

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

SUPERIOR COURT DEPARTMENT
CIVIL ACTION NO. 02-01159A

MARCIA RHODES, HAROLD RHODES, *
INDIVIDUALLY, HAROLD RHODES, ON *
BEHALF OF HIS MINOR CHILD AND NEXT *
FRIEND, REBECCA RHODES, *
Plaintiffs *
*
*

VS.

CARLO ZALEWSKI, DRIVER LOGISTICS, *
PENSKE TRUCK LEASING CORP., and *
BUILDING MATERIALS CORP. OF AMERICA *
d/b/a GAF MATERIALS CORP., *
Defendants *
*

BEFORE: DONOVAN, J.
AND A JURY

September 14, 2004
Norfolk Superior Court
650 High Street
Dedham, Massachusetts 02026



DAWNA M. CHAPIN
OFFICIAL COURT REPORTER
650 HIGH STREET
DEDHAM, MASSACHUSETTS 02026
(781) 326-1600

APPEARANCES:

**M. FREDERICK PRITZKER, ESQUIRE
MARGARET PINKHAM, ESQUIRE
On behalf of the plaintiffs,**

**LAWRENCE BOYLE, ESQUIRE
JOHN P. KNIGHT, ESQUIRE
On behalf of defendant Zalewski,**

**RUSSELL POLLACK, ESQUIRE
WILLIAM CONROY, ESQUIRE,
On behalf of defendant GAF Building Materials**

INDEX

WITNESS

DIRECT CROSS REDIRECT RECROSS

Dana Hewins				
(by Mr. Pritzker)	12			
(by Mr. Boyle)		38		
(by Mr. Conroy)		52		
(by Mr. Pritzker)			56	
(by Mr. Boyle)				58
Harold Rhodes				
(by Mr. Pritzker)	60			
(by Mr. Conroy)		138		

EXHIBITS

<u>No.</u>	<u>DESCRIPTION</u>	<u>PAGE</u>
64	Bills	6
65	Summary	7
66	Stipulation	7
67	Stipulation	9
68	Photograph	90
69	Photograph	90
70	Footprint of house	112
71	Expenses to date	120
72	Summary of Expenses	127

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

PROCEEDINGS

THE COURT: Good morning.

THE CLERK: The case this morning is Civil Action 02-1159, Rhodes et al versus Zalewski et al. The case is on for continuation of trial.

THE COURT: Good morning, members of the jury.

JURORS: Good morning.

THE COURT: Good morning, Counsel.

MR. PRITZKER: Good morning, your Honor.

MS. PINKHAM: Good morning, your Honor.

MR. CONROY: Good morning.

MR. BOYLE: Good morning.

MR. KNIGHT: Good morning.

MR. POLLOCK: Good morning.

THE COURT: I have two questions

MR. PRITZKER: Your Honor, before I call my next witness --

THE COURT: Before we do that, I have two questions I have to ask my jurors here. First, from the time we suspended yesterday until this moment, has anyone discussed the case with

1 anyone else? Please raise your hand if you have.

2 No hands have been raised.

3 Has anyone read anything about this
4 case, listened to any form of media or gone on the
5 Internet or anything like that since the time we
6 suspended yesterday until this moment?

7 No hands have been raised.

8 Now, we can proceed.

9 MR. PRITZKER: Before I call my next
10 witness, your Honor, just a couple of undisputed
11 exhibits.

12 The first is the certified medical bills
13 from the various doctors and hospitals and other
14 service providers. I would like to introduce them
15 in a folder in bulk.

16 THE COURT: Certainly. All right,
17 we'll mark those as Exhibit 64 if there's no
18 objection.

19 (Medical bills received and
20 marked Exhibit Number 64.)

21 MR. PRITZKER: The next, your Honor,
22 is a summary of Exhibit 64 by provider.

23 THE COURT: Okay. Any objection?

24 MR. CONROY: No objection, your

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

Honor.

MR. BOYLE: No objection.

THE COURT: Exhibit 65.

**(Summary of medical bills by
provider received and marked
Exhibit Number 65.)**

**MR. PRITZKER: The next is a
stipulation between the plaintiffs and the
defendant Building Materials Corp. of America,
doing business as GAF Materials Corp.**

**THE COURT: All right. That may be
marked as Exhibit 66. Has that stipulation been
read to the jury yet?**

**MR. PRITZKER: That's my next
request, your Honor.**

THE COURT: Certainly.

**(Stipulation between plaintiffs
and Building Corp. of America,
d/b/a GAF Building Materials
received and marked Exhibit
Number 66.)**

**MR. PRITZKER: May I address the
jury, your Honor?**

THE COURT: Yes, you may.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

Before you do that, let me just remind the jurors, when we began, I told you there were three sources of evidence: the answers given by witnesses, the exhibits that you will have with you, and stipulations. So this is a source of evidence for you to consider.

All right, Mr. Pritzker.

MR. PRITZKER: Ladies and gentlemen, this stipulation was entered into by GAF with the plaintiffs on September 2, 2004. Right before this trial.

The plaintiffs Marcia Rhodes, Harold Rhodes, individually, and on behalf of his minor child Rebecca Rhodes, and the defendant Building Materials Corporation of America, Inc., doing business as GAF Materials Corp., hereby stipulate as follows for the purposes of the present action only:

GAF, as the common carrier on whose behalf the tractor-trailer was being operator admits that it is liable for the operation of the tractor-trailer leased by GAF and operated negligently by defendant Carlos Zalewski.

GAF agrees to the entry of judgment

1 **against it. Damages remain to be proven by the**
2 **plaintiffs at trial.**

3 **GAF does not admit that it is an**
4 **employer of Carlos Zalewski, or that it has a dual**
5 **co-employer relationship with Drivers Logistics**
6 **Services, Inc. with respect to Carlos Zalewski.**

7 **And it's signed by the parties.**

8 **THE COURT: All right.**

9 **MR. PRITZKER: The next exhibit,**
10 **your Honor, that I would like to introduce is a**
11 **stipulation between the plaintiffs and the**
12 **defendant Carlos Zalewski and Drivers Logistics**
13 **Services, Inc.**

14 **THE COURT: We'll mark that as**
15 **Exhibit 67.**

16 **(Stipulation between the**
17 **plaintiffs and Carlos Zalewski**
18 **and Drivers Logistics Services,**
19 **Inc. received and marked**
20 **Exhibit Number 67.)**

21 **MR. PRITZKER: And this stipulation,**
22 **ladies and gentlemen, is as follows:**

23 **Stipulation between plaintiffs and**
24 **defendants Carlos Zalewski and Drivers Logistics**

1 **Services, Inc. The plaintiffs Marcia Rhodes,**
2 **Harold Rhodes, individually and on behalf of his**
3 **minor child Rebecca Rhodes and defendant Carlos**
4 **Zalewski and Drivers Logistics Services, Inc.,**
5 **referred to as DLS, hereby stipulate as follows:**

6 **Carlos Zalewski admits that he was**
7 **negligent in operating the tractor-trailer that**
8 **struck Mrs. Rhodes' car on January 9, 2002.**
9 **Carlos Zalewski agrees to the entry of judgment**
10 **against him on Count One of the Third Amended**
11 **Complaint as to liability. The amount of damages**
12 **remain to be proven by the plaintiffs at trial.**

13 **DLS admits that it is liable for the**
14 **negligence of its employee Carlos Zalewski in**
15 **operating the tractor-trailer that struck Mrs.**
16 **Rhodes' car on January 9, 2002. DLS agrees to the**
17 **entry of judgment against it on Count Two of the**
18 **Third Amended Complaint as to liability. The**
19 **amount of damages remain to be proven by the**
20 **plaintiffs at trial.**

21 **Your Honor, now having put in those**
22 **exhibits, I request permission, as I had done**
23 **earlier in the trial, to hand to the jury a book of**
24 **exhibits that have been marked to date, including**

1 those exhibits that now bring it up to date
2 because we anticipated that they would be
3 marked this morning.

4 THE COURT: All right.

5 MR. PRITZKER: I --

6 THE COURT: You may pass those --

7 MR. PRITZKER: Counsel all have a
8 copy.

9 THE COURT: Okay.

10 MR. PRITZKER: And just by way of
11 explanation, there are some areas -- there are
12 some exhibits that have been marked where you'll
13 just see a slip in there identifying what the exhibit
14 is like the skeleton or some of the blowups, and
15 some of the pictures that the defendant had
16 introduced, he did not have copies of, there were
17 just those pictures.

18 Now, I would like to call my next
19 witness, your Honor.

20 THE COURT: You may.

21 MR. PRITZKER: Dr. Dana Hewins,
22 please.

23 THE CLERK: Raise your right hand,
24 sir. Do you solemnly swear the testimony you

1 shall give to the court and the jury in the case now
2 on trial shall be the truth, the whole truth and
3 nothing but the truth, so help you God?

4 THE WITNESS: I do.

5 THE CLERK: Thank you. You may be
6 seated.

7 DANA HEWINS, sworn

8 DIRECT EXAMINATION BY MR. PRITZKER:

9 Q Would you state your full name, please.

10 A Certainly. My name is Dana C. Hewins. The last
11 name is spelled H-E-W-I-N-S.

12 Q What is your address?

13 A I live in the town of Lakeville, Massachusetts.

14 Q What is your profession?

15 A I'm an economist, who specializes in the areas of
16 health care economics, labor economics and
17 forensic economics.

18 Q Can you briefly describe for me, Dr. Hewins, your
19 education.

20 A Certainly.

21 Q Where did you graduate from college?

22 A I was awarded a Bachelor's degree by Tufts
23 University in 1968, a degree in economics.

24 Q And after Tufts, where did you go?

1 **instruct the two of you, one speak at a time.**

2 **MR. PRITZKER: I apologize, your**
3 **Honor.**

4 **THE COURT: Because this young lady**
5 **wants to pick up everything both of you are**
6 **saying, so --**

7 **THE WITNESS: Yes, your Honor.**

8 **THE COURT: All right, thank you.**

9 **Q Okay. After you did your post-doctorate work at**
10 **Harvard, did you teach?**

11 **A I started teaching actually as an instructor in 1972**
12 **at the University of Illinois. And then I went to**
13 **Ohio University in 1973. I was on the staff of the**
14 **faculty at Ohio University from 1973 till 1982.**
15 **During the academic year 1982-'83, I returned to**
16 **Massachusetts, my home state, as a visiting**
17 **professor of health care economics at Tufts**
18 **University. I then joined the faculty of Regis**
19 **College in Weston, Massachusetts, and I was on**
20 **the faculty of Regis much of the time. I was**
21 **chairman of the Economics Department from 1984**
22 **until I took early retirement in 2002.**

23 **Q And since 2002, what have you been doing?**

24 **A I've been consulting, writing. I've been a part-time**

1 teacher at Stonehill College in town of Easton,
2 Massachusetts. And I am currently a frequent
3 guest lecturer in the Health Care Policy and
4 Management Program at Stonehill.

5 Q Is it fair to say that your specialty is health care
6 economics?

7 A Yes, sir.

8 Q Have you published?

9 A Yes.

10 Q In periodicals or --

11 A A wide variety, going back to graduate school, on
12 assorted topics. Health care economics, forensic
13 economics, economic history, and so forth. A
14 wide variety.

15 Q And have you consulted for numerous
16 organizations and institutions?

17 A Yes, dating back to my days at Ohio University,
18 I've consulted with a number of private and
19 governmental organizations.

20 Q In what areas? Can you give us some examples?

21 A Predominantly health care economics. When I was
22 in Ohio, for example, I was on the Board of
23 Directors of the Area 6 Health Systems Agency,
24 which was the federal agency to try to control

1 health care spending back in the '70s and '80s. I
2 consulted on medical matters to the Appalachian
3 Regional Commission, the Ohio Nursing Home
4 Association, the Ohio Valley Health Services
5 Foundation, and so forth. So there were a number
6 of projects that I worked on that were health care
7 related.

8 Q Dr. Hewins, at some point, were you retained by
9 my office to do some evaluation economic work?

10 A Yes, I was, sir.

11 Q In the health care economic area?

12 A Yes, sir.

13 Q And what were you retained to do?

14 A I was asked to do two things actually. First, to
15 evaluate or calculate the present value of the
16 future medical and personal care costs of Marcia
17 Rhodes, and secondly, to evaluate the economic
18 value of her lost household services. So there
19 were two components that I looked at, sir.

20 Q Now, will you explain how you evaluated the
21 future expenses of the health care component of
22 your two-prong inquiry?

23 A Sure.

24 Q If I --

1 **MR. PRITZKER: May I, your Honor,**
2 **use the easel while --**

3 **THE COURT: You may.**

4 **MR. PRITZKER: -- Dr. Hewins is**
5 **testifying?**

6 **Q Now, would you go ahead.**

7 **A As an overview, there are four basic steps. It's**
8 **pretty straightforward. The first step in the**
9 **evaluation of future medical and personal care**
10 **expenses is to determine what we call the base**
11 **year or first year cost of care. You need a set of**
12 **starting numbers.**

13 **Q Okay.**

14 **A The second step is to determine how long the**
15 **projection is to go. This is the issue of life**
16 **expectancy.**

17 **Q Okay.**

18 **A The third step is to determine -- health care costs**
19 **have been rising over the years, in fact, quite**
20 **rapidly over the past thirty years. So what I have**
21 **to do is factor in some reasonable growth rates we**
22 **call them, or the rates at which costs -- medical**
23 **costs, physician costs and so forth, are likely to**
24 **rise in the future. So you have to determine**

1 reasonable growth rates for future costs.

2 Q And another way to put that, cost increases?

3 A Absolutely. Future costs increases.

4 Q Okay. And the last one.

5 A The fourth step is a purely mathematical one, and
6 that involves taking all of the projected annual
7 costs and then reducing them to a single lump
8 sum amount, which people in finance refer to as
9 the present value.

10 Q Present day value okay?

11 A Present day value is fine.

12 Q Now, if we can, Doctor, can we take these one at
13 a time?

14 A Certainly.

15 Q How did you determine the base year cost?

16 A The --

17 Q -- as it related to the future cost of medical and
18 personal care?

19 A These base year costs were determined by Adele
20 Pollard. I used the life care plan prepared by
21 Adele Pollard. So every item in her plan had both
22 the item identified, the frequency with which the
23 item would be needed, the duration of time over
24 which it would be needed, and the current cost.

1 **So Adele Pollard's life care plan gave me the full**
2 **set of information that I needed for step one.**

3 **Q And how did you determine the life expectancy to**
4 **use?**

5 **A Well, one way was to use the published**
6 **government life expectancy tables. I have the**
7 **latest ones here, National Vital Statistics Report,**
8 **United States Life Tables, 2001. And using this,**
9 **the life expectancy, and I would stress that my**
10 **projection is forward-looking. It begins October**
11 **1st of 2004 and goes forward. And currently, Mrs.**
12 **Rhodes is 49 years old. And the life expectancy of**
13 **a 49 year old white female, according to the**
14 **government tables, as we speak, is 33.2 years.**

15 **Q So --**

16 **A So one projection was 33.2.**

17 **Q So we put on the right side, if I can get the right**
18 **pen out, 33.2 years.**

19 **A Yes, sir.**

20 **Q That is the normal life expectancy for somebody**
21 **Mrs. Rhodes' present age, but not taking into**
22 **account her disability?**

23 **A That's correct.**

24 **Q Okay. Did you do anything else?**

1 **A Yes, it is.**

2 **Q And did you review that?**

3 **A Yes, I did, sir.**

4 **Q And did you, in fact, review the schedule that is at**
5 **the end of Exhibit 63?**

6 **A Yes, I did, sir. The table, yes, I did.**

7 **Q And when you reviewed it, did you understand**
8 **what that table was portraying?**

9 **A Oh, yes.**

10 **Q And what is that?**

11 **A Well, this shows -- the table in question shows**
12 **survival probabilities, according to the number of**
13 **years from today. And as he actually explains in**
14 **his text, Dr. DeVivo explains, for example, if I**
15 **might take the ten year number, which is .8657,**
16 **there is at least an 86.57 chance that she will live**
17 **ten years from the time of his report. So what he**
18 **is saying is the likelihood is approximately 86**
19 **percent that she will survive at least ten years.**

20 **Q Okay.**

21 **A And these change. Obviously, the further out at**
22 **the 20 year mark, there is a roughly two-thirds**
23 **chance, 666, that she would survive at least**
24 **twenty years. This was the raw material that went**

1 into his calculations of life expectancy.

2 Q Now here we are talking about his calculations of
3 life expectancy of somebody Marcia Rhodes age
4 who has been rendered a paraplegic.

5 A Yes, he's matched up exactly the paraplegia she
6 has.

7 Q Okay.

8 A So he's got an extensive data set. This guy is sort
9 of the guru of SCI data, and he has an extensive
10 data set, which enables him to custom fit it to the
11 exact nature of the spinal cord injury.

12 Q Okay. If we look at the chart that he uses as the
13 basis for his 23.1 years, first of all, I believe that
14 was as of April 30, 2003? Is that correct?

15 A Well, as of April 30, you'll see the numbers 24.4.

16 Q I'm sorry. So you --

17 A I had to reduce it to allow for the time which has
18 elapsed since then.

19 Q So if we look at the last page of Exhibit 63 --

20 A Yes, sir.

21 Q And we look at the line items between 24 years
22 and 25 years, which is what Dr. DeVivo used as of
23 April 20 -- April 30, 2003, what survival probability
24 does that show?

1 **A** Well, to quote it exactly, at age -- at 24 years,
2 what he's saying is there's a 56.21 percent chance
3 that Mrs. Rhodes will live at least 50 -- 24 more
4 years, excuse me. So there's a 56 percent
5 chance, approximately, that she'll live at least 24
6 years. A 53 percent chance that she'll live 25
7 years.

8 **Q** So am I correct that even under these statistics,
9 Mrs. Rhodes has a better than 50-50 chance of
10 surviving more than 25 years?

11 **A** Yeah. If you want to put it in terms of more likely
12 than not, it is more likely than not that she will
13 survive more than 25 years, yes, sir.

14 **Q** And if we use the same chart to the actual life
15 expectancy of Mrs. Rhodes if she were not a
16 paraplegic, what is the likelihood that Mrs. Rhodes
17 would survive for that period of time?

18 **A** Well, if we're talking about the normal life
19 expectancy, which would be 33.2 years, and we're
20 adding it on to her current age of 49, that would be
21 age 82. She was 48 at this point, so we'd be
22 looking at the 34, the second column of numbers
23 years from today, where it says 34. Again, the
24 number, if I'm reading it correctly, is .2339, and

1 **what that says is that there is a 23.39 percent**
2 **chance that she will live at least 34 more years.**

3 **That is exactly the way to phrase it.**

4 **Q Okay. And that's approximately one in four?**

5 **A About a one in four chance, yes.**

6 **Q So on the larger of the calculations or the higher**
7 **life expectancy that you used --**

8 **A Yes, sir.**

9 **Q -- even on that, there is a probability, a one in four**
10 **probability that she will survive longer than that?**

11 **A Approximately.**

12 **Q And is that an accurate reading of Exhibit 63?**

13 **A Yes, it is, sir.**

14 **Q So you've now determined two life expectancies,**
15 **which my office asked you to evaluate. What was**
16 **your next exercise?**

17 **A Well, the next step is to select reasonable cost**
18 **increases. And this is done -- in the past thirty**
19 **years I've been monitoring these on a fairly close**
20 **basis. What I look at is for each category of care,**
21 **physician services, medications, personal care**
22 **attendants, the various categories of care. There**
23 **are extensive historical data that show us what**
24 **has happened. The publication the government**

1 puts out, Health, United States, this is the most
2 recent 2003 edition, is a compendium of lots of
3 statistics that enable us to see what has
4 happened over the past thirty years to these
5 costs. There's also a very large literature that
6 tells us what the situation is today in terms of the
7 health care marketplace, what's going on inside
8 the hospital industry, nursing profession and what
9 have you. And there are also forecasts,
10 government forecasts, private forecasts, Social
11 Security Administration forecasts, where these
12 future costs are likely to go. What I do is draw on
13 historical experience, my understanding of current
14 market conditions. I look at the forecasts and
15 generate what I consider to be fair and reasonable
16 growth rates for the future costs.

17 Q Okay. Now, am I -- do I understand you correctly
18 that some future costs that Adele Pollard
19 projected have a higher probability of increase or
20 a greater probability of increase than others?

21 A Not a matter of probability. They will all increase.
22 It's a question of which ones will increase the
23 fastest.

24 Q Can you give us an example?

1 **A** **Well, the ones that have and will continue to grow**
2 **fast are hospital costs, for example, have been a**
3 **real problem area. Medications, prescription**
4 **medications. At one point, twenty years ago, they**
5 **were very good in terms of cost increases. Now**
6 **they're very, very high, and there's a lot going on**
7 **in that particular industry. The registered nurses,**
8 **the wages of registered nurses historically have**
9 **grown fairly rapidly, and we're expecting one-third**
10 **of the nursing force to retire, baby boomers, to**
11 **retire in the next ten years. There's going to be a**
12 **dramatic shortage of nurses. Shortage means**
13 **upward pressure on wages. So nursing costs can**
14 **be expected to rise. On the other hand, routine**
15 **medical supplies, wheelchairs, transportation, the**
16 **kinds of things in the plan, those don't increase**
17 **any faster really than the overall rate of inflation.**
18 **So you have this variation. Some very rapidly, and**
19 **others sort of like the overall average.**

20 **Q** **And part of the reason we need an expert like**
21 **yourself is to try and figure out which of these is**
22 **growing at what rate, or is likely to grow at what**
23 **rate?**

24 **A** **Yes, sir, that's the reason.**

1 **Q** **So that takes care of future increases and future**
2 **costs increases. Then you have to bring it to**
3 **present value.**

4 **A** **Yes, sir.**

5 **Q** **What is present value?**

6 **A** **The simplest way of thinking of it is to ask, what**
7 **lump sum amount, if you had a lump sum amount**
8 **of money, and you invested it conservatively, the**
9 **idea is how much money would you need to invest**
10 **to be able to pay the future medical and personal**
11 **care bills, year by year. Let's take the 33.2 year**
12 **one. You're going to have to fund 33.2 years of**
13 **care. You invest a certain lump sum. Interest**
14 **accumulates, but each year you're making**
15 **withdrawals. The idea is to calculate how much**
16 **you would have to invest -- this is the present**
17 **value -- in order to fund 33.2 years of care, so that**
18 **in the last year, when you make that final**
19 **withdrawal, you empty the account. All of the**
20 **original investment plus all accumulated interest**
21 **has been precisely exhausted in that last year.**
22 **Now, technically, we, for calculation purposes, we**
23 **used the date of filing of the complaint for this**
24 **investment. And that would have been in July of**

1 **2002. So how much money invested in July of**
2 **2002 would be sufficient to pay out for 33.2 years**
3 **all of the expenses that will be incurred?**

4 **Q Okay. So where did you bring the present value**
5 **calculation? What date did you use for the**
6 **present value calculation?**

7 **A July 12th of 2002. That is when, again,**
8 **mathematically, this investment theoretically**
9 **would take place.**

10 **Q And why particularly did you use that date?**

11 **A Because that is what I've been instructed by many**
12 **attorneys in Massachusetts to do, sir.**

13 **Q Okay. And do you know whether or not that is the**
14 **date that suit was filed in this case?**

15 **A Yes, sir, that is what I've been told.**

16 **Q And having done all of those steps, did you reach a**
17 **conclusion as to what the medical and personal**
18 **care costs would be to Mrs. Rhodes if she lived for**
19 **33.2 additional years reduced back to present**
20 **value as of June of 2002?**

21 **A Yes, I did, sir.**

22 **Q And what was that value?**

23 **A The present value for the 33.2 year projection is**
24 **1,997,833, or approximately two million dollars,**

1 **sir.**

2 **Q And did you do the same calculation of the present**
3 **value as of June of -- strike that -- as of June of**
4 **2002 --**

5 **A July, sir. Excuse me.**

6 **Q June 30th?**

7 **A The present value date?**

8 **Q Yes.**

9 **A That's July 12th of 2002. That's the date of filing,**
10 **sir.**

11 **Q I beg your pardon.**

12 **A That's okay.**

13 **Q On a 23.1 year basis?**

14 **A Yes, I did, sir.**

15 **Q And what is that?**

16 **A That number is 1,461,267.**

17 **Q Okay. Now, you said that you did two different**
18 **approaches. One was for medical and personal**
19 **care.**

20 **A Yes, sir.**

21 **Q And the other was for loss of household services?**

22 **A The economic value of lost household services,**
23 **yes, sir.**

24 **Q Okay. What is that? What is economic value of**

1 **lost household services?**

2 **A Well, the concept is fairly straightforward. When**
3 **someone is injured and unable to perform**
4 **household services, they can no longer do the**
5 **cleaning, the cooking, the shopping, et cetera,**
6 **that they used to do, there is a loss because these**
7 **services now have to be provided by someone**
8 **else. And we value these services at the**
9 **replacement cost, what would it cost to hire**
10 **someone else to do the things that you can no**
11 **longer do because of your injury. It's called the**
12 **economic value, or the replacement cost of**
13 **household services.**

14 **Q Economic value of household services. So if I**
15 **understand correctly, you assume what household**
16 **services Mrs. Rhodes would have been capable of**
17 **performing.**

18 **A Correct.**

19 **Q And then you try to calculate or you do calculate**
20 **what she is now able to perform.**

21 **A Yes.**

22 **Q And the difference is the economic value of**
23 **household services that Mrs. Rhodes has lost.**

24 **A Correct.**

1 Q How did you go about doing that?

2 A Well, we've got four steps parallel to the four we
3 just went through, only now the language changes
4 a little bit. Instead of base year cost of future
5 medical and personal care expenses, we now have
6 the first year economic value of these household
7 services. So base year value of household
8 services.

9 Q If I put value in parentheses --

10 A Yup.

11 Q -- that's what you do when you're talking about
12 household services?

13 A Yes.

14 Q Now, is this something that Adele Pollard dealt
15 with in her life care plan?

16 A No.

17 Q So now we're talking about something that wasn't
18 part of Ms. Pollard's presentation?

19 A That is correct.

20 Q Okay. And -- okay. How did you go about
21 determining the base year value of the household
22 services that Mrs. Rhodes had lost?

23 A Well, the first thing that has to be established is
24 how many hours would a woman such as Mrs.

1 **Rhodes, on average, devote to household services**
2 **each week? And there have been, in the last thirty**
3 **years, a dozen or more major studies that have**
4 **addressed this issue in a scientific fashion. I**
5 **reviewed this literature, the best known of these**
6 **studies have been published by researchers at**
7 **Cornell University in conjunction with the U.S.**
8 **Department of Agriculture, they've done a series**
9 **of three. But there have been others as well. I've**
10 **looked at this literature, there was a good survey**
11 **article last year of this literature. I looked at all of**
12 **the evidence we have. You can make it specific to**
13 **the individual's sex, the age, the number of**
14 **children in the home, et cetera, the employment**
15 **status of the wife. You can get fairly specific.**
16 **And what I did based on my research was to**
17 **determine that four hours per day would be a**
18 **reasonable estimate of the lost household**
19 **services. Twenty-eight hours a week, four hours a**
20 **day.**

21 **Q Okay. Then what did you do? You had to**
22 **determine the same life expectancy?**

23 **A Well, there's one more step before we finish. I**
24 **have to convert those hours into dollars. How**

1 much is that worth? And to do that, I looked at
2 wage rates being paid to maids and housekeeping
3 cleaners, food preparation workers, laundry
4 workers, and others, who do work comparable to
5 what we do in the home. The Massachusetts
6 Division of Employment Security puts out data in
7 its so-called occupational wage statistic series. I
8 looked in the area where Mrs. Rhodes lives.
9 Milford is in the South Worcester service delivery
10 area, and they give it by area. And, determined
11 that a reasonable wage rate to use would be eight
12 dollars per hour. So I used a wage rate of eight
13 dollars per hour, four hours per day. On an annual
14 basis, that's \$11,680 for the annual value, market
15 value of these household services.

16 Q Okay. Now, how then did you determine the life
17 expectancy of this loss?

18 A Well, household services are projected -- I project
19 them to age 75. Now, her normal life expectancy
20 had she not been hurt, we've said, would have
21 been early 80s, about 82. But there are a number
22 of studies that show us that the years of healthy
23 life, quote, unquote, tend to be significantly less
24 than the years of life. As we get older, we become

1 **infirmed and feeble, so that the likelihood of our**
2 **doing household services to the end is greatly**
3 **reduced. So what I've done, based on -- and there**
4 **are statistics on this, is used age 75 as the ending**
5 **point, not age 82.**

6 **Q So it went to the date of the accident?**

7 **A To the age of 75, sir.**

8 **Q So that's assuming that if Mrs. Rhodes were not**
9 **injured.**

10 **A That's correct.**

11 **Q That even after age 75, she would be spending**
12 **money for a lot of or all of the household services**
13 **that you would be calculating?**

14 **A Presumably. Yes, sir.**

15 **Q What was the next exercise that you undertook in**
16 **order to determine the economic value of**
17 **household services?**

18 **A Well, we're down to step three, and that one says**
19 **future cost increase. Well, clearly now what I**
20 **want is the future increase in the value of these**
21 **household services. We're talking about wages**
22 **paid to people who perform these kinds of**
23 **services. So what I need is a reasonable wage**
24 **increase. And what I used here was a wage**

1 **increase one percent above the rate of inflation.**
2 **It's what economists call a real wage increase.**
3 **And that's based on a lot of sources which have**
4 **shown us that the average American worker**
5 **receives raises over time, which are about one**
6 **percentage point higher than the rate of inflation.**
7 **So the rate of inflation has been running about**
8 **three percent over the past decade. The average**
9 **worker's been getting four percent as a raise. One**
10 **percentage point higher than the rate of inflation.**
11 **So that's -- economists do these things in real**
12 **terms, so I used a one percent real growth rate.**
13 **One percent above inflation.**

14 **Q Okay. And then what was the next -- and so then**
15 **you determined the future cost increase?**

16 **A I applied it. So now I go to the computer, and I**
17 **take my starting figure, I know my ending point is**
18 **age 75, so the projection goes for 28.45 years. I'm**
19 **going to increase it at a rate one percent above**
20 **inflation, the real rate of one percent. Now the**
21 **computer -- with the computer, I'm going to**
22 **calculate the present value, just as we did before.**
23 **It's that same lump sum amount conservatively**
24 **invested, which would be just sufficient to replace**

1 or pay for the replacement cost of these services.
2 And at age 75, the final withdrawal empties the
3 account. All interest and original lump sum have
4 been precisely exhausted. The same mathematics
5 as before.

6 Q And what value did you come up with for the lost --
7 or the economic value of household services to
8 age 75?

9 A The present value, again, stated as of the date of
10 filing on July 12, 2002, the present value was
11 292,379. That's the exact number from the
12 computer printout.

13 Q And would that be the same whether or not Mrs.
14 Rhodes lived to age 82 or if she lived to age 72?

15 A Yes. Because this asks the question of what
16 would she likely have done had she not been
17 injured. And had she not been injured, the spinal
18 cord injured work life expectancy would not be
19 relevant. So it's only the normal life expectancy.

20 MR. PRITZKER: Could I have the --

21 Q So if we focus on age 83 -- I'm sorry -- age 82 --

22 A Yes, sir.

23 Q When Mrs. Rhodes still has a one in four chance of
24 surviving, even after her tragic injury, the loss of

1 household services present value is 292,379?

2 A That is correct, sir.

3 Q And the future medical and personal care expense
4 as calculated to present value is 1,997,833?

5 A Yes, sir.

6 Q And is the total of that 2,290,212?

7 A It is, sir.

8 Q Does any of your work include expenses already
9 incurred by Mrs. Rhodes?

10 A No, let me stress that my focus is on future
11 medical expenses from October 1st of this year
12 onward. I have not included anything that has
13 been incurred to date.

14 Q So hypothetically, if evidence were presented to
15 this jury that already \$912,000 approximately has
16 been expended on behalf of Mrs. Rhodes for health
17 services, construction, and other related --
18 matters related to her injury, that would be over
19 and above the 2,292,012?

20 A That is absolutely correct, sir.

21 Q And does any of your work include past or future
22 pain and suffering Mrs. Rhodes has or will endure?

23 A No. Economists cannot measure that, sir.

24 Q So that's not in these numbers at all?

1 **A** **It's not in there in any way, shape or form.**

2 **Q** **Does any of your work include past or future lost**
3 **consortium claims of Harold Rhodes or Rebecca**
4 **Rhodes?**

5 **A** **No, sir, it does not.**

6 **Q** **So once again, if there's evidence about that,**
7 **that's over and above what you've done?**

8 **A** **Entirely separate from what I've done, sir.**

9 **MR. PRITZKER: I have no further**
10 **questions.**

11 **THE COURT: Cross-examination.**

12 **CROSS-EXAMINATION BY MR. BOYLE:**

13 **Q** **Good morning, Dr. Hewins.**

14 **A** **Good morning.**

15 **Q** **We've met before?**

16 **A** **I believe we have, sir.**

17 **Q** **Now, the household services, according to your**
18 **report and your testimony is for matters involving**
19 **things like cooking, food preparation, laundry,**
20 **housekeeping?**

21 **A** **Yes, sir.**

22 **Q** **And you've assumed that you provided an**
23 **economic number for providing those services to**
24 **Mrs. Rhodes' household four hours a day seven**

1 days a week, correct?

2 A It's the replacement cost, yes.

3 Q Right. But it's every single day until the expiration
4 of her life.

5 A That's the average, yes.

6 Q And you've taken a number of what you call
7 replacement costs, what it would cost to pay
8 somebody to do all of those things, correct?

9 A Based on market wages, yes, sir.

10 Q And for the purposes of your economic exercise,
11 you assume that Marcia Rhodes will never do any
12 food shopping, correct?

13 A That's correct.

14 Q And never do any cooking?

15 A That's correct.

16 Q Never do any housework at all ever?

17 A That would be negligible, yes, sir.

18 Q Okay. So you've given a hundred percent of all of
19 those costs over the next either -- or for that
20 household number, it was projected to be 37 years
21 into the future?

22 A To age 75.

23 Q And that's not necessarily the two numbers you
24 talked about before, concerning statistical life

1 **expectancy. That's sort of in between.**

2 **A Yeah, that's based on a different set of**
3 **parameters. We use a healthy life, when people**
4 **are capable of doing household services.**

5 **Q Okay. Now, also in the Adele Pollard life care**
6 **plan, she also provides an item for household**
7 **cleaning, correct?**

8 **A I believe she did have something in there.**

9 **Q And three hours every other week, again, that's for**
10 **life, correct?**

11 **A I believe she did, yes.**

12 **Q And so that's additional to the housecleaning type**
13 **of services that you've awarded -- strike that --**
14 **you've --**

15 **A That would be a separate, yes.**

16 **Q So going forward, your plan includes four hours a**
17 **day, seven days a week, for life, cleaning, cooking**
18 **assistance, correct?**

19 **A To 75, yes, sir.**

20 **Q Right. Plus Adele Pollard's household cleaning**
21 **services three hours every other week, again,**
22 **that's for life.**

23 **A That hour and a half a week, yes.**

24 **Q Okay. And the total cost of that you've reduced to**

1 present value.

2 A Yes.

3 Q All right. Now, you also took twelve pages of
4 Adele Pollard's life care plan, and you added up all
5 of the expenses that she estimated will be
6 needed. And again, you reduced that to present
7 value, correct?

8 A I took each item separately, as I think I explained,
9 but yes.

10 Q Understood, but --

11 A Yes, sir.

12 Q End of the day, every single thing that Adele
13 Pollard says Mrs. Rhodes is going to need, you
14 accounted for in your economic analysis, correct?

15 A Absolutely correct.

16 Q You left nothing out?

17 A And I added nothing.

18 Q Right. And you projected what prudent investment
19 today would generate the income to provide for all
20 of these economic needs, correct?

21 A Correct.

22 Q I think you said something in your report like high
23 grade treasury bonds or something, correct?

24 A I often use those, yes, sir.

1 Q Something that's reliable, predictable and stable,
2 correct?

3 A Yes, sir.

4 Q So as an economist, you're fairly confident that
5 the amount of money that you give as a bottom
6 line if invested in that type of investment would
7 yield the money needed over her entire life to
8 provide every single one of the services Adele
9 Pollard needs, correct?

10 A Yes.

11 Q And in addition to that, you also took from Adele
12 Pollard's life care plan something called potential
13 complications. And there's a number that she
14 attributed to things that could arise in the future,
15 correct?

16 A Her Appendix C, as she notes, yes, sir.

17 Q Right. And that's sort of intangibles, correct?
18 Things that may happen, may not happen, but
19 we're going to account for them because it's a
20 possible complication, correct?

21 A Well, I -- the way it's explained to me is that --

22 Q No, no.

23 A -- these are going to happen, we just don't know
24 when.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

MR. BOYLE: Objection, your Honor.

A Okay.

THE COURT: Sustained.

Q The term was potential complications, and you assumed that those were numbers that needed to be fulfilled in your economic analysis, correct?

A Based on her input, yes, sir.

Q So you included both all of the itemization things she's going to need, doctors, vans, all of that, in your report, plus the so-called potential complications, correct?

A I took everything in her plan. Yes, I did, sir.

Q And that also included a van, handicap van for her projected life, and replacement vans, correct?

A Well, not technically, no.

Q Well --

A What I did is, I used the cost of retrofitting the van, not the van itself.

Q Well, she gives a cost in her report, and you relied upon her report?

A For that item. The 48,000, however, is the full cost of the van. People need transportation, even if they're not injured. So the way economists do it there's big literature on this. There'd be incorrect

1

--

2

Q Well, just stick with my question. Just stick with my question.

3

4

A Okay, sir.

5

Q She allocates an amount of money for a van, correct?

6

7

A 48,000 I believe it was.

8

Q And she also indicates there's going to be a future cost for van replacement or van refurbishing, whatever.

10

11

A Every five to seven years, yes.

12

Q And everything Adele Pollard addressed as needs about vans is in her report, you accepted and you did an economic analysis, correct?

13

14

15

A Well, to an extent. I accept the item, I accept the cost of the van, but that's not the relevant cost. We look for as economists --

16

17

18

Q Just listen to my --

19

A -- the incremental costs.

20

MR. BOYLE: Objection.

21

MR. PRITZKER: Your Honor, I think

22

he's answering the question.

23

THE COURT: Okay. You've answered

24

the question.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

THE WITNESS: Excuse me, I don't --

Q Let's see if we can agree to this question.

A Okay. I don't know if I'm supposed to talk.

Q Well --

**THE COURT: He's going to ask
another question.**

THE WITNESS: Okay.

**Q By the way, Mr. Hewins, you've got a big forensic
economic practice, do you not, sir?**

A Since I retired two years ago, I've been busy, yes.

**Q Well, going back fourteen years ago you were
working for lawyers in this state, weren't you?**

A On a limited basis, yes, as an adjunct to my --

**Q And you've testified in trials and depositions over
the years, correct?**

A Yes, sir.

Q And I've met you in trials --

A Yes, sir.

Q -- over the years; is that right?

A We have, sir.

**Q Yes. And you've worked principally in
Massachusetts for plaintiffs firms doing personal
injury work, isn't that true, sir?**

A About 80 percent plaintiff, 20 percent defendant,

1 **sir.**

2 **Q Well, you've testified before that you do in**
3 **Massachusetts mostly for plaintiffs' firms; isn't**
4 **that true, sir?**

5 **A Right. New Hampshire is where I do most of the**
6 **defense work, that's correct.**

7 **Q So in Massachusetts, you work mostly for**
8 **plaintiffs' firms doing personal injury litigation,**
9 **correct?**

10 **A Mostly, sir.**

11 **Q And you've testified before juries many times**
12 **before?**

13 **A Yes, I have, sir.**

14 **Q Okay. And you felt -- you prepare -- at least as far**
15 **back as the '80s, you were preparing up to 25**
16 **reports a year for plaintiffs' personal injury firms,**
17 **correct?**

18 **A At that point, I was affiliated with Commonwealth**
19 **Research Group in the '80s, so I --**

20 **Q Go ahead. Is that a correct number, 25 a year**
21 **back in the '80s?**

22 **A It's hard to say because I was supervising at**
23 **Commonwealth Research the work of a number of**
24 **associates, so I had more supervisory as opposed**

1 to actually performing the evaluation, so it's hard
2 back in the '80s, but 25 might not be an
3 unreasonable number in terms of my actual direct
4 involvement.

5 Q You've worked with many, many personal injury
6 firms in Massachusetts, correct?

7 A I have over the years, yes, sir.

8 Q And you've prepared a lot of reports over the
9 years, up to 25 a year, correct?

10 A Absolutely, sir.

11 Q And is that now most of your work is now forensic
12 economics, working for lawyers?

13 A Predominantly. I do part-time teaching. I'm on a
14 bank board. But predominantly consulting, sir.

15 Q So if you looked at your income tax return, it
16 would be mostly income retained in connection
17 with personal injury cases and lawyers?

18 A Yes, during 2003 it was. That was the first year
19 that was true.

20 Q Well, again, you've been earning monies for many
21 years working for lawyers.

22 A Yes.

23 Q You and I have met much earlier than last year,
24 right?

1 **A** **I don't recall when we met, but yes, sir.**

2 **Q** **Okay. Now, with respect, sir, to Adele Pollard also**
3 **accepting in her report for something called stair**
4 **glide expenses, correct?**

5 **A** **Yes.**

6 **Q** **And you again attribute a number for that**
7 **projected over the life?**

8 **A** **Yes, sir.**

9 **Q** **Okay. And what it did not include were**
10 **renovations to her home, correct?**

11 **A** **There was "to be determined" or some such --**

12 **Q** **Right.**

13 **A** **-- I couldn't do that, that's correct, sir.**

14 **Q** **Right. So that's out of your report.**

15 **A** **That's out of the report.**

16 **Q** **Everything else is in the report though?**

17 **A** **Yes.**

18 **Q** **Now, is it fair that the money we're talking about, I**
19 **think there were two numbers, based upon**
20 **projected life expectancy, those numbers, you**
21 **took out nothing for taxes, correct?**

22 **A** **Why would I take taxes out, sir?**

23 **Q** **Right. Because taxes is not something that is**
24 **going to be taken out of any personal injury award.**

1 **A Or household services.**

2 **Q Right.**

3 **A There's no taxes on household services or**
4 **medical. It's not like earnings, so there's no**
5 **income tax liability.**

6 **Q Right. Exactly. So the monies that would be**
7 **awarded to a plaintiff in a personal injury case is**
8 **not taxable.**

9 **MR. PRITZKER: Objection.**

10 **THE COURT: Sustained.**

11 **Q Well, you -- the monies that you --**

12 **MR. BOYLE: May I be heard at side**
13 **bar, your Honor?**

14 **THE COURT: No.**

15 **Q The monies that you allocated, sir, taxes is not**
16 **part of your analysis?**

17 **MR. PRITZKER: Objection.**

18 **THE COURT: He's already answered**
19 **that, but I'm going to sustain it.**

20 **Q Now, you told us, sir, that with respect to when**
21 **the analysis started, you said you took a date of**
22 **the date of the filing of the complaint, 2002,**
23 **correct?**

24 **A No, that wasn't when the analysis started.**

1 Q I mean as far as the calculation where the money
2 would be invested --

3 A Yes.

4 Q -- in a theoretical sense.

5 A That is correct, sir.

6 Q Now, the court awards interest from the date of
7 the filing, you knew that?

8 MR. PRITZKER: Objection.

9 THE COURT: Sustained.

10 MR. BOYLE: May we be heard, your
11 Honor?

12 THE COURT: No. And I'm going to
13 exclude that.

14 Q Sir, you awarded monies to -- the final number
15 would generate an investment starting in 2002,
16 correct?

17 A I awarded -- I don't understand your question.

18 Q Not awarded, but you -- your bottom line number,
19 this assumes that it was invested in 2002,
20 correct?

21 A That is correct, sir.

22 Q Okay. So starting today, going back a couple of
23 years?

24 A Yes.

1 **Q And monies that the investment would have**
2 **generated in the prudent investment that you**
3 **discussed in your report?**

4 **A Yes, sir.**

5 **Q And in connection with the analysis, again, you**
6 **assumed, based upon the statistics that you had,**
7 **that Mrs. Rhodes would live, you assume a**
8 **complete statistical probability of either -- I think**
9 **it was 24 or 33 years?**

10 **A Yes, there were two projections.**

11 **Q Right. And those were the numbers that you**
12 **based your analysis on, a fulfillment of whatever**
13 **the life expectancy was on those two different**
14 **options.**

15 **A That is correct.**

16 **Q Sir, the number on the higher life expectancy was**
17 **how much?**

18 **A Approximately two million dollars, sir.**

19 **Q And that is exclusive of the household service**
20 **number?**

21 **A That is correct, sir.**

22 **Q And adding them together is approximately what?**

23 **A 2.29.**

24 **Q Okay.**

1 **A Million.**

2 **Q And 2.29 accounts for all of the expenses that**
3 **Adele Pollard had indicated that Mrs. Rhodes will**
4 **ever need over her projected life, correct?**

5 **A It includes that, yes, sir.**

6 **MR. BOYLE: Thank you, sir.**

7 **THE COURT: Cross-examination?**

8 **MR. CONROY: If I may.**

9 **CROSS-EXAMINATION BY MR. CONROY:**

10 **Q Dr. Hewins, good morning.**

11 **A Good morning, sir.**

12 **Q I don't think we've had a chance to meet. My**
13 **name is Bill Conroy.**

14 **A Nice to meet you.**

15 **Q One of the attorneys who represents the**
16 **defendant GAF in this matter. I have just a couple**
17 **of questions for you.**

18 **A Certainly.**

19 **Q We're looking at this exhibit here on future**
20 **expenses, where we have the lost household**
21 **services identified, present value of \$292,379,**
22 **correct?**

23 **A That is correct.**

24 **Q And then we go down to the future medical and**

1 **personal care number, and you've got this reduced**
2 **down to the present value. And that's just over**
3 **1.9 million dollars, correct?**

4 **A Correct.**

5 **Q And we have a total there of just under 2.3 million,**
6 **correct?**

7 **A Correct.**

8 **Q And just so we're clear about this, there is -- the**
9 **other number that you used for life expectancy,**
10 **what we're looking at here assumes a life**
11 **expectancy of -- was it 32 or 33 years?**

12 **A It was actually 33.2 to be precise, yes.**

13 **Q And that was based upon the government life**
14 **expectation tables?**

15 **A Yes.**

16 **Q And then you also told us that there was this Dr.**
17 **DeVivo?**

18 **A Yes.**

19 **Q And I think you said he was the guru on the issue**
20 **of --**

21 **A On the statistical of spinal cord injured data, yes,**
22 **sir.**

23 **Q Trying to sort out how long someone is likely to**
24 **live in the information available to him with their**

1 **age and their sex, correct?**

2 **A Yes. Well, he has a database that's enormous,**
3 **where he's got data on who's passed away and**
4 **how old they were, et cetera.**

5 **Q Right. And I think your -- is it true, Doctor, that**
6 **when we talk about life expectancy, that it's very**
7 **hard to predict, isn't it? I mean --**

8 **A Absolutely.**

9 **Q -- obviously it's very hard to predict.**

10 **A Yes.**

11 **Q But if we look to Dr. DeVivo's analysis, your**
12 **understanding is that was requested by the**
13 **plaintiff's counsel in this case?**

14 **A That is my understanding.**

15 **Q And there's a letter, I think you said, that was sent**
16 **by Dr. DeVivo to Carlotta Patten at counsel's firm?**

17 **A Yes.**

18 **Q And they were asked to do the analysis, in Dr.**
19 **DeVivo's opinion, based upon all this data**
20 **available to him, what was the likely life**
21 **expectancy for Mrs. Rhodes, correct?**

22 **A That is correct.**

23 **Q And if we go to -- it's Exhibit 63, I believe, in the**
24 **book, if we go to the second page, if I'm correctly**

1 reading this, it says -- it says future life
2 expectancy is calculated as the summation of this
3 table of survival probabilities. Based on this table,
4 Ms. Rhodes' life expectancy would be 24.4 years
5 from today, right?

6 A That's what he says.

7 Q Now, if to -- for comparison purposes, if we have
8 this exhibit in front of us here, just, it's around 2.3
9 million total future expenses, am I correct, Doctor,
10 that this number would come down for total future
11 expenses reduced to present value to just over 1.7
12 million dollars if you were to use the 23 year life
13 expectancy?

14 A Yeah, my -- the exact number is 1.75 million.
15 That's right, sir.

16 Q Okay. And I think you've told us that the way you
17 reduce it to present value, this is accounting the
18 looking into the future as to what the cost will be
19 to finance Mrs. Rhodes' future health care needs,
20 both expected and contingent upon Dr. -- upon Ms.
21 Pollard, which you reduce down to present value,
22 correct?

23 A That is right, sir.

24 MR. CONROY: Thank you, sir. That's

1 all I have.

2 THE COURT: Any redirect?

3 MR. PRITZKER: Just a few, your
4 Honor.

5 **REDIRECT EXAMINATION BY MR. PRITZKER:**

6 Q Were you aware, Dr. Hewins, that Mrs. Rhodes had
7 no access to the upstairs and has no access to the
8 upstairs of her home?

9 A I don't think I was aware of that, sir.

10 Q Did you assume that in calculating the economic
11 value of household services?

12 A No, I did not.

13 Q Well, when you said that you assumed that there
14 were certain household services that she was not
15 going to be able to do, and some of them were
16 cleaning --

17 A Mm-hmm.

18 Q -- can you tell me, as to the cleaning, what that
19 component is comprised of?

20 A Well, again, my evaluation was based on the
21 services she would have been able to perform had
22 she never been hurt, in which case she would have
23 had access to the second floor and so forth.

24 Q And the basement area as well?

1 **A** **The basement, could have done the vacuuming**
2 **and the cleaning and the dusting, and tons of**
3 **things that people normally do, sir.**

4 **Q** **But again, I would stress, it was based on the**
5 **capability that existed prior to her injury?**

6 **A** **That was what was the lost, that capability.**

7 **Q** **Now the hour and a half a week that Ms. Pollard**
8 **included in her life care plan, how do you deal with**
9 **that?**

10 **A** **Well, I considered it as sort of a rounding thing.**
11 **Let me explain, the average hours, according to**
12 **the survey that I mentioned that was done last**
13 **year by economists by the name of Martin and**
14 **Baboulis, they came up with an average hours for**
15 **American female housewives just under six hours**
16 **per day, 41.5 hours per week is the exact average**
17 **of eight different studies. When I looked at these**
18 **studies, I was conservative. I used four,**
19 **considerably lower. For various reasons. Some of**
20 **the studies I don't like. The higher ones I think**
21 **are suspect. But I gave myself enough slack in**
22 **what I considered as being a reasonable number**
23 **for the loss, but the 41.5 a week didn't bother me.**

24 **Q** **By the way, Dr. Hewins, have you ever been**

1 retained by Mr. Boyle's firm, Morrison, Mahoney
2 and Miller?

3 MR. BOYLE: Objection.

4 A I've had that privilege.

5 MR. BOYLE: Objection, your Honor.

6 THE COURT: The objection is
7 overruled.

8 Q So you've actually provided economic analysis
9 services for his firm?

10 A I have, sir.

11 Q And have you been retained by the firm of
12 Campbell, Campbell, Edwards and Conroy, Mr.
13 Conroy's firm?

14 A I've had that privilege as well. Yes, I have, sir.

15 Q So you've been retained by his firm also to provide
16 economic evaluation services?

17 A Yes, I have.

18 MR. PRITZKER: Thank you, sir. I
19 have no other questions.

20 THE COURT: Any recross?

21 **RECROSS-EXAMINATION BY MR. BOYLE:**

22 Q Every time you and I have ever met in a courtroom,
23 sir, it's been on opposite sides, hasn't it?

24 A I've never worked for you --

1 Q No, you have --

2 A -- individually, sir.

3 Q -- been opposite sides, hasn't it, sir?

4 A That is correct.

5 Q I never retained you, did I?

6 A You never did, no, sir.

7 THE COURT: Anything further?

8 MR. PRITZKER: No, your Honor.

9 THE COURT: Thank you. You may
10 step down.

11 WITNESS STEPS DOWN

12 THE COURT: All right. Next witness.

13 MR. PRITZKER: May I call my next
14 witness, your Honor?

15 THE COURT: You may.

16 MR. PRITZKER: The plaintiff calls
17 Harold Rhodes, please.

18 THE CLERK: Raise your right hand,
19 sir. Do you solemnly swear the testimony you
20 shall give to the court and this jury in the case
21 now on trial shall be the truth, the whole truth,
22 and nothing but the truth, so help you God?

23 THE WITNESS: Yes, I do.

24 THE CLERK: Thank you. You may be

1 Q In what year?

2 A I graduated in 1972.

3 Q Did you go on to college?

4 A Yes, I did.

5 Q And where did you go to college?

6 A Indiana University.

7 Q Did you get a degree?

8 A Yes, I did.

9 Q What degree and when?

10 A In 1975, I got a baccalaureate in economics.

11 Q And did you go on to any higher education?

12 A Yes, I did.

13 Q Where?

14 A I went to business school at Harvard University.

15 Q Did you graduate?

16 A Yes, I did.

17 Q With what degree?

18 A MBA, Master's in Business Administration.

19 Q In what year?

20 A That would have been 1980.

21 Q Can you just generally track your business work
22 from 1980 on?

23 A Okay. 1980 to 1983, approximately, I joined Prime
24 Computer, which is in Natick, Massachusetts. I

1 was in marketing and the marketing organization
2 part manager. From 1983 to 1987, I was with a
3 few startups, a few high technology startups,
4 which no longer are around today. From 1987 to
5 1991, I was with a company called Parametric
6 Technology, a successful software startup
7 company. And in 1991 to 1993, I was with Data
8 General Corporation as Vice President of
9 Marketing. At --

10 Q Where is Data General located?

11 A They're in Westboro.

12 Q And you were Vice President of Marketing?

13 A Yes.

14 Q And did you change direction a little bit?

15 A Yes. In 1993, I decided I wanted to become an
16 independent marketing consultant, so from 1993
17 until 2002, I was an independent marketing
18 consultant.

19 Q Can you give us some of the companies that you
20 consulted for?

21 A Oh, certainly. UPromise, I was one of the very
22 early people with UPromise. A company called
23 Open Market. Another company called Netegrity.
24 These were all small software emerging

1 **companies.**

2 **Q High tech?**

3 **A Yes, high technology companies. Yes.**

4 **Q Where were you working at the time of the**
5 **accident?**

6 **A In mid 2001, I was doing marketing consulting for**
7 **a company called Visibility, and they were located**
8 **in Chicago.**

9 **Q And I'm going to shift gears for minute. When and**
10 **where did you meet Marcia?**

11 **A I was living in Natick, at the Natick Village**
12 **Apartments, in 1982, while I was working for Prime**
13 **Computer, and it was July, 1982, and I went to the**
14 **pool, and it was, you know, a warm Sunday, and I**
15 **you know, saw a chair open, and there was a very**
16 **pretty girl sitting next to the chair, but there was**
17 **obviously nobody sitting with her, so I asked her if**
18 **I could sit in the chair, and she said yes. And we**
19 **struck up a conversation, and that's how we met.**
20 **And I had the --**

21 **Q Do you remember the first date?**

22 **A Yes, I do. I asked her out, you know, that Sunday,**
23 **for a date for that Tuesday night to go out to**
24 **dinner.**

1 Q You still remember that?

2 A Well, I went over -- she was living at Natick --
3 Marcia was living at Natick Village Apartments as
4 well, so I went over to pick her up, and, you know,
5 the first thing I noticed about Marcia was these
6 red shoes that she had on. And, you know,
7 growing up in Indiana with conservative values, I
8 was just awestruck that someone would be
9 wearing red shoes. And at that moment, well, it
10 was just -- it just took my breath away.

11 Q When were you married?

12 A We were married on April 16th, 1983.

13 Q Do you remember when Marcia stopped working
14 full-time?

15 A 1990.

16 Q When was Rebecca born?

17 A Rebecca was born on April 8th, 1988.

18 Q Even after Rebecca was born, Marcia continued to
19 work?

20 A Yes, Marcia continued in her collectibles and
21 antique business and continued with her part-time
22 teaching at Mount Ida College.

23 Q Now, between the two of you, were you able to put
24 some savings away?

1 **A** **Yes, we were.**

2 **Q** **Marcia was saving from her work?**

3 **A** **Yes, she was.**

4 **Q** **Did you consider the money joint, pooled, however**
5 **you handled your --**

6 **A** **Yes, we had one joint savings account for the two**
7 **of us.**

8 **Q** **Who was in charge of the finances?**

9 **A** **I mainly handled it.**

10 **Q** **Where did you maintain your office in 2001?**

11 **A** **Well, as an independent marketing consultant, I**
12 **had an office in our finished -- in our semi-finished**
13 **basement, as well as I did some consulting work**
14 **on-site at a company when necessary. So about**
15 **50 percent of the time I was in my office in my**
16 **basement, and about half the other time I would**
17 **be, you know, at the company that I was working**
18 **with site.**

19 **Q** **When did you move to Milford?**

20 **A** **In August, 1983. Just after we were married.**

21 **Q** **So just after you were married, you purchased**
22 **your own home?**

23 **A** **Yes, we did.**

24 **Q** **And you've lived there ever since?**

1 **A** **Yes, we have.**

2 **Q** **Can you describe the home, just generally, before**
3 **any renovations were made?**

4 **A** **Maybe the easiest way is just sort of walk through**
5 **the house. We have a normal garrison colonial**
6 **house. It's got two floors. It has a basement and**
7 **it has a two-car garage.**

8 **Q** **It had a two-car garage?**

9 **A** **Yeah, a two-car garage certainly.**

10 **Q** **Okay. So what was on the first floor?**

11 **A** **Well, as you came in from the two-car garage,**
12 **immediately to your right would be -- before the**
13 **renovations, a half-bathroom. And on your left**
14 **would be a -- you know, a den. If you proceeded**
15 **straight past the bathroom, you immediately come**
16 **into the kitchen. And then if you pass through the**
17 **kitchen, you get to a breakfast room, dining room.**
18 **And then you turn left and you come into what was**
19 **our living room, where Marcia had her piano. And**
20 **then if you kept -- so now we're diagonally across**
21 **from the bathroom to the living room now. So as**
22 **you come back, we're going to go across the front**
23 **foyer, where the steps are and the front door is,**
24 **and if you keep going, you get back to the den.**

1 **That's sort of a walk around. And then upstairs,**
2 **there were four bedrooms, as well as a full**
3 **bathroom.**

4 **Q And what was downstairs?**

5 **A And downstairs was in two parts. Half of it was**
6 **finished where I had my office and the other half is**
7 **unfinished, where we had our laundry room.**

8 **Q Now, you said that before the accident you were**
9 **working for one particular company. What**
10 **company was that?**

11 **A The name of that company was Visibility.**

12 **Q Where were they located?**

13 **A They were located in Chicago.**

14 **Q And did you have to travel?**

15 **A Yeah, I try to avoid generally taking companies --**
16 **working with companies outside of Boston, unless**
17 **I felt they were very, very special. So I went to**
18 **Visibility, you know, one or two nights a week, or**
19 **every two weeks, not very much.**

20 **Q About how many hours a day did you work?**

21 **A Eight hours normally, sometimes more, sometimes**
22 **less. Just depending on what was, you know, the**
23 **requirement to get done.**

24 **Q And how many days a week?**

1 **A** **I tried very hard to work just five days a week, but**
2 **there were sometimes I worked on weekends**
3 **certainly.**

4 **Q** **So how much time would you say typically you**
5 **spent in the home office as opposed to on the**
6 **road, right before the accident?**

7 **A** **In the home office --**

8 **Q** **The home office being the office in your home.**

9 **A** **Yeah. And working hours I think I would -- in**
10 **terms of working hours. You know, twenty-five or**
11 **thirty working hours a week. Maybe more if I**
12 **wasn't traveling to Chicago that week.**

13 **Q** **During the same period of time, can you describe**
14 **what you did when you weren't working? What**
15 **kinds of activities were you involved in?**

16 **A** **Well, we spent -- Marcia, Rebecca and I spent a lot**
17 **of time together on weekends. Maybe I'll just walk**
18 **through a typical weekend. Friday night dinner**
19 **was very important to our family, that we all sat**
20 **down and had dinner together on Friday night. On**
21 **Saturdays, typically Rebecca and I would go off**
22 **and do something educational, like the science**
23 **museum or a zoo. And that would be the time that**
24 **Marcia would go antiquing and like that. On**

1 **Saturday night Marcia and I would always have**
2 **dinner together, either together or with friends,**
3 **either at somebody's house or we would go out.**
4 **And then on a, you know, a typical Sunday, you**
5 **know, if Marcia was going to the Grafton Flea**
6 **Market, I might go with her. It sort of just**
7 **depended on what the activity of the day might be.**

8 **Q Did you become involved at all with Marcia's**
9 **antique business?**

10 **A Oh, yeah. You know, this was the time period --**
11 **many of you may know, EBay began to become**
12 **very important, and I helped Marcia get started on**
13 **EBay, and put up her collectibles store on EBay, as**
14 **well as, you know, started going to -- I was getting**
15 **more and more interested in her antique business,**
16 **so I started going more and more with her to flea**
17 **markets and auctions.**

18 **Q What about religious activities?**

19 **A Temple is very important to our family. Certainly**
20 **for me on the religious side, Temple is much more**
21 **important. For Marcia, for the social and the**
22 **charity side. You know, I think the year preceding**
23 **-- well, Rebecca was bat mitzvahed in April, 2001,**
24 **so the year preceding that, the family, the three of**

1 us spent a great deal of time together at the
2 Temple, getting Becca ready, or the family ready
3 actually for her bat mitzvah, so it was very
4 important to us.

5 Q And were there charitable activities over the years
6 that you were involved in?

7 A Oh, yeah, certainly as part of the Temple, a
8 number of charity organizations that, you know,
9 Marcia mainly participated in.

10 Q What about interaction at Rebecca's school?

11 A This was generally Marcia's -- Marcia's area. I got
12 involved when Marcia -- when Rebecca needed like
13 math or science homework, but most of it all was
14 with Marcia.

15 Q And what about chores around the house?

16 A Well, I guess Marcia and I had a deal. She took
17 care of all the inside chores, I took care of all the
18 outside chores. You know, she took care of all the
19 cleaning, and she took a lot of time transporting
20 Rebecca from where -- you know, all of her after
21 school and summer activities. I did yard work,
22 home repairs, things like that I guess.

23 Q And can you describe other interactions with
24 Marcia right before the accident?

1 **A** Well, I guess we had what I -- you know, I guess
2 we had just, you know, what anybody would call a
3 normal, caring, warm relationship. You know,
4 Marcia -- you know, Marcia's my best friend. And,
5 you know, we -- you know, I mean we spent time
6 together, we -- you know, I --

7 **Q** Did you interact generally on a regular basis?

8 **A** Well, one of the nice things about being a
9 consultant and working at home is that you get to
10 see your family a lot. And, you know, every day
11 Marcia and I, you know, talked about whatever
12 was going on, with Rebecca or with her antiques,
13 or my work. You know, we saw each other quite a
14 lot.

15 **Q** What about visiting mutual friends?

16 **A** We had two couple friends that we were very close
17 with. I think Rebecca mentioned Lisa Cowen, her
18 parents. And Rebecca mentioned also Rachel
19 Kramer. Her parents. There was a third couple,
20 Cindy and Andy Grayfield, we spent a lot of time
21 with as well. And we went to -- you know, we did
22 a normal stuff. Family, you know, outings
23 together, and dinners out and dinners at homes
24 and things like that.

1 **Q** **Visited each others' homes?**

2 **A** **Oh, yeah.**

3 **Q** **You haven't talked about the general bringing up**
4 **of Rebecca.**

5 **A** **You know, actually the best thing, you know, is to**
6 **bring up a kid together. And, you know, Rebecca's**
7 **just a wonderful, wonderful child and is growing up**
8 **to be a -- you know, a younger -- you know, a great**
9 **young woman. And, you know, we obviously spent**
10 **a lot of time, you know, doing the best we could as**
11 **parents bringing her up.**

12 **Q** **Did you take family vacations?**

13 **A** **Well, that -- that certainly was something that**
14 **annually we looked forward to a great deal. We**
15 **rented a house on the Cape for the two summers --**
16 **two previous summers, the earlier one for two**
17 **weeks and the next one for three weeks, and we**
18 **were certainly looking forward to continuing our**
19 **vacations each August, you know, to the Cape.**
20 **We just loved it there. That was a lot of fun.**

21 **Q** **How would you describe your relationship with**
22 **Marcia?**

23 **A** **You know, I think I said it. I mean, she -- Marcia --**
24 **you know, Marcia is my best friend. And, you**

1 know, she was the -- she is the one I can -- I could
2 count on for anything and everything, and, you
3 know, it was -- you know, what can I say? I mean
4 it was --

5 Q Did you have arguments?

6 A Of course we had arguments.

7 Q How many times? Could you generalize how many
8 times you argued?

9 A We had arguments, but I don't think anything more
10 than average or normal, but certainly -- certainly
11 the good times or the normal times well exceeded
12 the any kind of argument times that we might
13 have. I mean, I don't want to --

14 Q When you had arguments, did you ever use the
15 word "divorce"?

16 A Well, I never used it. Once in a while, once in a
17 great while, Marcia might say divorce, but I knew
18 that was really just get -- to really grab my
19 attention on a topic.

20 Q Did she or you ever follow through with anything
21 having to do with divorce or separation?

22 A Oh no, not -- not whatsoever.

23 Q When you had arguments, what were the
24 arguments about?

1 **A** You know, it's so hard to remember, but it might
2 have been, you know, stuff about Rebecca, and it
3 might have been, you know -- I don't know. It's
4 just so hard to remember. You know, nothing --

5 **Q** Was any of it about your lifestyle when you were
6 working with these large corporations?

7 **A** Well, early on, certainly from -- as I mentioned
8 1980 to when I became a consultant, you know, I
9 became more and more, I guess the terms is a
10 workaholic. You know, I worked very, very hard,
11 and I think I probably didn't spend as much time in
12 those later years with Marcia and the family as I
13 perhaps should have, and that probably was the
14 source of some -- you know, some concern.

15 **Q** Now, you knew that Marcia was using marijuana?

16 **A** Yes. I disapproved. I didn't want Rebecca to
17 know about it. I didn't want Rebecca to be around
18 it, even though I knew it was just for Marcia's
19 medicinal use.

20 **Q** And was that a source of arguments from time to
21 time?

22 **A** Yeah, occasionally.

23 **Q** Now, you described the upstairs of your home.
24 When you first -- was one of the rooms a master

1 bedroom?

2 A Yes.

3 Q And when you first bought the home, did you and
4 Marcia sleep in that larger bedroom?

5 A Yes, we did.

6 Q In that master bedroom?

7 A Yes, we did.

8 Q And after a period of time did that change?

9 A Yes, it did.

10 Q When?

11 A As best I can remember, about 1996.

12 Q And what was the reason for the change?

13 A Well, I'm little embarrassed to say. I have a
14 terrible nasal snoring problem, which is quite
15 predominant I understand it to be.

16 Q Did you try to do anything about it?

17 A I had grown up with asthma and allergies anyway.
18 I had a broken nose, and in -- I think it was like
19 1993, I did a sleep study and was diagnosed with
20 sleep apnea. And then in 1996, or 1997, I went for
21 one of those new surgeries to reduce snoring, but
22 unfortunately it didn't work.

23 Q Okay. And so what happened as far as the
24 sleeping arrangements?

1 **A** **I guess, you know, it's fair to say that Marcia slept**
2 **in one room, I slept in another room for**
3 **convenience factor.**

4 **Q** **Did this mean that there were no displays of**
5 **affection after that period of time?**

6 **A** **Oh, not -- not at all. I mean, you know, we saw**
7 **each other every day, you know. You know, that**
8 **didn't change anything about our relationship. We**
9 **loved each other, and, you know, we kissed on a**
10 **regular basis, I mean, you know, we hugged on a**
11 **regular basis. We, you know, did stuff that normal**
12 **husbands and wives do.**

13 **Q** **Did you have sex?**

14 **A** **Intermittently. I mean, you know, I mean -- who**
15 **counts, but intermittently certainly.**

16 **Q** **You talked about kissing and hugging. On a daily**
17 **basis, would you kiss?**

18 **A** **Well, we tried to, I mean especially because**
19 **Marcia would be going out, you know, and doing**
20 **her antique business, so we would always talk**
21 **about what she was doing for the day and maybe**
22 **what we were doing for, you know, for dinner that**
23 **night, and then we would kiss good-bye, and she**
24 **would go off and certainly, you know, at nighttime,**

1 **kissing too.**

2 **Q Hugging, would you hug on a daily basis?**

3 **A Well, that's what Marcia liked to do more than**
4 **anything else.**

5 **Q And anything else come to mind about ways that**
6 **you showed your affection?**

7 **A I cannot recall.**

8 **Q When you were away, was there contact?**

9 **A You know, since I -- that period of time I was**
10 **working in Chicago maybe one or two nights a**
11 **week, every other week, but actually I think we**
12 **spent more time on the phone when I was away**
13 **than, you know, when we were together. So we**
14 **would talk on the phone a great deal in the**
15 **afternoons or evenings.**

16 **Q I'm going to shift gears now, Mr. Rhodes, and**
17 **direct your attention to the date of the accident.**
18 **Do you remember where you were?**

19 **A Yes, I do.**

20 **Q Where were you?**

21 **A I was working at home in the basement. It was -- I**
22 **was making lunch upstairs actually, and Marcia**
23 **was getting ready to go out for the afternoon to,**
24 **you know, go do her antiques business.**

1 Q About what time of the day was this?

2 A This was -- I guess a few minutes -- around one
3 o'clock, maybe a few minutes past one o'clock.

4 Q Do you have any memory of saying good-bye to her
5 that day?

6 A We -- like we did always, we talked about, you
7 know, where she was going, when she was going
8 to be back, what we'd be doing for dinner. She
9 has a cute little Allie McGraw hat that I like so
10 much. We kissed goodbye and off she went, and I
11 went back downstairs to, you know, continue my
12 work.

13 Q What happened next?

14 A So -- so a little while later, I guess about a half
15 hour later, I got a phone call from the Medway
16 Police Department.

17 Q What was -- what was said by you, and who was on
18 the other end of the phone?

19 A The Medway policeman told me that Marcia had
20 been involved -- Marcia had been involved in a
21 serious automobile accident, and could I come
22 over as quickly as possible. He told me that the
23 accident was near Trotter Lane at Route 109, and
24 did I know it. And I told him it was right around

1 **our house, and I would -- I just got everything**
2 **together to go over there as quickly as possible.**

3 **Q Did you go as quickly as possible?**

4 **A Yes, I did.**

5 **Q What time did you get to the scene?**

6 **A I would guess it was about 1, 1:40, 1:45. Marcia**
7 **hadn't been gone very long, you know.**

8 **Q What did you observe?**

9 **A Well, Trotter Drive is very close to where we live,**
10 **so I got over there and parked right on Trotter**
11 **Drive. But even as I was driving up, you could see**
12 **that there was a lot of activity right there, so I**
13 **parked and walked up just as fast as I could to**
14 **where all the activity was going on. And I saw -- I**
15 **saw Marcia's car, her Toyota, in a ditch. It was --**
16 **it was -- it was horribly mangled up.**

17 **Q Did you have an opportunity to speak to her?**

18 **A As I was walking up, the Medway policeman asked**
19 **me if I was Mrs. Rhodes' husband and that she was**
20 **asking for me, and would I go over -- over to her.**
21 **So I walked up to her, and she was still in the car,**
22 **but the passenger side window glass was blown**
23 **out, so I was able to reach in to her on the**
24 **passenger side and --**

1 **Q** **What did you see?**

2 **A** **Well, Marcia was in -- Marcia was in bad shape.**
3 **She was sort of hunched over, and there were --**
4 **there was blood and there was cuts and bruises**
5 **and there was glass everywhere. And she was**
6 **moaning. She was in pain.**

7 **Q** **And then what happened?**

8 **A** **Well, I was over -- I was just overcome by**
9 **everything that was going on right at that moment,**
10 **and I think the Medway policeman, you know, said**
11 **could you step back, we're going to try to get**
12 **Marcia out of the car, so go step -- step to the**
13 **side. So I went over to the side.**

14 **Q** **Before stepping to the side, did you have a chance**
15 **to talk to Marcia at all?**

16 **A** **I think we said a little bit, but not very much.**
17 **They didn't give me much time because I was**
18 **beginning to lose control I believe.**

19 **Q** **Did you watch them try to get her out of the car?**

20 **A** **Well, I'm -- you know, off to the side, and they're**
21 **beginning to work on the car, and, you know,**
22 **whatever they were doing, they were doing to, you**
23 **know, get her out of the car. So yeah, I watched**
24 **her.**

1 **Q What did you watch, what did you see?**

2 **A Well, I didn't know it at the time, but there was a**
3 **thing called the jaws of life. I didn't know what it**
4 **was, but they cut open the roof or the side, I don't**
5 **remember which, and they dragged her out and put**
6 **her onto a stretcher.**

7 **Q And when they put her onto the stretcher, is there**
8 **anything in particular that you observed?**

9 **A So -- so she's on the stretcher, I'm off to the side,**
10 **the car's behind us, or behind her, and the EMTs**
11 **are now taking -- taking over. And there was a**
12 **woman EMT who was holding -- was at the feet**
13 **side of Marcia, and I didn't know it at the time**
14 **what she was doing, but she was scratching the**
15 **bottom of Marcia's feet. I didn't know what that**
16 **meant, but she was scratching and the EMT**
17 **woman looked at me and just shook her head no.**

18 **Q What did that mean to you?**

19 **A Well, I certainly knew it wasn't good news, and it**
20 **probably meant that she didn't have any feeling in**
21 **her legs.**

22 **Q Did you go in the ambulance with your wife?**

23 **A I wanted to, but they said no, that they needed to**
24 **work on her and would I just follow in the car over**

1 to Milford Hospital.

2 Q Did you watch Marcia driving away in the
3 ambulance?

4 A Yes, I did.

5 Q How did you feel?

6 A Well, I mean, you just can't imagine. Your whole
7 world comes crashing down on you at that moment
8 because you know there's something wrong, and
9 you don't really know what's going to happen. And
10 you know, you just sort of go on autopilot, I guess,
11 you know. And I followed her in my car, you know,
12 from one side of Milford over to the other side of
13 Milford.

14 Q Well, you're anticipating my question. Where did
15 they take her?

16 A Well, they took her to Milford -- Milford Hospital.

17 Q What did you do?

18 A Well --

19 Q Did you do anything on the way to the hospital?

20 A Well, you know, I called -- I made a couple of calls
21 from the car. I called Marian Cowan and asked her
22 to pick up Becca at school if she could do that.

23 Q This is a family friend?

24 A This is a family friend, Lisa's mother. I called the

1 school counselor we knew, and explained briefly
2 what had happened to Marcia because I didn't
3 want -- I didn't want Becca to get home and not
4 know anything that was going on. She was just
5 thirteen at the time. And I called Marcia's sister
6 Sue, who was living in Falmouth, and I asked her
7 to please come up to the house, just so that she
8 could stay with Rebecca. So I made those calls
9 while I was on my way over to --

10 Q Okay. And then you got to the Milford-Whitinsville
11 Hospital?

12 A Yes.

13 Q What did you observe when you got to the
14 hospital?

15 A Well, I went immediately into the ER. And they
16 had Marcia out on a bed. She was just covered
17 with glass. And they were working on her, and
18 one of the nurses told me that they were filling her
19 up, giving her IV injections of steroids, which they
20 would hope would hold down the swelling, which
21 was developing in her body. So she's got cuts and
22 bruises, they're trying to stabilize her. She's got
23 glass all over her. They didn't -- they couldn't give
24 her any painkillers -- they told me they couldn't

1 give her any painkillers and that she was in a lot
2 of pain right now, but they couldn't give her any
3 painkillers because they didn't know what was
4 going to be, whether they were going to operate
5 on her or not, so they couldn't sedate her. And it
6 was just a horrifying -- it's hard to even describe to
7 some people, to see all this going on.

8 Q Did you learn that she was going to stay at Milford-
9 Whitinsville?

10 A Well, after a while, one of the ER doctors came to
11 me and said that Milford wasn't equipped to deal
12 with this kind of severe trauma, and that she was
13 going to be transported up to UMass Trauma Unit
14 because they were better equipped to deal with
15 this.

16 Q And, in fact, did that transfer take place?

17 A Yes.

18 Q How did you get to the UMass Trauma Unit?

19 A Well, Marcia was taken away by ambulance. One
20 of the ER nurses gave me directions to UMass. I
21 had never been up there. And so I just drove from
22 Milford up to Worcester, you know, as quickly as I
23 could, but it was the longest drive of my life.

24 Q When you got to UMass, approximately what time

1 of the day was it?

2 A Well, it had to be around like 4:30 I would say.

3 You know, it was about 4:30 in the afternoon.

4 Q Did you -- were you able to see Marcia at that
5 time?

6 A Okay. So I walked in, and the ER nurse at Milford
7 said just go to the emergency room nurse, or the
8 attendant at the emergency room, tell them who
9 you are, they'll be expecting you. So I went in
10 there, and the desk nurse just said go wait in the
11 family room, which was a special room, and that
12 somebody would be down to see me, you know, in
13 a short while. So I went into -- I went into that
14 family room and waited.

15 Q And that was about what time?

16 A So this was about 4:30 p.m. now.

17 Q While you were in this waiting area, did you make
18 any calls?

19 A I didn't want to call anybody because I didn't know
20 what was going on. So I didn't want to tell
21 anything to anybody. I think I asked Sue to call
22 her parents, just to let them know what had
23 happened to Marcia, but that I would be calling
24 them later, but I hadn't called them yet.

1 **Q Did you talk to Marcia's parents that night?**

2 **A So the social worker came in just a little while**
3 **after I got into the family room, and calmed me**
4 **down, and told me that Marcia was being**
5 **examined by the doctors, and that as soon as the**
6 **doctors knew something, they would come and**
7 **see me and explain what the situation was. So,**
8 **you know, it's about 5 o'clock now, and they just**
9 **told me to wait until the doctors came down. So,**
10 **you know, it was -- I -- you know, I had to make -- I**
11 **had to make some phone calls, because, you**
12 **know, everything's going on now. So first -- first I**
13 **called my brothers and my sister, to let them**
14 **know, you know, what's going on. Then I had to**
15 **make what was the second hardest call to**
16 **Marcia's parents, because they've been waiting to**
17 **hear from me, to tell them that their daughter had**
18 **been in a very serious automobile accident, and**
19 **that I really didn't know what was going on. They**
20 **told me they were going to make plans to come up**
21 **to Boston just as soon as they could.**

22 **Q Where were they?**

23 **A They lived in Florida. And then I had to make the**
24 **hardest call.**

1 **Q To whom?**

2 **A I called Rebecca because by then Rebecca knew**
3 **that something was going on, that there was --**
4 **Mom was involved in an auto accident. And I**
5 **didn't know what to say to her, but I knew I had to**
6 **say something to her because she was going to**
7 **hear about it because this sort of thing would be**
8 **all over Milford the next day. So, you know, it was**
9 **a very tough call.**

10 **Q What did you say to Rebecca?**

11 **A I tried just to be as honest, but as short as I could**
12 **because I didn't want to get her too upset. But I**
13 **didn't want to lie to her either, so I just told her**
14 **that Mom was in an automobile accident, that the**
15 **doctors were working on her, and as soon as we**
16 **knew more, we would know more.**

17 **Q Did you talk to the doctors that night?**

18 **A So I'm still -- I'm making phone calls and I'm**
19 **waiting in the family room, and about 9 p.m. that**
20 **night, the social worker and two doctors came**
21 **down to see me. And one doctor was Dr. Bailey**
22 **and one doctor was Dr. Bloomenkauf. Dr. Bailey**
23 **was the orthopedic surgeon. Dr. Bloomenkauf was**
24 **the neurosurgeon. And there was the social**

1 worker there. And they said that Marcia was --
2 had a severe trauma. She was going to need to
3 have surgery. They didn't know right then, or at
4 least they told me they didn't know right then the
5 extent of the damage to her, but that, you know,
6 they were doing all they could for her. The social
7 worker -- if I can just continue -- said to me that
8 there was nothing more that I could do right then,
9 that I should go home and be with Rebecca. She
10 said to me, and I remember this, she said to me,
11 Mr. Rhodes, you're going to be facing a lot of
12 things, go home and get some rest because there
13 are going to be a lot of things that are going to go
14 on. So I went home that night.

15 Q Was Rebecca sleeping?

16 A No, she waited up for me.

17 Q Did she yet know the details of the accident?

18 A She knew that Mom was in an automobile
19 accident, and she -- and I told her that it was a
20 serious one, but that she was at the hospital and
21 the doctors were taking care of her, and we'd
22 know more when we knew more.

23 Q Was her aunt there at that time?

24 A Yeah, Sue was there taking care of her.

1 Q Did you go back to the hospital the next day?

2 A Yeah. So next morning I went back up to UMass.

3 And, you know, Marcia -- Marcia was in the
4 intensive care unit at this time. And, you know,
5 this was pretty scary stuff now.

6 Q Harold, maybe you should wait for the questions.

7 Did you have an opportunity to see Marcia --

8 A Yes.

9 Q -- that day?

10 A Yes, I did.

11 Q In the intensive care unit?

12 A Yes.

13 Q Are you familiar with a rotor bed?

14 A Well, I didn't know what it was then, but I do
15 certainly know what it is now.

16 Q Did you see Marcia in a rotor bed?

17 A Yes, I did.

18 Q I'm going to show you two pictures, and ask if you
19 can identify them for me.

20 A Yup.

21 Q What are they?

22 A They're pictures of Marcia in -- in intensive care on
23 the first day. The first day she was in intensive
24 care.

1 Q On a rotor bed?

2 A On a rotor bed.

3 MR. PRITZKER: Could I have the
4 picture marked or identified as 3856 marked as
5 the next exhibit, your Honor?

6 THE COURT: All right. Is there any
7 objection?

8 MR. BOYLE: No.

9 MR. CONROY: No objection.

10 THE COURT: That will be marked as
11 Exhibit 68.

12 (Photograph of Marcia Rhodes
13 in intensive care received and
14 marked Exhibit Number 68.)

15 MR. PRITZKER: And the one
16 identified as 3860 as the next exhibit, please.

17 THE COURT: 69.

18 (Photograph received and
19 marked Exhibit Number 69.)

20 MR. PRITZKER: May I publish these
21 to the jury, your Honor?

22 THE COURT: You may.

23 Q Aside from the pictures, Mr. Rhodes, can you
24 describe what it was that you observed?

1 **A** **Well, she was on the bed. And a rotor bed sort of**
2 **goes sideways to sideways, it goes back and forth.**
3 **Marcia had all sorts of tubes and wires coming out**
4 **of her. And the ICU nurse told me that they were**
5 **stabilizing her.**

6 **Q** **Was there an issue about her pulling the tubes**
7 **out?**

8 **A** **Well, I stayed that day, the whole day at the**
9 **hospital, and then I slept at the hospital that**
10 **night. And then early the next morning, the**
11 **attending -- the attending physician or somebody**
12 **came to see me and asked me to come to see**
13 **Marcia. And he showed me that Marcia had pulled**
14 **out one of the tubes, and that this was a really**
15 **serious problem because they didn't want to be**
16 **putting it in and taking it out, putting it in the**
17 **tubes. And that they just had to stop that. And**
18 **they explained to me in order to stop Marcia**
19 **having her hands come up to pull out these tubes,**
20 **they needed to ask my permission -- you know,**
21 **this was going to be the first hard decision. They**
22 **asked my permission to strap Marcia's arms down**
23 **to the sides of the bed, so she couldn't be jerking -**
24 **- I mean so she couldn't pull out the tubes from her**

1 **body. And she was --**

2 **Q Did you give them permission?**

3 **A Yeah. Yes, I did. And then, you know --**

4 **Q Did they strap her down?**

5 **A Yes, they did.**

6 **Q And what did you observe?**

7 **A It's so horrible. She's flailing her arms to try to**
8 **reach her nose, to try to pull out these body**
9 **things, and you're just looking at -- you know, what**
10 **have you just done to your wife.**

11 **Q Do you remember the day of the surgery?**

12 **A Yes, I do.**

13 **Q Can you tell me if anything in particular sticks out**
14 **in your mind about the day of the surgery?**

15 **A Well, it was about a week later. Dr. Bailey and Dr.**
16 **Bloomenkauf came to see me and -- early that**
17 **morning and said they were going to do spinal**
18 **cord surgery. Of course, I'd learned a lot more by**
19 **then, that there was spinal cord trauma, and they**
20 **were going to do her spinal cord surgery, and that**
21 **the surgery would take like six or eight hours. So**
22 **just be patient, and as soon as the surgery was**
23 **over, they would come out and give me an update,**
24 **you know, as to what was -- what was -- what was**

1 **happening. About an hour after they went away**
2 **and were in surgery, Dr. Bloomenkauf, the**
3 **neurosurgeon, came down to see me. And he said**
4 **that the damage to Marcia's spinal cord was so**
5 **extensive that, as a neurosurgeon, there wasn't**
6 **anything that he could do, and that Dr. Bailey**
7 **would be doing orthopedic or spinal cord**
8 **reconstruction as best as he could, but there was**
9 **nothing he could do from a neurosurgery kind of**
10 **activity.**

11 **Q During the first month of her care at UMass, what**
12 **was Rebecca doing?**

13 **A Well -- well, her parents -- Marcia's parents were**
14 **up, Marcia's sister was here. My family came. So**
15 **I was focused on Marcia. You know, other family**
16 **members were taking care of Rebecca. But it's --**
17 **you know --**

18 **Q At some point did you bring Rebecca to the**
19 **hospital?**

20 **A So it's now the weekend after the -- it's now the**
21 **weekend after the surgery, and I hadn't wanted --**
22 **well, the social worker told me, don't bring -- don't**
23 **bring Becca to the hospital until Marcia is**
24 **stabilized and can at least talk to Rebecca**

1 **because -- you know, until after surgery, until she**
2 **could -- because that just wouldn't be a good thing**
3 **for Rebecca to see at that point. So we had to tell**
4 **Marcia that Rebecca was going to be coming up.**
5 **But in order to tell Marcia that Rebecca was**
6 **coming up, I had to have a talk with Marcia first.**

7 **Q Did you have that talk?**

8 **A So the doctors and the social worker had been**
9 **pushing me to tell Marcia how she was because,**
10 **you know, she's been in bed and sedated and she**
11 **really didn't know how she was doing. Or maybe**
12 **she knew. Or maybe -- I don't know. So with the**
13 **doctor's help, and I built up my courage to go see**
14 **Marcia, and she was just lucid enough that I could**
15 **talk to her, and I told her. I said, Marcia, the**
16 **doctors want me to tell you that you're paralyzed**
17 **and that you're going to be in a wheelchair for the**
18 **rest of your life. And Marcia said to me -- Marcia**
19 **said to me, Harold, I know that, I can't feel**
20 **anything in my legs. So the next day I brought**
21 **Rebecca up to see Marcia. And I sort of explained**
22 **to Rebecca in the car as we were going up that**
23 **she's going to see Mom and it was pretty serious,**
24 **but when we got there, doctors would meet us and**

1 we'd talk about it first. Well, there was a group of
2 us, including the social worker, we took Becca in
3 to see -- Marcia was still in ICU. And that's when I
4 explained to Rebecca that Mom was paralyzed.
5 And Becca just fell apart.

6 THE COURT: Why don't we take our
7 morning recess at this point.

8 (Morning Recess)

9 Q Mr. Rhodes, we've already heard that when Marcia
10 left UMass, she went to Fairlawn Rehab. Center.
11 She was at UMass for how long?

12 A Twenty-one days.

13 Q Three weeks.

14 A Three weeks.

15 Q And I'm not going to spend a lot of time with
16 Fairlawn, but when you visited Marcia -- how long
17 was she at Fairlawn?

18 A Ten weeks.

19 Q During that ten weeks, when you first started
20 visiting Fairlawn, was she with the general
21 population?

22 A No, she was -- she was in isolation. She was in
23 isolation.

24 Q And how long did she remain in isolation?

1 **A** **Well, I think about six or seven -- six or seven of**
2 **the ten weeks.**

3 **Q** **So when you visited her, did you have to suit up?**

4 **A** **Yes.**

5 **Q** **What did that mean? What does that mean?**

6 **A** **It's -- you have to put on a full gown, hair cover,**
7 **gloves, mask, you know, so --**

8 **Q** **During that same period, the first seven weeks,**
9 **was Marcia wearing the body cast that we've had**
10 **marked as an exhibit?**

11 **A** **Yes, she was.**

12 **Q** **And did she have any other significant**
13 **complications?**

14 **A** **I don't remember all the things that were going on**
15 **with her, but there were a lot -- there were a lot of**
16 **things --**

17 **Q** **Did she have a swollen leg?**

18 **A** **She -- she got a blood clot, and her leg was huge.**
19 **Just huge.**

20 **Q** **Did you have an opportunity to observe Marcia's**
21 **disposition during this period?**

22 **A** **You know, the only word that comes to mind is**
23 **just despondent. I mean, she was in pain every**
24 **minute. Anybody who comes to see her has got to**

1 get dressed up and keep a distance. She wants to
2 get going and, you know, get active, but she can't.
3 And she's just so unhappy.

4 Q During this period, or maybe even back at UMass,
5 how did you prepare for Marcia's ultimate return?

6 A The social worker at UMass, when I was there
7 began to tell me about what was going to happen.
8 And the social worker at UMass said she's going
9 to be in a -- she's going to have surgery, she's
10 going to be in the hospital, she's going to go to a
11 rehabilitation facility that I would need to select,
12 and then if our home was modified, she could
13 come home, and if not, she would go to a nursing
14 care facility. So you know, the first thing was I
15 knew Marcia would never want to go to a nursing
16 care facility, so I needed to get the home
17 renovations done just as quickly as possible. So
18 this started while I was at UMass and went all the
19 way through while she was at Fairlawn as well.

20 Q What arrangements did you make?

21 A So now there are other therapists talking to me
22 and telling me what I've got to do for the home.
23 And they said as a bare minimum, you have to --
24 see, they have to certify a home for a patient to

1 return to it, so they've got these things that you've
2 got to do. So they said you've got to have a ramp,
3 you've got to have a handicap accessible --
4 handicap accessible bathroom, and you also have
5 to have special flooring because we had, you
6 know, regular carpet, so we had to have like -- we
7 had grade -- like what we have here, we had grade
8 flooring put on throughout the house.

9 Q So how did you go about starting to coordinate
10 this?

11 A Well, you know, through all our friends, I sent out
12 this giant -- I don't know, I call it like an SOS e-
13 mail to everybody I knew, just everybody, because
14 I didn't know how to get, you know, construction
15 done. And fortunately, one of the Temple
16 members that I didn't really know very well called
17 me to let me know that he was a design architect
18 and he just happened to have ADA background --

19 Q ADA being?

20 A Disabilities Association. American Disabilities
21 Association. And he understood perfectly well
22 what to do, and he would help me in every way to
23 get this done, because it had to be done in six or
24 eight weeks, you know, in a rapid fashion. And

1 **this is really a hard thing to get done.**

2 **Q What was this fellow's name?**

3 **A Manuel Sneiderman. He's called Manny**
4 **Sneiderman.**

5 **Q And in fact, did he help you through this process?**

6 **A Yeah. Manny was terrific. He just said, you go be**
7 **with your wife, you take care of your family, and**
8 **I'll take care of all the renovations. And I pretty**
9 **much did what -- what the social worker tells you**
10 **is you've got to learn to depend on a lot of people**
11 **to do a lot of things because you just can't do it**
12 **yourself. So Manny just took care of that, all of**
13 **that for me.**

14 **Q So between the time that you started and the time**
15 **Marcia came home, what was done?**

16 **A So we used up one of the two car garages, the**
17 **garage side close to the house, and -- close to the**
18 **entrance to the house and put in a ramp inside the**
19 **garage. We remodeled the one-half bath into a full**
20 **bathroom -- a full disabled accessible bathroom**
21 **which now extended into the garage, so we've**
22 **given up one half of the, you know, the two-car**
23 **garage. And the rehab. carpet that needed to be**
24 **put down is a special carpet, so it had to be**

1 **ordered. And eventually, we got the carpeting,**
2 **that carpeting put down as well. So this way**
3 **Marcia could get in, go to the bathroom. I also**
4 **ordered the medical bed, the bed that Marcia**
5 **would need to be sleeping on. And, you know,**
6 **when the occupational therapist came and did a**
7 **home visit, you know, we decided that the best**
8 **place to have Marcia go would be in what was our**
9 **living room, where the piano was. So I had to get**
10 **the piano put into storage, get a hospital bed**
11 **brought in there, so that when Marcia came home,**
12 **she could get into the house, go to the bathroom,**
13 **cross the floor and get into bed. And this was all**
14 **done in like the space of, you know, eight or nine**
15 **weeks.**

16 **Q So the ramp was constructed?**

17 **A Yes.**

18 **Q Where was it constructed?**

19 **A In the garage.**

20 **Q And the bathroom was enlarged?**

21 **A Yes, and it extended into the garage as well.**

22 **Q Certain doorways were widened?**

23 **A Yes. Yeah, we had to -- because regular doorways**
24 **don't accommodate wheelchairs, so we had to**

1 widen several doorways so Marcia could get
2 through.

3 **Q** Was there any other construction that was done at
4 this first initial stage?

5 **A** That would be it. We did just enough to get her
6 home.

7 **Q** How much did you expend for this initial
8 construction phase?

9 **A** So including the flooring to be done, about
10 \$29,000.

11 **Q** Now, I'm jumping ahead a little bit, but for this and
12 for all your expenses, Mr. Rhodes, did you keep
13 track of them?

14 **A** Yes, I did.

15 **Q** Did you keep track of the expenses that were
16 being spent as they were being spent?

17 **A** Yes, I did.

18 **Q** Did you keep a running list of them?

19 **A** Oh, yes, I did.

20 **Q** And did you break it down into various areas of
21 either vendors or providers?

22 **A** By category and by vendor.

23 **Q** And do you have all of those records with you
24 today?

1 **A** **Yes, I do.**

2 **Q** **Now, going back a little bit, you got all this done**
3 **while Marcia was in Fairlawn, and then she came**
4 **home. Did you feel that you were prepared for her**
5 **coming home?**

6 **A** **Well, as part of Marcia's therapy, there was**
7 **spouse therapy that they give you while she's at**
8 **Fairlawn, and they try to teach you as much as you**
9 **can be taught. And I know that Fairlawn tried to**
10 **teach me a lot of things, but at the same time,**
11 **there's so many other things going on. There's**
12 **Rebecca, there's the house, there's medical**
13 **issues, there's financial issues, there's just a lot of**
14 **things going on. So, I mean, I thought I was**
15 **prepared, you know, for Marcia's coming home. I**
16 **thought I was.**

17 **Q** **Were you prepared?**

18 **A** **No.**

19 **Q** **When did that become obvious to you?**

20 **A** **So she comes -- they bring her home by ambulance**
21 **in the middle of the afternoon.**

22 **Q** **On what date?**

23 **A** **April 16th, 19 -- April 16th, 2002, because that was**
24 **our 19th anniversary. And the ambulance brings**

1 her home, brings her into the living room where
2 the medical bed is, and they get her on the bed
3 and the ambulance leaves, and just a few minutes
4 later, she has a bowel movement.

5 Q Who was with you at this time?

6 A There was nobody --

7 Q Just the two of you?

8 A Just the two of us.

9 Q What happened?

10 A You know, I mean, it's like there she is, you know,
11 with a bowel movement, you know, in her brief,
12 and it's like I didn't know what to do. So, you
13 know, I was like, you know, you're just sort of
14 overcome with everything. So I leave Marcia there
15 and I run over to CVS and they load me up with
16 supplies, and I come back, and they told me how
17 to fix her up, and this was the first bowel change,
18 diaper bowel change that I would do -- of many
19 more that I would do over the next couple of
20 years.

21 Q And, in fact, are you still doing it?

22 A Yes, I am.

23 Q Were there urinary accidents along the way?

24 A So they teach you about, you know, indwelling

1 **Foleys and things like that, and teach you that**
2 **you're supposed to keep her skin dry, and they**
3 **teach you about watching for leakage, so there**
4 **are certainly times when the home health care -- I**
5 **mean, the home aide wasn't there that Marcia**
6 **would wet herself that I would have to change her**
7 **because she couldn't stay in a -- you know, a wet**
8 **brief or diaper for very long. I mean you had to**
9 **change it very quickly, and I did that many times.**

10 **Q By the way, was it just changing her or did you**
11 **first have to --**

12 **A Oh, it's a whole process because, you know, as**
13 **you learn, urine has lots of bacteria in it, so you've**
14 **got to keep Marcia as clean as possible. So**
15 **there's a whole process for cleaning up either**
16 **after a bowel movement or, you know, urinary, you**
17 **know, after wetting herself. There's a big process**
18 **that you've got to go through.**

19 **Q What about menstruation?**

20 **A Well, so Marcia starts her period again. And she**
21 **can't bend over far enough to insert a Tampax. So**
22 **I learned how to insert a Tampax, and I do it now**
23 **for Marcia, you know, whenever the home health**
24 **aide's not there and evenings and weekends. And**

1 I know you didn't ask me this, but the loss -- the
2 loss of dignity on the part of Marcia, I just know
3 it's excruciating to have your husband change
4 your Tampax. She shouldn't have to do that.

5 Q How were you dealing with Rebecca during the
6 period after Marcia came home?

7 A Well, Marcia -- Rebecca had just I guess she had
8 just turned fourteen. And she's just so -- I mean,
9 she's out of her mind. She doesn't -- you know,
10 here's her mom in a hospital bed, her legs swollen
11 up, there are people coming in our house all the
12 time. I mean, there's -- I'm doing the best I can to
13 pay attention to her. She's undergoing therapy,
14 but we just -- we just cope. You know, I mean, she
15 -- you know, you just cope each day to get
16 through.

17 Q During this period of time, after Marcia came
18 home, can you describe from then until now how
19 your relationship with Marcia has changed?

20 A Well, now Marcia is my wife, but we're no longer
21 husband and wife. She is the patient and I'm the
22 caregiver. And that's -- that's what it is.

23 Q You're the caregiver when the home health care
24 aide is gone for the day?

1 **A** **And on weekends, yes.**

2 **Q** **What is the timing of the home health care aide?**

3 **A** **At that time we could afford for a home health**
4 **care aide to come in at 8 a.m. and stay till 4 p.m.**
5 **So she would come in at 8, and leave at 4. And**
6 **then after 4 p.m. and then on weekends, that was**
7 **my responsibility.**

8 **Q** **So after 4 p.m., until Marcia went to bed, that**
9 **meant putting --**

10 **A** **Well, at night too, in case there was a problem.**

11 **Q** **So if there was a problem, but at least you put**
12 **Marcia to bed every night?**

13 **A** **Yes.**

14 **Q** **Seven days a week?**

15 **A** **Every night.**

16 **Q** **And are you still doing that?**

17 **A** **Every night.**

18 **Q** **Seven days a week?**

19 **A** **Seven days a week.**

20 **Q** **Has the home health care aide cut back?**

21 **A** **I had to cut her back from eight hours to six hours,**
22 **yes.**

23 **Q** **Why?**

24 **A** **I'm beginning to run out of money.**

1 **Q** **Aside from being the caregiver to Marcia, what**
2 **else do you do as it relates to her activities -- to**
3 **her disability?**

4 **A** **I end up -- I mean, I end up doing everything. I**
5 **mean, the first thing here is, you know, the first**
6 **thing I'm Marcia's patient advocate. I mean, I'm**
7 **going to find a way every day to try to get Marcia**
8 **better. So I did everything I could to get Marcia**
9 **better. I -- we had so many doctors that we saw.**
10 **And coordinating all those doctors is an enormous**
11 **task, to make sure that all the doctors know what**
12 **all the other doctors are thinking and everybody's**
13 **doing. You know, there's tremendous amount of**
14 **transportation. I mean, Marcia's got to go here**
15 **and there, and you've got to take care of that. I**
16 **didn't mention I had a -- at the same time I had**
17 **this whole handicap van put together. And it's not**
18 **just a real easy process. I mean, there's -- you've**
19 **got to get a van, you've got to get it modified, and**
20 **you've got to get it specially modified. And it's --**
21 **that takes a lot of time just to do that. There --**
22 **you know -- you know, there's nothing that Marcia**
23 **can do, so I have to do everything.**

24 **Q** **Do you have a list of doctors that Marcia sees on a**

1 **regular basis?**

2 **A Yes, I do.**

3 **Q Do you have it with you? May I see it? Do you**
4 **have more than one copy?**

5 **A That's the one I have.**

6 **Q How many doctors are presently -- is Marcia**
7 **seeing presently on an ongoing basis?**

8 **A She has nine ongoing caregiver doctors.**

9 **Q Who are they?**

10 **A Well, the first one is Dr. Donna Kraus, and Dr.**
11 **Kraus is Marcia's internist or general practitioner.**
12 **So she handles all of Marcia's general medical**
13 **issues. Then there's Dr. Roaf, who's Marcia's**
14 **physiatrist. Then there's Dr. Mastriani, who's**
15 **Marcia's orthopedic surgeon who's been handling**
16 **her broken legs. There's Dr. Kelly Clark, who is**
17 **Marcia's psychiatrist, who handles medicine**
18 **management for her. And there's Dr. Jill**
19 **Macinulty, who's Marcia's psychologist. Dr.**
20 **Neerman, Dr. Mark Neerman who's Marcia's**
21 **generalist urologist. And there's Dr. Albert**
22 **Cumaldy, who's Marcia's gastroenterologist, that's**
23 **the person who deals with Marcia's bowel. Then**
24 **there's Dr. D. Giovanni, who is Marcia's OBGYN.**

1 **And then there's Dr. Bianicomineau, who's**
2 **Marcia's podiatrist, because Marcia had several**
3 **feet problems, which continue. So all these**
4 **doctors.**

5 **Q And you have to coordinate with them?**

6 **A Oh, gosh, yes.**

7 **Q And what does it entail to coordinate with them?**

8 **A Well, you know, you have an orthopedic surgeon**
9 **like Dr. Mastriani who's putting in certain orders to**
10 **have Marcia do certain things who Dr. Roaf needs**
11 **to know what those things are and Dr. Kraus**
12 **needs to know what those things are, so**
13 **everybody is working towards the same thing.**
14 **There's -- there's -- you know, there's obviously a**
15 **lot of discussion about trying to get Marcia to be**
16 **able to transfer, but with her broken legs and her**
17 **casts and everything like that, that was, you**
18 **know, all coordinated to say let's put off all that**
19 **kind of activity.**

20 **Q Are there also special doctors that see Marcia for**
21 **particular needs like spinal cord needs or other**
22 **needs like that? You don't have to go through**
23 **them. I'm just asking you are there?**

24 **A Yes, there are certainly are.**

1 Q And how many of those doctors are there?

2 A So there's five more. The spinal cord injury
3 specialist doctors that I drag Marcia to go see.

4 Q You have to coordinate appointments with them as
5 well.

6 A Oh, these are difficult doctors to get in to see.
7 You have to wait many months to see them.

8 Q And who else do you have to coordinate with
9 besides these doctors that she sees regularly, the
10 special doctors that she sees occasionally?

11 A And then there's a whole class of doctors called
12 event doctors, when some particular event
13 happens to her, like the -- like Marcia's pressure
14 sores. So we spent a lot of time with Sturdy
15 Memorial Hospital in Attleboro with their Wound
16 Care Clinic. So it was that whole group of people
17 that do event kind of management.

18 Q Now, in addition to being Marcia's advocate and
19 organizing her medical appointments and making
20 sure that the doctors have updated information,
21 what else do you do?

22 A Well, now, there's this whole thing about, you
23 know, making sure that -- trying to be a mom and
24 dad to Rebecca. Trying is -- well, failing at being a

1 mother --

2 Q She's now sixteen.

3 A She's now sixteen.

4 Q So between the ages of thirteen and sixteen,
5 you've been the principal parent?

6 A Yes.

7 Q What about her transportation?

8 A I have to take care of that as well because, you
9 know, she has her orthodontist and her after
10 school activities, and you know, everything that
11 kids do. Like this summer when she was
12 volunteering at the hospital, I had to take her and
13 pick her up for all of her volunteering.

14 Q Do you do much of the shopping?

15 A I have to do it all.

16 Q Well, I know there are times when Marcia's tried to
17 do them with her caregiver.

18 A Yes.

19 Q Has that been successful?

20 A Not really.

21 Q What about the cleaning?

22 A I take care of all the non-Marcia area kinds of
23 things. The home health care aide takes care of
24 Marcia's bedroom and bathroom, but everything

1 else than that, you know, I'm responsible for.

2 Q And what about the construction at the house?

3 A So Marcia -- it's obvious, you know, Marcia's living
4 in this room with a hospital bed with all of the
5 medicines there. And, you know, it's important
6 that Marcia, you know, have an appropriate
7 amount of space in which now to live. So while all
8 of this is going on, we have a construction plan to
9 make a space so that Marcia could live in a way
10 like she was living before.

11 Q I'm going to show you what appears to be a floor
12 plan, Mr. Rhodes, and ask if you can identify it?

13 A Yes. The construction.

14 Q And does this show the footprint of the first floor
15 after the second phase of construction?

16 A Yes, it does.

17 MR. PRITZKER: Could we have that
18 marked as the next exhibit, your Honor.

19 THE COURT: Any objection?

20 MR. CONROY: No objection.

21 MR. BOYLE: No objection.

22 THE COURT: Exhibit 70.

23 (Footprint of house received
24 and marked Exhibit Number 70.)

1 **Q** **Now, directing your attention to Exhibit 70, and**
2 **this is very small, so I'm going to hold it up to the**
3 **jury while I ask you the questions. Is it fair to say**
4 **that the footprint of the original house was on the**
5 **top of the footprint, in very dark outline?**

6 **A** **Yes.**

7 **Q** **And then the bottom approximate half of the**
8 **footprint is the new area that was constructed?**

9 **A** **Yes, it is.**

10 **Q** **So if we look at Exhibit 69 --**

11 **A** **70.**

12 **Q** **-- 70 -- excuse me -- the existing -- what's called**
13 **the existing living room on the top right corner of**
14 **the house, that became Marcia's bedroom?**

15 **A** **Right.**

16 **Q** **And the bath, which was a half bath, was**
17 **diagonally across the whole first floor of the**
18 **house?**

19 **A** **Yes, it was.**

20 **Q** **And if I understood your testimony earlier, that**
21 **bath was enlarged to accommodate Marcia's**
22 **handicap, a ramp was put in the garage, so that**
23 **what was a two-car garage is now a one-car**
24 **garage, correct?**

1 **A** **That's correct.**

2 **Q** **Now, let's talk about phase two. What was done**
3 **in phase two?**

4 **A** **Well, the first thing that was important is for**
5 **Marcia to have a bedroom and a connecting**
6 **bathroom, so that she would no longer have to --**
7 **you know, so she could maintain some privacy, so**
8 **she wouldn't have to go across the house to, you**
9 **know, keep private. The second thing is we**
10 **needed a dining room because we didn't have a**
11 **place to eat anymore because the house with the**
12 **living room sort of spilled over to where our**
13 **breakfast room was, and there wasn't any space in**
14 **there, so we ate at a card table in the kitchen,**
15 **until we built a dining room, so we could all eat**
16 **together and where Marcia could be social with**
17 **her girlfriends, and we built a family room, which**
18 **was large enough to accommodate Marcia's, you**
19 **know, equipment, and so we could all be together.**

20 **Q** **And was this -- has this been accomplished?**

21 **A** **Yes, it has.**

22 **Q** **So right now, the living room is back as a living**
23 **room?**

24 **A** **Yes, it is.**

1 Q There's a bedroom, which has been constructed
2 for Marcia?

3 A Yes, it has. A special one.

4 Q With an accompanying -- with a connecting
5 bathroom?

6 A A connected disabled accessible bathroom.

7 Q And right outside of Marcia's new bedroom and
8 bathroom, there's a family room?

9 A Yes, there is.

10 Q And that has access then to the dining room?

11 A Yes.

12 Q And from the dining room, there's access to the
13 kitchen?

14 A Yes.

15 Q By the way, there was some testimony the other
16 day about the need for two handicap exits.

17 A Yes.

18 Q Does that require two ramps, or just two
19 handicapped exits?

20 A It needs two exits from the space.

21 Q And was this accomplished with the one existing
22 ramp that you had initially constructed before
23 Marcia came home?

24 A No, the only way for her at that point was to go out

1 through the garage door. I mean, a connecting
2 door to the den.

3 Q Okay. And is that still available?

4 A That one is still there, yes.

5 Q Now is there a second exit?

6 A Yes, there is a second exit, so in case there's a
7 fire, there is another place for Marcia to exit.

8 Q And where is that?

9 A That's off the dining room. There's a sliding door
10 that's handicap accessible, which Marcia can then
11 go out and transfer across deck, down into the
12 ramp in the garage.

13 Q How much did the phase two construction cost
14 you?

15 A About \$210,000.

16 Q And in addition to that, did you have to expend
17 money for design and architectural services?

18 A Yes. Separate from -- separate from the
19 construction was design architecture and
20 construction management. I couldn't be there, so
21 I needed somebody to supervise, and the design --
22 and the survey was complex just because of the
23 nature of our -- of our land and our house.

24 Q And so you -- how much was that?

1 **A About, as I remember, 25 or \$30,000.**

2 **Q If I suggest 24,000 to you, does that sound right?**

3 **A Yeah, 24 sounds right.**

4 **Q And now does this include any money for kitchen**
5 **renovations?**

6 **A No, we haven't started that at all. We're -- no.**

7 **Q So you haven't done anything towards rehabbing**
8 **the kitchen?**

9 **A No, unfortunately.**

10 **Q Why not?**

11 **A Well, we're running out of money.**

12 **Q And have you done the basement modification?**

13 **A Other than getting the estimates, we've not done**
14 **any work on the basement.**

15 **Q What is the plan for the basement?**

16 **A Well, it's important that Marcia get as much**
17 **opportunity to exercise as possible, and the way**
18 **she has to exercise now is somebody, either me or**
19 **the health care provider has to take her out to a**
20 **gym. We want to put in a place where she could**
21 **have more easy access to exercise equipment.**

22 **Q On a daily basis?**

23 **A On an absolute daily basis.**

24 **Q And is that what's provided for in the basement?**

1 **A** **Right now?**

2 **Q** **No, is that the plan?**

3 **A** **Yes, that is the plan.**

4 **Q** **And is there other space down there that's also**
5 **being planned for Marcia's use?**

6 **A** **Oh, in addition, we want to make it so that all of**
7 **Marcia's antiques and collectibles can be sorted**
8 **out or left out so that she can have access to it,**
9 **you know, because she can't reach very high, so**
10 **we're going to put in shelving so she can get to it,**
11 **and then have a computer office area so she can**
12 **work there.**

13 **Q** **So you've got the estimates?**

14 **A** **Yes, we have.**

15 **Q** **But you haven't expended the work?**

16 **A** **No, we haven't.**

17 **Q** **What is the average amount of money that you've**
18 **received by way of estimates to do the work?**

19 **A** **Well, it comes in two parts. The basement**
20 **renovation portion is about \$30,000. But we have**
21 **to put in this special ramp lift due to the concern**
22 **of Marcia transferring to a stair lift. And so that is**
23 **an expensive thing because the house rewiring**
24 **that has to happen to it is \$20,000.**

1 MR. CONROY: May I have a moment,
2 your Honor?

3 (Pause)

4 MR. CONROY: No objection, your
5 Honor.

6 MR. PRITZKER: I'm offering it, your
7 Honor.

8 THE COURT: All right. There's no
9 objection. It may be marked as Exhibit 71.

10 (Expenses to date received and
11 marked Exhibit Number 71.)

12 Q Directing your attention, your Honor -- Mr. Rhodes
13 -- excuse me -- to Exhibit 71, I'm going to put a
14 summary in front of you. And the first item on the
15 summary is -- has nothing to do with you, but that
16 is the items that added up to \$425,235, and they
17 were the total of the medical services that were
18 certified and were introduced into evidence
19 earlier. How much have you spent for home health
20 care, Mr. Rhodes?

21 A \$95,313.70.

22 Q And that's from the time that your wife came home
23 until August 31?

24 A Yes, it is.

1 Q How much have you spent for medical equipment?

2 A \$13,074.

3 Q How much have you spent for medical supplies?

4 A \$9,722.17.

5 Q How much have you spent for what's called

6 medical miscellaneous?

7 A \$4,366.04.

8 Q What is medical miscellaneous?

9 A That would include things like Marcia's adaptive
10 driving, her medical alert, and anything else that
11 might fall into that category.

12 Q Her medical alert being what?

13 A Marcia at all times wears a medical alert from
14 Brinks, just in case something happens so she can
15 push a button inside the house, and Brinks is
16 automatically notified to send over police or
17 ambulance, whatever is the appropriate thing.

18 Q How much did you spend on the handicapped
19 accessible van?

20 A \$52,932.21.

21 Q Now, was that just for the van?

22 A Well, the van cost about \$38,000, but then you
23 have to do substantial modifications to the van, to
24 make it acceptable for a handicap person to drive

1 and be certified as a driveable van by the Registry.

2 Q Now, you've talked about the modifications to the
3 home, but those were in three parts.

4 A Right.

5 Q So the phase one, the part that was done while
6 Mrs. Rhodes was still in the hospital, how much
7 was that?

8 A Phase one, which did the bathroom, the ramp and
9 the flooring, was \$28,396.54.

10 Q How much was the survey, the design and
11 construction management?

12 A \$23,556.50.

13 Q And how much was the big construction, the
14 phase two construction?

15 A \$209,996.09.

16 Q And what does that add up to?

17 A \$261,949.13.

18 Q Now, does that include any costs for renovations
19 of the kitchen?

20 A No, it doesn't.

21 Q And does that number include any cost for the bids
22 that you've received for the renovation and
23 modification for Marcia's handicap to the
24 basement and for the lift?

1 **A No, it does not.**

2 **Q And is that last item included in -- as the last line**
3 **item on this chalk that I've put up?**

4 **A For the basement, yes.**

5 **Q And how much is that?**

6 **A \$48,939, including the special ramp lift that needs**
7 **to be provided.**

8 **Q So the total expenses that Marcia has -- that**
9 **Marcia and you have either expended or have been**
10 **expended on your behalf to date, the past**
11 **expenses, with the exception of the basement**
12 **modification, which is going to happen next, are**
13 **\$911,485.58.**

14 **A 458.50 -- 58.**

15 **Q I'm sorry. \$911,458.58.**

16 **A Thank you. Yes.**

17 **Q How did you pay for all that? Not all of it because**
18 **I know you didn't pay for all of the medical**
19 **services. How did you pay for it?**

20 **MR. BOYLE: Objection.**

21 **THE COURT: Sustained.**

22 **Q How did you pay for all this, Mr. Rhodes?**

23 **MR. BOYLE: The same objection.**

24 **THE COURT: Sustained.**

1 **Q Do you have any savings left, Mr. Rhodes?**

2 **MR. BOYLE: Objection.**

3 **THE COURT: Sustained.**

4 **MR. PRITZKER: Your Honor, could I**
5 **introduce a small version of the summary we have**
6 **been going through as a summary of the expenses**
7 **that Mr. Rhodes has incurred?**

8 **THE COURT: You may. Any**
9 **objection?**

10 **MR. BOYLE: I've not seen it, your**
11 **Honor.**

12 **May we be heard, your Honor?**

13 **THE COURT: Yes.**

14 **(CONFERENCE AT THE BENCH, AS FOLLOWS:)**

15 **THE COURT: I think these are the**
16 **same figures that are up on that chart.**

17 **MR. BOYLE: Yes, your Honor. I've**
18 **just been given this document that was marked as**
19 **the last exhibit. And I don't have any objection to**
20 **the expenses, but I notice that there's things like -**
21 **- credit cards and interest on credit cards.**

22 **MR. PRITZKER: I was asking how he**
23 **paid for these. You objected to it.**

24 **THE COURT: At side bar you talk to**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

me.

MR. PRITZKER: I'm sorry, your Honor.

THE COURT: Okay. That document that you're referring to right now is already introduced without an objection.

MR. BOYLE: Yes, your Honor, but I'd ask the court if we could sanitize so much of it as talks about interest on credit cards. I don't have any problem with this, it lists expenses, and I agree with that, but it also contains, and I didn't see it because it's a multipage document, it talks about interest on credit cards. I don't think that's fairly part of what the document is represented to be, which is a document of his expenses. And I want to sanitize much of the credit line and things like that. I don't see how that's part of the case.

THE COURT: Well --

MR. BOYLE: -- like insurance.

THE COURT: If it's an out-of-pocket cost that he's incurred, that in effect happened to be a credit charge, is he not entitled to recover?

MR. BOYLE: Yeah, he can just -- it would be a lump sum on that, but itemizing it as a credit card or a bank, how does that --

1 **THE COURT:** Well, I don't think the
2 jurors -- that it will be a great shock to them to
3 find out that maybe he had to refinance the house
4 or he had to use credit cards. I mean, not too
5 many people can probably pull that amount of
6 money out of the air to pay for some of these. So I
7 don't think it would shock the jury to see that he
8 used his credit card or whatever else he may have
9 used. But what we're talking about here is this
10 breakdown of these -- the expenses to date, the
11 compilation, the last one that was -- do you have
12 any objection to that one?

13 **MR. BOYLE:** No, your Honor.

14 **THE COURT:** Okay.

15 **(END OF BENCH CONFERENCE)**

16 **THE COURT:** So the small version of
17 the compilation can be marked as Exhibit 72.

18 **(Summary of expenses received**
19 **and marked Exhibit Number 72.)**

20 **Q** **Mr. Rhodes, have you kept track of the medical**
21 **visits your wife has had since the date of the**
22 **accident?**

23 **A** **Yes, I have.**

24 **Q** **How many days have elapsed since the crash?**

1 **A** **Nearly 1,000 days.**

2 **Q** **Of that, how many days has Marcia been in the**
3 **hospital or a rehab. center as an inpatient?**

4 **A** **About a 120 of those days.**

5 **Q** **Of that same 1,000 days, how many days has**
6 **Marcia been in the -- I'm sorry, how many trips to**
7 **the emergency room has Marcia had since the**
8 **crash?**

9 **A** **We've made fourteen trips to the emergency room**
10 **over that period.**

11 **Q** **How many blood tests has Marcia had?**

12 **A** **As I remember, about forty blood tests.**

13 **Q** **How many medical visits has Marcia had, aside**
14 **from the hospital?**

15 **A** **If you add up all the doctors, all the therapists, all**
16 **the nursing visits, all the exercise, you add up**
17 **everything, I can't remember exactly the number,**
18 **but it's over 450.**

19 **Q** **How many home health aide hours have been**
20 **expended by the home health aide providers since**
21 **the crash?**

22 **A** **About 5,000.**

23 **Q** **Were you present during the filming of a videotape**
24 **portraying the typical day in the life of Marcia**

1 **Rhodes?**

2 **A Yes, I was.**

3 **Q At the beginning and end of the video, there are**
4 **some family pictures occurring before the**
5 **accident.**

6 **A Yes.**

7 **Q And I'm going to ask you about those, but -- as the**
8 **video progresses, but have you reviewed that part**
9 **of the video?**

10 **A Yes.**

11 **Q And are those pictures a fair and accurate**
12 **representation of the family at whatever particular**
13 **time they portray?**

14 **A Yes.**

15 **Q And the video, the body of the video itself, is that**
16 **a fair and accurate representation of the**
17 **particular activities that are portrayed in that**
18 **video?**

19 **A Yes, it is.**

20 **Q Do you remember at the beginning there's some**
21 **pictures of Marcia and Rebecca when Rebecca**
22 **was very young?**

23 **A Yes.**

24 **Q What approximately was the age range of those**

1 pictures? What was the age of Rebecca?

2 A From about one to four or one to six, something
3 like that.

4 Q And then there are some other pictures of
5 Rebecca and the family at Rebecca's bat mitzvah.

6 A Yes, when she was thirteen.

7 Q When was that?

8 A That was on April 16th, 2001.

9 Q And that was approximately five or six months
10 before the accident?

11 A Yes, it was.

12 MR. PRITZKER: Your Honor, with the
13 Court's permission, I would like to have the room
14 darkened, and I would like to set up the videotape,
15 which takes approximately forty minutes.

16 THE COURT: Okay.

17 MR. PRITZKER: I will be asking Mr.
18 Rhodes a few questions during it.

19 THE COURT: If you wish to stand up,
20 you may do so.

21 MR. PRITZKER: Your Honor, could we
22 inquire if Juror 14 can because if not, there is an
23 empty chair.

24 THE COURT: Where are you going to

1 display it? Where are you going to --

2 MR. PRITZKER: The screen will be
3 right about here.

4 THE COURT: All right. Why don't we
5 set it up and see if all the jurors can see it.

6 MR. PRITZKER: Thank you, your
7 Honor.

8 THE COURT: If any juror cannot see,
9 just raise your hand, and we'll change your seat.

10 MR. PRITZKER: Could we dim the
11 lights?

12 THE COURT: Let me ask if -- can you
13 see?

14 JUROR: Yes.

15 THE COURT: Okay. Is there anyone
16 that cannot see? Any juror? All right.

17 MR. PRITZKER: I want to be sure that
18 there's no audio on.

19 Okay.

20 (Videotape played)

21 Q Mr. Rhodes, this is in two parts. The first date was
22 when, or the first two days?

23 A May 29th and 30th, 2003.

24 Q And the second date was when?

1 **A April 20th, 2004.**

2 **Q So approximately a year late?**

3 **A Yes.**

4 **Q During this first period of time that's being**
5 **portrayed, was this the time that Marcia had her**
6 **pressure sores and so was confined mostly to**
7 **bed?**

8 **A Yes.**

9 **Q Was this also a period of time when Marcia's leg**
10 **was in a cast for her broken bones?**

11 **A Yes, it was.**

12 **Q Was this also a period of time when Marcia was at**
13 **one of her heaviest periods?**

14 **A Yes, certainly.**

15 **Q Is that what has been described in previous**
16 **testimony as an EZ board?**

17 **A Yes.**

18 **Q That helps with the transfers?**

19 **A Yes, that the EZ transfer board.**

20 **Q Was there a particular reason why you tried not to**
21 **slide Marcia across the board?**

22 **A She had those pressure sores, so we couldn't rub**
23 **up against them. So she had to be picked up.**

24 **Q Was this before Marcia had her electric**

1 **wheelchair?**

2 **A Yes, it was.**

3 **Q Mr. Rhodes, why are you putting a strap on**
4 **Marcia's leg as she sits on the commode?**

5 **A Well, when you're paralyzed, you don't know where**
6 **your feet are. And since the cast is so very heavy,**
7 **if that cast were to slip out under her, she'd fall off**
8 **the commode very quickly.**

9 **Q And why are you strapping in Marcia's chest?**

10 **A Again, she's going to have to do digital**
11 **stimulation. She's going to have to reach behind**
12 **herself and -- to make a bowel movement, so she'll**
13 **be leaning forward, and we don't want her to fall**
14 **forward off the commode.**

15 **Q Who are those two guys?**

16 **A Those are our proud puppy dogs.**

17 **Q Is Marcia particularly attached to them?**

18 **A She certainly is. And they to her.**

19 **Q Was the inability to slide on the EZ board**
20 **expanded for the whole time that she had this**
21 **serious pressure sore?**

22 **A Yes, it did.**

23 **Q And how long was that?**

24 **A Ten months.**

1 **A** **That's correct.**

2 **Q** **This is right before Marcia's bedtime?**

3 **A** **Yes, it is.**

4 **Q** **Or I should say sleep time?**

5 **A** **Yes.**

6 **Q** **What is that you're doing?**

7 **A** **During the night she has to wear the Lenard boots**
8 **to keep the sheets from putting pressure down on**
9 **her toes and to keep her ankle as straight as**
10 **possible.**

11 **Q** **How about this time? The home health care aide**
12 **is gone?**

13 **A** **Yes.**

14 **Q** **At this period, which is last May, Marcia's now in**
15 **her -- you've got a note. Marcia now uses an**
16 **electric wheelchair.**

17 **A** **Yes. Due to the tendinitis and bursitis, Dr. Roaf**
18 **prescribed an electric wheelchair for Marcia.**

19 **Q** **Does she still have her casts on?**

20 **A** **At this point in time, she's wearing the air cast**
21 **now.**

22 **Q** **Which is what she wears presently?**

23 **A** **Which is what she must wear all the time.**

24 **Q** **What is that apparatus that she's pulling in next**

1 to?

2 A This is either called the standing frame, or this
3 particular is called an EasyStand.

4 Q Is Marcia using the EasyStand right now today?

5 A Dr. Mastriani has given an order not -- for Marcia
6 not to use it at the current time.

7 Q But it's available for use when she's once again
8 physically able?

9 A When Dr. Mastriani says it's okay for her to use.

10 Q Now's she's exiting the second exit from the
11 house?

12 A She is.

13 Q And this was installed as part of the phase two
14 construction?

15 A It was.

16 Q Mr. Rhodes, if Marcia were to drive or when she
17 practices driving now, she has to put her
18 wheelchair where the driver's seat is, right?

19 A That's correct.

20 Q How does the driver's seat get moved?

21 A I have to move it for her.

22 Q Before this second phase of renovations, could the
23 family eat dinner together?

24 A Only if I set up a card table in the kitchen area,

1 **Q** **Taken from that night, Mr. Rhodes, that were it not**
2 **for the fact that this was being filmed, Marcia**
3 **would have been naked during this period?**

4 **A** **Yes, that's true.**

5 **Q** **Mr. Rhodes, is this the Depends that we had**
6 **marked as an Exhibit?**

7 **A** **Yes, it is.**

8 **Q** **And is this in the stage before it was fastened**
9 **together, so it's like a diaper?**

10 **A** **Exactly.**

11 **Q** **And are you able to do this dressing of Marcia by**
12 **yourself at night?**

13 **A** **Yes, I am.**

14 **Q** **By the way, is this the living room that we were**
15 **talking about?**

16 **A** **Yes, it is.**

17 **Q** **And at this point, this was Marcia's bedroom?**

18 **A** **Yes.**

19 **Q** **Mr. Rhodes, is Marcia able to reach her feet in**
20 **order to put warm socks or booties on?**

21 **A** **Not at that time and not currently.**

22 **Q** **So, in order to go outside, someone has to help her**
23 **get into warm clothes?**

24 **A** **Yes, completely.**

1 Q Particularly on her lower extremities?

2 A Yes.

3 Q She's putting something over her knees right now.
4 What is that?

5 A It's called a leg brace. As a paraplegic, legs sort
6 of just extend out to each side if left to their own,
7 and they would rub up against the wheelchair.
8 And to prevent getting pressure sores there, she
9 wears a leg brace all the time.

10 Q Now, she's just exited the handicap ramp which
11 you had installed while she was in the hospital?

12 A Yes, yes.

13 Q And there's the van.

14 A Yes, it is.

15 Q Equipped with a lift?

16 A Yes.

17 Q What keeps Marcia from rolling back when she's in
18 place?

19 A It's call an easy-lock system. There's a bracket
20 coming down from the bottom of the wheelchair
21 which locks into it so she can't -- so the
22 wheelchair and she can't be moved.

23 Q And where Marcia's sitting now in the front
24 passenger's seat, there's no seat there, correct?

1 and then take it back down.

2 Q Mr. Rhodes, when Marcia plays the piano, can she
3 use the pedals?

4 A No, she cannot reach. She cannot use her legs to
5 reach the pedals.

6 Q And this is now the new bedroom?

7 A Yes, it is.

8 Q Typically would the home health care aide be
9 there for Marcia's transfer back to bed?

10 A No, this is always my responsibility.

11 Q That ramp is for the dogs?

12 A It is.

13 MR. PRITZKER: And while that's
14 being taken down, may I check my notes?

15 THE COURT: You may.

16 (Pause)

17 Q Mr. Rhodes, going back for a minute to the
18 handicap modifications that were made on the
19 house, the first floor today, is it as large as the full
20 house was before the accident which Marcia had
21 access to?

22 A Are you asking me the size of the renovated area
23 compared to the size of the first floor --

24 Q No. The first floor, the area that Marcia presently

1 has access to, is that larger or smaller than the
2 area that -- of the house that Marcia had access to
3 including the second floor and the basement prior
4 to the accident?

5 A It's 50 percent smaller. Before the accident,
6 Marcia could go to the second floor, to the first
7 floor, to the basement. Now she's practically
8 restricted to that one area of the construction,
9 except for occasional use of a few of the other
10 rooms.

11 MR. PRITZKER: Thank you. I have no
12 further questions.

13 THE COURT: All right. Cross-
14 examination.

15 **CROSS-EXAMINATION BY MR. CONROY:**

16 Q Mr. Rhodes, good afternoon. I think you've told us
17 how Rebecca is now dealing with her mom's
18 condition. And am I correct, sir, that they had a
19 warm and close relationship before the accident?

20 A Yes.

21 Q And today they have a warm and close
22 relationship, correct? Different, but it's warm and
23 close, correct?

24 A I wouldn't agree with that.

1 **Q** **All right. You had mentioned that Rebecca was**
2 **getting some counseling now?**

3 **A** **Yes.**

4 **Q** **And am I correct that prior to the accident,**
5 **Rebecca was also getting some counseling for**
6 **issues that she had before the accident?**

7 **A** **Yes.**

8 **Q** **And you had -- am I correct, sir, that you also were**
9 **getting some counseling before the accident?**

10 **A** **Yes.**

11 **Q** **And I think you told us that you and Mrs. Rhodes**
12 **were married in 1983?**

13 **A** **Correct.**

14 **Q** **And you moved from the bedroom with Mrs.**
15 **Rhodes to a separate room thirteen years later,**
16 **1996?**

17 **A** **Actually, Marcia moved into the next-door**
18 **bedroom.**

19 **Q** **Some thirteen later after you were married?**

20 **A** **1996, 1997.**

21 **Q** **And you say this is because of a snoring issue you**
22 **had?**

23 **A** **Yes.**

24 **Q** **There are some activities that you've told us that**

1 **Mrs. Rhodes is doing at this time. We just saw in**
2 **the video she plays the piano as one of her**
3 **interests?**

4 **A She tries very hard.**

5 **Q And I think we've heard that Mrs. Rhodes is now**
6 **taking some driving lessons?**

7 **A Yes.**

8 **Q And the hope is Mrs. Rhodes will be driving**
9 **sometime in the next few months?**

10 **A If you're asking me if I have that hope or does**
11 **Marcia have that hope or does the driving**
12 **instructor have that hope, I'm not sure of whom**
13 **you're asking that question.**

14 **Q Well, Mrs. Rhodes clearly has that hope, correct?**

15 **A I can't speak for her.**

16 **Q Were you present when Mrs. Rhodes testified at**
17 **the trial?**

18 **A Yes.**

19 **Q Mrs. Rhodes is taking driving lessons, correct, Mr.**
20 **Rhodes?**

21 **A Yes.**

22 **Q And one of the things that's slowing down her**
23 **ability to get the driving license she needs is the**
24 **availability of the instructor, right?**

1 **A** **Yes.**

2 **Q** **And you had told us about some things that you**
3 **had done as a family prior to the accident, such as**
4 **Friday evenings you would enjoy dinner with the**
5 **three of you together, yourself, Rebecca and Mrs.**
6 **Rhodes?**

7 **A** **Previous to the crash, yes.**

8 **Q** **And today, you're able to still enjoy dinner at home**
9 **on Friday evenings, correct?**

10 **A** **No.**

11 **Q** **If Mrs. Rhodes would like to go out to a restaurant**
12 **for dinner on the weekend, there are restaurants**
13 **that you and she and Rebecca, if she cares to join**
14 **you, are able to go to dinner, correct?**

15 **A** **If you're talking at dinner at a point past 6 p.m. or**
16 **past 7 p.m., the answer would be no. If you're**
17 **talking about an early supper, the answer would**
18 **be yes.**

19 **Q** **My point is, Mr. Rhodes, that though it's different,**
20 **if you and she would like to go to dinner out of the**
21 **home, that's something you're able to do, correct?**

22 **A** **It's very difficult to do it.**

23 **Q** **And we saw on the video where Rebecca had**
24 **come home from school at approximately 3**

1 o'clock, and she was showing Mr. Rhodes some of
2 her -- some of her work assignments. And that's a
3 thing that goes on on a fairly regular basis, unless
4 Mrs. Rhodes is at the doctor's, right?

5 A I think so.

6 Q As far as travel, there is a mention that Mrs.
7 Rhodes had taken a trip to Florida with Rebecca
8 and I believe the home care attendant?

9 A Yes, that's correct.

10 Q That was not a trip that you went on?

11 A No, it wasn't.

12 Q And so is that only time that Mrs. Rhodes has
13 traveled, as far as you know, that required her to
14 travel on an airplane?

15 A Yes.

16 Q And would I be correct, Mr. Rhodes, that you
17 would encourage Mrs. Rhodes to travel, even if it
18 had to happen by airplane, to a different facility to
19 learn training and rehabilitation, would you do
20 that?

21 MR. PRITZKER: Objection.

22 THE COURT: Sustained.

23 Q Mr. Rhodes, I take it from your testimony that
24 there are a lot of things that you're trying to

1 encourage Mrs. Rhodes to do on a daily basis?

2 A I encourage Marcia to do those things that doctors
3 have told me to encourage her to do. I myself play
4 no part in encouraging Marcia to do things or not
5 to do things. I go by what caregivers, professional
6 caregivers tell me what to do.

7 Q Let me ask you differently. Do you understand
8 that for Mrs. Rhodes' benefit, it's important that
9 she try and condition herself, and strengthen her
10 upper body?

11 A That's what caregivers have told me, so yes, I
12 believe that's true.

13 Q All right. And you encourage Mrs. Rhodes to do
14 that as well?

15 A Not to be repetitive, I don't encourage or
16 discourage Marcia to do those things. Those kinds
17 of activities are left to her caregivers, particularly
18 Dr. Roaf, in this case, to do those things. I don't --
19 I try very hard not to -- not to encourage or
20 discourage Marcia from doing things.

21 Q Well, Mr. Rhodes, what -- can you please tell us
22 what kind of things then do you encourage Mrs.
23 Rhodes to do?

24 A Those things which doctors and other caregivers

1 **have indicated that she is -- that she should try to**
2 **do.**

3 **Q And can you give me some examples, please?**

4 **A Aquatic therapy would be a good example, but we**
5 **haven't started it. Dr. Roaf has indicated that**
6 **would be a good idea to do that. So then I would**
7 **largely be responsible for taking and -- taking**
8 **Marcia to and from. But if Marcia were to decide**
9 **she didn't want to do it, I would neither encourage**
10 **her or discourage her from that activity. That**
11 **would be between she and -- between her and Dr.**
12 **Roaf.**

13 **Q Well, do you think it would be of benefit to Mrs.**
14 **Rhodes that if she didn't want to do it,**
15 **encouragement from you may help her in this**
16 **context?**

17 **A According to social workers that have worked with**
18 **me --**

19 **Q Yes.**

20 **A -- they have been very specific that I not place any**
21 **demands on Marcia because we're there each and**
22 **every day, and she needs to get the**
23 **encouragement or, you know, the medical care**
24 **from the caregiver -- from the doctors and**

1 caregivers. So I don't -- I do not, you know,
2 encourage or discourage her from doing these
3 things. This is -- this is --

4 Q Well, I take it, Mr. Rhodes, that you're trying to
5 identify goals with Mrs. Rhodes that she can work
6 towards. You do that, don't you?

7 A If what you're asking is if I'm identifying goals, if
8 that's your question, then no, I'm not identifying
9 any goals for her.

10 MR. CONROY: That's all I have, your
11 Honor.

12 THE COURT: Fine. We're going to
13 suspend at this point.

14 Members of the jury, could you fold
15 up those notebooks and put them on your chairs,
16 they'll be there tomorrow morning. We'll start
17 tomorrow morning at nine o'clock. I'd ask you to
18 be in the jury room at quarter of nine.

19 My two instructions, you're not to
20 discuss the case among yourselves or with
21 anyone. You're not read anything about the case
22 or listen to any form of media. The jury may go
23 out.

24 (Jury recessed for the day)

1 (Without the presence of the jury, as follows:)

2 THE COURT: Before we suspend, I
3 just -- you all may be seated. You may step down,
4 Mr. Rhodes. I just wanted to inquire whether you
5 people had discussed the verdict slip.

6 WITNESS STEPS DOWN

7 MR. PRITZKER: We have, your Honor,
8 and the defendants have indicated that they are
9 withdrawing -- excuse me -- I'm on the record. The
10 defendants have indicated that they are
11 withdrawing their request for a breakdown of
12 future and past damages, but I'd appreciate it if
13 you'd confirm that, your Honor, with the
14 defendants.

15 MR. POLLOCK: Thank you. Judge, as
16 you instructed, and requested of us, we discussed
17 it last night, and we do want to withdraw the
18 proposed verdict slip that we submitted on the
19 first day of trial. And would request something
20 along the lines of what the court first proposed,
21 you know, without the Penske stuff.

22 THE COURT: Right. As a matter of
23 fact, I've already deleted the Penske stuff.

24 MR. POLLOCK: Oh, okay.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

THE COURT: So it will just be the damage portion.

MR. POLLOCK: Thank you.

MR. PRITZKER: And the plaintiff is perfectly satisfied with that simpler jury verdict form.

THE COURT: Thank you. Let me ask everyone. How much longer do you anticipate? Now, we have cross-examination left from Driver Logistics of Mr. Rhodes, and then redirect, and whatever else. How long do -- you're finished, Mr. Conroy.

MR. CONROY: Yeah, once we're finished with Mr. Rhodes, then from our client's standpoint, GAF and Building Materials, there will be no additional evidence.

THE COURT: All right.

MR. BOYLE: I would say, your Honor, under thirty minutes.

THE COURT: On cross-examination? All right. And then what about any further evidence from Driver Logistics?

MR. BOYLE: Possibly reading portions of the plaintiff's deposition into evidence.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20

THE COURT: All right. So we'll go to the jury tomorrow.

MR. PRITZKER: It looks that way, your Honor.

THE COURT: Very good. All right. What I'll do then is why don't we meet tomorrow morning about 8:30, and we'll just go over the charge, and then we'll be all set.

But we will take -- after we conclude the evidence, we will then take a recess, to give you folks a little opportunity to put things together, and then we'll go into final arguments and instructions.

MR. PRITZKER: Your Honor, may I have permission to have the paralegal supplement the exhibit book with today's exhibit?

THE COURT: You may.

All right. Have a nice afternoon.

(HEARING ADJOURNED)

* * * * *

CERTIFICATE

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21

COMMONWEALTH OF MASSACHUSETTS

NORFOLK, ss.

I, Dawna M. Chapin, an Official Court Reporter in and for the Commonwealth of Massachusetts, do hereby certify that the foregoing transcript represents a complete, accurate and true copy of my notes taken in the above-entitled matter, to the best of my knowledge, skill, and ability.



Dawna M. Chapin

**THE FOREGOING CERTIFICATION OF THIS
TRANSCRIPT DOES NOT APPLY TO ANY
REPRODUCTION OF THE SAME BY ANY MEANS
UNLESS UNDER THE DIRECT CONTROL AND/OR
DIRECTION OF THE CERTIFYING REPORTER.**