JURY TRIAL; 2013 Trial Trans. LEXIS 71

SUPREME COURT OF NEW YORK, QUEENS COUNTY, CIVIL TERM: PART MDP

INDEX NUMBER: 003359/09

March 12, 2013

Reporter
2013 Trial Trans. LEXIS 71 *

CAROL HOWARD, as Mother and Natural Guardian of SHANIA HOWARD, an infant, and CAROL HOWARD, Individually, Plaintiffs, - against - LONG ISLAND JEWISH HOSPITAL, Defendant.

Expert Name: Debra Sabatini Dwyer, Ph.D., M.S.

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Counsel

[*1] SULLIVAN, PAPAIN, BLOCK, McGRATH & CANNAVO, P.C., Attorneys for the Plaintiffs, New York, New York, BY: DAVID J. DEAN, ESQ.

MARTIN, CLEARWATER & BELL, LLP, Attorneys for the Defendant, New York, New York, BY: ANTHONY M. SOLA, ESQ.

Judges

BEFORE HONORABLE PETER J. O'DONOGHUE, Justice of the Supreme Court, (And a Jury)

Proceedings

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[1]THE CLERK: Case on trial continued. Howard

[2]versus LIJ.

[3]COURT OFFICER: All rise, jury entering.

[4](Whereupon, the jury enters the courtroom.)

[5]THE CLERK: Case on trial continued. Howard

[6]versus LIJ. **[*2]**

[7]THE COURT: Good morning, jurors.

[8]THE CLERK: All jurors are present, properly

[9]seated.

[10]THE COURT: Mr. Dean, call your next witness

[11]please.

[12]MR. DEAN: Yes, Dr. Dwyer please.

[13]D E B R A D W Y E R,

[14]called as a witness on behalf of the Plaintiff,

[15]having been first duly sworn by the Clerk of the Court,

[16]was examined and proceeded to testify as follows:

[17]THE CLERK: Please state your name and address for

[18]the record.

[19]THE WITNESS: Debra Dwyer, D-W-Y-E-R, 17

[20]Springbriar Lane, Centereach, New York 11720.

[21]THE CLERK: Thank you. Please be seated.

[22]THE COURT: You can see it's a large courtroom so

[23]please keep your voice up loud and clear so everyone can

[24]hear you.

[25]THE CLERK: Try to talk into this as much as
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[1]possible.

[2]THE WITNESS: Sure.

[3]THE COURT: You may inquire.

[4]MR. DEAN: Thank you, your Honor.

[5]DIRECT EXAMINATION

[6]BY MR. DEAN:

[7]Q Dr. Dwyer, you have a Ph.D.?

[8]A That's right.

[9]Q So with your permission you are not a medical

[10]physician, but you attained your PhD, I will call you Dr. Dwyer?

[11]A Yes.

[12] **[*3]** Q What is your profession?

[13]A Economist. I am also a professor at Stony Brook

[14]University.

[15]Q And before we elicit your opinion, do you understand

[16]that in order to give your opinion to a jury you have to talk

[17]about your background, your professional background as an

[18]economist and as a professor. Before we elicit certain

[19]information, when I spoke to the jury yesterday I said it might

[20]be dull because it has to do with interest rates, but we have to

[21]talk about it anyway.

[22]A Okay.

[23]Q Would you give us your professional background

[24]commencing with the year and place of your graduation from

[25]college?

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[1]A Sure. I received my bachelor of science in economics

[2]and English literature from Queens College in Flushing, New

[3]York; I went on to get -- worked for a couple of years --

[4]THE COURT: What year that was?

[5]THE WITNESS: Sorry.

[6]A 1986 I got my bachelor's degree. I worked for a couple

[7]of years for a labor union in the division of economic research

[8]as an economist. I went on to get my masters and my Ph.D. from

[9]Cornell University in the School of Industrial Labor Relations

[10] **[*4]** in economics.

[11]THE COURT: You acquired that grade?

[12]A I got my masters and Ph.D., I completed it all in 1986.

[13]I went on to do post doctoral research on the relationship

[14]between work and disability at the Center for Policy Research in

[15]Syracuse University. I went on to work for the Social Security

[16]Administration in their division of economic research as an

[17]economist for two years, so I left there in 1998; then I began

[18]in the economics department at Stony Brook University where I
[19]worked as an assistant professor for eight years; then I took
[20]over as the chairperson of the Department of Healthcare Policy
[21]and Management at Stony Brook University where I am currently
[22]employed today.
[23]Q And have you authored certain articles in your field as
[24]well, and are you a member of a number of professional societies
[25]in connection with your profession and your duties as an
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[1]economist?
[2]A Yes. My profession -- my job includes doing research
[3]so I published many, many articles on the tie between health and
[4]work, on children at risk for all sorts of adverse outcomes, on
[5]healthcare reform and policy, probably **[*5]** about 15 articles that
[6]are published in those areas. I do a lot of professional
[7]reviews for journals; I teach in economics and health policy;
[8]and I am a member of many professional organizations, including
[9]the American Economic Association, The Policy and Management
[10]Group.
[11]Q May we conclude that you know something about inflation
[12]rates and average wage growth?
[13]A Yes, we can.
[14]Q Did there come a time that my office had contacted you
[15]with regard to evaluating in this case certain rate of inflation
[16]increases and certain average wage growths?
[17]A Yes, you did.
[18]Q Doctor, for the purposes of our question I want you to
[19]briefly assume that there has been testimony yesterday that at
[20]age five years and five months Shania Howard was caused to
[21]become paraplegic and incontinent of bowel and bladder, that she

[22]is now 11 years old and lives with her brother and her mother

[23]and her mother has so testified and the jury has seen the

[24]photographs of where she lives. That she requires, and we are

[25]going to be talking about that, certain medical care, and
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[1]therapy and medications, and many of **[*6]** the things -- and

[2]procedures that paraplegic needs, okay?

[3]A Okay.

[4]Q Now you are not going to opine I guess about how long

[5]she is going to live because she also has sickle cell anemia,

[6]but I am going to ask you about topics that you have an

[7]expertise in, and one of those is the inflation rate.

[8]Just tell us, we all know anyway, tell us what is the

[9]inflation rate?

[10]A The inflation rate is the measure that we use for how

[11]prices are rising or how much things cost us. So we calculate

[12]the purchasing power, the change in the cost of living over

[13]time, and the CPI, or consumer price index is what we use to

[14]measure inflation.

[15]If you think about prices from when you were a little

[16]kid to now, you know they are going up, this is the measure by

[17]how much they go up.

[18]To give you a few examples, I always use an example of

[19]a pizza, I used to work in a pizzeria, it was 50 cents a

[20]slice --

[21]Q Let me stop you. When I was a kid it was 15 cents.

[22]A No comment.

[23]Q Go ahead.

[24]A Fifty cents a slice in the 1980s, probably about $ 2 a

[25]slice on average, that's an example **[*7]** of how our purchasing power
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[1]changes.

[2]Q How about a telephone call?

[3]A Ten cents a call when I was a kid, I'm sure it was even

[4]less when you were a kid. And now we know we don't even use pay

[5]phones anymore, but the cost of making a call has gone up.

[6]Median income has gone up significantly. Even if you

[7]look ten or 15 years ago it was about 20,000 a year, now we are

[8]up to 40,000 a year; prices in all areas just keep growing.

[9]Q You said a medial income was how many years ago?

[10]A I'd say about 20 years ago.

[11]Q How much?

[12]A $ 20,000.

[13]Q And now the medial income --

[14]A Median income is about 40,000, that's a mid point.

[15]Q Okay. All of these questions that I am going to ask

[16]you will be based with a reasonable degree of economic

[17]certainty; you understand that?

[18]A Yes.

[19]Q When you answer it, while you are answering based upon

[20]statistics that accepted -- that are accepted in your profession

[21]as reliable in forming a professional opinion?

[22]A That's right.

[23]Q What's statistics, by the way, and what do you use with

[24]providing a professional **[*8]** opinion?

[25]A The Federal Government collects a lot of statistics,
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[1]the Bureau of Labor Statistics, National Health Statistics,

[2]Center for Disease Control, all these organizations collect data

[3]on prices over time on all sorts of trends. We use National

[4]statistics to figure out how prices are rising, wages are

[5]rising, changes in the labor force, all those sorts of things.

[6]Q What's the rate of inflation increase with regard to

[7]medical care?

[8]A On average over the last 25 years medical prices have

[9]been rising faster than the general rate of inflation. So on

[10]average it's been 5.2 percent per year compared to three percent

[11]for other commodities.

[12]Q What about medication?

[13]A Med --

[14]Q When I say what about medication, I am talking about

[15]the rate of increase in inflation?

[16]MR. SOLA: I'm sorry, your Honor. I am going to

[17]have an objection based upon the 3101(d).

[18]THE COURT: Sidebar.

[19](Whereupon, a discussion was held off the record

[20]at the sidebar.)

[21]THE COURT: Mr. Dean. Strike that question and

[22]answer from your memory jurors. It will not be part of **[*9]** the

[23]official record.

[24]Q We will break it down, okay?

[25]A Okay.

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[1]Q All of these you are going to be telling us the

[2]percentage of increase every year, okay?

[3]A Okay.

[4]Q So if I don't ask you the fancy question you just give

[5]us the percent?

[6]A Okay.

[7]Q What about medications?

[8]A Medications rose on average 4.5 percent per year.

[9]Q Durable medical equipment?

[10]A Two percent per year.

[11]Q What's durable medical equipment?

[12]A Those are the things that -- the assistive devices like

[13]a wheelchair, electronic wheelchair, the batteries, shower

[14]device, all of the things that Shania will need for activities

[15]of daily living.

[16]Q Transportation?

[17]A Transportation at three percent per year.

[18]Q Medical supplies?

[19]MR. SOLA: Objection, your Honor. Objection.

[20]THE COURT: No, overruled. You can clarify with

[21]this witness.

[22]MR. SOLA: Your Honor, for the record it's exactly

[23]opposite of what's in the 3101(d) on the transportation.

[24]THE COURT: Foundation. Go ahead.

[25]A So supplies?

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[1]Q Yes.

[2] **[*10]** A Two percent per year.

[3]Q What do you mean by supplies?

[4]A So medical supplies would include diapers, wipes, other

[5]supplies needed for activities of daily living.

[6]Q Therapies?

[7]A Three percent per year.

[8]Q What do you mean by therapies?

[9]A Rehabilitation, so occupational therapy, physical

[10]therapy.

[11]Q How about home health aide?

[12]A Three percent per year.

[13]Q That would be someone who would be taking care of her?

[14]A Household duties.

[15]Q What about case report?

[16]A That would be three percent per year.

[17]Q And what about household services?

[18]A Three percent per year.

[19]Q What about medical and therapeutic evaluation?

[20]A Four percent per year.

[21]Q The medical and therapeutic care?

[22]A That was the four percent per year.

[23]Q Same thing, evaluation care?

[24]A Right.

[25]Q Like the doctor stuff?
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[1]A Office visits, labs.

[2]Q Or office visits of particular medical specialties?

[3]A Yes.

[4]Q Hospitalization?

[5]A That would be four percent per year.

[6]Q Something there I **[*11]** didn't ask you, anything?

[7]A No, you got them all.

[8]Q Now, what about the average wage growth, tell our jury

[9]what that is?

[10]A So average wage growth is just like prices rise over

[11]time wages have to remain competitive. So that's where I call

[12]purchasing power before has to also rise over time to keep up

[13]with the price inflation. So wages on average over the last

[14]20 years, according to the Bureau of Labor Statistics, have

[15]risen by three percent by average, that's what's typically used.

[16]Q That's it, thanks. He is going to ask you some

[17]questions.

[18]A Sure.

[19]CROSS-EXAMINATION

[20]BY MR. SOLA:

[21]Q Good morning.

[22]A Good morning.

[23]Q I just introduced myself before to you. I am Tony

[24]Sola, I represent Long Island Jewish.

[25]A Yes.

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[1]Q You and I have not met before?

[2]A No, I don't think so.

[3]Q About five months ago you testified in a case called

[4]Torbati?

[5]A Yes.

[6]Q Here in this courthouse against a client represented by

[7]my partner Sean Dugan, do you remember that case?

[8]A Yes.

[9]Q So one thing that Mr. Dean and I **[*12]** will agree, this is

[10]exciting stuff, the interest rates.

[11]Let's talk about some areas though specifically. First

[12]of all, since about February 1st of this year, February 1st,

[13]roughly the last six weeks or so, five or six weeks, how many

[14]times have you testified, if at all, in court?

[15]A One other time besides this.

[16]Q Okay. And how many times all totaled -- withdrawn.

[17]Can we call this, what you are doing here in terms of

[18]coming to court and testifying in a case involving claims of

[19]personal injuries, economic/legal work --

[20]A Sure.

[21]Q -- is that okay?

[22]How many times have you come into court in situations

[23]such as this in your career for medical/legal work to testify to

[24]a jury about things like interest rates?

[25]A About eight times.

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[1]Q And you didn't tell the jury how much you are being

[2]compensated. So let me ask you this, did you charge for

[3]preparation of a report in this case?

[4]A Yes.

[5]Q How much did you charge for preparation of the report?

[6]A Actually my partner did the invoice, so I am under oath

[7]so I don't want to say the wrong number, **[*13]** I think it was about

[8]$ 3,000.

[9]Q $ 3,000?

[10]A Yes.

[11]Q To provide the interest rate information that you have

[12]just given to this jury?

[13]A For the analysis that was requested by Mr. Dean.

[14]Q The analysis was for the interest rates for these

[15]various categories you just gave the jury?

[16]A That's right.

[17]Q And you also charge for coming to court and testifying?

[18]A Yes.

[19]Q That's in addition to the report?

[20]A Yes.

[21]Q How much do you charge for that?

[22]A Total of 4,000, 1,200 for retaining my time and then

[23]the remaining 2,800.

[24]Q Just to be clear. There is 3,000 for the report, and a

[25]total of $ 4,000 for coming to court and testifying to the jury?
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[1]A That's right.

[2]Q For a total of $ 7,000?

[3]A That's right.

[4]Q Don't have to be an economist to do that?

[5]A No.

[6]Q Even I could do that. $ 7,000.

[7]And so its got nothing to do with how much time you

[8]have today. What time did you get here today?

[9]A 9:00.

[10]Q Let me ask you this, you would agree that it's

[11]possible, not you, possible, **[*14]** that financial gains by providing

[12]expert testimony might, for some people, influence the testimony

[13]they give to a jury?

[14]A In theory it's possible.

[15]Q You, of course, would tell this jury it is of no

[16]influence on you?

[17]A No.

[18]Q Let's explore that a little bit. You are a full time

[19]employee of the State University of New York; is that correct?

[20]A That's correct.

[21]Q You receive a yearly salary from them?

[22]A Yes, I do.

[23]Q This money that you earn from this case, the $ 7,000, do

[24]you give that to the University?

[25]A No, I do not.
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[1]Q This goes to you personally?

[2]A That's correct.

[3]Q So this is over and above your income from the

[4]University?

[5]A That's right.

[6]Q Now, you know a doctor, another economist Ph.D. doctor,

[7]not a medical doctor, named Alan Leiken, L-E-I-K-E-N?

[8]A Right, Alan Leiken.

[9]Q Leiken?

[10]A Leiken.

[11]Q It's spelled L-E-I-K-E-N?

[12]A That's correct.

[13]Q He is also at Stony Brook?

[14]A Yes.

[15]Q He works in your department?

[16]A Yes, does.

[17]Q For many, many **[*15]** years -- withdrawn.

[18]A few years ago -- withdrawn.

[19]Some time ago you formed a partnership with Dr. Leiken,

[20]did you not?

[21]A Yes, I did.

[22]Q Was a partnership to provide this service of reviewing

[23]cases and coming to court and providing testimony as to economic

[24]issues?

[25]A That's right.

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[1]Q Correct?

[2]A Uh-huh.

[3]Q How long ago did you form that partnership with

[4]Dr. Leiken?

[5]A I testified for the first time last year, but he had

[6]been training me for a year before that, so I would say about

[7]three years.

[8]Q Training you to do this sort of work?

[9]A Yes, in terms of what's involved in a legal case, not

[10]in terms of inflation rates and the economics of it.

[11]Q I see, okay. Dr. Leiken testifies, you know, probably

[12]about five or six or seven times a month?

[13]A That's right.

[14]Q He's been doing that for many, many years?

[15]A Yes.

[16]Q Do you split the profits from your venture equally?

[17]A No.

[18]Q It reflects on how much you have contributed in terms

[19]of the work that you brought in?

[20]A That's correct.

[21] **[*16]** Q The amount of work, however, has been growing over time

[22]since you first started for you personally?

[23]A For me, yes.

[24]Q And your intent is for this to be more work going

[25]forward?

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[1]A No, we have an agreement that I, given am the chair of

[2]a department and my primary responsibilities are at the

[3]University, I wouldn't do more than a couple a week, and prefer

[4]one a week.

[5]Q You prefer one a week?

[6]A One trial a week, sorry.

[7]Q One trial a week. 52 a year?

[8]A Yes.

[9]Q So the average would be approximately 3,000 for

[10]analysis and 4,000 for the testimony?

[11]A Right.

[12]Q So that's 7,000 if you do it a week for the cases that

[13]you come to court, that's about 7,000 times 52 weeks?

[14]A Depending on who does -- the report work we split.

[15]Q Okay.

[16]A So not necessarily. I may be involved with the report

[17]and then just testify and have him get paid, so we split it. I

[18]just don't get paid for the ones I don't touch at all.

[19]Q I thought you were indicating before that you are

[20]looking forward or wanting to get to the point of doing this

[21]once **[*17]** a week?

[22]A At most, yes.

[23]Q At most, right?

[24]A Right.

[25]Q But if you do it once a week then you get approximately
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[1]7,000 per case?

[2]A On average unless I don't get much for the report, so

[3]it would be 4,000 a case in that case.

[4]Q But whatever -- if it's 7, just for round quick

[5]numbers --

[6]A Sure.

[7]Q 7,000 times 50 weeks, that's -- what's the math?

[8]A 280.

[9]Q 280 thousand a year?

[10]A Yes. I'm sorry, 350,000. Sorry. I was thinking

[11]40 weeks -- 40 hours a week.

[12]Q That would be $ 350,000 extra income from this sort of

[13]work over and above University salary?

[14]A That's correct.

[15]Q Per hour there is no question but that what you get

[16]paid for this sort of work dwarfs what you make as a University

[17]professor?

[18]A That's correct. I do --

[19]MR. DEAN: Let her finish.

[20]THE COURT: No, no.

[21]MR. DEAN: She was in the middle of an answer.

[22]THE COURT: Quiet.

[23]MR. DEAN: Yes, Judge.

[24]Q Now, let me ask you this, in terms of your report, you

[25]did one for the Torbati case back in October?
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[1] **[*18]** A Yes.

[2]Q And you do this on your computer of course, right?

[3]A Yes.

[4]Q Do you have it in a Word program or Excel sheet?

[5]A I use both, but Excel primarily for the analysis.

[6]Q If I told you that in that Torbati case you gave the

[7]exact same -- different categories of damages or categories of

[8]medical care, you know, transportation, therapies, physical

[9]therapies, household, evaluations, you gave exact same

[10]categories, hospitalization, you would agree with that, would

[11]you?

[12]A Yes.

[13]Q And these interest rates you gave are things that you

[14]calculate, you say, based upon the experience over the last

[15]20 years?

[16]A We do update them because --

[17]Q Have you updated them since the Torbati case --

[18]A Yes.

[19]Q -- in October?

[20]Would it surprise you to know you gave the exact same

[21]numbers in the Torbati case?

[22]A It might not have changed as much.

[23]Q Let me ask you this, when you updated the Torbati --

[24]withdrawn.

[25]In all these cases you are doing basically the same
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[1]thing, you are issuing your report with these various categories

[2] **[*19]** and putting the interest rate, true?

[3]A That's right, I always check to see what happened with

[4]the interest rate, that's what I mean by update.

[5]Q So when you updated the Torbati case, or the numbers in

[6]the Torbati case to this case, how long did that actually take

[7]you to do?

[8]MR. DEAN: Objection.

[9]THE COURT: Overruled.

[10]Q How long did that actually take you to do?

[11]A In this case?

[12]Q Yeah.

[13]A I look into the details of what I get from Mr. Dean,

[14]from the law firm, I look into -- I have to read through all of

[15]the medical reports and the life care plan, the -- I forgot the

[16]name -- the vocational expert. In every case I do a little bit

[17]of research. I would say on and off we have conversations back

[18]and forth, and Alan and I talk, on and off about six hours.

[19]Q Let me ask you this, Doctor, you do this research you

[20]say, the bottom line is you come up with the same list of the

[21]categories of things like transportation, hospitalization,

[22]right?

[23]A They vary from case to case but, yes, those are the

[24]categories in general that come up --

[25]Q And --
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[1] **[*20]** A for this type of injury.

[2]Q It doesn't take you much time to analyze again the

[3]interest rate difference?

[4]A No, the interest rate differences don't take long.

[5]Q That takes you, what, maybe 15 minutes?

[6]A Fifteen minutes, that's about right.

[7]Q If you calculate your hourly rate, you charge 3,000 for

[8]the report, the actual amount of time that you charge for that

[9]it's a pretty high hourly rate?

[10]A I think what you are paying for is not the time.

[11]Q Please, I am asking you pretty high hourly rate?

[12]A Yes.

[13]Q Much higher than the University?

[14]A I work for the State, yes.

[15]Q Now let me ask you this, you get more business by

[16]referrals, true?

[17]A Yes.

[18]Q And you and Dr. Leiken advertise, you have a website,

[19]don't you?

[20]A No, I have a University website, but not for my legal

[21]work.

[22]Q In partnership with Dr. Leiken he advertises for your

[23]services, right?

[24]A I am actually not aware of that, I didn't think he did,

[25]so maybe he does.
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[1]Q You know that plaintiffs' lawyers are the ones who come

[2]and ask for you to **[*21]** present this -- let me back up.

[3]Of the eight cases you say you testified in court, is

[4]it true every single one of them when you were in court was at

[5]the request of a plaintiff?

[6]A Yes.

[7]Q And you know that the plaintiffs are seeking expert

[8]testimony to put numbers in front of the jury for an award, you

[9]know that?

[10]A Yes.

[11]Q You know they want you to put up the largest numbers

[12]that you can, true?

[13]MR. DEAN: Objection, Judge.

[14]THE COURT: Overruled. Foundation.

[15]A That's absolutely not what I do.

[16]Q I am not asking what you do. I am asking you if you

[17]know that's what they want from you?

[18]A That's actually not what they want me to do.

[19]Q I am asking what you know. Let me --

[20]THE COURT: She answered your question.

[21]Q Doctor, let's go through this. You told this jury, for

[22]example, that transportation in this case was three percent?

[23]A Yes.

[24]Q Three percent. Do you remember serving a report in

[25]this case?

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[1]A Yes.

[2]Q A report that was dated -- let me back up first of all.

[3]Over a long period of time, let's **[*22]** say 30 years, a

[4]change of one percent in an interest rate could be very

[5]substantial in terms of what the end number is, true?

[6]A Absolutely.

[7]Q That's why people when they refinance their mortgages

[8]for 30 years will jump at a half percent reduction or

[9]one percent reduction, true?

[10]A True.

[11]Q At the end of the day it makes a lot of difference?

[12]A Sure.

[13]Q So when you served your report in this case, correct me

[14]if I am wrong, I am going to show this to you, the 3101(d), did

[15]you for transportation --

[16]MR. DEAN: I'm sorry, what are you doing? May we

[17]approach?

[18]THE COURT: Sure.

[19]MR. DEAN: Use her report.

[20](Whereupon, a discussion was held off the record

[21]at the sidebar.)

[22]THE COURT: You may proceed, Mr. Sola.

[23]MR. SOLA: If I may, your Honor, ask this document

[24]first be marked for identification.

[25]MR. DEAN: No objection.

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[1]THE COURT: ID only, not in evidence.

[2]MR. SOLA: Correct.

[3](Whereupon, Defendant's Exhibit A was received and

[4]marked for identification.)

[5]THE COURT: Let me explain something to you, **[*23]**

[6]jurors. When we say there is something in evidence, that

[7]means when it comes time to deliberate you can request it,

[8]you can see it, you can read it, you can analyze it, you

[9]can make your own judgment and evaluations. When we say

[10]something is for identification you are not going to see

[11]it, it's only for the purposes of assisting the attorney

[12]and the witness with followup questions.

[13]Now you may show it to the witness.

[14]MR. SOLA: Thank you, Judge.

[15]COURT OFFICER: (Handing to the witness.)

[16]Q Please look at the last page of this document that's

[17]been marked for identification.

[18]A Sure. Okay.

[19]Q If I may --

[20]MR. SOLA: May I briefly point to where?

[21]THE COURT: Look at it under transportation.

[22]Q Do you see it, on the last page?

[23]A The last -- there is a paragraph you said?

[24]Q It's not a paragraph.

[25]THE COURT: Transportation.
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[1]A This?

[2]Q The box.

[3]A Okay.

[4]Q Does this, Dr. Dwyer, refresh your recollection that

[5]you advised Mr. Dean's office --

[6]THE COURT: No, no. We are going to rephrase that

[7]and I am **[*24]** going to do it for you.

[8]MR. SOLA: Okay.

[9]THE COURT: The information contained there on the

[10]issue of transportation, do you see a specific number,

[11]correct?

[12]THE WITNESS: That's right.

[13]THE COURT: Did you provide that information?

[14]THE WITNESS: Yes, with Alan Leiken.

[15]THE COURT: That's all I want to know.

[16]Now you can take it from there.

[17]MR. SOLA: Thank you.

[18]Q The information that you provided then was two percent?

[19]A That's right.

[20]Q And today you told the jury it was three percent?

[21]A That's correct.

[22]Q Now may I have that back please?

[23]A Sure.

[24]COURT OFFICER: (Handing to the attorney.)

[25]Q Did you provide this information of two percent
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[1]transportation in December of 2012?

[2]A That's correct.

[3]Q And are you telling this jury that there is something

[4]that's come up between then and now that has increased it

[5]50 percent? Please answer that yes or no.

[6]A Yes.

[7]Q There is, okay. Let's go to another category. You

[8]said medical care for things like doctors' office visits and

[9]doctors' treatment, **[*25]** correct me if I am wrong, increases the rate

[10]of four percent a year?

[11]A That's correct.

[12]Q Now, in that regard, that's a very even number,

[13]4.0 percent?

[14]A Right.

[15]Q In fact, I ask you, did you come to -- come up with

[16]that number of 4.0 medical care inflation rate, did you actually

[17]do the calculation yourself?

[18]A No, we got it from the --

[19]Q Please answer yes, or no you did not?

[20]A Right.

[21]MR. DEAN: May she finish we got it from?

[22]THE COURT: No. You can certainly embellish that

[23]on your redirect.

[24]Q Is it your testimony that you got it from some data

[25]source?

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[1]A That's correct.

[2]Q In fact the data source -- withdrawn.

[3]The U.S. Government, bear with me one second while I

[4]find this, the U.S. Bureau of Labor Statistics puts out an index

[5]each month, and it's been done so for many years as to what the

[6]increase is in physician's costs --

[7]A That's correct.

[8]Q -- correct?

[9]Your testimony that you -- withdrawn.

[10]That index doesn't actually calculate the percent, you

[11]have to do the calculation using that index, **[*26]** true?

[12]A There are many different sources, so some of them --

[13]Q Doctor, that's not my question.

[14]MR. DEAN: May she answer the question? Come on.

[15]He cuts her off.

[16]MR. SOLA: Objection.

[17]MR. DEAN: I object, your Honor, because --

[18]THE COURT: Overruled.

[19]MR. DEAN: Thank you.

[20]THE COURT: This is cross-examination. I allow a

[21]little latitude on cross. I will allow you the same

[22]opportunity when your turn comes.

[23]MR. DEAN: Thank you, Judge.

[24]THE COURT: Let's have that last question and

[25]answer read back please.

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[1](Whereupon, the record was read.)

[2]MR. SOLA: I move to strike the answer as

[3]nonresponsive.

[4]THE COURT: Overruled. You may now proceed.

[5]Q Doctor, you know on cross-examination I can ask yes or

[6]no questions?

[7]A Yes.

[8]Q Or true and false?

[9]A Okay.

[10]Q If you can't answer it yes or no, or if you can't

[11]answer the question let me know and I will move on?

[12]A Okay.

[13]Q Or rephrase it. The U.S. Bureau of Labor Statistics

[14]index that I referred to does not actually put a percent

[15]increase **[*27]** on the page, true or false?

[16]A False.

[17]Q What is -- withdrawn.

[18]Are you telling this jury that the index that is put

[19]out by the U.S. Bureau of Labor Statistics for physicians

[20]increases over time has 4.0 percent on it?

[21]A I don't --

[22]Q Yes or no?

[23]A I don't know.

[24]Q Okay.

[25]A I am not sure which one you are using.

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[1]Q Okay. In fact if you use the U.S. Bureau of Labor

[2]Statistics index with regards to the increase for physician's

[3]costs over time for the last 20 years, its averaged

[4]approximately only 3.3 percent?

[5]THE COURT: Overruled.

[6]Q True or false?

[7]MR. DEAN: I didn't object.

[8]Q True or false?

[9]A I can't answer it because I don't know what you are

[10]looking at. There is different categories and there is

[11]different -- so there is office visits, I put it under general

[12]medical care, and took an average from a consumer prices report

[13]that comes out of the Bureau of Labor Statistics that does

[14]produce the index, and the average was slightly over

[15]four percent, and we rounded it down to four percent.

[16]Now we do know that **[*28]** what economists do is use these

[17]Federal statistics that are calculated many different ways, and

[18]within a reasonable degree of economic certainty we come up with

[19]these inflation rates. So this is within a reasonable degree of

[20]economic certainty.

[21]And depending on what they include and what we call the

[22]bundle of goods that is rising over time it can vary between

[23]three percent and five percent, which is why in general the rate

[24]of inflation is five percent over the last 25 years.

[25]Q You are trying to project based upon past experience
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[1]what's going to happen in the future, of course?

[2]A Right.

[3]Q Just like investing in the stock market, past

[4]performance is no guarantee of future performance, true or

[5]false?

[6]A True.

[7]Q And in fact, one of the major concerns of the

[8]Government with things like what's referred to as ObamaCare is

[9]try to reduce the growth of costs in this area, true or false?

[10]A True.

[11]Q The fact is it may well be -- withdrawn.

[12]In fact, you are aware that there are government

[13]statistics from the U.S. Bureau of Labor Statistics which

[14]calculated **[*29]** over the last ten years the rate of increase in

[15]medical care costs for physicians has increased at only

[16]2.9 percent, true or false?

[17]A True.

[18]Q And you also know for medical care costs of doctors'

[19]office visits over the last 20 years it's been approximately

[20]3.3 percent, true or false?

[21]A It's been going down, I can't say with precision that

[22]it's 3.3.

[23]Q If you are looking at the future care costs for

[24]doctors' office visits, just that category?

[25]A Yes.

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[1]Q Not lumping other things in there now, just future care

[2]costs for going to doctors, urologists, orthopedists, a fair

[3]estimate of what the future rate of inflation will be is

[4]three percent, true?

[5]A Can't answer that because ObamaCare is complex.

[6]Q The answer is that you cannot say, with reasonable

[7]medical certainty, one way or the other for doctors' care?

[8]A For the future all we can do is look to the past. I

[9]agree --

[10]Q That's not what I am asking you. You gave opinions

[11]here as to what the future rate of inflation will be?

[12]A Yes.

[13]Q I am speaking now on doctors' office visits **[*30]** for

[14]orthopedists, urologists, et cetera?

[15]A Right.

[16]Q With reasonable medical certainty -- I'm sorry not

[17]medical.

[18]With reasonable economic certainty, you know that the

[19]rate of care of inflation for that category only going forward

[20]is probably about three percent, true?

[21]A In the vicinity of four percent is what I found.

[22]Q Give me the -- did you bring the literature or

[23]statistic or government form or whatever it is that you relied

[24]upon for that with you here today?

[25]A I did not bring the actual data because I do it on line
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[1]but I do have the source.

[2]Q Please give me the source?

[3]A Sorry, give me a minute. It's series C as in cat, U-U,

[4]R as in Robert, 0-0-0, Sam, S-A-M, 2.

[5]Q That's on line?

[6]A Sorry -- yes. So if you search under U.S. Bureau of

[7]Labor Statistics -- do you want the website?

[8]Q No. Now, a couple of other things. In your -- some

[9]research you do is on disabilities and how it affects people in

[10]the labor force?

[11]A That's correct.

[12]Q Were you asked to do any work on sickle cell disease as

[13]a disability and how **[*31]** that affects people in the work force?

[14]A No, I was not.

[15]Q You referred to medicines in one category in terms of

[16]the rate of increase going forward?

[17]A Yes.

[18]Q You have no idea what medicines this child takes with

[19]regards to the paraplegic?

[20]A I do. I have the report of Wendy Cummings.

[21]Q She's not testified yet, we will wait for that.

[22]Your information is based upon what a Miss Cummings

[23]told you?

[24]A Yes.

[25]Q And you did not look at her life expectancy per se, did
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[1]you?

[2]A I did in terms of -- you are talking about Shania

[3]Howard's life expectancy?

[4]Q You didn't give testimony about that?

[5]A No.

[6]Q Because that's not your area of expertise?

[7]A It's not relevant for me to -- I am not supposed to

[8]present that. So it is an area of expertise for me.

[9]MR. SOLA: Nothing further, your Honor.

[10]REDIRECT EXAMINATION

[11]BY MR. DEAN:

[12]Q Mr. Sola just asked you about her life expectancy.

[13]With regard to the statistical life expectancy of 11 year old

[14]child --

[15]MR. SOLA: No, I did not.

[16]MR. DEAN: He brought it **[*32]** up.

[17]THE COURT: Whoa --

[18]MR. SOLA: Objection.

[19]THE COURT: Come inside.

[20](Whereupon, a discussion was held off the record

[21]at the sidebar.)

[22]THE COURT: You may proceed, Mr. Dean.

[23]MR. DEAN: Thank you, Judge.

[24]Q Mr. Sola had you making 350,000 bucks a year

[25]testifying. Now, that's like testifying once a week. Have you
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[1]testified once a week?

[2]A No, I have not.

[3]Q In your total career of testifying, what's the total

[4]amount that you have testified?

[5]A About eight times.

[6]Q So this $ 350,000 a week supplement to your income that

[7]he is suggesting, would you like to be able to spend that?

[8]A I would love to, but I am estimating I do about ten or

[9]12 a year.

[10]Q But you testified eight times?

[11]A Yes.

[12]Q By the way, just to clear up some inference --

[13]MR. SOLA: Move to strike that, your Honor.

[14]THE COURT: Let's find out.

[15]Q When you were asked by us to project the increase in

[16]inflation and the average wage growth, at any time was it asked

[17]by you or implied by us, give us the highest amount?

[18]A Absolutely **[*33]** not. All I have tried to do was do what I

[19]believed is the right way, and I never honestly, surprisingly

[20]since I got to this business, I have yet to meet a lawyer --

[21]MR. SOLA: Your Honor, I move to strike.

[22]THE COURT: Overruled.

[23]MR. SOLA: Move to strike.

[24]THE COURT: Overruled.

[25]Q If a lawyer said to you and the inference -- if the
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[1]lawyer said, never mind what the statistics say, never mind what

[2]your conscience say --

[3]THE COURT: You went far enough on that issue.

[4]MR. DEAN: Yes, Judge.

[5](Whereupon, the following was recorded and

[6]transcribed by Official Court Reporter Nora Campisi.)

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[1]REDIRECT EXAMINATION

[2]BY MR. DEAN: (Continued)

[3]Q You said something about, on his examination about the

[4]general rate of inflation increased 5 percent per year over 20

[5]years?

[6]A For medicine. I would also like to say that the 4

[7]percent that I have been using on medical care is not just

[8]general office visits, which I believe is the 3.3 percent. I

[9]think that is the discrepancy we **[*34]** are talking about. We are

[10]talking about specialists also, so that is why I am trying to

[11]say we lumped together, we aggregated an average based on all

[12]the various types of specialties she would need into medical

[13]care, and some of them will be at 3 percent, some of them will

[14]be at 4.5 percent. It rounds to about 4 percent, so we believe

[15]this is within a reasonable degree of economic certainty.

[16]Q But when you say the general rate of inflation

[17]concerning medicine is 5 percent per year over the last 20

[18]years?

[19]A That's right.

[20]MR. DEAN: Nothing further.

[21]THE COURT: Anything else?

[22]MR. SOLA: No, Judge.

[23]THE COURT: Thank you, Dr. Dwyer, you are all

[24]finished. Take care.

[25](Whereupon, the witness stepped down)

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