is a group home?
A. It's a private in -- a private group that does development delays and brain injury and they have residential facilities. It can be home or more facility-based.
Q. And how did you pick those three?
A. I always try the best I can to keep the patient, you know, close to home. I think that's helpful for visiting and maintaining family relationships. And in my research, that's what I could find close to home.
Q. Did you identify any other group homes that were equally close or closer to Devin's home than those three?
A. Well, the one -- I'm not sure of the name of the person that never called back. I have to go into my file for that, but there were several others that didn't respond to our request.
Q. Several others or one other?
A. Several other it says.
Q. And do each of these companies take patients with different levels of impairment for different residential

placements?
A. I mean, most often they do take a variety of patients and they assign them in the living spaces with -- to the best they can with people that would make a good group or get along, not necessary exactly the same functional level but they -- some of them have multiple levels, you know, that could serve a variety of functional issues, people with more medical needs or people that require more or less supervision.
Q. So there would be different tiers, for example, in a company like ResCare where they would take -- some of their residential placements might be patients who require less support and some of them might be patients who require more support.
A. Right. I know ResCare for sure has different options available.
Q. So what did you do to make sure that the price you were getting quoted was the appropriate level support for a child like Devin?
A. That he should not be left alone which the tier he would be in would be the 12 to 24-hour supervision level.
Q. Is there a lower tier?
A. It depends on the facility.
Q. Okay. Do some facilities have a lower tier than

what you were including in the price range for Devin?
A. Some, well, of course they do because some people are able to come and go on their own but need a lower level of supervision. They're safe to be left without direct observation 24 hours a day.
Q. So do you imagine Devin being directly observed 24 hours a day?
A. No. I'm just telling you the different levels that's available.
Q. I noticed going back over to your home care option, that one would have Devin in the home with his parents until he's age 35, correct?
A. Right.
Q. And that would have an LPN for 10 hours a day. Now, why -- maybe you could explain to me, I don't think I understand, how you've arrived at these different numbers here on your --
MR. ASHTON: What page are you on, Meg?
MS. HEIDEN: I'm on page 82.
WITNESS: Okay. So your question is?
Q. Could you explain to me under Future Care Option 1 exactly what it is that you are indicating?
MR. ASHTON: Object to the form, but you can answer.
Q. (By Ms. Heiden) I'm basically asking you to

explain this plan to me. Under -- primarily under frequency, what are you including in your plan for Devin to have?
A. I am including him to have 16 to 24 hours of care and it would be LPN during the days and an aide, if it's required, at night. I have allowed on the low end to not cover nighttime hours because mom would be sleeping in the house.
Q. So let's look at -- let's just walk through. Low range, LPN 10 hours a day for 244 days a year.
A. Correct.
Q. And --
A. Now, can we just stipulate, too, that the days and weeks, if camp -- there's camp and there's respite care, that those have been backed out?
Q. Yes. So you've got 10 hours a day for 244 days a year and then 16 hours a day for 87 days a year. Could you explain why you've created that difference between the 10 hours a day and the 16 hours a day?
A. Because of his attendance at the day program 244 days a year.
Q. Okay. So the day -- how come the day program doesn't go year round or you're just backing out weekends?
A. Well, I'm backing out weekends and I'd have to do

the math if I had him going -- I don't know if I have him going three or five. I need my calculator. If I have him going six days -- five days a week or three days a week.
Q. Up to a high range of an LPN 10 hours a day with an aide for 8 hours a night and an LPN for 16 hours a day and an aide 8 hours a night. All right. So I see what you've done there. And then the same 28 days a year of 24-hour LPN respite care between -- during the years that Devin would be living at home, correct?
A. Yes.
Q. Okay. What durable medical equipment have you included in your plan?
A. The medical stroller that we have already talked about and the car seat we've already talked about. And the rest are supplies, diapers, wipes, the Sonicare toothbrush and replacement heads. That's it.
Q. All right.
MR. ASHTON: I don't mean to interrupt but were there AFOs anywhere in your plan?
WITNESS: Well, that's not D -- durable medical equipment.
MR. ASHTON: Okay. All right.
WITNESS: I mean, it's --
Q. (By Ms. Heiden) It's not?

MR. ASHTON: Okay.
WITNESS: No.
Q. (By Ms. Heiden) Where would that be?
A. It's in its own section.
Q. Oh.
MR. ASHTON: On that page 81 of your plan?
WITNESS: Page 81 and 82.
Q. (By Ms. Heiden) Page 81. Was Devin wearing his glasses at school when you observed him?
A. Yes, he was.
Q. Did you observe him fidgeting with the glasses or objecting to the glasses?
A. Not in the brief observation period.
Q. All right. So I'd like to go to the end of your life care plan. Now, for year 1 --
MR. ASHTON: Can you tell me what page? Are you on a particular page?
MS. HEIDEN: Yes, sorry, Frank, I'm on page 85. And I don't know if we've marked the plan so I'm going to mark the plan as No. 16. Is that where we are?
(Discussion off the record.
Exhibit No. 16 marked.)
Q. All right. Ma'am, now, I see that you've got these two different cost summaries of yours recognizing that you've not -- you've neither grown these numbers

nor produced under present value, correct?
A. I have not.
Q. But you've got Option 1 and Option 2. Now, those Option 1 and Option 2 are going to be the same up until the point that Devin reaches age 21, correct?
A. Correct.
Q. Because those would both include the same items for his childhood through age 21.
A. Correct.
Q. So what is year 1 of your plan?
A. Year 1 of this plan is him turning six so he's six in year 1.
Q. And so what is the low end of cost that you are predicting to take care of Devin in year 1 while he's six years old?
MR. ASHTON: Which option?
MS. HEIDEN: Well, that's why we just established that Option 1 is --
MR. ASHTON: Okay. I'm sorry, you're right, you're exactly right, yeah. Okay.
WITNESS: So the low annual total would be $56,713.73.
Q. (By Ms. Heiden) Okay. And what would the high end of the plan be?
A. The plan or a particular year?

Q. I'm sorry, what would the high end of your cost projection cost to take care of Devin in year 1?
A. $113,890.47.
Q. And then when Devin gets up to year 7, that's when he starts receiving additional -- his LPN -- or, I'm sorry, his aide care goes from -- for eight hours a week to four hours a day, correct?
A. Correct?
Q. Which would be -- so he goes from eight hours a week essentially to 28 hours a week?
A. Correct.
Q. So once that happens, what is your projection of the annual cost on the low end?
A. $96,015.98.
Q. And your projection on the annual cost on the high end?
A. $165,651.47.
Q. All right.
MS. HEIDEN: We can go off for just a second. I'm going to flip through my notes and make sure I covered everything.
MR. ASHTON: Okay.
(Brief pause.)
Q. (By Ms. Heiden) I'd just like to run through the Exhibit to your Notice which are the materials we

requested that you bring today and make sure that we've gotten everything that you have: Any and all correspondence, records, medical information, radiology films, CDs, DVDs, depositions or other documents obtained by or provided to you relating in any way to this lawsuit, including your e-mails.
A. I did not provide all the records. They're electronic. But everything I reviewed is listed in the back of the plan.
Q. All right. And there's nothing that you would supplement in that list to review that you've reviewed since you prepared the plan?
A. Correct.
Q. And you've not made any kind of electronic marks, electronic highlighting, bookmarking or anything like that on the records you have?
A. There's bookmarks.
Q. Did you put them in or were they already in there when Mr. Ashton sent them?
A. No, we put them in.
Q. Would it be possible then since you've altered the records that you were sent, would it be possible for you to transmit those to Mr. Ashton in an electronic format for us?
MR. ASHTON: Sure. If you can send them

back to us, do that. And I don't mind providing them to you as long as they can be transferred in that format. I don't know.
WITNESS: Well, there's no highlighting in them. They're just dates.
Q. (By Ms. Heiden) All right. Well, that's fair enough then.
A. Along the tabs, they're dates and institution names and so that we know what's in the file.
Q. No other annotations --
A. No.
Q. -- besides those navigational benchmarks?
A. No, it's only navigational.
Q. Then we don't need to get those. All correspondence, reports, notations, calculations or other documents prepared by you or your assistants?
A. We have all that here on the table.
Q. And you don't have any prior versions of the prior drafts of the plan that exist other than the mark-out we have already marked?
A. We have one marked. It was the one discussed with Dr. Dietzen.
Q. Yes.
A. And then there was that preliminary group of tables that was with -- for the first discussion with

Dr. Dietzen. Those are the only other I guess you could call them drafts.
Q. Okay. Any and all documents, treatises, articles, diagrams, drawings, models, textbooks or other written information which you reviewed, rely upon or consider authoritative in preparing your plan?
A. I don't have anything I specifically pulled for this plan.
Q. And we've already gotten the evidence of charges and payments, correct?
A. Yes, we discussed the invoice.
Q. Do you have a contract with Mr. Ashton's office that we've not -- that's not included in the materials?
A. No.
Q. And did you bring a copy of your current CV?
A. It's in the file.
Q. Have we covered all of the opinions that you intend to express at the trial of this matter?
MR. ASHTON: Object to the form, but you can answer.
WITNESS: We've covered a lot of them but there may be other subtle things we did not discuss, but they would be stated in the written report.
Q. (By Ms. Heiden) So all of your opinions are either contained in your life care plan or have been

discussed today?
MR. ASHTON: Object to the form.
WITNESS: Right.
Q. (By Ms. Heiden) Do you have any intention of altering your plan between now and trial?
A. I do.
Q. Okay. How will you do that?
A. I have the housekeeping proofing kinds of things that I discussed with Dr. Dietzen. I also have an adjustment to make based on the visit frequency and MRI frequency that Dr. Aldana is recommending. And I'm also holding it to wait to see if there are any other participants that are really going to send us their information before adjusting the plan. You know, I'm waiting to do it one final time.
Q. When do you anticipate finalizing your plan?
A. Let's see; prior to trial but, I mean, if I have to state, I mean, a specific -- I'm not sure when trial is.
Q. Okay.
A. Do I have to -- do you want to know when?
Q. Well, I just want to make sure that we'll have adequate time to review a finalized plan and ask you any additional questions before trial.
A. Oh, I would do it to -- I would absolutely do it

before so that you had that opportunity.
Q. All right. Well, that's all the questions I have for you today.
MR. ASHTON: I don't have any questions. You want to read or waive the reading?
WITNESS: I'm going to waive.
MR. ASHTON: All right. That's fine. Thank you.
MS. HEIDEN: I'll take a copy, e-tran only, please.
MR. ASHTON: I will take an e-tran copy.
(The deposition concluded at 12:50 p.m. and the signature was waived.)

REPORTER'S CERTIFICATE

I, LAURA LYNN MURPHY, CCR No. 764, Certified Court Reporter and Registered Merit Reporter, do hereby certify;
that the foregoing proceedings were taken before me at the time and place therein set forth, at which time the witness was put under oath by me;
that the testimony of the witness, the questions propounded and all objections and statements made at the time of the examination were reported by stenographic means by me and were thereafter transcribed;
that the foregoing is a true and correct transcript of my shorthand notes so taken.

I further certify that I am not a relative or employee of any attorney of the parties nor financially interested in the action.

I declare under penalty of perjury under the laws of Missouri that the foregoing is true and correct.

Dated this 16th day of February, 2017.

_____
LAURA LYNN MURPHY, CCR No. 764