SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF SUFFOLK : PART 33

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JEAN E. LIBERTI, INDIVIDUALLY AND AS ADMINISTRATRIX OF THE ESTATE OF NUNZIO J. LIBERTI, DECEASED,

Plaintiff,

- against -

INDEX NO. 18476/2009

JOHN A. SAUGY, JR., M.D., SUFFOLK ORTHOPAEDICS ASSOCIATES, P.C., BETHPAGE ORTHOPAEDICS, P.C., WILLIAM K. WRIGHT, P.A.,

Defendants.

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January 21, 2014
Riverhead, New York

B E F O R E: HON. THOMAS F. WHELAN
Supreme Court Justice

M I N U T E S O F: **TESTIMONY OF DEBORAH DWYER**

**A P P E A R A N C E S:**

DUFFY & DUFFY, PLLC.
For the Plaintiff
1370 RXR Plaza
Uniondale, New York 11556
BY: EDWARD G. BITHORN, ESQ.

RIVKIN RADLER
For the Defendant John Saugy, Jr.
926 RXR Plaza
Uniondale, New York 11556
BY: DAVID E. RICHMAN, ESQ.

LEWIS, JOHS, AVALLONE & AVILES, LLP.
For Suffolk Orthopaedics and William K. Wright
21 East Second Street
Riverhead, New York 11901
BY: DEBORAH A. AVILES, ESQ.

REPORTED BY: Stephen P. Salerno, SCR

THE COURT: Back on the record.

MR. BITHORN: For demonstrative purposes the witness from her analysis and report, we have an exhibit that encompasses the yearly breakdowns.

THE COURT: Just show them.

MR. BITHORN: (Indicating.)

THE COURT: Is that okay?

MR. RICHMAN: Yes.

THE COURT: Good. This morning I'm not sure I placed on the record, Court Exhibit Number 5 is the Plaintiff's memorandum of law that we discussed this morning. Also for the record, Mike, please.

COURT OFFICER: Plaintiff's Exhibit Number 9 which was previously for I.D. has now been marked and received into evidence.

THE COURT: Okay. Counsel, all ready to proceed?

MS. AVILES: Yes.

MR. BITHORN: Yes.

MR. RICHMAN: Yes.

THE COURT: Okay. Let's get the jury.

COURT OFFICER: All rise, jury entering.

THE COURT: Please be seated everyone.

COURT CLERK: Case on trial continued, all attorneys are present as well as jurors. Counsel, waive roll call?

MS. AVILES: Yes.

MR. BITHORN: Yes.

MR. RICHMAN: Yes.

THE COURT: Ladies and Gentlemen of the Jury, as I said, this case, you'll hear all the issues all at different times. A lot of this is based upon scheduling. Sometimes we hear liability issues and sometimes we hear damage issues. Counsel, you have a witness for the jury?

MR. BITHORN: At this time we call Deborah Dwyer.

COURT OFFICER: Watch your step coming up to the witness chair. I ask that you please remain standing and raise your right hand, face the clerk of the court.

**DEBORAH DWYER**, having been first duly sworn by the Clerk of the Court, testified as follows:

THE WITNESS: I do.

COURT CLERK: State your name.

THE WITNESS: Deborah Dwyer, D-W-Y-E-R.

COURT CLERK: Your address?

THE WITNESS: 17 Springbriar Lane, one word, Spring, B-R-I-A-R, lane. That's in Centereach.

COURT CLERK: That's great. Have a seat.

THE COURT: Doctor, please just speak up so all those jurors in the back can hear you, okay? Thank you very much. Proceed.

BY MR. BITHORN:

Q. Good morning. Can you please tell the jury your educational, about your educational background and educational and professional background and experience?

A. Sure. I received my Bachelor's degree from Queens College in Flushing in economics and English literature. I went on to work for the Amalgamated Clothing and Textile Workers Union for two years in their economic research department where I was an economic researcher. I went on to graduate school at Cornell University where I got my Masters and my PhD in labor and health economics. From there I did postdoctoral study at the Center for Policy Research in Syracuse University where I continued my studies in health and labor economics. I was recruited to

the Social Security Administration in Washington D.C. where I worked for a year and a half on a disability project. There I studied disability policy and from there I came to Stony Brook University where I worked in the economics department for seven years and then I went on to chair the Department of Healthcare Policy and Management which is what I'm doing right now.

Q. Can you tell the jury what is the subject of economics, what is economics?

A. Economics is pretty broad so it involves the study of how societies make decisions about resources. What we do as health and labor forensic economists is we study the labor and health markets. So I have a good sense of the trends in the labor and health markets. So we study the workforce, workforce issues, changes in the healthcare system and trends in healthcare.

Q. Just to put a title to it are you a forensic economist?

A. Yes, I am.

Q. As part of your professional background and experience have you done loss analysis for claims that have been brought by folks who have been injured in lawsuits?

A. Yes, I have.

Q. How do you go about doing such a thing, give us a broad outline of what you do in that regard?

A. Sure. What we do as economists, when we value time or the value of time or productivity for workers is we look at their potential productivity, the labor market experience. We take what their earnings are and we grow them based on national trends, the economy, so inflation rates until their work life expectancy. We also make projections about what their medical costs might be, if we are talking about medical damages, all the way to the end of their life.

Q. Now, where do you get the specific information that you use, where do you gather that information typically?

A. The federal government collects a lot of statistics. The Bureau of Labor Statistics, the National Center for Vital Statistics, employment and earnings data, health data are all collected by the federal government.

Q. In addition what, if any, information do you get that's particularly, that would be individualized to a particular person or family, for instance?

A. The federal government breaks it down by all

types of categories, regional breakdowns. So basically I can look at an individual and get their average life expectancy, average earnings based on their educational levels achieved. I can get occupational earnings, industry trends. It can be broken down by gender, age, cohort.

Q. At my request did you do such an economic loss analysis for Nunzio Liberti and his family?

A. Yes, I did.

Q. Were you provided with certain information to assist you in calculating such an analysis?

A. Yes, I was.

Q. What were you provided with, please tell the jury?

A. I was provided with his W-2's, his income statements, his union contract and I also reviewed Jean Liberti's pretrial testimony.

Q. At some point Mrs. Liberti had testified in this courtroom Friday as well as a portion today. Did you review any portion of her trial testimony as well?

A. Yes, I did.

Q. What were the background facts and assumptions from which you derived your calculation of loss in this case?

A. I looked at his last year of full employment and that's what I -- so the 2007 W-2 and income statements provide me with his full year's salary. So I used that and then I used the federal statistic on wage growth, average wage growth over the last twenty-five years to project his future earnings had he survived.

Q. And that inflationary growth rate, and we'll talk about that a little bit further in a moment, but you said you use a twenty-five year period. Why do you do such a thing?

A. Because we have a business cycle. The economy fluctuates. We are just coming out of a recession. You don't want to capture just an outliner year, a year where we had significantly lows or significant highs. Twenty-five years is sufficient to capture an average that will span the whole business cycle.

Q. In calculating and doing your analysis of the economic damages in this case how do you calculate the length of time that's associated with future losses, for instance?

A. So when we are talking about future losses in income I project until expected age of retirement. In this case I used sixty-five. Sixty-five is

younger than the normal age of retirement. Under Social Security for Mr. Liberti it would have been sixty-six and two-thirds for him to collect his full Social Security benefit, but based on testimony by Mrs. Liberti he expected to retire at age sixty-five. So we used age sixty-five. For life expectancy we go to the National Center For Health Statistics where they report vital statistics and we use the average life expectancy for a male born in the year that he was born and that life expectancy is age 78.3.

Q. I want you to assume for purposes of the next questions, I want you to assume that Nunzio Liberti died on February 27th, 2008 and I want you to also assume that at the time of his death he had been employed by the town of Islip as what's known as a heavy equipment operator earning in the last year, full year that he was alive in 2007, $51,295. I want you to further assume that he also had part-time employment with OTB earning an additional $17,440 in the last year, full year that he was employed, 2007. Combined earnings are totalled out at $68,735. I want you to further assume that Mr. Liberti was a union member with Teamsters Local 237 and also to assume that he received benefits through his employment, including family coverage for medical and

dental and that he had the eligibility for pension benefits as well. Finally I want you to also assume that there has been testimony by Mrs. Liberti that Nunzio Liberti, her husband, planned to continue working to age sixty-five. Dr. Dwyer, with those assumptions in mind could you tell us how you calculated the economic damages that were suffered by the Liberti family as a result of Mr. Liberti's death and tell us what factors you took into consideration in your evaluation, and with the Court's permission as she answers this question, Doctor, we've blown up some pages from your report of the analysis here and with the Court's permission if the doctor can make use of that as well?

THE COURT: No objection, right, counsel?

MS. AVILES: No.

MR. RICHMAN: No.

THE COURT: Well, to the use of any blowups, but I think there is a question still pending, right, somewhere in there?

MR. BITHORN: Yes.

Q. With those assumptions in mind, can you tell us how you calculated the economic damages suffered by this family?

A. If you want me to step down?

MR. BITHORN: If it's okay with the Court can the doctor step down and use the easel?

THE COURT: Yes.

(The witness left the stand.)

A. Now I can say good afternoon because it is afternoon. See, I'm going to do it category by category. The first category is going to be his salary earnings from working for the town. Then I'm going to do his part-time job earnings working with OTB. In each case I deduct the tax rate, the average tax rate and his personal consumption. Personal consumption, again, I said the federal government collects a whole bunch of data. One of the things they collect is average consumption for a husband, for a wife, for members of the family based on income and it's number of people in the family. So for Mr. Liberti we are using a personal consumption rate of 12.5 percent. It's actually 12.4 percent for his category, we just rounded it to be 12.5 to be conservative. We are deducting a little bit more.

Q. The concept of personal consumption, what is that suggesting?

A. It's how much money was left for the rest of

the family after Mr. Liberti consumed what he would have from the money spent. So the reason we deduct it is we are calculating the economic losses to the family and so we have to deduct what Mr. Liberti would have consumed in clothing, in food, in just surviving. And so that, again that was based on federal statistics. So income loss as Mr. Bitwell (sic) said, in 2007. So we use 2007 because he passed away in 2008, in early 2008. So the last full year of earnings was $51,295 from the town job. What we do -- so in 2008 he earned some income up until February. We deducted that so that the loss amounts to $34,511. Then we pick up again his full salary for 2009 of $51,295 but we have to increase it based on the inflation rate. So we increase it by three percent and actually that's the average wage growth for the last twenty-five years. So if you increase it by three percent every year up until his work life expectancy of age sixty-five as recorded by his wife Jean Liberti you get the annualized loss from his earnings every year up until the time he retires. And you will notice it gets smaller in 2023 which is the year he turned sixty-five because we assume they retire about the time of their birthday. So it's not a full year of earnings. So three percent, just so

you get an understanding of where that comes from, again, it's average wage growth for the last twenty-five years which hopefully tends to keep up with inflation and it does on average. So the costs of riding the subway twenty years ago was a lot lower than the cost of riding the subway today. So our wages grow to reflect that. So the total loss from income, gross income for Mr. Liberti amounts to $1,000,550 and that can be broken down into past which would be up until 2013 which is $323,429 and future earnings of $677,121.

Q. I want to ask you about why you break it down between past and future in just a moment, but first I just want to see, going through the yearly earnings from the full-time job, the job with the town of Islip, in 2009 it showed 54,419 and the increase to the next year, 2010, 56,052; 2011 57,733 and so on. Those increases, that's the three percent inflationary component that's increasing it?

A. Yes.

Q. Okay. So that when he was at the last full year of retirement, 2022, some fourteen years after he died in 2008, the earnings would have been had he lived 79,916 for that year?

A. Yes.

Q. Okay. Now, in showing these amounts, the actual amounts of the loss from that component, why is it that, why are you breaking this up into past loss and future loss, what's the rationale behind that?

A. Okay, so we just started the year 2014. This is the income that she would have received up until now. We are still growing it because we began calculating in 2008 when he passed away but we always separated it out into what was already past that she should have gotten up until this point and she hasn't and then into the future.

Q. Is the methodology that you're using, is this generally used by labor economists, forensic economists such as yourself?

A. Yes, it's a standard.

Q. Now, you spoke a little bit about personal consumption, I believe you said it was twelve point?

A. Five.

Q. Five percent. Is that use of a personal consumption element, again, is that a methodology that's used by forensic economists, labor economists such as yourself as well?

A. Yes, it is.

Q. I want to ask you, on this chart, and I don't

know if the same applies with regard to the other chart, but Social Security, is that something that's mentioned and taken into consideration in the evaluations of economic loss?

A. No. I do take into account the federal and the state taxes but I don't -- I have not calculated the loss associated with the Social Security retirement income component. So he -- Mrs. Liberti will collect some Social Security based on the years of service that Mr. Liberti had put in but as we know it's a defined benefit formula. So had he continued working up until 2023 his benefit would have grown. So the economic loss that we typically calculate as labor economists is the difference between the Social Security benefit, if he continued to work to age sixty-five, and the age that he died. I chose not to include it because we were focusing in on a pension. It's something that could be added.

Q. Okay. Now, in this chart we were looking at the income loss from the full-time position that he had, the part-time position that he had, again the numbers that are reflected on from the years that you have listed here. Where did that originate from, the numbers that are reflected?

A. Okay, so his 2007 W-2 shows that he earned

$17,440 from the part-time OTB job. So I did exactly the same thing. I deducted from 2008 the earnings that he had already received from the seventeen thousand plus and then I grew it by three percent every year until the age of retirement which brings us a total gross economic loss of $342,342 and this again can be broken up into past and future. The numbers that really matter are the ones that after I deduct the taxes and the personal consumption because that would be the loss that would be felt by the family. So I'm going to give you those totals, if that's okay?

Q. Yes, please.

A. From the full-time job, the town of Islip, the total loss is $761,668 and from the part-time job it's $260,608.

Q. Okay. The combination of those two numbers, is that what reflects the income loss from, on both categories?

A. From his work.

Q. And that's, what is that amount?

A. So the 760,000 plus another 260,000 would be about a million.

Q. Okay.

A. I do sum the whole thing in the end.

Q. That would be the income loss working up to age sixty-five?

A. Right, from the paid work.

Q. Is there other information that would be useful and helpful to provide to the jury using this first page of the blowup at this point?

A. No, I think we covered it.

Q. Okay.

A. So should I put up the --

Q. Sure, if we can go to the second page of the blowup. Thank you.

A. So we talked about the paid earnings. The other categories of loss that we are going to talk about are pension, health insurance and the value of household services. So we'll start with the pension. Mr. Liberti was covered by the State and Local Pension Fund. So he's a government employee. So that's a defined benefit plan which means it's based on years of service and there is a formula where you calculate what the benefit would have been. So we did this for retirement in February of 2023 and then we continue -- sorry. Then we give the full amount in 2024. As you will see these numbers don't change up until the time of his expected death, which is at the age of 78.5 based on federal statistics. So I'm

just going to write that. So this is a half year of income, the year that he was expected to die if he lived out his full life. We don't grow it based on inflation because his pension is not indexed to inflation so we keep that the same. So in other words, his real income is actually declining but we keep it the same all the way through. We do again deduct taxes but in this case there are no state taxes, it's federal only. So I'm going to write that.

Q. Because he was a state employee?

A. Right, the pension, the state doesn't charge taxes for the pension. Then the loss in pension after taxes and personal consumption again because we have to deduct 12.5 percent for personal consumption. So that brings us to a total value of the pension loss of $657,188 and this is all in the future since it starts at his time of retirement. Now --

Q. I was going to ask, how is it that you're able to determine that there is a loss of $657,000 as it relates -- well, withdrawn. Does that number have something to do with his inability to contribute into his pension because he passed or is it something else?

A. It's, this number is based on the defined

benefit formula which is years of service.

Q. That number is?

A. $657,188, and we use -- he would have earned 35.5 years of service. So that's plugged into a formula and that's the benefit that he would have gotten. A defined contribution plan is one where you pay in and then it gross and this is matched funding by the employer but this is based on the defined benefit. I do need to deduct, so let me just write that this was based on 35.5 years of service. Now, I notice in the files that Mrs. Liberti received some benefits from the retirement funds through the employer.

Q. Is that after he died?

A. After he died. So in 2008 she received two checks and what I'm assuming they are, because it just says it's a retirement benefit, is the amount that he already earned toward his pension. So Mrs. Liberti was paid some money, the value of the pension up until 2008. So we need to deduct that from the total value because she did receive a portion of this since he worked part of the years. So the amount to deduct, the total amount, but I'm going to deduct after taxes, after personal consumption, the total amount is one hundred -- so

this is how much I'm subtracting from the 657,000. I'm using the wrong number. I'm sorry. It's after the taxes and the personal consumption. I'm sorry about that. It's 575,039. I was reading the wrong column. So I only -- I was using the column with just taxes. So the personal consumption is 575,039 and I'm going to subtract from that the checks she received in the amount of 102,871. So that leaves us with the value of the pension loss at $472,168.

THE COURT: Sorry, please repeat that.

THE WITNESS: $472,168.

THE COURT: Thank you.

Q. With regard to the pension, you have completed your presentation of information concerning the loss as it related to the pension?

A. Yes.

Q. There is another category that was listed there, the loss of health insurance?

A. Right.

Q. Please discuss what the loss is in that regard?

A. So what we use Is the average replacement rate for family health insurance which is what Mr. Liberti was receiving through his union and the average replacement rate in 2013 was $12,000. That's

the value of a health insurance premium. If you grow that -- now health insurance prices have been rising faster than average so the general rate of inflation rate for the healthcare sector is 5.7 percent which is significantly higher than we use in the overall inflation rate. For health insurance it's been growing at a rate of 4.8 percent on average for the last twenty-five years. So we grow this by higher than three percent. We grow it by 4.8 percent and we do that up until age sixty-five because then he's eligible for Medicare. So the total value of the loss in health insurance is $157,971. And again, we break it up into past and future, but 2013 is the first year we calculated it at, so it's twelve thousand and the future value is $145,971.

Q. There is another category that you have listed, loss in the value of household services. I'm going to ask you to focus on that. First of all, what is the concept of loss of household services?

A. Okay. So another category of data that the federal government collects is time use. So they do this time use survey and they estimate for men and women -- and again they take into account household size -- how many hours a week they contribute toward household services. And so for Mr. Liberti what I

used was for that time period for a family with one dependent child the average which was, and it's growing over time for men so it changes over time. So for 2008 it was about eight hours a week and in 2009 it was about ten hours a week and in 2010 it was ten hours again. So we continue assuming ten hours for the remainder of his life. So ten hours a week valued at employment and earnings data, average hourly earnings data, we multiply the eight times fifty-two weeks times the average earnings, hourly earnings to value that at, so that it's $7,762 in 2008. Again, that's beginning with February. And then $9,433 in 2009 as the first year of full loss and in the end it totals $401,502 and we grow this at three percent.

Q. So just to make sure I'm understanding, these numbers that are reflecting, concerning loss of household services, do they have a relationship to what the replacement cost would be in effect for someone who would perform various types of services?

A. It's for the average male with an average child with one child, one only child.

Q. That's what you used in your calculations. I want you to assume, and I'll ask you why you did that, but I want you to assume just for purposes of

this question that Mrs. Liberti in her examination before trial, her pretrial testimony testified about the things that Mr. Liberti would do around the house and that testimony was also given at trial, specifically at page 37 from her testimony that she gave on Friday when asked the following question:

"Question: Tell the jury what types of things he would do and in what way he was a handy husband?

Answer: Everything. He would go food shopping. I hated doing food shopping. He would go food shopping, take care of the yard, take care of the cars. On days that he worked if it snowed he would come home during his lunch hour and bring his shovel so I don't have to go out and shovel the show. He took care of the bills. If I wasn't feeling good he took care of our daughter. If I had to go to work and he was home he would stay home with her, with our daughter. If my daughter was sick in a hospital he would take time off from work to spend time with us at the hospital. He would cut the grass, take care of the cars, rake the leaves. We were in the middle of renovating our house, putting in all

new windows. He was a handy guy. He would give you the shirt off his back if he had to."

First of all, are those the type of items that are reflected in the category that you indicated as household services?

A. Only in the extent that it includes the general population. So to the extent that there are families like that it's incorporated. However, I didn't have that information. So this is for the average family of three.

Q. So if I were to ask you that someone like Nunzio Liberti and Mrs. Liberti and their circumstances, their having a child that is and will continue to require the needs that she does, would that indicate that the loss would be a greater loss?

A. Yes. So what I did was, is what is standard for a labor economist to do, it may be conservative, but it's what we do without further information. We base it on the averages.

Q. And now in the area of loss of household services you calculated that out to what age?

A. To the age of death at 78.5.

Q. Okay. And that's the statistical date of death for what would have been for Mr. Liberti had he lived beyond 2008?

A. Yes.

Q. What are the final amounts of loss for each of the categories that you calculated?

A. Well, I gave you the final for each.

Q. Yes, if you can just repeat them on each of the categories?

A. Can I start with the second slide?

Q. Certainly. As long as you identify the category as you go through.

A. I can start with income loss but do you want --

Q. You don't have to put it back up.

A. So why don't I write that up here. The total loss in paid earnings from the town job, total income loss is estimated -- again, this is after taxes and personal consumption -- is estimated at $515,458 and the total income loss from OTB, so that's the county, from OTB which is the part-time job, is $175,250. For retirement income the total is $575,039, that's the value of the economic loss, minus the earnings she did receive of 102,871 for a total loss of $472,168. The total value of health insurance loss is $157,971 and the total loss and value of household services is $401,502 for a grand total, and I'm gonna give the total minus the 102,000, of $2,053,917.

Q. I'm gonna ask if we can just two through again just the numbers. I had the numbers as being five hundred fifty -- five one five four five eight for the loss for town. The part-time job at OTB was one seven five two five zero?

A. I'm sorry?

Q. The pension amount of four seventy-two one sixty-eight, the loss with regard to the health insurance is one fifty seven nine seventy-one and then the loss of household services of four zero one five zero two and if you can calculate what that amount would be for those numbers? I think we may have had a transposition error that may have taken place.

A. For the two million?

Q. Yes.

A. Here?

Q. Yes. Can you add together those five categories that I just referenced?

A. Including this number, not that number?

Q. Yes, correct?

A. Then this is correct. What you might have there is before I deducted the four hundred and seventy-two -- I mean the hundred two thousand. The original report had $2,156,788 but I deducted the

retirement income that I only found out about this morning and these are the future. I didn't put the total. This was the future. So I should write the total in also.

Q. Yes. But if I may, Dr. Dwyer, just in terms of the numbers that I'm reflecting, if you would be kind enough just to check and --

MR. RICHMAN: How many times do we have to --

Q. Tell me --

MR. RICHMAN: Objection.

THE COURT: One more time. Go ahead.

A. I read the wrong numbers. That's what the problem is.

Q. Go ahead.

A. I gave future up here for income loss and I apologize for that. I didn't put the total. So the total is seven hundred -- so that was future. The total is 761,668 and for the part-time job it's 260,608. Okay?

Q. Okay. Now I think I've confused myself.

A. Sorry.

Q. So the final number with regard to the loss is it reflecting the seven sixty one six six eight and two sixty-six zero eight?

A. Yes.

Q. Okay. And --

A. And then I add the pension, the health insurance, household services to get the grand total.

Q. Okay. Finally, I just wanted to ask you, with regard to the analysis that you're providing of these numbers, again the reason why you use statistical information is why?

A. That's the best we can do when there is uncertainty so we base it on federal statistics which is the best data that's out there that's accurate and we base it on the averages. So that's within a reasonable degree of economic certainty.

Q. So it could be he could have lived longer, could have worked more, could have lived shorter, worked less?

A. So this is average in the general population.

Q. So your testimony that you're giving here regarding the losses and your analysis concerning the loss for Mr. Liberti and the Liberti family, is that being given here based upon a reasonable degree of economic certainty?

A. Yes, it is.

Q. Are you being compensated for your time that you spent in analyzing the data that had been

provided to you before coming to court here today and are you being compensated for your time spent in court with us here today?

A. Yes, I am.

Q. What's your rate of compensation?

A. So the rate of compensation for producing the report is $2,500. The rate of compensation for pretrial prep and being here today is $4,000.

Q. Have you provided economic calculations to juries in other lawsuits where my firm Duffy and Duffy represented the widow and surviving family?

A. Yes, I have.

Q. Have you ever testified for me in any matter, any matter that has been presented in a courtroom?

A. No.

Q. Okay. Thank you. I have no further questions.

THE COURT: Thank you.

Counsel, cross-examination?

MR. RICHMAN: Yes, your Honor. Thank you.

CROSS-EXAMINATION

BY MR. RICHMAN, ESQ.:

Q. Afternoon, Doctor.

A. Good afternoon.

Q. A little chilly in here. I'm going to try and get done as quickly as I can.

A. Yes. It's even chillier outside.

Q. What's that?

A. It's even chillier outside.

Q. That's true. I want to stay here. We've not met before. My name is David Richman, I represent Dr. Saugy.

A. Nice to meet you.

Q. You have testified in Court before, am I correct?

A. Yes.

Q. How many times have you testified?

A. About fifteen, sixteen.

Q. Yes. And each time you're asked to make projections with regard to loss of wage earning capacity, loss with regard to pensions?

A. Yes.

Q. Things of that nature?

A. Yes, and also projected future health expenses. But not in this case.

Q. And if I understand in your curriculum vitae you are also, you're affiliated or associated with Stony Brook, am I correct?

A. Yes.

Q. You hold a teaching position there?

A. Yes.

Q. And you are teaching students, is it undergraduate level, graduate level?

A. Currently I'm only teaching graduate students. I might mentor under grads but my courses are at the graduate level. Historically I taught all levels, undergraduate, masters and PhD.

Q. How much time is involved in the analysis of the type that you gave here today?

A. So it's hard to put a precise amount of time since a lot of research is involved but I would say for each report, I'd say about ten hours maybe.

Q. What goes into preparing the report?

A. I review the relevant federal statistics, industry trends, that sort of thing. I review all of the federal statistics for life expectancy, work life expectancy, just keeping up with inflation rates and that sort of thing; check into all of those and then I review all the data that's provided by the law firm and tie it all together.

Q. How many times a week are you doing that?

A. Since it is something I only do on the side, it's kind of seasonal so I would say -- can I do it as a percentage of the year?

Q. Sure.

A. As opposed to weekly, I would say probably a month worth. So probably about twelve a year. A month worth doesn't sound right. Twelve a year.

Q. Twelve reports a year?

A. Yes.

Q. The analysis that you provided us with today which was initially included in the report that you prepared for the Duffy law firm and reflected by this blowup here, it's a spreadsheet, am I correct?

A. Yes.

Q. The analysis that you're doing, the numbers that are generated are as a result of information that is put into a spreadsheet and the spreadsheet does the rest of the work?

A. Right, you put in formulas and I use a template.

Q. And the three percent, for example, that's not something that you have to go look up, you use the three percent in each of the reports that you do?

A. Right. I check for updates, but yeah.

Q. There has been no change?

A. Right.

Q. The three percent is actually probably in one of the fields on the spreadsheet?

A. Yes.

Q. And so the information that's actually -- withdrawn. There is actual basic information that's already in the spreadsheet, true?

A. Right.

Q. And what you do is that you take information that's provided by the law firm, you plug it into certain fields in the spreadsheet and again the spreadsheet will then spit out these columns and total them up, am I correct?

A. To some extent, yes.

Q. And that takes literally seconds with the spreadsheet to do that, correct?

A. Not seconds. It takes a little bit more than that. I have to tailor it for the individual.

Q. Your part of it takes some amount of time?

A. Right.

Q. Spreadsheet takes virtually no amount of time once the information is input?

A. Right. Once I have all the information I just enter it.

Q. And as you told us, for the purposes of rendering the report for Mr. Bithorn on behalf of Mrs. Liberti you charged between your report and the time this morning $6,500?

A. Yes.

Q. So the report that you prepared as you told us this morning, I think we have a copy of it someplace, you are looking at basically four categories of loss, income loss, loss of retirement pension income, loss of health insurance and loss of the value of the household services. Those are the four categories, am I correct?

A. Yes.

Q. And I think you told us a little bit in response to some of the questions that Mr. Bithorn asked the process that you go through in gathering that information. One of the things that you did was to read Mrs. Liberti's deposition testimony?

A. Yes.

Q. Testimony that she gave before trial?

A. Yes.

Q. Did you ever sit down and talk to Mrs. Liberti herself about her finances and the state of her husband's estate, if you will?

A. No.

Q. Did you ever ask to see any of their financial records?

A. Well, I have the W-2's and the income taxes, that was all I needed.

Q. What about bank statements?

A. No.

Q. So you indicated that the, I think the words you used toward the end of your direct examination is that the reliance upon the government statistics, I think the words you used is the best we can do?

A. Yes.

Q. And you used those government statistics to project average life expectancy, am I correct?

A. Yes.

Q. And average work life expectancy?

A. Yes.

Q. And average, using average rates of inflation?

A. Yes.

Q. And using average wage increases, three percent number that we've been talking about?

A. Yes.

Q. And I think you also used averages in trying to figure out what the loss was with respect to the cost of medical insurance?

A. Yes.

Q. And using -- withdrawn. One of the figures that you did use was a projection with regard to Mr. Liberti's life expectancy, am I correct?

A. Correct.

Q. You gave him a 78.3?

A. 78.5.

Q. 78.5. I'm sorry.

A. I'm sorry, it is 78.3. You remembered better than me.

Q. Again, that's based upon government statistics of the average male?

A. Yes.

Q. You would agree, would you not, that an individual's health would certainly impact life expectancy, am I correct?

A. Sure.

Q. And I was actually interested by one of the articles that's reflected on your CV deals with the effect of obesity on earnings and I think the title of the articles is, correct me if I'm wrong, was "Obesity in Labor Market Outcomes 2004 2007," am I correct?

A. Yes.

Q. And, in essence, what you were looking at was how obesity could cost, I think costs us I think you said in terms of wages and hours of work?

A. Yes.

Q. And am I correct what this article concluded

that obesity and the health problems associated with obesity would adversely affect earning capacity?

A. Yes.

Q. And why is that?

A. So people, what we see in the data is that people who are obese have lower earnings than people who are not and the point of that work was to try to identify why that is the case. That was the whole point. The work actually wasn't published and the reason it wasn't published is because it's very difficult to disentangle the factors that contribute to that. There is a whole bunch of hypotheses but one of them being more sick days, more chronic conditions, slower productivity if one is not in good health and obesity tends to be correlated with a whole bunch of comorbidities like diabetes and other conditions that might keep them from being as productive as they could be. So we do see an associated with lower average earnings and the obesity problem.

Q. Do you know anything about Nunzio Liberti's medical background?

A. I do not.

Q. Do you know that he was classified as obese?

A. No. I did see it in one of the transcripts

since.

Q. And based upon your own studies would you agree that the fact that he was obese would have a negative effect on his earning capacity for the rest of his life were he still with us today?

A. Earning capacity that I used was not based on federal statistics. It was his actual productivity. So I used his earnings in 2007 which are slightly lower than the national averages but I have no reason to believe that his productivity would change. He was already obese and earning that income. In terms of life expectancy, what we use is the average male life expectancy in the general population where we do have a pretty high rate of obesity so that it incorporates a population that's obese and not obese.

Q. But you're not saying that his obesity might not have had a damaging effect on his earnings going forward?

MR. BITHORN: Objection.

THE COURT: Overruled. She can answer. Go ahead.

A. It could.

Q. You told us that you understood that Mr. Liberti was a member of the Teamsters Union Local 237, am I correct?

A. Correct.

Q. And that actually both the town and the job with the OTB were Teamsters jobs, am I correct?

A. Correct.

Q. Did you factor into your assessment of Mr. Liberti's earnings the issues that the Teamsters union was confronting in its dealings with the town of Islip?

A. No, I did not.

Q. You're aware, are you not, that in the sixteen years before 2010 there had been ten wage freezes imposed by the town of Islip on its employees, including employees in the Department of Public Works?

A. I was aware that there were several wage freezes. I'm not specifically familiar with what happened in the town of Islip.

Q. And are you aware that, in fact, things got so bad in the dealings between the town and the union that the union actually sued the town?

MR. BITHORN: Objection.

THE COURT: Sustained.

Q. Are you aware of Teamsters having brought a lawsuit against the town in order to --

MR. BITHORN: Objection.

THE COURT: Sustained, counsel.

Q. Did you factor into your calculation -- let me show you something.

MR. RICHMAN: May I show --

THE COURT: Through the officer.

MR. BITHORN: Can I see what counsel is referring to?

MR. RICHMAN: (Handing.)

THE COURT: Let's go.

COURT OFFICER: This is going to be Defendant's Exhibit A for identification only being presented to the witness (Handing.)

THE COURT: Yes.

MR. BITHORN: Objection when the question comes.

THE COURT: Question, counsel.

Q. Before we actually even talk about that, but it's part of this, as part of the work that you do with graduate students at Stony Brook do you discuss local economic issues with them?

A. Not typically.

Q. In coming here today do you have any knowledge whatsoever of the dealings between the town of Islip and the Teamsters union?

MR. BITHORN: Objection.

THE COURT: Overruled.

A. No.

Q. Would you agree that the negotiations in terms of wage hikes and wage contracts between the union and the town might have some bearing on the numbers that you put before this Court and Jury today?

A. No.

Q. They don't have any impact?

A. The reason I used the twenty-five year average is to account for times of recession or times of economic difficulty, so that we experience wage freezes. So that's incorporated in the twenty-five year average. One year it could be five percent average growth rate. Another year one percent.

Q. Are you aware that in 2010 the members of Local 237 voted to leave the Teamsters and join the United Public Service Employees union?

MR. BITHORN: Objection.

THE COURT: If she knows. Go ahead.

A. No.

Q. Do you know that the town of Islip negotiated a contract with a schedule for wage increases beginning in 2008 for its employees?

A. I'm not familiar with the specifics.

Q. Are you aware that that contract provided for a schedule of wage increases less than three percent?

A. It's not surprising but I wasn't aware.

Q. If I were to show that to you do you have any reason to doubt that a contract was entered into?

A. No.

Q. Okay. And that the numbers provided for by that contract on average yielded wage increases anywhere from 1.25 to 2.5 percent annually?

A. That's not surprising as I said and I was not aware of it when I did the calculations. That could be adjusted.

Q. And certainly with regard to the numbers that you put before the Court and Jury with regard to what you characterize as past wage loss, those numbers would certainly be affected by the terms of the contract, would you agree with that?

A. Yes.

Q. And if those numbers were less than the three percent that you were talking about those numbers in turn would also be less than the numbers that you put before the Court and jury?

A. Right, that's specifically why we split between past and future because if it is past we use the information that we have. So this report was

done in 2008. It could be adjusted for things that already happened. But into the future I would not tie the growth rate to just a few years because that was a recessionary time.

Q. Well, would you agree that with public employees like Nunzio Liberti they are themselves subject to the vagaries of the town's finances?

A. Yes, I suppose.

Q. And certainly if the town is facing financial hardship its ability to pay its public worker is going to be affected?

A. Yes.

Q. And do you know anything about the town of Islip's finances over, beginning, say, in 2007 right through 2014?

A. I'm just gonna assume that it's not good given the whole economy wasn't doing so well.

Q. Are you aware that they went from a surplus of $74,000,000 in 2007 to a deficit today of $26,000,000?

MR. BITHORN: Objection.

THE COURT: Sustained.

Q. Do you know that they have been laying off employees?

MR. BITHORN: Objection.

THE COURT: Sustained, counsel.

Q. If the town were forced to lay off employees -- withdrawn. Would you agree that if the town's finances were adversely -- withdrawn. The town's finances can be adversely affected by the economy, would you agree with that?

A. Yes.

Q. The tax base goes down, income goes down that the town can then use to pay public employees, am I correct?

A. Yes.

Q. And that could find its way into the contracts that have been negotiated with its public employees, correct?

A. Correct.

Q. And would you agree if the schedules -- withdrawn. Do you know if the town employees are currently working without a contract?

A. I do not.

Q. Do you know if there is a wage freeze in place right now with regard to the public employees of the town of Islip?

A. No.

Q. The pension that we were talking about before, the calculation of that pension is actually

simply published at a website, am I correct?

A. Correct.

Q. There is actually -- my iPad is getting a workout today (Handing.)

COURT OFFICER: (Handing.)

THE COURT: Question?

MR. RICHMAN: In a second, your Honor. I'm sorry.

(Brief pause.)

Q. The website that is on my iPad that the court officer handed to you, is that the website that an individual can go to?

MR. BITHORN: Objection.

THE COURT: Sustained.

Q. The pension numbers that you calculated -- I'll take it back.

COURT OFFICER: (Handing.)

Q. -- are predicated on two fundamental assumptions. One is that Mr. Liberti was going to work until age sixty-five?

A. Yes.

Q. And the other was calculation of three percent annual wage increase?

A. Yes.

Q. And if as we've been discussing those wages

-- withdrawn. The calculation with regard to the pension -- withdrawn one more time. These employees were placed into various tiers, am I correct?

A. Yes.

Q. And do you know what tier Mr. Liberti was in?

A. I don't recall.

Q. If I were to tell you Tier 4 would that refresh your recollection?

A. It sounds right.

Q. And the way that the pension is calculated is they take, I think you said the date of the length of time in service, correct?

A. Correct.

Q. Date of retirement, their birth date?

A. Yes.

Q. And most importantly the average of the last three years salary prior to the date of retirement, is that correct?

A. That's correct.

Q. And the pension numbers that you put before the Court and the Jury were based upon the three percent that we were talking about earlier, am I correct?

A. That's correct.

Q. Would you agree that in light of the contract

numbers that we've been talking about that those numbers are, should be adjusted a little bit lower?

MR. BITHORN: Objection.

THE COURT: It's not in evidence.

Overruled. Go ahead.

A. So only very slightly. I would only change the couple of years that have already passed but I would still use three percent for the remaining time. That represents his earning capacity and the averages of wage growth over the last twenty-five years. It's not specific to the town of Islip.

Q. I understand that but your calculations are based upon averages, national averages, am I correct?

A. Which calculations?

Q. The three percent?

A. Yes.

Q. It has nothing to do with the reality of what is going on in the town of Islip, true?

MR. BITHORN: Objection.

THE COURT: Sustained. Come on.

Q. You do not know whether negotiations between the town of Islip and UPSEU would have resulted from a schedule that provided for lower wage increases than the three percent?

MR. BITHORN: Objection.

THE COURT: Sustained. Come on. Move along.

Q. Health insurance. You told the Court and Jury that there was an average of a 4.8 percent increase in the cost of healthcare?

A. Health insurance.

Q. Health insurance?

A. Yes.

Q. And I know that you've done a tremendous amount of work with regard to the Affordable Care Act?

A. I teach about it, yes.

Q. Otherwise known as, people might refer to it as Obamacare?

A. Yes.

Q. Have you inquired of Mr. -- withdrawn. Ms. Liberti could make an application at the ACA for coverage, am I correct?

A. She could make an application. Whether she'd be subsidized or not isn't clear.

Q. But she could be subsidized as well, am I correct?

MR. BITHORN: Objection. Could be?

THE COURT: If she knows. If you don't know then you just don't know.

A. I don't know whether she would be eligible or not.

Q. If she were eligible for subsidization by the government for healthcare that would drive down the cost of health insurance to her, am I correct?

A. No. My job is to calculate the replacement rate or the value of the loss.

Q. Um-hum.

A. So if liability is found who should pay for the health insurance depends on the liability which I have nothing to do with. What I'm saying is the value of the loss is $12,000 in 2013. If she can replace it elsewhere is irrelevant.

Q. Thank you.

MS. AVILES: I have no questions, your Honor.

THE COURT: Counsel, re-direct?

MR. BITHORN: Brief, brief.

RE-DIRECT EXAMINATION

BY MR. BITHORN, ESQ.:

Q. Interestingly, with regard to the concept of Obamacare, I know you calculated that it was, the loss would be about $12,000?

A. Yes.

Q. Did you happen to check to see what the cost

would be if she were to actually go and try to apply if she was eligible?

A. Yes, I did.

Q. What would that cost be?

A. If she went for the cheapest possible plan it would be in the range of $11,500.

Q. Cheapest possible plan with a daughter. Did you read her testimony regarding the extent of the disability that her daughter had in your pretrial, in the review of material in this case?

MR. RICHMAN: Objection. There is no evidence.

MS. AVILES: Objection.

THE COURT: Sustained, sustained.

Q. Counsel asked you some questions regarding the creation of the information that's laid out on the breakdown of the economic loss. You pointed out that that information is making use of data that's inputted that is part of a spreadsheet, correct?

A. Correct.

Q. The data that's input and the creation of this particular document, is that something that required economists such as yourself to generate work product related to that?

A. I'm not clear on the question. Sorry.

Q. Sure. In other words it's not just -- you know, the creation of what actually allows for a spreadsheet to reflect loss requires the input of someone like yourself, correct?

A. Correct.

Q. Why, why, why can't just anybody do it? Why does it require somebody who has years of training, experience in forensic economy?

MR. RICHMAN: Objection.

THE COURT: I'll allow it. Go ahead.

A. It's not just the education and the training, it's the years of training and teaching and following the markets. So that you have to have to know where to go to find the data, you have to know how to analyze the data. So the bulk of the work is not the creation of the spreadsheet itself but what columns to create and where to get the data, how to fill it in, how to put formulas in, that sort of thing.

Q. Counsel asked you some questions regarding Mr. Liberti's weight, obesity, that issue. She asked you some questions in that regard and you answered a question that, what was significant is that you utilized his actual earnings. Could you explain the significance of that and why that can counter issues with regard to obesity?

A. I actually didn't hear part of what you said, I'm sorry.

Q. It's okay.

A. Didn't hear the first part.

Q. That's okay. Counsel had asked you a question regarding the subject of obesity, Nunzio Liberti's weight?

A. Right.

Q. He was obese and you had answered a question to counsel that what was significant was that you were using his actual earnings?

A. Right.

Q. Could you explain the significance of that and how that would apply in this case?

A. If I actually have what his earnings potential is because we observed it then that's specific to his talents, his experience and his work ethic and so what we typically use as labor economists is the information, the best information we have in hand and that is the value of his productivity.

Q. To the extent that one might consider that someone who is obese might have a reduction in life expectancy, I believe you told us his life expectancy was 78.3 years, correct?

A. Correct.

Q. His work life expectancy, what did you calculate that out to?

A. His work life expectancy, what we typically use is the normal age of retirement under the Social Security system which would be sixty-six and two-thirds. We used sixty-five because Mrs. Liberti reported that's when he planned to retire.

Q. So here, at least with respect to income production, he would work until he's age sixty-five?

A. Yes.

Q. Counsel asked you some questions about the state of affairs in the town of Islip vis-a-vis its employees. He asked you some questions along those lines. Could you, you responded to one question that there is a reason why you use a twenty-five years average as it relates to wage freezes. Could you explain the significance of that?

A. Whenever we have an economic downturn all states and counties, especially New York state, we were pretty badly hit, you don't want to use that time period because you know you're gonna grow again at some point. Historically we see these ups and downs, peaks and troughs we call them in the business cycle and if you pick a peak or a trough, a high or a

low, then you're either exaggerating or underestimating what's going to happen in the future.

Q. Following the reasoning behind some of the questions that were asked --

MR. RICHMAN: Objection to that.

THE COURT: Sustained. Come on, counsel, let's go.

Q. In following up with some of the questions in this particular area with regard to wage freezes and changes in one's income level by virtue of circumstances involving a town or a municipality, I want to ask you, can we agree that there is a possibility that the town can reduce the growth of Mr. Liberti's income so that it's not three percent per year, can we agree that that is a possibility?

A. Yes.

Q. Can we also -- and if that would happen there could be an effect on the income that he might have generated by virtue of the assumptions and the analysis that you did, correct?

A. Correct.

Q. Can we also agree that there could be a circumstance by which the town could negotiate away and reduce the health benefits that apply to Mr. Liberti and/or his family and, in turn, there

could be a significant increase in the healthcare cost that he might have to incur to care for his disabled daughter?

MR. RICHMAN: Objection.

THE COURT: Sustained. Come on, let's go.

Q. Is it equally a consideration when one is looking at circumstances involving a town that a town might reduce or limit or eliminate healthcare benefits that would have carried to Mr. Liberti?

MS. AVILES: Objection.

THE COURT: Sustained. Come on, counsel, let's go.

Q. You made an assumption in the analysis based upon the data that you had that the healthcare benefits would continue to be provided to Mr. Liberti and his family, is that correct?

A. Correct.

Q. If those healthcare benefits were not provided in the manner with which you assumed, would the components of the loss with regard to medical care costs actually increase then, there would be greater loss to Mr. Liberti?

MR. RICHMAN: Objection.

MS. AVILES: Objection.

THE COURT: Sustained. Come on, counsel. She's standing by her report. Let's go.

MR. BITHORN: Thank you. I have no further questions.

MR. RICHMAN: Nothing further, your Honor.

THE COURT: Thank you very much.

THE WITNESS: Thank you.

(The witness left the stand.)

THE COURT: Ladies and Gentlemen, as I said, we will break today. We had scheduled no testimony tomorrow. That seemed to work out just fine. Be back on Thursday. We will hear two witnesses on Thursday, the one we didn't hear this afternoon and the one we already prescheduled. Please have a safe ride home. No speeding. Please be back here Thursday.

9:30, counsel?

MS. AVILES: 10:00

THE COURT: 9:45. Thank you. Don't discuss the testimony you heard so far.

(Adjourned to Thursday, January 23rd, at 9:45 a.m.)

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