Proceedings

SUPREME COURT OF THE STATE OF NEW YORK
NEW YORK COUNTY - CIVIL BRANCH - PART: 6

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MARYANNE O'BRIEN,

Plaintiff,

INDEX NO.
114901/09

-against-

THE HUDSON VALLEY MEDICAL GROUP, PLLC, AND HUDSON VALLEY HOSPITAL CENTER,

Defendants.

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60 Centre Street
New York, New York 10007
February 11, 2016

B E F O R E:

HONORABLE JOAN B. LOBIS, JUSTICE AND A JURY

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

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DENISE PATERNOSTER, and
ANGELA TOLAS,
OFFICIAL COURT REPORTERS

Proceedings

(Whereupon, at this time, Plaintiff's Exhibit 27 was received in evidence, as of this date.)

THE COURT: Good morning.

MS. BOOKSON: Good morning.

MR. GIBSON: Good morning.

MR. BATH: Good morning.

MR. ALT: When Miss Bookson is finished with her direct, can we have ten minutes to set up the projector?

MS. BOOKSON: Who is doing the cross?

MR. ALT: I will.

MS. BOOKSON: I just want it clear that he is the only one doing the cross.

THE COURT: No, no, there is no switching from the counsel table, unless Mr. --

MS. BOOKSON: Bath.

MR. BATH: Unless I have questions.

MS. BOOKSON: Right.

THE COURT: We are ready for the jury.

COURT OFFICER: All rise, jury entering.

(Whereupon, the jury enters the courtroom.)

THE COURT: Off the record.

(Discussion held off the record.)

THE COURT: Sorry, members of the jury for the slight delay. Everyone else may be seated.

Before we call the next witness, we confirmed today

that we have kind of scheduled witnesses so there will be someone here on our next trial date, which is Wednesday. We have a witness Thursday, Friday, the following Monday, the following Wednesday, finish out that week, and by the 29th, the case, if everything goes according to plan, should be ready for you to hear the summations, charge, and if time permits, you can begin your deliberations. Once you are deliberating, you are here on Tuesdays.

So that looks like we've cut the time down by at least three days.

With that, Miss Bookson, your next witness, please.

MS. BOOKSON: Thank you very much, your Honor.

Good morning, your Honor, defense counsel, members of the jury.

The plaintiff calls Dr. Debra Dwyer.

Dr. D E B R A D W Y E R, called as a witness by and on behalf of the Plaintiff, having been first duly sworn, testified as follows:

THE COURT CLERK: State your name for the record, spelling your last name, and give us your business address.

THE WITNESS: Debra Dwyer, D-E-B-R-A, D-W-Y-E-R, 17 Springbriar Lane, one word, B-R I A-R, in Centereach, C-E-N-T-E-R-E-A-C-H, New York, 11720.

THE COURT: Dr. Dwyer, you may be seated.

When you are speaking, try to keep your voice up

because the voices don't carry in this room. We have mikes, but you have to speak into them or they don't do very well. But if you get too close, that happens and nobody can hear you.

With that, Miss Bookson, you may inquire.

MS. BOOKSON: Thank you, your Honor.

DIRECT EXAMINATION.

BY MS. BOOKSON:

Q Good morning, Doctor?

A Good morning.

Q What is your occupation, Dr. Dwyer?

A I'm an economist and a faculty member at Stonybrook University in the College of Engineering.

Q What is an economist?

A An economist is somebody who studies markets. We study how societies or economy allocates scarce resources. My area of expertise is the labor market and the health markets and the cross over between the two. So I study a lot of issues related to work and disability.

Q Tell us, please, about your educational background.

A Sure. I received my bachelor's degree from Queens College in Flushing, New York in English literature and economics.

I went on to get my master's degree and Ph.D. from the college -- the School of Industrial and Labor Relations in

Cornell University in labor economics and health economics.

From there I did a postdoctorate fellow at Syracuse University in the Center For Research.

Q Approximately when, was it that you completed your education?

A So I completed my Ph.D. in 1996. It was technically 1996, but I finished the work in 1995, so that overlapped when I did my postdoctorate at Syracuse.

I was recruited to the Social Security Administration after one year, so I was only in Syracuse for the year of 1996.

Q Tell us now about your work experience in the field of economics since your completion of your education.

A Sure. I was recruited to the Social Security Administration in Washington D.C., where I spent a couple of years working on disability policy research.

From there I came to Stonybrook University, where I have been a faculty member for the last 17 years. I'm affiliated with the Department of Economics, with Health Sciences and with the College of Engineering.

Q And do you teach in the field of health care economics?

A Yes, I do. So, during my career I have taught everyone from high school students to Ph.D. students. I was the chairperson of the Department of Health Care Policy and Management, and I currently teach economics and public policy to Ph.D. students.

Q Have you published in the field of economics?

A Yes. Over the courses of my career I've published over a dozen articles and peer review journals, some in top journals like the Journal of Health Economics and the Review of Economics and Statistics.

Q And have you also been invited to present at conferences or groups regarding economics?

A Yes, several conferences, at least one a year over the course of my career. So I have presented at the Society of Labor Economics, I've presented before disability policy groups, various, and at the Eastern Economics Association later this month.

Q In your present position at Stonybrook, give us an idea of what you do day-to-day?

A Sure. So, a faculty member doesn't just teach. I teach my courses, but I also serve on committees. So I'm a member of the University Senate. I was elected to the University Senate, where I also sit on the finance and budget committee for the university.

I also do research. A lot of my time is spent doing research and I collaborate with M.D.'s and I collaborate with social scientists and political scientists.

Q What type of research have you done?

A So my research falls into two main categories. One is on disability policies. So I do research on work life, work

life expectancies, disability policy, Social Security policy, and retirement. So anything related to Social Security.

And, then the other one is I have an interest in young people. And so I study barriers to success among young people, particularly mental health, addiction; those sorts of issues.

Q Okay. And do you also consult with attorneys who ask you regarding issues of economic loss?

A Yes.

Q And have you testified in court?

A Yes.

Q And have you ever testified for me?

A No.

Q Okay. Since what year have you been testifying in court for attorneys?

A So I began this work back in 2012.

Q Okay. And are you being compensated for your time in court today?

A Yes, I am.

Q And what is your compensation?

A I charge a flat rate of $4,000 for preparation and being here today.

Q Did there come a time that you were asked to prepare an economic loss analysis with regard to the plaintiff Maryanne O'Brien?

A Yes.

Q Approximately, when were you contacted to do that?

A December of 2015.

Q And did you prepare an analysis and report?

A Yes.

Q And did your analysis include her wage and -- her wage loss and loss of earning capacity?

A Yes.

Q And did it also include an analysis of future medical costs?

A Yes.

Q Now, are you here in court today to tell the Court and jury your conclusions regarding the economic loss sustained by depend Maryanne O'Brien?

A Yes, I am.

Q What materials did you review to do your analysis?

A So in order to be able to make these kinds of projections, I needed to know what her past earnings capacity had been. So I need the W-2's.

Typically, what I want is the last full year of work. So there were the W-2's. There was a report by a Dr. Dans-O'Connor, neuropsychologist; that is what I used as the basis for the future medical needs.

I'm not a medical doctor, so I don't have the expertise to be able to predict what her future medical needs would be, so there was that report.

I also had her offer letter from Citibank and her application materials from Citibank, and I also had her resume so I was able to look over her educational experience and work life.

Q Did you use a start date for economic loss for Maryanne O'Brien?

A Yes, I did.

Q What was that?

A I began her loss in the year 2008, started the year 2008, January.

Q And do you know what the last date that she worked?

A Yes, it was April 2007.

Q Okay. So if the last date she worked was April of 2007, why did you use 2008 as her start date?

MR. BATH: Objection.

THE COURT: Overruled.

A So I was just being conservative and thought I would start with the first full year.

Q Are you familiar with a determine called the wage growth rate?

A Yes.

Q What does that mean?

A So, wage growth rate is the average rate at which wages grow over time. Our wages don't stay still, hopefully, and they haven't -- they don't stay still, they haven't historically.

So what we do as labor economists, if we want to be able to predict what somebody is going to earn, for example, we do returns on investments. So what we do is take the average of what the growth rates were and we project into the future using that.

So for the growth rate in this case, I took the average based on the last 20 years using are Bureau of Labor Statistics. So that is federal statistics. So on average, wages have risen by three percent per year on average over the last 20 years.

Q Okay. And by using that term, is that meant to cover all the ups and downs with regard to the growth of wages when there are good periods, bad periods; things like that?

A Yes. So that's where my expertise comes in as an economist. What I do is I look over the past -- I have to make a decision about the right amount of time that would capture what I referred to as a businesses cycle.

So we have periods of peaks and troughs in our prices and our wages. So if I took just one year, say, I took last year when we are coming out of a recession. Had I used that year, it would be a very low rate and that wouldn't be fair for projecting over the next 15 years or 20 years, given it was an outlier year.

So what we do is we capture a set of peaks and troughs, a business cycle, and we smooth it out. So rather than six percent or one percent, we use the average, which is three

percent.

Q Okay. Then this is not a personal rate that you have applied, this is something that you have taken from a federal agency, the Bureau of Labor Statistics?

A It is widely accepted among labor economists.

Q Okay. So tell us the method that you use to calculate past economic loss?

A Okay. So what I do is I take the last full year of earnings. The reason I do that is that represents her potential earnings, her earnings capacity.

I don't typically go back farther than that because people's wages rises over time. The trajectory tends to be upward sloping and flattens out over life just a bit. So, typically, wages don't go down.

So what I want is the last full year, since that represents her capacity of what she is able to earn in the labor market.

The offering letter that she received from Citibank said that her starting salary would be $90,000. According to her W-2's, her starting salary was a little bit higher than that.

MR. BATH: Objection.

THE COURT: Sustained, is that document in evidence?

MS. BOOKSON: It is.

THE COURT: Okay, then I'll allow her to answer the question.

THE COURT: Go ahead.

Q Go ahead.

A So if you calculate what her actual earnings were at Citibank, it was slightly higher than 90,000. They do explain in the offer letter that they provide additional compensation based on merit and how well they are doing.

So I used the 90,000. I just took the flat 90,000 rate that was in the offer letter as her earnings capacity.

In 2008 I assigned her a loss of $90,000, because she was not able to work in the year 2008.

Moving to 2009 --

Q Wait. Stop. Let me ask you the next question.

A All right.

Q After the year 2008, did you then continue to calculate her economic loss from 2009 up until the present time?

A I did.

Q And what would that be the past economic loss, all those years?

A Yes.

MR. BATH: Objection.

THE COURT: It's leading, but I think it is preliminary, so I'll allow it.

Q Okay. So if I asked you to use this pad on the board

and come down and write for us every year the amount of economic loss -- oh -- for every year and explain how you calculated it.

MS. BOOKSON: May I, your Honor?

THE COURT: Yes.

MS. BOOKSON: Thank you.

MR. GIBSON: May we, Judge?

THE COURT: You may.

(Witness gets down from the witness stand.)

MR. BATH: Your Honor, may I cut across?

THE COURT: Yes.

MR. BATH: Thank you.

(So done.)

MR. GIBSON: Pardon me.

MS. BOOKSON: Sure.

MR. GIBSON: Sorry.

Q Okay. Why don't you start with the year 2008.

A So what I'm writing down is her past earnings loss. And we're starting with 2008, because she stopped working in 2007. So, again, the first full year of loss is 2008, and I used a base salary of $90,000.

Q And the next year?

A In 2009, I take the $90,000 and I grow it by three percent. That is the assumption we make based on what we believe would have happened with real wages, actual wages over time.

If you grow that up by three percent, you get $92,700. So what I'm saying is she would have gotten a raise and her income would have been $92,700 in 2009.

Q Continue.

A The next year would be 2010. So I'm going to do exactly the same thing, I'm not going to repeat it every time; I'll grow it by three percent and we get $95,481.

2011, we get $98,345.

2012, her salary would have reached $101,296.

2013, $1,404,335.

2014, $107,465.

2015, $110,689.

Q Okay. Now, what is your opinion, to a reasonable degree of economic certainty, of the total amount of past economic loss for Maryanne O'Brien in this case? And you can write the number here on the far left so you don't have to bend all the way down.

MR. BATH: Objection, your Honor.

MR. ALT: Objection, your Honor.

THE COURT: Overruled.

A So the total is just summing all of these numbers, the past earnings lost from the year 2008 until the present, would total $800,310 -- I will circle that -- for the total.

Q Okay. Now, did you also calculate the future economic loss for Maryanne O'Brien?

A Yes, I did.

Q How did you calculate the economic loss?

A So, actually let me rephrase that. I didn't actually calculate it, what I do is I'm going to teach you how to do it.

So, what I do is I take --

MR. BATH: Objection.

THE COURT: Overruled, go ahead.

THE WITNESS: Okay.

A So in a case like this, what I do is I give you the information based on my expert opinion to calculate the future earnings loss.

You start off the same way I did. What is the starting salary for 2016? I take the $110,689 from to '15, grow it by three percent, and we're going to say that her yearly loss then is based on that salary, beginning in 2016, of $114,009. That would be her salary, starting off from now into the future.

What I'm also going to give you is the number of years that I believe she would have continued to work. So in order to calculate future earnings, I have to assign a retirement age.

The normal age of retirement under the Social Security system for somebody born the year that Miss O'Brien was born is 66 years and 8 months. So it has been slowly rising from 65.

So, the normal age of retirement represents the age at which she collects her full Social Security pension without penalty. In this case, I believe that was a very reasonable age

to assume she would retire, and that was the age I used.

Q Could you just stop for a moment?

A Sure.

Q Why did you believe that to be a reasonable age at which she will retire?

A I follow Social Security legislation. I start with that and look at the normal age. Unless I have reason to believe that she would be different than taking the full benefit. For example, if I had reason she might be someone who takes the benefit under the early age of retirement of 62, I might do that.

In this particular case, I have reason to believe that she is somebody who would have worked her full work life up to the age of 66 and 8 months, and I believe that is very reasonable.

Q Why do you believe in her particular case she would have worked up until the full age of 66 and 8 months?

A So I looked at the Bureau of Labor Statistics work life expectancy tables. A woman with a college degree, who is currently working, who had a very strong labor force attachment, meaning 22 years of full-time work, who is on a career track in the financial sector, is someone who works longer than average.

So if you look at the work life expectancy, I believe, it would have been around 66 for someone in her category. She fell in the higher end, even higher than 66. So it is my

professional opinion that this is a woman who would have worked at least until the age of 66.

Q Okay. Then did you use an inflation rate going forward into the future with that number?

A Yes.

Q What is that and why do you use an inflation rate?

A So, again, we're going to do the same thing we did with the past. I have to project into the future.

So, we project for 9.4 years, because that will bring her to the age of 66 and 8 months. So you have to do this for 9.4 years and you grow its by the three percent, the same growth rate that I have been using.

Q And using those factors; the amount of yearly loss, the number of years she would be expected to work and the growth rate of three percent, that will lead to what the future loss number would be; correct?

A Correct.

Q Okay, thank you. You can have a seat again.

A Okay.

(Witness complies.)

Q Thanks.

MR. BATH: May we take the easel down or are we using it some more?

MS. BOOKSON: Maybe we'll just leave it.

MR. BATH: It is just blocking the jury.

MS. BOOKSON: I'll move it then.

(So done.)

Q Now, with regards to future, in terms of health care for Maryanne O'Brien, did you make an analysis of future health care?

A Yes.

Q And tell us again what method you used to calculate the future health care.

A Okay. So, again, in a case like this I don't actually come up with a number for the cost of future health care. What I do is I'm going to provide you with the information to be able to produce that calculation, that total number.

I'm not a medical doctor, I said that earlier. So what I do is I take the categories of medical services that Miss O'Brien is expected to need over the remainder of her life -- and that comes from medical experts, from physicians, the neuropsychologist or Dr. Greenwald.

I take those categories, I leave it for the experts to decide the quantity and quality of those services, and I provide you with the inflation rates that are relevant for projecting into the future in those categories.

An inflation rate is very similar to a wage growth rate, but instead of wages and labor markets, we are looking at prices in the health sector. So, we will look at how prices rise over time.

Just like all prices rise over time, the price of medical services rises. So the same psychologist appointment today, the same exact service is going to cost more ten years from now. So that's what I'm taking into account.

Q And what services, what categories of services did you take into account for this individual, for Maryanne O'Brien?

A So, I had taken into account both cognitive and physical therapy based on the expert opinion I received. Psychologist visits, rehabilitation programs, primary care physician services.

Q All right. And did you arrive at an inflation rate for those services?

A I did.

Q What inflation rate did you use?

A So it varies by the sub sectors within the health sector. Overall, medical prices have been rising much faster than the general rate of inflation. You've probably heard that before. They have been rising on average over the last 25 years at a rate of five percent.

What I use is -- they have the broad category at the Bureau of Labor Statistics and then they have subcategories. So I match it to the subcategories, the services that she will require.

None of them have their prices risen as fast as five percent. So for the cognitive therapy, physical therapy,

psychology visits and rehabilitation programs, I recommend a rate of three percent growth, which is more in line with the general rate of inflation.

The only one that is a little bit higher is primary care physician services. The average inflation rate has been four percent over the last 25 years for primary care physician services.

Q Now, again, taking those percentages of inflation rate, 3 to 4 percent, that may not even, in fact, keep pace in the future with the cost of future health care, correct?

MR. ALT: Objection.

MR. BATH: Objection.

THE COURT: Sustained.

Q Do we know if that inflation rate will keep pace with what the cost of future health care will be?

MR. BATH: Objection.

MR. ALT: Objection.

THE COURT: Sustained.

Q Did you also use a life expectancy --

A Yes, I did.

Q -- for this particular individual?

A Yes, we needed an ending point. So she is going to require medical services up until she dies. And we use data from the National Center For Health Statistics to predict what her expected date of death would be. And we use, for females

born in the year she was born, which is 1958, the average life expectancy for a woman of her age is 25.3 years more, or the age 82.6.

Q Is that, again, a statistical life expectancy?

A Yes.

Q Okay. So is that the period of time, her statistical life expectancy, that the future health care costs would be applied to?

MR. BATH: Objection.

THE COURT: Sustained.

MS. BOOKSON: Is that as to form?

THE COURT: Yes.

MS. BOOKSON: Okay.

Q For what period of time would the future health care costs be intended for?

A Again, I'm not a medical doctor, so I can't say the quantity, frequency of these services. I'm taking the recommendation of a medical doctor that she'll require services for the remainder of her life.

So those services, the value of those services would grow at a rate, as I prescribed, 3 to 4 percent over the remainder of her life until the year 2041, when she is expected to reach the age of 82.6, will pass away and will no longer need medical services.

Q And the economic loss of both past income loss, future

income loss and the categories of future health care, is that basically the analysis that you conducted for Maryanne O'Brien?

MR. BATH: Objection.

MR. ALT: Objection.

THE COURT: Overruled.

A Yes.

MS. BOOKSON: Thank you, I have no further questions.

THE COURT: Cross examination or do you want to take a break?

MR. ALT: Yes, your Honor.

THE COURT: We will take a 5 or 10-minute break for the switch over. Then you will come back in.

COURT OFFICER: All rise, jury exiting.

(Whereupon, the jury exits the courtroom.)

MR. GIBSON: Can I see the doctor's file?

THE COURT: Dr., do you have a file with you?

THE WITNESS: Yes.

THE COURT: Why don't you show it to counsel.

(Handing.)

(Break taken.)

(Transcript continues on the following page.)

(Jurors enter courtroom.)

THE COURT: Welcome back, members of the jury. Everyone else may be seated.

Mr. Alt, on behalf of Hudson Valley Medical Group, you may inquire.

MR. ALT: Thank you, your Honor. Good morning, ladies and gentlemen of the jury. Good morning.

CROSS-EXAMINATION

BY MR. ALT:

Q Ms. Dwyer, good morning.

A Good morning.

Q We've never met before, correct?

A Correct.

Q Okay. I just want to introduce myself. My name is Brendan Alt. I'm one of the attorneys representing the Hudson Valley Medical Group, okay?

A Nice to meet you.

Q Nice to meet you as well.

You've testified that you have been in court before to do testimony such as you're doing today, right?

A Correct.

Q Before we begin, I want to give you a general instruction. If you can answer my questions with a "yes" or "no," please do so, and if you're unable to do so, tell me that you can't answer the question with a "yes" or "no," okay?

A Okay.

Q You testified earlier this morning that, in your opinion, Ms. O'Brien's anticipated retirement age would be approximately 66 and two-thirds, right?

A Yes.

Q Okay.

And that number is based on Social Security's average retirement age for a woman born in the year that she was born, right?

A Not average.

Q Well, that's the number that you got from Social Security, right?

A Correct.

Q Okay.

Now, that number, 66 and two-thirds, which comes from Social Security, is based on the general population in the United States, right?

A It's actually legislation.

Q Yes or no. Is it a yes or no or you can't answer that question.

A No.

Q Okay.

It's not based on the general population?

A No.

Q It's based on a group of people, though, correct?

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

Q Okay.

The way Social Security derives the average retirement number of 66 and two-thirds, that's based on statistics from -- or data collected from a group of people, right?

A No.

Q No.

How is that number calculated from Social Security?

A It is -- I use the number based on legislation, Social Security policy. So under the defined benefit plan, the normal age of retirement, based on the law, is 66 and eight months for someone who's born in 1958. So I'm using the age under the law, not based on federal statistics.

Q Okay.

So that 66 and two-thirds, you would agree with me that some people retire after that, right?

A Correct.

Q Some people also retire before that, right?

A Correct.

Q Okay.

Now, did you review any of the trial testimony from this case before you came to court here?

A I did not.

Q Okay.

Would you agree with me that if an individual

testified under oath what his or hers expected retirement age would be, that that would be highly relevant to analysis of an expected retirement age? Yes or no.

A Yes.

Q That would be.

I have up on the screen trial testimony from just last Thursday. This is Ms. O'Brien's testimony. I'm going to read a portion of the testimony to you. Line 19:

"Question: In your plans for the future before April of 2007, did you have a plan about how long you expected or wished to continue working?

"Answer: I assumed it was between 60 to 65 depending how my money grew in the 401(k) and when my house was paid off."

Did I read that correctly?

A Yes, you did.

Q Okay.

So you would agree with me that, based on Ms. O'Brien's own testimony, she could have retired at age 60, right?

MS. BOOKSON: Objection.

THE COURT: Overruled.

A I don't know whether she could have.

Q Yes or no. Is that up on the screen that she could

have retired, in her own opinion, at 60 years old?

A No. That's not what's on the screen.

Q Well, there's a range there on the screen, and Ms. O'Brien testified that she assumed that she could have retired from 60 to 65, right?

MS. BOOKSON: Objection.

THE COURT: Counsel, rephrase your question.

MR. ALT: Okay.

Q In Ms. O'Brien's plans, in her own words, before April of 2007 she assumed her retirement age was between 60 and 65, right?

A Yes.

Q Okay.

So you would agree with me that 60 is about seven years below your 66 and two-thirds estimation, right?

A Yes.

Q Okay.

Now, if we take the average of 60 and 65, we'd get 62 and a half, right?

A Yes.

Q You don't need to be an economist to do that math, right?

A I hope not.

Q Would you also agree with me that 62 and a half is about five years below your 66 and two-thirds estimation,

right?

A Yes.

Q Ms. Dwyer, you've published articles on the connection between health and work, right?

A Yes.

Q Okay.

And you previously worked in Washington, DC, doing some research on this topic, right?

A Yes.

Q Okay.

Would you agree with me that an individual has to be physically capable of getting up and going to work every day in order to work?

A Yes.

Q Okay.

Would you agree with me as a general concept that alcoholism can have a negative impact on one's health?

A It can, yes.

Q And it's generally known that alcoholism can cause a number of different health problems, right?

A Correct.

Q Alcoholism can cause damage to the liver, right?

A Yes.

Q It can lead to heart damage, right?

A Yes.

Q It can lead to damage to the pancreas, correct?
A Yes.
Q It can also lead to damage of the brain, right?
A I would imagine so, yes.
Q I want you to assume that last week we heard testimony from plaintiff's expert neuro-radiologist who said that alcohol is, quote, "toxic to the brain."
MS. BOOKSON: Objection.
THE COURT: Sustained as to form.
Q Isn't it true, Ms. Dwyer, that alcoholism can lead to certain medical problems?
MS. BOOKSON: Objection.
THE COURT: I'll allow it.
A Yes.
Q Ms. Dwyer, you didn't review Ms. O'Brien's deposition testimony, did you?
A No, I did not.
Q Did you ask for it?
A No, I did not.
Q So you didn't feel it was relevant to your analysis in this case at all?
A No.
Q Okay.
You reviewed a number of materials, some of those materials included Dr. Dams-O'Connor's neuro-psychological

evaluation, right?

A Right.

Q Based on your review of all the materials that were given by Ms. Bookson, you know that Ms. O'Brien has a longstanding history of alcoholism, right?

A I don't know that.

Q Yes or no. Do you know that she has a history of alcoholism?

A Yes.

MS. BOOKSON: Your Honor, can we let the witness finish an answer instead of cutting it off?

THE COURT: Yes.

MS. BOOKSON: Please.

Q Ms. Dwyer --

MS. BOOKSON: Yes?

MR. ALT: Yes, Ms. Bookson.

Q Ms. Dwyer, you know that Ms. O'Brien was, in fact, fired from her job at American Express in 2005, right?

A I did not know she was fired.

Q Did you know -- or you know she was fired because she was drinking on the job, right?

MS. BOOKSON: Objection.

THE COURT: Sustained as to form.

Q Do you know that Ms. O'Brien was fired from American Express in 2005 due to alcoholism?

A I knew that she left the job. That's all I knew.

Q So you don't know that she was fired?

A Right.

Q Okay.

Do you know that Ms. O'Brien attended at least eight inpatient alcohol detoxifications between 2002 and the time of her deposition in this case? Are you aware of that as you sit here today?

A Could you repeat the question?

Q Do you know, as you sit here today, that Ms. O'Brien testified that she was in inpatient alcohol detoxification at least eight times between 2002 and the time of her deposition? Do you know that?

A No.

Q Do you know that Ms. O'Brien missed six weeks from work in 1999 due to an alcohol problem?

MS. BOOKSON: Objection.

THE COURT: Sustained.

Q Based on your review of the materials provided to you by Ms. Bookson, do you know that Ms. O'Brien missed six weeks of work in 1999 due to alcoholism?

MS. BOOKSON: Objection.

THE COURT: Sustained.

Q Ms. Dwyer, would you agree with me that alcohol was a problem for Ms. O'Brien in her work history?

A No.

Q So the fact that she was fired from her job due to alcoholism, that did not result in a problem for her?

A It's revealed on her record that it did not.

Q What record are you referring to?

A Her work history. So she had a lapse, and I understand it's because of alcoholism and that is in the record. What I observe is someone who had 22 years of experience as a career -- on a career track.

Q Ms. Dwyer, what I am asking you --

MS. BOOKSON: Excuse me, your Honor.

THE COURT: Mr. Alt, she needs to finish her answer, which I will allow her to do.

A So she returns to work after this lapse that has to do with the medical issue, alcoholism, and she gets a vice president job. So she gets a pretty high-ranking position. I'm a labor economist. I'm looking to see what is her earnings capacity despite her limitations.

Q Do you agree with me that alcoholism caused a problem between 2005 and 2006 in Ms. O'Brien's employment history? Yes or no.

MS. BOOKSON: Objection.

THE COURT: Sustained.

Next question, Counsel.

Q Ms. Dwyer, are you aware -- are you familiar with the

National Bureau for Economic Research?

A Yes.

Q Okay.

Are you aware that there is research that concludes that alcoholism leads to unemployment?

MS. BOOKSON: Objection.

THE COURT: Sustained as to form.

Q Did you consider Ms. O'Brien's alcohol history when you came to the conclusion that she would work until 66 and two-thirds?

A Yes.

Q Ms. Dwyer, you would agree with me that there are a number of future uncertainties that can happen in one's life over the course of their work career that may render them incapacitated from working, right?

A Yes.

Q Death can occur at any given time, right?

A Yes.

Q An accident can occur at any given time, right?

A Correct.

Q It's your testimony today that Ms. O'Brien would have worked for 17.4 consecutive years from 2008 all the way up into the future to 66, right?

A Yes.

Q With a growth rate of 3 percent applied to that,

right?

A Yes.

Q Ms. Dwyer, did you review any of Ms. O'Brien's recent medical records?

A No.

Q Did you review any of her medical records at all in this case?

A I'm not an MD, so no.

Q Yes or no. Did you review any of the medical records?

MS. BOOKSON: Asked and answered.

THE COURT: Well, I wasn't clear about her answer.

A No, not medical charts, if that's what you mean.

Q Would you agree with me that if someone was hospitalized for a period of time, they wouldn't be able to go to work, right?

A Correct.

Q So you're unaware of any hospitalizations that Ms. O'Brien had between 2008 and the present, right?

A Correct.

Q Ms. Dwyer, I want you to go back to September 2007, okay?

A Okay.

Q At that point Ms. O'Brien was working for Citigroup, right?

A September, you said?

Q September of 2007, right?

A Okay.

Q In September of 2007, Ms. O'Brien was working at Citigroup. She attempted to go back to work at Citigroup, right?

A Yes.

Q Would you agree with me that in the end of 2007 and continuing into 2009, the United States went into an economic recession, right?

A Yes, it did.

Q And Citigroup, in fact, started laying off employees at the end of 2007, right?

MS. BOOKSON: Objection.

THE COURT: Overruled.

A There were a lot of layoffs, yes.

Q But Citigroup, do you know that they started laying off employees in 2007 due to the economic recession?

A Yes, the banks.

Q In 2008, Citigroup, in fact, laid off 73,000 employment, isn't that right?

A I don't know the exact number.

Q Do you have any basis to disagree with my representation?

A No.

Q And Ms. O'Brien testified in court here -- withdrawn.

I'm going to read another page from the trial testimony here last week. Ms. O'Brien was asked the following question:

"Question: What was different about your job duties when you came back to work after Labor Day in 2007?

"Answer: There was some layoffs going on into the department and I was being put in charge of credit cards on the front side of the business, you know, the solicitations that go out in the mail, making sure that the type was right, there was no claim that should not have been paid, it was the right trademark, and the letter had to be a certain way, and I never did that before, you know, with the application. I was always on pretty much the back end."

Did I read that correctly?

A For the most part, yes.

Q Would you agree with me that Ms. O'Brien testified that there was some layoffs going on in her department when she returned to work in 2007?

A Yes.

THE COURT: Counsel, if you're standing up, you're not speaking.

MS. BOOKSON: I'm sorry. I'm sorry. I was waiting. I thought there was a question coming and I was waiting for that. I'm sorry. Go ahead.

Q Ms. Dwyer, do you know that Citigroup laid off more employees in 2008 other than any other companies in the entire United States?

MS. BOOKSON: Objection.

THE COURT: Sustained.

Q Ms. Dwyer, the unemployment rate at the end of 2007, do you have an idea of what the unemployment rate in the United States was at that time?

A At the end of 2007?

Q At the end of 2007.

A I'm going to say it was about seven, but I don't remember.

Q And by October 2009, the nation's unemployment rate had risen to over 10 percent, isn't that true?

A Yes.

Q Okay.

And in the past 50 years, only one point in this nation's history had the unemployment rate risen to over 10 percent, isn't that true?

MS. BOOKSON: Objection.

THE COURT: Overruled.

A Yes.

Q And that was back in 1982, 1983, right?

A Yes.

Q In 2008, the Citigroup stock fell 75 percent, right?

MS. BOOKSON: Objection.

THE COURT: Sustained.

Q Ms. Dwyer, are you familiar with a general business concept in terms of layoffs called "last in, first out"? Have you heard of that before?

A Yes.

Q And that generally means that when a company starts laying off employees, they lay off the last employee that came in first, right?

A Correct.

Q Thank you.

So despite the economic recession, despite the layoffs at Citigroup, despite the unemployment rate rising to over 10 percent in 2009, it's your testimony that Ms. O'Brien would have worked for almost 17 consecutive years up until she was 66 years old with a positive growth rate of 3 percent. That's your testimony here today?

MS. BOOKSON: Objection.

THE COURT: Overruled.

A Yes. So can I explain?

Q No. Thank you, Ms. Dwyer.

Ms. Dwyer, you're being compensated for your time

today, right?

A Correct.

Q And you're getting paid $4,000 to be here today?

A Correct.

Q And you also prepared a report in preparation for today, correct?

A Yes.

Q Okay.

And did you charge for that report as well?

A With my partner, yes.

Q How much did you charge for that report?

A $3,200.

Q $3,200, okay.

So, again, to make the numbers easy, let's say approximately $7,000, right?

A Correct.

Q It's your preference to come to court and testify once per week, right?

A No.

Q I'm going to read to you a portion of your testimony from a trial entitled Carol Howard, C-A-R-O-L, H-O-W-A-R-D, versus Long Island Jewish Hospital. This was venued in Queens County, State of New York, before the Honorable Peter O'Donoghue.

THE COURT: Can you give me the date of that

transcript, Counselor?

MR. ALT: Yes. The date is March 12, 2013.

Q I'm referring to page 122 to 123, line 24:

"Question: And your intent is for this to be more work going forward?

"Answer: No. We have an agreement that I, given I am the chair of the department and my primary responsibilities are the university, I wouldn't do more than a couple a week, preferably one a week.

"Question: You prefer one a week?

"Answer: One trial a week. Sorry.

"Question: One trial a week, 52 a year?

"Answer: Yes."

Do you recall giving that testimony in 2013, Ms. Dwyer?

A I believe it occurred, yes.

Q So was it your preference at that time to give trial testimony once per week?

A I believe it was out of context.

Q But that's what you said. You prefer one per week, right?

A Yes.

Q Okay.

So you agree there's 52 weeks in a year?

A Correct.

Q If you testified that your preference is once per week, that would be -- let's say, to make numbers easy -- 50 times in a year, okay? Do you agree with me?

A Yes.

MS. BOOKSON: Objection to the form.

THE COURT: Overruled.

Q If you earned $7,000 on a case for a report and your trial testimony over 50 weeks, that would be over $350,000, right?

MS. BOOKSON: Objection.

THE COURT: Counsel, you're just -- you're asking her to do the math at this point or whether she earned that money?

MR. ALT: I'm asking, her based on her preference, that would add up to $350,000.

THE COURT: That's the question you're doing the math at this point?

MR. ALT: Correct.

THE COURT: Okay. I'll allow it, with that clarification.

Q That would add up to $350,000 a year, right?

A I have a partner. So it would not, and it's not my preference. I agreed that it is what I said.

Q Just yes or no. Would that add up to $350,000 a year?

A That number would add up to $350,000, yes.
Q Okay.
And isn't it also true that you produce more reports than you do trial testimony, right?
A Not me personally, but yes.
Q Your business partnership. Okay.
So you have a business partner, Alan Leiken, right?
A Correct.
Q Alan Leiken is also an economist, right?
A Yes.
Q And he's testified on many occasions in court, right?
A Yes.
Q There have been times where Mr. Liken has testified almost a hundred times in a given year, right?
MS. BOOKSON: Objection.
THE COURT: Sustained.
Q Isn't it true that Dr. Leiken testifies approximately six or seven times a month?
MS. BOOKSON: Objection.
THE COURT: Sustained.
Q Ms. Dwyer, do you give any of the money that you earn for your legal work back to the university?
A No, I do not.
Q Is it fair to say that your hourly rate for legal work far exceeds what your hourly rate is as a professor?

MS. BOOKSON: Objection.

THE COURT: Overruled.

A It's higher, yes.

Q I want to take a look at the report that you produced.

A Okay.

Q Okay.

This report is three pages long, right?

A Correct.

Q There are four written paragraphs on this report?

A Yes.

Q This report is signed by you and Mr. Leiken, correct?

A Dr. Leiken, yes.

Q And that's on the third page, right?

A Yes.

Q So on the first page you told us that Ms. O -- or your testimony here today is that Ms. O'Brien was earning $90,000 a year, right, and that was the starting point for your economic estimation of lost earnings?

A Correct.

Q And you applied the 3 percent growth rate, right?

A Correct.

Q Okay.

And then you put a chart on the first page. Is that chart readily accessible to you?

A You're talking about --

Q On the first page, the annual percent changes in wages.

A Yes. I produced that from Bureau of Labor Statistics numbers.

Q Okay.

And on the first page, you also indicate that your estimation is the 66 and eight months for her retirement age, right?

A Correct.

Q On the second page, you performed the math, which you did for us this morning, right, and there is information about your calculations, right?

A Correct.

Q Would you agree with me that these calculations can be performed in Microsoft Excel in a matter of seconds?

A Minutes, yes.

Q Minutes.

And on the third page, you gave us the growth rate for future costs of healthcare, right?

A Correct.

Q And you were given information from Ms. Bookson about what specific types of healthcare Ms. O'Brien would require, right?

A Correct.

Q Did this report take you more than 15 minutes to do?

A Absolutely.

Q Approximately how long did this report take?

A Again, I work in conjunction with Dr. Leiken. So it was his time that went predominantly into the production of this report, and then I review it on top of what he had done. So it really is hard to put a total number of hours.

Q So a report just like this, you've produced them in the past, right?

A Yes.

Q How long would you say it takes for you to produce the same report similar to this?

A I usually allocate a work day to it.

Q This report takes you a full work day?

A This particular report probably a little bit less, probably four or five hours. What I do when I do these reports --

MR. ALT: Your Honor, move to strike.

MS. BOOKSON: Your Honor --

THE COURT: I think she's answering the question. I'll allow her to complete her answer.

Go ahead.

THE WITNESS: So I'm not being paid to plug numbers into an Excel spreadsheet. I can train a student to do that. What I am paid for is my expertise in understanding what's happening in the healthcare sector, in

the labor market, and I brush up on that. On the days that I am doing a report, I check on what's going on with the labor market wage growth, inflation, that sort of thing, and I update my tables and then I produce the report.

Q Ms. Dwyer, on the third page you talk about future medical costs, right?

A Correct.

Q And it's your testimony that physician costs will go up approximately 4 percent per year, right?

A Correct.

Q Over the past 40 years, isn't it true that physician costs have been on the decline? Yes or no or you can't answer that question yes or no.

A I can't answer that question yes or no.

Q Isn't it true that over the past 20 years, the physician costs have gone up approximately 2.9 percent, isn't that true?

A A little higher than that, but lower than 4 percent.

Q Over the past ten years, isn't it true that physician costs have gone up approximately 2.5 percent?

A That's correct.

Q But it's your testimony that in the future they will go up at 4 percent, right?

A Yes. Can I explain?

Q No. Thank you.

Ms. Dwyer, I want you to assume that there has been testimony from Ms. O'Brien in this case that she's been receiving $4,500 a month in disability income, okay?

A Okay.

Q Wouldn't you agree that when calculating her lost future earnings, you need to subtract the disability income --

MS. BOOKSON: Objection.

Q -- from the $90,000?

THE COURT: Overruled.

A It's my understanding that disability benefits are not supposed to come up in these cases because it's a collateral source. However, I --

Q I want you to assume that they did come up in this case, and that Ms. O'Brien testified that she's been receiving $4,500 a month in disability income. Shouldn't that number be subtracted from the $90,000 that you gave us as a starting point?

MS. BOOKSON: Objection.

THE COURT: I'll allow it.

A So it's my understanding that we don't subtract it because she is on disability. That's what we consider endogenous to the case.

Q Thank you, Ms. Dwyer.

So you're saying her future lost earnings would be $90,000, plus a 3 percent growth rate, and it doesn't matter

that she's been receiving $4,500 a month in disability. Is that your testimony here today?

MS. BOOKSON: Objection.

THE COURT: I'll sustain that. At this point, Counsel, there is a question of law which, jurors, there is a process by which collateral source is applied to any award after your verdict is in. So I don't want to mislead you into thinking that will be something you should do in figuring what her economic loss is, and that so there is no confusion.

Counsel, why don't you proceed?

Q Ms. Dwyer, you were given certain costs or types of medical costs that Ms. O'Brien may require in the future, right?

A Correct.

Q Okay.

So I want you to assume that we haven't heard any testimony yet about what those specific costs are, okay?

A Okay.

Q So would you agree with me that if that actually comes out in the future of this trial and those numbers change, that would change the final numbers in this case, right?

MS. BOOKSON: Objection.

THE COURT: Sustained as to form.

Q Ms. Dwyer, if a doctor comes in, hypothetically, and

gives -- puts a number of costs for future medical costs, okay, you then apply your growth rate to that number, right?

A Correct.

Q So you would agree with me that if that cost value that the doctor comes in and testifies to changes, that would change the final numbers when applying your growth rate, right?

MS. BOOKSON: Objection.

THE COURT: Overruled.

A Yes, it would change it.

Q Ms. Dwyer, would you agree with me that it's possible -- and I'm not saying this about you -- but is it possible that an expert's testimony in court can be influenced because that expert's getting paid by an attorney?

MS. BOOKSON: Oh, objection.

THE COURT: Sustained.

MR. ALT: Thank you, Ms. Dwyer.

THE COURT: Anything, Mr. Bath?

MR. BATH: Yes. Thank you.

(Continued on following page.)

CROSS-EXAMINATION

BY MR. BATH:

Q Good morning, Miss Dwyer. My name is John Bath, I represent The Hudson Valley Hospital Center.

You testified that one of your areas of interest was, I think you said, disability and addiction; is that correct?

A Young people and addiction, yes.

Q And you have done a bunch of research on that, you had testified?

A Yes.

Q And in connection with all that research that you've done, have you done research concerning whether addiction and disability -- mental illness has an impact on a person's work life expectancy?

A I incorporate that literature, I don't perform that analysis myself. So my focus was --

Q That was a yes or no.

A Oh, sorry.

Q It was a yes or no question.

MS. BOOKSON: Well, your Honor, objection.

THE COURT: Yes or no or you can't answer with a yes or no.

A So, could you repeat the question, sorry?

Q Yeah. I mean, you will agree -- withdrawn.

You have done research on the effect addiction and

mental illness has on a person's work life expectancy; true?

A I'm going to say in between. But, yes.

Q Okay. And you would agree then that -- withdrawn.

A person who is an alcoholic has a decreased work life expectancy, by and large; is that what the research shows?

A It is --

Q Either yes or no?

MS. BOOKSON: Or you can't answer.

A Yes.

Q Would you agree that patients who have -- withdrawn.

Would you agree also that people in general who have a mental illness, have a decreased work life expectancy?

A Not necessarily.

Q You've indicated that if you had reason to believe that she might have a shortened work life expectancy, that you would incorporate that into your report; true?

A Yes.

Q And you saw no reason in this case to include that in your report; is that correct?

A Correct.

Q All right. Did you -- did you review any of the prior treatment records?

A No.

Q Did you know that Ms. O'Brien had a long history of anxiety and depression prior to April of 2007?

A No.

Q All right. You weren't provided with that information, correct?

A Correct.

Q Would you agree that that information would be important for you to know if you were projecting out what the patient's work life expectancy was; yes or no?

A No.

Q You brought some records with you today?

A Yes.

MR. BATH: Could I approach and --

THE COURT: Yes.

MR. BATH: Thank you.

Q The records that you brought, are these all the records that exist with respect to your work on Miss O'Brien's case?

A It doesn't include all of the federal statistics and research that I do. But, yes, all the records that I've reviewed.

Q You've indicated that you reviewed a report of Dr. Dans-O'Connor; is that correct?

A Correct.

Q And did you review the entire report?

A Allen Leiken did. He sent me the part of it that was relevant for my analysis.

Q Well, I asked you, does this folder include everything

that you were provided with or that your office was provided with concerning Ms. O'Brien?

A What is the question?

Q The question is: Does everything in this folder, does it represent everything that you -- that your office was provided with?

A No.

Q Okay. So, I'm just looking at a report -- a letter here. Do you know who Jennifer Fleming is?

A No.

Q Do you know who Tabak Law is?

A It's a law firm.

Q And is that who sent you this case?

A I don't recall, because first contact was with Dr. Leiken.

Q Prior to today, have you spoken with Ms. Bookson about this case?

A Yes.

Q Did you meet with her?

A Not before today.

Q So you saw her this morning, correct?

A Yes.

Q For the first time?

A Yes.

Q Now, in terms of the work that you do as -- your

medical -- I'm sorry, your legal work that you do, do you and Dr. Leiken do that work within the State University of New York out there at Stonybrook?

A Not within the State system, no.

Q All right. Do you and Dr. Leiken have a separate office where you do your work?

A Yes.

Q All right. And do you and Dr. Leiken have a separate company?

A No.

Q All right, you don't. Where is your office?

A I don't do much of this work, so I work out of my home. And, actually, so does Dr. Leiken.

Q And do you have any employees?

A No.

Q Do you have anybody that prepares these reports?

A No.

Q Have you ever met Miss O'Brien?

A No.

Q Did you ever talk with Miss O'Brien?

A I did not.

Q The report that you produced, the economic loss analysis, isn't it true that this report is identical, but for names and monetary figures, to, you know, all the other reports that you produce for plaintiff's lawyers?

MS. BOOKSON: Objection.

THE COURT: Sustained.

Q The work that you do, in connection with your business as an economist testifying in court, all that work is done on behalf of plaintiffs's attorneys; is that correct?

A It has been, yes.

Q And when was the last time you were in court testifying?

A Earlier this week.

Q So this year, how many times have you been in court testifying?

A Three.

Q Has Dr. Leiken, to your knowledge, been in court this year?

MS. BOOKSON: Objection.

THE COURT: Sustained as to form.

Q Well, do you know if Dr. Leiken has been in court this year testifying?

MS. BOOKSON: Objection.

THE COURT: In relationship to their joint business?

MR. BATH: Yes.

THE COURT: I'll allow it.

A Yes.

Q And how many times has he been in court this year

testifying?

A I don't know.

Q All right. How many times did you testify last year?

A I'm going to say I average about once a month, but it comes in clumps, like this week was two. So, about 12.

Q And how about Dr. Leiken?

A I have no idea.

Q You can't say?

A No.

Q Thank you for your time.

A Thank you.

MR. BATH: Nothing further.

THE COURT: Anything further, Miss Bookson?

MS. BOOKSON: Yes, your Honor.

MR. BATH: May I hand these back to the witness?

THE COURT: Yes.

(Handing.)

THE WITNESS: Thank you.

RE-DIRECT EXAMINATION

BY MS. BOOKSON:

Q Hello.

A Hi.

Q A couple of things. You were shown the testimony and asked some questions about the plaintiff's statement here in court about what her plans were in terms of her retirement age;

sometime between 60 and 65.

Does that change your opinion with regard to what the age of her retirement would be that you used to calculate her loss?

A I typically do take into account when I hear the preferences of the plaintiff. So I'm going to say a couple of things, if that's okay.

Based on her career track, her education, her revealed preferences for work to the point where she tried to go back, I'm very comfortable with using the normal age of retirement that I used. Having said that, again, the preferences do matter.

One thing I can say as an expert in this area, is people have been retiring later. The average age has been later because there were unexpected financial reasons. And so people want to retire at a given age and then do something different sometimes. And so it is possible that she's in that group.

So on average people are retiring later because they find that they have to. In this case -- so what she said was between 60 and 65, depending upon my financial situation. That is a paraphrase. That is very much in line with what I observed on average.

So to answer your question, I'm very comfortable with the number I used, but I would take into account had I heard that and lowered it a little bit.

Q Well, how much would you have lowered it to?

A Another age that I would use in a situation like that is 65.

Q Okay. So we are talking about a one year difference at most?

A At minimum.

MR. BATH: Objection.

THE COURT: Sustained.

Q You were also asked some questions with regard to her future work life expectancy and how many years she could be expected to work going forward from now until into the future, basically. And you were asked some questions about alcoholism and mental illness.

Do you believe, in your opinion as an economic expert, that alcoholism would have interfered with the work life of this particular individual?

A No.

Q Why not?

A From what I'm understanding, it's a life long disease, she has had it, she worked 22 years solidly. There was a lapse. It was my understanding she got rehabilitated and she was able to land a good job at a vice-president level.

So that suggests to me that this is a high functioning person. There are different types of alcoholics, and there are those that are high functioning. So high functioning alcoholics

can go on to do -- have very strong work lives.

So I'm, again, within a reasonable degree of economic certainty, very comfortable with the analysis that I had performed.

Q The same question with regard to any history of anxiety or depression that Mary Anne O'Brien had. Did you see any evidence that that interfered with her work life?

A No.

Q Would any of those conditions change your opinion with regard to how many years you would have expected her to continue working?

A No.

Q You were asked some questions about the great recession of our time, starting in 2008; yes?

A Yes.

Q Does that event, does that change your opinion about how much of a work life she would have had?

A No.

Q Why not?

A So it is quite possible that --

MR. BATH: Objection.

THE COURT: I'll allow the answer.

Continue.

A So even if she lost her job at Citibank, I'm not performing an analysis on the probability of her retaining the

same job, I'm performing an analysis based on her propensity to earn. And that propensity to earn was revealed at this $90,000 rate. She was able to attract a position with Citibank pretty quickly.

I'm believing that she would have found another position if she were, indeed, one of the people that were let go. The last and first out may not apply at highly specialized levels, as well.

Q Now, you were also asked about the potential cost percents that is in your calculations and your report, about what is the rate at which physician cost rises.

Why did you choose the rate that you did of four percent for physician costs?

A So, I'm basing the inflation rate in the medical sector on the averages, as I said. And had I gone back 40 or 30 years, it would have been higher because inflation in the medical sector 26 years ago or 30 years ago was in the double digits.

So, I said I couldn't answer the question about a steady decline over the last 40 years, because there were some ups and downs. But it has come down considerably from double digits, thank God.

So from the 15 percent, 12 percent down to 2.5, 3 percent right now, I want to predict into the future picking one point in time. As you can see from what I just explained, it could be really problematic. Because of those fluctuations,

I don't believe there is going to be a steady decline from the three percent we see now, I think it is going to go back up.

Therefore, I captured what I believe represents a business cycle and the most reliable period of time to project into the future to get that average of what might happen over the remainder of her life.

Q Okay. And would you explain to us now, in terms of producing the reports that you did for economic loss for Maryanne O'Brien, what is your process of producing those reports and the time involved?

A So, I don't really believe I'm being paid hourly. I think I'm being paid for my expertise, and I don't think that's easily substitutable. So when people ask me about -- I charge a flat rate, I don't charge an hourly rate. So each case is different. Each has there own little anomalies.

I did ask you some questions. I did not ask the plaintiff questions because I asked you. I did ask what was in the transcript, even though I didn't read the transcript of the deposition. I gather the information I need and I don't time myself.

So could it have taken -- I don't believe it took me less than three hours. Somewhere between 3 and 6, on a case like this.

Q And it's not a matter of just pushing a button on a computer; is it?

A No.

Q And then, finally, with regard to testimony, you were asked some questions about what you would be earning if you testified 52 weeks of the year, every single week of the year each year. Do you testify 52 weeks of the year?

A No.

Q In the year 2015, did you testify every week of the year?

A I don't want to and I couldn't possibly.

Q Why is that?

A I have a full-time job and then some at the State University of New York.

MS. BOOKSON: Thank you.

THE COURT: Anything else, Mr. Alt?

MR. ALT: Yes, your Honor, very briefly.

RE-CROSS EXAMINATION

BY MR. ALT:

Q Miss Dwyer, you didn't review any of Miss O'Brien's prior alcohol records, correct?

A Correct.

Q You didn't review any of her deposition testimony in this case, right?

A Correct.

Q You relied on what was given to you by Miss Bookson, right?

MS. BOOKSON: Objection.

THE COURT: Sustained.

Q Are you aware of any of the recent relapses in alcohol that Miss O'Brien has had?

MS. BOOKSON: Objection.

THE COURT: Sustained, that is not proper recross.

Q Miss Dwyer, you would agree with me that Miss O'Brien's plan for retirement at the 60 to 65 range is below your estimation, right?

MS. BOOKSON: Objection.

THE COURT: Sustained.

Q Miss Dwyer, do you know if Miss O'Brien has been hospitalized in the last four years?

MS. BOOKSON: Objection.

THE COURT: Sustained.

MR. ALT: Thank you.

THE COURT: Anything further, Mr. Bath?

MR. BATH: No, your Honor.

THE COURT: Dr. Dwyer, you can step down and then we will take a brief recess.

(Witness excused.)

THE COURT: We will take five minutes and then we will go to 12:30 today.

COURT OFFICER: All rise, jury exiting.

(Whereupon, the jury exits the courtroom.)

(Recess taken.)

THE COURT: Bring in the jury.

COURT OFFICER: All rise, jury entering.

(Whereupon, the jury enters the courtroom.)

THE COURT: Welcome back, members of the jury. Everyone may be seated.

I just want to remind you that I won't see you again until Wednesday -- Wednesday?

MS. BOOKSON: Wednesday, almost a week.

THE COURT: Now that we have already lost one juror, it is really important I see you all back here on the 17th at 9:30.

So with that, we are recalling Miss O'Brien.

Miss O'Brien, come on back to the stand. I remind you that you are still under oath, having been previously sworn.

M A R Y A N N E O ' B R I E N, recalled as a witness by and on behalf of the Plaintiff, having been reminded she is still under oath, testified as follows:

THE COURT: I'm also, on application of the defense, allowing Mr. Bath to reopen his cross in lieu of Lindenbaum, which application was made a couple of days ago.

With that, Mr. Bath, you may cross-examine.

MR. BATH: Thank you.

CROSS-EXAMINATION

BY MR. BATH:

Q Good morning, Ms. O'Brien.

A Good morning.

Q Now, after you got fired from American Express in 2005, you were not employed again until you went to Citi; true?

A Yes -- no, I can't answer that.

Q And after you left or were fired from American Express, did you -- well, you applied for disability, true?

A I don't know what you mean by disability.

Q Well --

A Do you mean Social Security?

Q Did you apply for short-term disability after you were fired for drinking on the job at American Express?

MS. BOOKSON: Objection to the form.

THE COURT: Sustained as to form.

Q After you were fired at American Express, isn't it true that you filed a disability claim through your disability carrier?

A No.

Q All right. Isn't it true, Ms. O'Brien, that you were assisted in filing for long-term disability after being fired from Dr. -- from American Express and asked Dr. Stumacher to assist you?

MS. BOOKSON: Objection.

THE COURT: Sustained.

Q Isn't it true that Dr. Stumacher assisted you in filing forms so that you could receive long-term disability after being fired from American Express?

MS. BOOKSON: Objection.

THE COURT: Overruled.

A No.

MR. BATH: May I approach, your Honor?

THE COURT: Yes.

Q I want to show you -- that is Dr. Mark Stumacher, true?

A I know who he is.

Q I want to show you a document and ask you to just read that document.

(Witness complies.)

A This was not assisting --

THE COURT: No, just look at it. He is giving you the opportunity to look at it and read it.

THE WITNESS: It is really hard to say yes or no.

THE COURT: There is no question now, all he did was ask you to look at the document.

THE WITNESS: All right.

Q Have you had an opportunity to look at this document?

A Yes.

Q Is this document entirely in your handwriting?

A Yes.

Q And is this a document that you prepared?

A Yes.

Q Is this a document that you faxed to Dr. Stumacher?

A I believe it was faxed, yes.

Q Is this a document that you faxed to Dr. Stumacher on September the 21st of 2005?

A I believe that's the date, yes.

Q All right.

MR. BATH: May I have this marked, please?

THE COURT: For identification at this point, yes. I think we are up to --

MR. BATH: I think we are up to Defense B.

THE COURT: -- Defense's Exhibit B.

MR. BATH: Maybe we will have defense -- two documents marked.

THE COURT: Mark them as B and C.

(Whereupon, at this time, Defendant's Exhibits B and C were marked for identification, as of this date.)

MR. BATH: Your Honor, I'm going to offer the document marked Defendant's Exhibit B for I.D. into -- I want to move it into evidence.

THE COURT: Miss Bookson?

This is the one she just testified was in her handwriting?

MR. BATH: Yes.

(Handing.)

MS. BOOKSON: Can we approach, your Honor?

THE COURT: Sure.

(Whereupon, the following sidebar conference was held out of the hearing of the jury:)

THE COURT: This sort of impeaches her credibility, it contradicts what she just said.

MS. BOOKSON: Why does it impeach her? It is a form that she says I need filled out.

THE COURT: She just said he didn't help her with the long-term disability form. So over your objection, I'll allow it in.

MR. BATH: To go in?

THE COURT: Yes, she's identified it.

MR. BATH: While we are at it, the next exhibit, too.

(Handing).

THE COURT: She hasn't identified that one, you have to lay the foundation.

MR. BATH: All right.

THE COURT: Again, it directly contradicts her statement on the stand.

MS. BOOKSON: She has to explain it.

THE COURT: Then let her explain it. That is your redirect, but I will allow it in.

MR. BATH: Thank you, your Honor.

(Whereupon, the sidebar conference was concluded and the following took place in open Court:)

THE COURT: Over objection that will be admitted as Defense B.

MS. BOOKSON: Note my exception.

THE COURT: So noted.

(Whereupon, at this time, Defendant's Exhibit B was received in evidence, as of this date.)

Q Miss O'Brien, you've just finished telling this jury that you didn't request Dr. Stumacher to assist in filing a long-term disability claim after you were fired from American Express, true?

A With any disability request, you have to have your doctors certify it.

Q Yes or no?

A There is no yes or no.

THE COURT: That is your answer.

Q Would you just read to the jury what you wrote and faxed to Dr. Stumacher on September 21, 2005?

(Handing.)

Q Can you read that handwriting?

A Sure. Mark -- I'm so sorry -- "Mark, these are the long-term disability forms I need filled out, as my physician --

MR. BATH: Objection.

Q Is that what it says?

A It doesn't matter, it is the truth.

Q Would you just read what it says, Ms. O'Brien?

THE COURT: Miss O'Brien, Miss Bookson will be able to ask you some questions when Mr. Bath sits down. If she believes that there is an explanation for that that is important for the jury to hear, she can ask you to do that.

It will go a lot quicker and be a lot clearer if you just listen to the question and answer it to the best of your ability, and wait until your attorney has another opportunity to ask you questions, if you believe those things are being left out; okay?

THE WITNESS: Yes.

THE COURT: With that -- you added "as my physician;" correct? It is not on the document?

THE WITNESS: Yes. Can I continue?

THE COURT: Sure.

A "I am ready to go inpatient sometime in early October when my long-term disability is approved. And my court custody case is over" -- which was my ex-husband refusing to pay child support.

MR. BATH: Objection, your Honor.

MR. GIBSON: Move to strike.

MR. BATH: Move to strike.

THE COURT: Stricken, the jury is to disregard that

final portion.

I think you read the portion that I believe was relevant to the question. So at this point, Mr. Bath, do you have another question for the witness?

MR. BATH: Yes, thank you.

Q I just want to show you what has been marked as Defendant's Exhibit C for identification. I ask you, does this document contain your handwriting?

A Yes.

Q All right. Is that a document that you faxed to Dr. Stumacher on November 23rd of 2005?

A It looks like it.

Q All right. And this document would have been sent to Dr. Stumacher after you were fired from American Express, but before you got the job at Citigroup; true?

A Yes.

Q And --

MR. BATH: Your Honor, I would like to move this into evidence.

THE COURT: Over objection?

MS. BOOKSON: Over objection.

THE COURT: Over objection it is admitted.

(Whereupon, at this time, Defendant's Exhibit C was received in evidence, as of this date.)

Q Could you just read it, you know, start to finish,

please, to the jury.

A All right. It is dated 11/2305 to Mark Stumacher, his fax. There are two pages, but I only see one here.

It says, "Mark, my long-term disability MetLife --" I have a hard time calling doctors doctor. They call me Maryanne, I'm calling him Mark.

MR. BATH: Your Honor.

THE COURT: Just read --

THE WITNESS: It is misleading.

MR. GIBSON: Objection, Judge. I move to strike.

THE COURT: Sustained, the jury is instructed to disregard it.

How you appear to the jury and how you respond to questions is important in how the jury will construe your answers. So I think at this point if you need a few minutes to composes yourself, I will give you that. But you've got to answer the questions without adding things that were not requested in the question, okay?

THE WITNESS: Yes.

THE COURT: Do you need a few minutes?

THE WITNESS: Yes.

THE COURT: Okay.

Why don't we take another brief recess. Jurors, I think you can stay here.

If you want to go out and have some water or

something and come right back, fine.

THE WITNESS: Thank you.

(Witness excused.)

(Transcript continues on the following page.)

O'Brien - Cross - Bath.

MS. BOOKSON: Your Honor, may we approach?

THE COURT: Sure.

(Sidebar discussion held off the record.)

THE COURT: Ms. O'Brien, are you ready to go back to the stand?

THE WITNESS: Yes, ma'am.

THE COURT: Come on back up. I think we just admitted what was marked C for identification.

MR. BATH: Yes. And I believe my question was Ms. O'Brien read the document.

THE COURT: To the jury.

MR. BATH: To the jury, yes.

THE COURT: Again, Ms. O'Brien, all you're being asked to do right now is read the words on the paper okay.

THE WITNESS: Yes, ma'am.

THE COURT: Then he'll have to follow up with a question if he has one, okay?

THE WITNESS: Okay. Dated November 23, '05, there was two pages to Mark's fax number, his name, then it said, "Mark, my long term disability in (Met Life), needs to be updated. They must receive this info by 12/9/05. See you on the 1st of December. Happy Thanksgiving. Thanks. MO."

Q Thank you, Ms. O'Brien. Now is it a fact that doctor Stumacher continued his efforts at obtaining your disability up

until May 25 of 2006?

MS. BOOKSON: Objection to the form.

THE COURT: Sustained as to form.

Q Well, did you continue to have Dr. Stumacher submit -- withdrawn.

Did you or someone on your behalf continue to have Dr. Stumacher pursue your disability benefits up to until May 25 of 2006?

MS. BOOKSON: Objection.

THE COURT: Sustained as to form.

Q Are you aware whether Dr. Stumacher continued seeking disability benefits on your behalf up until May 25, 2006?

MS. BOOKSON: Same objection.

THE COURT: Sustained, counselor. I think that's just not accurate as to what his role was.

Q Okay Ms. O'Brien, when was the last time that you saw or spoke to Dr. Stumacher?

A I don't remember the exact date. But it was probably about three years ago.

THE COURT: How many?

THE WITNESS: Three years ago.

MR. BATH: That's all I have. Thank you.

THE COURT: All right then we will stop here for the day. And Ms. O'Brien we you will be recalled for redirect at some point in the next -- when we reconvene at

some point. You may step down.

MS. BOOKSON: Thank you, your Honor.

THE COURT: See you Wednesday, members of the jury. Enjoy your long weekend. Stay healthy and safe.

(Jurors exit courtroom).

THE COURT: Before the record's closed for the day, anything any counsel wishes to place on the record?

MR. GIBSON: Judge, there is one thing I had a question about doctor Dam's-O'Connor that before she take the stand that we receive any additional records other than what's been supplied already.

THE COURT: Have you?

MS. BOOKSON: I have been in contact with her and I asked her for any additional records, and she said that there has been more recent treatment, but the records have not been transcribed in her office.

THE COURT: Will she have them?

MS. BOOKSON: I don't think she will even have them, but if I get them I will send them over.

THE COURT: What do you mean by they weren't transcribed, they were dictated?

MS. BOOKSON: They are electronic records and their system has not produced the record yet.

MR. GIBSON: Judge -- I'm sorry, are you finished?

MS. BOOKSON: I asked her.

THE COURT: You should find out if by the time she comes before she takes the stand those records can be here. How much time do you know?

MS. BOOKSON: I think it's just one visit or two visits.

MR. GIBSON: Judge, if I might be heard.

THE COURT: Sure.

MR. GIBSON: We might be able to cut this short. Is she going to testify about this? The easiest solution might be to have her testify to what's in her report.

MS. BOOKSON: The report's not up to date, she's been seeing her since the report.

MR. GIBSON: This is unfair, we're less than a week before she's on the stand.

MS. BOOKSON: It's one or two visits, that's all.

THE COURT: I think the remedy is the records should be here. If they are not here then there will have to be a voir dire about why they weren't produced and some testimony or questioning outside the presence of the jury. I don't know if you know, I have no reason to believe there would be a dramatic change in what's been happening with the witness and the plaintiff that it would in any way prevent you from doing an effective cross based on the information you have. But again until I hear what it is

and whether they are here or not, I'm not going to make any ruling. It's possible that if there is a significant development in that period of time that comes out that it may affect how that testimony goes before the jury if plaintiff is -- if there is information that should have been disclosed to defendant that wasn't until the morning of her examination. But again that's highly unlikely, it's more likely that it's more of the same. But again I don't know so we'll see, we'll wait and see.

MR. GIBSON: Thank you, Judge.

THE COURT: With that anything else? Have a good weekend everybody, enjoy the long holiday.

(Whereupon, the trial is adjourned to Wednesday February 17, 2016.)