# *TRIAL TRANSCRIPT OF DEBRA SABATINI DWYER, M.S., Ph.D.; 2016 Trial Trans. LEXIS 319*

Supreme Court of New York, Special Term, New York County

INDEX NO. 114901/09

February 11, 2016

**Reporter**
2016 Trial Trans. LEXIS 319 *

MARYANNE O'BRIEN, Plaintiff, -against- THE HUDSON VALLEY MEDICAL GROUP, PLLC, AND HUDSON VALLEY HOSPITAL CENTER, Defendants.

**Expert Name:** Alan M Leiken, Ph.D.Debra Sabatini Dwyer, Ph.D., M.S.KRISTEN DAMS-O'CONNOR, Ph.D.

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## Counsel

**[*1]** SHOSHANA T. BOOKSON, ESQ., Attorney for Plaintiff, 570 Lexington Avenue - Suite 1600, New York, New York 10022.

HEIDELL, PITTONI, MURPHY & BACH, LLP, Attorneys for Jack Yee and The Hudson Valley Medical Group, PLLC, 81 Main Street, White Plains, New York 10601, BY: ROBERT B. GIBSON, ESQ.

BRENDAN ALT, ESQ., LAW OFFICES OF PILKINGTON & LEGGETT, Attorneys for The Hudson Valley Hospital Center, 222 Bloomingdale Road, White Plains, New York 10605, BY: JONATHAN A. BATH, ESQ.

## Judges

BEFORE HONORABLE JOAN B. LOBIS, JUSTICE AND A JURY

## Proceedings

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[1]60 Centre Street

[2]New York, New York 10007

[3]

[4]DENISE PATERNOSTER, and

[5]ANGELA TOLAS,

[6]OFFICIAL COURT REPORTERS
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[2](Whereupon, at this time, Plaintiff's Exhibit

[3]27 was received in evidence, **[*2]** as of this date.)

[4]THE COURT: Good morning.

[5]MS. BOOKSON: Good morning.

[6]MR. GIBSON: Good morning.

[7]MR. BATH: Good morning.

[8]MR. ALT: When Miss Bookson is finished with her

[9]direct, can we have ten minutes to set up the projector?

[10]MS. BOOKSON: Who is doing the cross?

[11]MR. ALT: I will.

[12]MS. BOOKSON: I just want it clear that he is the

[13]only one doing the cross.

[14]THE COURT: No, no, there is no switching from the

[15]counsel table, unless Mr. --

[16]MS. BOOKSON: Bath.

[17]MR. BATH: Unless I have questions.

[18]MS. BOOKSON: Right.

[19]THE COURT: We are ready for the jury.

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

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

[22]THE COURT: Off the record.

[23](Discussion held off the record.)

[24]THE COURT: Sorry, members of the jury for the

[25]slight delay. Everyone else may be seated.

[26]Before we call the next witness, we confirmed today
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[2]that we have kind of scheduled witnesses so there will be

[3]someone here on our next trial date, which is Wednesday. We

[4]have a witness Thursday, Friday, **[*3]** the following Monday, the

[5]following Wednesday, finish out that week, and by the 29th,

[6]the case, if everything goes according to plan, should be

[7]ready for you to hear the summations, charge, and if time

[8]permits, you can begin your deliberations. Once you are

[9]deliberating, you are here on Tuesdays.

[10]So that looks like we've cut the time down by at

[11]least three days.

[12]With that, Miss Bookson, your next witness, please.

[13]MS. BOOKSON: Thank you very much, your Honor.

[14]Good morning, your Honor, defense counsel, members

[15]of the jury.

[16]The plaintiff calls Dr. Debra Dwyer.

[17]Dr. D E B R A D W Y E R, called as a witness by and on behalf

[18]of the Plaintiff, having been first duly sworn, testified as

[19]follows:

[20]THE COURT CLERK: State your name for the record,

[21]spelling your last name, and give us your business address.

[22]THE WITNESS: Debra Dwyer, D-E-B-R-A, D-W-Y-E-R, 17

[23]Springbriar Lane, one word, B-R I A-R, in Centereach,

[24]C-E-N-T-E-R-E-A-C-H, New York, 11720.

[25]THE COURT: Dr. Dwyer, you may be seated.

[26]When you are speaking, try to keep your voice up
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[2]because **[*4]** the voices don't carry in this room. We have mikes,

[3]but you have to speak into them or they don't do very well.

[4]But if you get too close, that happens and nobody can hear

[5]you.

[6]With that, Miss Bookson, you may inquire.

[7]MS. BOOKSON: Thank you, your Honor.

[8]DIRECT EXAMINATION.

[9]BY MS. BOOKSON:

[10]Q Good morning, Doctor?

[11]A Good morning.

[12]Q What is your occupation, Dr. Dwyer?

[13]A I'm an economist and a faculty member at Stonybrook

[14]University in the College of Engineering.

[15]Q What is an economist?

[16]A An economist is somebody who studies markets. We study

[17]how societies or economy allocates scarce resources. My area of

[18]expertise is the labor market and the health markets and the

[19]cross over between the two. So I study a lot of issues related

[20]to work and disability.

[21]Q Tell us, please, about your educational background.

[22]A Sure. I received my bachelor's degree from Queens

[23]College in Flushing, New York in English literature and

[24]economics.

[25]I went on to get my master's degree and Ph.D. from the

[26]college -- the School of Industrial and Labor Relations in
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[2] **[*5]** Cornell University in labor economics and health economics.

[3]From there I did a postdoctorate fellow at Syracuse

[4]University in the Center For Research.

[5]Q Approximately when, was it that you completed your

[6]education?

[7]A So I completed my Ph.D. in 1996. It was technically

[8]1996, but I finished the work in 1995, so that overlapped when I

[9]did my postdoctorate at Syracuse.

[10]I was recruited to the Social Security Administration

[11]after one year, so I was only in Syracuse for the year of 1996.

[12]Q Tell us now about your work experience in the field of

[13]economics since your completion of your education.

[14]A Sure. I was recruited to the Social Security

[15]Administration in Washington D.C., where I spent a couple of

[16]years working on disability policy research.

[17]From there I came to Stonybrook University, where I

[18]have been a faculty member for the last 17 years. I'm

[19]affiliated with the Department of Economics, with Health

[20]Sciences and with the College of Engineering.

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

[22]A Yes, I do. So, during my career I have taught everyone

[23] **[*6]** from high school students to Ph.D. students. I was the

[24]chairperson of the Department of Health Care Policy and

[25]Management, and I currently teach economics and public policy to

[26]Ph.D. students.

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[2]Q Have you published in the field of economics?

[3]A Yes. Over the courses of my career I've published over

[4]a dozen articles and peer review journals, some in top journals

[5]like the Journal of Health Economics and the Review of Economics

[6]and Statistics.

[7]Q And have you also been invited to present at

[8]conferences or groups regarding economics?

[9]A Yes, several conferences, at least one a year over the

[10]course of my career. So I have presented at the Society of

[11]Labor Economics, I've presented before disability policy groups,

[12]various, and at the Eastern Economics Association later this

[13]month.

[14]Q In your present position at Stonybrook, give us an idea

[15]of what you do day-to-day?

[16]A Sure. So, a faculty member doesn't just teach. I

[17]teach my courses, but I also serve on committees. So I'm a

[18]member of the University Senate. I was elected to the

[19]University Senate, where I also sit on **[*7]** the finance and budget

[20]committee for the university.

[21]I also do research. A lot of my time is spent doing

[22]research and I collaborate with M.D.'s and I collaborate with

[23]social scientists and political scientists.

[24]Q What type of research have you done?

[25]A So my research falls into two main categories. One is

[26]on disability policies. So I do research on work life, work
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[2]life expectancies, disability policy, Social Security policy,

[3]and retirement. So anything related to Social Security.

[4]And, then the other one is I have an interest in young

[5]people. And so I study barriers to success among young people,

[6]particularly mental health, addiction; those sorts of issues.

[7]Q Okay. And do you also consult with attorneys who ask

[8]you regarding issues of economic loss?

[9]A Yes.

[10]Q And have you testified in court?

[11]A Yes.

[12]Q And have you ever testified for me?

[13]A No.

[14]Q Okay. Since what year have you been testifying in

[15]court for attorneys?

[16]A So I began this work back in 2012.

[17]Q Okay. And are you being compensated for your time in

[18]court **[*8]** today?

[19]A Yes, I am.

[20]Q And what is your compensation?

[21]A I charge a flat rate of $ 4,000 for preparation and

[22]being here today.

[23]Q Did there come a time that you were asked to prepare an

[24]economic loss analysis with regard to the plaintiff Maryanne

[25]O'Brien?

[26]A Yes.
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[2]Q Approximately, when were you contacted to do that?

[3]A December of 2015.

[4]Q And did you prepare an analysis and report?

[5]A Yes.

[6]Q And did your analysis include her wage and -- her wage

[7]loss and loss of earning capacity?

[8]A Yes.

[9]Q And did it also include an analysis of future medical

[10]costs?

[11]A Yes.

[12]Q Now, are you here in court today to tell the Court and

[13]jury your conclusions regarding the economic loss sustained by

[14]depend Maryanne O'Brien?

[15]A Yes, I am.

[16]Q What materials did you review to do your analysis?

[17]A So in order to be able to make these kinds of

[18]projections, I needed to know what her past earnings capacity

[19]had been. So I need the W-2's.

[20]Typically, what I want is the last full year of work.

[21]So there were the **[*9]** W-2's. There was a report by a Dr.

[22]Dans-O'Connor, neuropsychologist; that is what I used as the

[23]basis for the future medical needs.

[24]I'm not a medical doctor, so I don't have the expertise

[25]to be able to predict what her future medical needs would be, so

[26]there was that report.

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[2]I also had her offer letter from Citibank and her

[3]application materials from Citibank, and I also had her resume

[4]so I was able to look over her educational experience and work

[5]life.

[6]Q Did you use a start date for economic loss for Maryanne

[7]O'Brien?

[8]A Yes, I did.

[9]Q What was that?

[10]A I began her loss in the year 2008, started the year

[11]2008, January.

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

[13]A Yes, it was April 2007.

[14]Q Okay. So if the last date she worked was April of

[15]2007, why did you use 2008 as her start date?

[16]MR. BATH: Objection.

[17]THE COURT: Overruled.

[18]A So I was just being conservative and thought I would

[19]start with the first full year.

[20]Q Are you familiar with a determine called the wage

[21]growth rate?

[22]A Yes.

[23] **[*10]** Q What does that mean?

[24]A So, wage growth rate is the average rate at which wages

[25]grow over time. Our wages don't stay still, hopefully, and they

[26]haven't -- they don't stay still, they haven't historically.
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[2]So what we do as labor economists, if we want to be

[3]able to predict what somebody is going to earn, for example, we

[4]do returns on investments. So what we do is take the average of

[5]what the growth rates were and we project into the future using

[6]that.

[7]So for the growth rate in this case, I took the average

[8]based on the last 20 years using are Bureau of Labor Statistics.

[9]So that is federal statistics. So on average, wages have risen

[10]by three percent per year on average over the last 20 years.

[11]Q Okay. And by using that term, is that meant to cover

[12]all the ups and downs with regard to the growth of wages when

[13]there are good periods, bad periods; things like that?

[14]A Yes. So that's where my expertise comes in as an

[15]economist. What I do is I look over the past -- I have to make

[16]a decision about the right amount of time that would capture

[17]what I referred to as a businesses **[*11]** cycle.

[18]So we have periods of peaks and troughs in our prices

[19]and our wages. So if I took just one year, say, I took last

[20]year when we are coming out of a recession. Had I used that

[21]year, it would be a very low rate and that wouldn't be fair for

[22]projecting over the next 15 years or 20 years, given it was an

[23]outlier year.

[24]So what we do is we capture a set of peaks and troughs,

[25]a business cycle, and we smooth it out. So rather than six

[26]percent or one percent, we use the average, which is three
1261

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[2]percent.

[3]Q Okay. Then this is not a personal rate that you have

[4]applied, this is something that you have taken from a federal

[5]agency, the Bureau of Labor Statistics?

[6]A It is widely accepted among labor economists.

[7]Q Okay. So tell us the method that you use to calculate

[8]past economic loss?

[9]A Okay. So what I do is I take the last full year of

[10]earnings. The reason I do that is that represents her potential

[11]earnings, her earnings capacity.

[12]I don't typically go back farther than that because

[13]people's wages rises over time. The trajectory tends to be

[14]upward sloping **[*12]** and flattens out over life just a bit. So,

[15]typically, wages don't go down.

[16]So what I want is the last full year, since that

[17]represents her capacity of what she is able to earn in the labor

[18]market.

[19]The offering letter that she received from Citibank

[20]said that her starting salary would be $ 90,000. According to

[21]her W-2's, her starting salary was a little bit higher than

[22]that.

[23]MR. BATH: Objection.

[24]THE COURT: Sustained, is that document in

[25]evidence?

[26]MS. BOOKSON: It is.
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[2]THE COURT: Okay, then I'll allow her to answer the

[3]question.

[4]THE COURT: Go ahead.

[5]Q Go ahead.

[6]A So if you calculate what her actual earnings were at

[7]Citibank, it was slightly higher than 90,000. They do explain

[8]in the offer letter that they provide additional compensation

[9]based on merit and how well they are doing.

[10]So I used the 90,000. I just took the flat 90,000 rate

[11]that was in the offer letter as her earnings capacity.

[12]In 2008 I assigned her a loss of $ 90,000, because she

[13]was not able to work in the year 2008.

[14]Moving to 2009 --

[15]Q Wait. **[*13]** Stop. Let me ask you the next question.

[16]A All right.

[17]Q After the year 2008, did you then continue to calculate

[18]her economic loss from 2009 up until the present time?

[19]A I did.

[20]Q And what would that be the past economic loss, all

[21]those years?

[22]A Yes.

[23]MR. BATH: Objection.

[24]THE COURT: It's leading, but I think it is

[25]preliminary, so I'll allow it.

[26]Q Okay. So if I asked you to use this pad on the board
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[2]and come down and write for us every year the amount of economic

[3]loss -- oh -- for every year and explain how you calculated it.

[4]MS. BOOKSON: May I, your Honor?

[5]THE COURT: Yes.

[6]MS. BOOKSON: Thank you.

[7]MR. GIBSON: May we, Judge?

[8]THE COURT: You may.

[9](Witness gets down from the witness stand.)

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

[11]THE COURT: Yes.

[12]MR. BATH: Thank you.

[13](So done.)

[14]MR. GIBSON: Pardon me.

[15]MS. BOOKSON: Sure.

[16]MR. GIBSON: Sorry.

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

[18]A So what I'm writing down is her past earnings loss.

[19]And we're **[*14]** starting with 2008, because she stopped working in

[20]2007. So, again, the first full year of loss is 2008, and I

[21]used a base salary of $ 90,000.

[22]Q And the next year?

[23]A In 2009, I take the $ 90,000 and I grow it by three

[24]percent. That is the assumption we make based on what we

[25]believe would have happened with real wages, actual wages over

[26]time.
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[1]

[2]If you grow that up by three percent, you get $ 92,700.

[3]So what I'm saying is she would have gotten a raise and her

[4]income would have been $ 92,700 in 2009.

[5]Q Continue.

[6]A The next year would be 2010. So I'm going to do

[7]exactly the same thing, I'm not going to repeat it every time;

[8]I'll grow it by three percent and we get $ 95,481.

[9]2011, we get $ 98,345.

[10]2012, her salary would have reached $ 101,296.

[11]2013, $ 1,404,335.

[12]2014, $ 107,465.

[13]2015, $ 110,689.

[14]Q Okay. Now, what is your opinion, to a reasonable

[15]degree of economic certainty, of the total amount of past

[16]economic loss for Maryanne O'Brien in this case? And you can

[17]write the number here on the far left so you don't have to bend

[18] **[*15]** all the way down.

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

[20]MR. ALT: Objection, your Honor.

[21]THE COURT: Overruled.

[22]A So the total is just summing all of these numbers, the

[23]past earnings lost from the year 2008 until the present, would

[24]total $ 800,310 -- I will circle that -- for the total.

[25]Q Okay. Now, did you also calculate the future economic

[26]loss for Maryanne O'Brien?

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[2]A Yes, I did.

[3]Q How did you calculate the economic loss?

[4]A So, actually let me rephrase that. I didn't actually

[5]calculate it, what I do is I'm going to teach you how to do it.

[6]So, what I do is I take --

[7]MR. BATH: Objection.

[8]THE COURT: Overruled, go ahead.

[9]THE WITNESS: Okay.

[10]A So in a case like this, what I do is I give you the

[11]information based on my expert opinion to calculate the future

[12]earnings loss.

[13]You start off the same way I did. What is the starting

[14]salary for 2016? I take the $ 110,689 from to '15, grow it by

[15]three percent, and we're going to say that her yearly loss then

[16]is based on that salary, beginning in 2016, of $ 114,009. That

[17] **[*16]** would be her salary, starting off from now into the future.

[18]What I'm also going to give you is the number of years

[19]that I believe she would have continued to work. So in order to

[20]calculate future earnings, I have to assign a retirement age.

[21]The normal age of retirement under the Social Security

[22]system for somebody born the year that Miss O'Brien was born is

[23]66 years and 8 months. So it has been slowly rising from 65.

[24]So, the normal age of retirement represents the age at

[25]which she collects her full Social Security pension without

[26]penalty. In this case, I believe that was a very reasonable age
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[2]to assume she would retire, and that was the age I used.

[3]Q Could you just stop for a moment?

[4]A Sure.

[5]Q Why did you believe that to be a reasonable age at

[6]which she will retire?

[7]A I follow Social Security legislation. I start with

[8]that and look at the normal age. Unless I have reason to

[9]believe that she would be different than taking the full

[10]benefit. For example, if I had reason she might be someone who

[11]takes the benefit under the early age of retirement of 62, I

[12] **[*17]** might do that.

[13]In this particular case, I have reason to believe that

[14]she is somebody who would have worked her full work life up to

[15]the age of 66 and 8 months, and I believe that is very

[16]reasonable.

[17]Q Why do you believe in her particular case she would

[18]have worked up until the full age of 66 and 8 months?

[19]A So I looked at the Bureau of Labor Statistics work life

[20]expectancy tables. A woman with a college degree, who is

[21]currently working, who had a very strong labor force attachment,

[22]meaning 22 years of full-time work, who is on a career track in

[23]the financial sector, is someone who works longer than average.

[24]So if you look at the work life expectancy, I believe,

[25]it would have been around 66 for someone in her category. She

[26]fell in the higher end, even higher than 66. So it is my
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[2]professional opinion that this is a woman who would have worked

[3]at least until the age of 66.

[4]Q Okay. Then did you use an inflation rate going forward

[5]into the future with that number?

[6]A Yes.

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

[8]A So, again, we're going **[*18]** to do the same thing we did with

[9]the past. I have to project into the future.

[10]So, we project for 9.4 years, because that will bring

[11]her to the age of 66 and 8 months. So you have to do this for

[12]9.4 years and you grow its by the three percent, the same growth

[13]rate that I have been using.

[14]Q And using those factors; the amount of yearly loss, the

[15]number of years she would be expected to work and the growth

[16]rate of three percent, that will lead to what the future loss

[17]number would be; correct?

[18]A Correct.

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

[20]A Okay.

[21](Witness complies.)

[22]Q Thanks.

[23]MR. BATH: May we take the easel down or are we

[24]using it some more?

[25]MS. BOOKSON: Maybe we'll just leave it.

[26]MR. BATH: It is just blocking the jury.
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[2]MS. BOOKSON: I'll move it then.

[3](So done.)

[4]Q Now, with regards to future, in terms of health care

[5]for Maryanne O'Brien, did you make an analysis of future health

[6]care?

[7]A Yes.

[8]Q And tell us again what method you used to calculate the

[9]future health care.

[10]A **[*19]** Okay. So, again, in a case like this I don't actually

[11]come up with a number for the cost of future health care. What

[12]I do is I'm going to provide you with the information to be able

[13]to produce that calculation, that total number.

[14]I'm not a medical doctor, I said that earlier. So what

[15]I do is I take the categories of medical services that Miss

[16]O'Brien is expected to need over the remainder of her life --

[17]and that comes from medical experts, from physicians, the

[18]neuropsychologist or Dr. Greenwald.

[19]I take those categories, I leave it for the experts to

[20]decide the quantity and quality of those services, and I provide

[21]you with the inflation rates that are relevant for projecting

[22]into the future in those categories.

[23]An inflation rate is very similar to a wage growth

[24]rate, but instead of wages and labor markets, we are looking at

[25]prices in the health sector. So, we will look at how prices

[26]rise over time.

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[2]Just like all prices rise over time, the price of

[3]medical services rises. So the same psychologist appointment

[4]today, the same exact service is going to cost more ten years

[5]from **[*20]** now. So that's what I'm taking into account.

[6]Q And what services, what categories of services did you

[7]take into account for this individual, for Maryanne O'Brien?

[8]A So, I had taken into account both cognitive and

[9]physical therapy based on the expert opinion I received.

[10]Psychologist visits, rehabilitation programs, primary care

[11]physician services.

[12]Q All right. And did you arrive at an inflation rate for

[13]those services?

[14]A I did.

[15]Q What inflation rate did you use?

[16]A So it varies by the sub sectors within the health

[17]sector. Overall, medical prices have been rising much faster

[18]than the general rate of inflation. You've probably heard that

[19]before. They have been rising on average over the last 25 years

[20]at a rate of five percent.

[21]What I use is -- they have the broad category at the

[22]Bureau of Labor Statistics and then they have subcategories. So

[23]I match it to the subcategories, the services that she will

[24]require.

[25]None of them have their prices risen as fast as five

[26]percent. So for the cognitive therapy, physical therapy,
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[1]

[2]psychology visits and rehabilitation **[*21]** programs, I recommend a

[3]rate of three percent growth, which is more in line with the

[4]general rate of inflation.

[5]The only one that is a little bit higher is primary

[6]care physician services. The average inflation rate has been

[7]four percent over the last 25 years for primary care physician

[8]services.

[9]Q Now, again, taking those percentages of inflation rate,

[10]3 to 4 percent, that may not even, in fact, keep pace in the

[11]future with the cost of future health care, correct?

[12]MR. ALT: Objection.

[13]MR. BATH: Objection.

[14]THE COURT: Sustained.

[15]Q Do we know if that inflation rate will keep pace with

[16]what the cost of future health care will be?

[17]MR. BATH: Objection.

[18]MR. ALT: Objection.

[19]THE COURT: Sustained.

[20]Q Did you also use a life expectancy --

[21]A Yes, I did.

[22]Q -- for this particular individual?

[23]A Yes, we needed an ending point. So she is going to

[24]require medical services up until she dies. And we use data

[25]from the National Center For Health Statistics to predict what

[26]her expected date of death would be. And we use, for females
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[2] **[*22]** born in the year she was born, which is 1958, the average life

[3]expectancy for a woman of her age is 25.3 years more, or the age

[4]82.6.

[5]Q Is that, again, a statistical life expectancy?

[6]A Yes.

[7]Q Okay. So is that the period of time, her statistical

[8]life expectancy, that the future health care costs would be

[9]applied to?

[10]MR. BATH: Objection.

[11]THE COURT: Sustained.

[12]MS. BOOKSON: Is that as to form?

[13]THE COURT: Yes.

[14]MS. BOOKSON: Okay.

[15]Q For what period of time would the future health care

[16]costs be intended for?

[17]A Again, I'm not a medical doctor, so I can't say the

[18]quantity, frequency of these services. I'm taking the

[19]recommendation of a medical doctor that she'll require services

[20]for the remainder of her life.

[21]So those services, the value of those services would

[22]grow at a rate, as I prescribed, 3 to 4 percent over the

[23]remainder of her life until the year 2041, when she is expected

[24]to reach the age of 82.6, will pass away and will no longer need

[25]medical services.

[26]Q And the economic loss of both past income loss, future
1272

[1]

[2] **[*23]** income loss and the categories of future health care, is that

[3]basically the analysis that you conducted for Maryanne O'Brien?

[4]MR. BATH: Objection.

[5]MR. ALT: Objection.

[6]THE COURT: Overruled.

[7]A Yes.

[8]MS. BOOKSON: Thank you, I have no further

[9]questions.

[10]THE COURT: Cross examination or do you want to

[11]take a break?

[12]MR. ALT: Yes, your Honor.

[13]THE COURT: We will take a 5 or 10-minute break for

[14]the switch over. Then you will come back in.

[15]COURT OFFICER: All rise, jury exiting.

[16](Whereupon, the jury exits the courtroom.)

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

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

[19]THE WITNESS: Yes.

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

[21](Handing.)

[22](Break taken.)

[23](Transcript continues on the following page.)

[24]

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1273

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[2](Jurors enter courtroom.)

[3]THE COURT: Welcome back, members of the jury.

[4]Everyone else may be seated.

[5]Mr. Alt, on behalf of Hudson Valley Medical

[6]Group, you may inquire.

[7]MR. ALT: Thank you, your Honor. Good morning,

[8] **[*24]** ladies and gentlemen of the jury. Good morning.

[9]CROSS-EXAMINATION

[10]BY MR. ALT:

[11]Q Ms. Dwyer, good morning.

[12]A Good morning.

[13]Q We've never met before, correct?

[14]A Correct.

[15]Q Okay. I just want to introduce myself. My name is

[16]Brendan Alt. I'm one of the attorneys representing the Hudson

[17]Valley Medical Group, okay?

[18]A Nice to meet you.

[19]Q Nice to meet you as well.

[20]You've testified that you have been in court before to

[21]do testimony such as you're doing today, right?

[22]A Correct.

[23]Q Before we begin, I want to give you a general

[24]instruction. If you can answer my questions with a "yes" or

[25]"no," please do so, and if you're unable to do so, tell me that

[26]you can't answer the question with a "yes" or "no," okay?
1274

[1]

[2]A Okay.

[3]Q You testified earlier this morning that, in your

[4]opinion, Ms. O'Brien's anticipated retirement age would be

[5]approximately 66 and two-thirds, right?

[6]A Yes.

[7]Q Okay.

[8]And that number is based on Social Security's average

[9]retirement age for a woman born in the year that she was born,

[10]right? **[*25]**

[11]A Not average.

[12]Q Well, that's the number that you got from Social

[13]Security, right?

[14]A Correct.

[15]Q Okay.

[16]Now, that number, 66 and two-thirds, which comes from

[17]Social Security, is based on the general population in the

[18]United States, right?

[19]A It's actually legislation.

[20]Q Yes or no. Is it a yes or no or you can't answer that

[21]question.

[22]A No.

[23]Q Okay.

[24]It's not based on the general population?

[25]A No.

[26]Q It's based on a group of people, though, correct?
1275

[1]

[2]A I guess I'm not clear on the question.

[3]Q Okay.

[4]The way Social Security derives the average retirement

[5]number of 66 and two-thirds, that's based on statistics from --

[6]or data collected from a group of people, right?

[7]A No.

[8]Q No.

[9]How is that number calculated from Social Security?

[10]A It is -- I use the number based on legislation, Social

[11]Security policy. So under the defined benefit plan, the normal

[12]age of retirement, based on the law, is 66 and eight months for

[13]someone who's born in 1958. So I'm using the age under the

[14] **[*26]** law, not based on federal statistics.

[15]Q Okay.

[16]So that 66 and two-thirds, you would agree with me

[17]that some people retire after that, right?

[18]A Correct.

[19]Q Some people also retire before that, right?

[20]A Correct.

[21]Q Okay.

[22]Now, did you review any of the trial testimony from

[23]this case before you came to court here?

[24]A I did not.

[25]Q Okay.

[26]Would you agree with me that if an individual
1276

[1]

[2]testified under oath what his or hers expected retirement age

[3]would be, that that would be highly relevant to analysis of an

[4]expected retirement age? Yes or no.

[5]A Yes.

[6]Q That would be.

[7]I have up on the screen trial testimony from just last

[8]Thursday. This is Ms. O'Brien's testimony. I'm going to read

[9]a portion of the testimony to you. Line 19:

[10]"Question: In your plans for the future

[11]before April of 2007, did you have a plan about

[12]how long you expected or wished to continue

[13]working?

[14]"Answer: I assumed it was between 60 to 65

[15]depending how my money grew in the 401(k) and

[16]when my house was paid off."

[17]Did I read **[*27]** that correctly?

[18]A Yes, you did.

[19]Q Okay.

[20]So you would agree with me that, based on

[21]Ms. O'Brien's own testimony, she could have retired at age 60,

[22]right?

[23]MS. BOOKSON: Objection.

[24]THE COURT: Overruled.

[25]A I don't know whether she could have.

[26]Q Yes or no. Is that up on the screen that she could
1277

[1]

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

[3]A No. That's not what's on the screen.

[4]Q Well, there's a range there on the screen, and

[5]Ms. O'Brien testified that she assumed that she could have

[6]retired from 60 to 65, right?

[7]MS. BOOKSON: Objection.

[8]THE COURT: Counsel, rephrase your question.

[9]MR. ALT: Okay.

[10]Q In Ms. O'Brien's plans, in her own words, before April

[11]of 2007 she assumed her retirement age was between 60 and 65,

[12]right?

[13]A Yes.

[14]Q Okay.

[15]So you would agree with me that 60 is about seven

[16]years below your 66 and two-thirds estimation, right?

[17]A Yes.

[18]Q Okay.

[19]Now, if we take the average of 60 and 65, we'd get 62

[20]and a half, right?

[21]A Yes.

[22]Q You don't need **[*28]** to be an economist to do that math,

[23]right?

[24]A I hope not.

[25]Q Would you also agree with me that 62 and a half is

[26]about five years below your 66 and two-thirds estimation,
1278

[1]

[2]right?

[3]A Yes.

[4]Q Ms. Dwyer, you've published articles on the connection

[5]between health and work, right?

[6]A Yes.

[7]Q Okay.

[8]And you previously worked in Washington, DC, doing

[9]some research on this topic, right?

[10]A Yes.

[11]Q Okay.

[12]Would you agree with me that an individual has to be

[13]physically capable of getting up and going to work every day in

[14]order to work?

[15]A Yes.

[16]Q Okay.

[17]Would you agree with me as a general concept that

[18]alcoholism can have a negative impact on one's health?

[19]A It can, yes.

[20]Q And it's generally known that alcoholism can cause a

[21]number of different health problems, right?

[22]A Correct.

[23]Q Alcoholism can cause damage to the liver, right?

[24]A Yes.

[25]Q It can lead to heart damage, right?

[26]A Yes.
1279

[1]

[2]Q It can lead to damage to the pancreas, correct?

[3]A Yes.

[4] **[*29]** Q It can also lead to damage of the brain, right?

[5]A I would imagine so, yes.

[6]Q I want you to assume that last week we heard testimony

[7]from plaintiff's expert neuro-radiologist who said that alcohol

[8]is, quote, "toxic to the brain."

[9]MS. BOOKSON: Objection.

[10]THE COURT: Sustained as to form.

[11]Q Isn't it true, Ms. Dwyer, that alcoholism can lead to

[12]certain medical problems?

[13]MS. BOOKSON: Objection.

[14]THE COURT: I'll allow it.

[15]A Yes.

[16]Q Ms. Dwyer, you didn't review Ms. O'Brien's deposition

[17]testimony, did you?

[18]A No, I did not.

[19]Q Did you ask for it?

[20]A No, I did not.

[21]Q So you didn't feel it was relevant to your analysis in

[22]this case at all?

[23]A No.

[24]Q Okay.

[25]You reviewed a number of materials, some of those

[26]materials included Dr. Dams-O'Connor's neuro-psychological
1280

[1]

[2]evaluation, right?

[3]A Right.

[4]Q Based on your review of all the materials that were

[5]given by Ms. Bookson, you know that Ms. O'Brien has a

[6]longstanding history of alcoholism, right?

[7]A I don't know that.

[8]Q Yes **[*30]** or no. Do you know that she has a history of

[9]alcoholism?

[10]A Yes.

[11]MS. BOOKSON: Your Honor, can we let the witness

[12]finish an answer instead of cutting it off?

[13]THE COURT: Yes.

[14]MS. BOOKSON: Please.

[15]Q Ms. Dwyer --

[16]MS. BOOKSON: Yes?

[17]MR. ALT: Yes, Ms. Bookson.

[18]Q Ms. Dwyer, you know that Ms. O'Brien was, in fact,

[19]fired from her job at American Express in 2005, right?

[20]A I did not know she was fired.

[21]Q Did you know -- or you know she was fired because she

[22]was drinking on the job, right?

[23]MS. BOOKSON: Objection.

[24]THE COURT: Sustained as to form.

[25]Q Do you know that Ms. O'Brien was fired from American

[26]Express in 2005 due to alcoholism?
1281

[1]

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

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

[4]A Right.

[5]Q Okay.

[6]Do you know that Ms. O'Brien attended at least eight

[7]inpatient alcohol detoxifications between 2002 and the time of

[8]her deposition in this case? Are you aware of that as you sit

[9]here today?

[10]A Could you repeat the question?

[11]Q Do you **[*31]** know, as you sit here today, that Ms. O'Brien

[12]testified that she was in inpatient alcohol detoxification at

[13]least eight times between 2002 and the time of her deposition?

[14]Do you know that?

[15]A No.

[16]Q Do you know that Ms. O'Brien missed six weeks from

[17]work in 1999 due to an alcohol problem?

[18]MS. BOOKSON: Objection.

[19]THE COURT: Sustained.

[20]Q Based on your review of the materials provided to you

[21]by Ms. Bookson, do you know that Ms. O'Brien missed six weeks

[22]of work in 1999 due to alcoholism?

[23]MS. BOOKSON: Objection.

[24]THE COURT: Sustained.

[25]Q Ms. Dwyer, would you agree with me that alcohol was a

[26]problem for Ms. O'Brien in her work history?
1282

[1]

[2]A No.

[3]Q So the fact that she was fired from her job due to

[4]alcoholism, that did not result in a problem for her?

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

[6]Q What record are you referring to?

[7]A Her work history. So she had a lapse, and I

[8]understand it's because of alcoholism and that is in the

[9]record. What I observe is someone who had 22 years of

[10]experience as a career -- on a career **[*32]** track.

[11]Q Ms. Dwyer, what I am asking you --

[12]MS. BOOKSON: Excuse me, your Honor.

[13]THE COURT: Mr. Alt, she needs to finish her

[14]answer, which I will allow her to do.

[15]A So she returns to work after this lapse that has to do

[16]with the medical issue, alcoholism, and she gets a vice

[17]president job. So she gets a pretty high-ranking position.

[18]I'm a labor economist. I'm looking to see what is her earnings

[19]capacity despite her limitations.

[20]Q Do you agree with me that alcoholism caused a problem

[21]between 2005 and 2006 in Ms. O'Brien's employment history? Yes

[22]or no.

[23]MS. BOOKSON: Objection.

[24]THE COURT: Sustained.

[25]Next question, Counsel.

[26]Q Ms. Dwyer, are you aware -- are you familiar with the
1283

[1]

[2]National Bureau for Economic Research?

[3]A Yes.

[4]Q Okay.

[5]Are you aware that there is research that concludes

[6]that alcoholism leads to unemployment?

[7]MS. BOOKSON: Objection.

[8]THE COURT: Sustained as to form.

[9]Q Did you consider Ms. O'Brien's alcohol history when

[10]you came to the conclusion that she would work until 66 and

[11]two-thirds? **[*33]**

[12]A Yes.

[13]Q Ms. Dwyer, you would agree with me that there are a

[14]number of future uncertainties that can happen in one's life

[15]over the course of their work career that may render them

[16]incapacitated from working, right?

[17]A Yes.

[18]Q Death can occur at any given time, right?

[19]A Yes.

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

[21]A Correct.

[22]Q It's your testimony today that Ms. O'Brien would have

[23]worked for 17.4 consecutive years from 2008 all the way up into

[24]the future to 66, right?

[25]A Yes.

[26]Q With a growth rate of 3 percent applied to that,
1284

[1]

[2]right?

[3]A Yes.

[4]Q Ms. Dwyer, did you review any of Ms. O'Brien's recent

[5]medical records?

[6]A No.

[7]Q Did you review any of her medical records at all in

[8]this case?

[9]A I'm not an MD, so no.

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

[11]MS. BOOKSON: Asked and answered.

[12]THE COURT: Well, I wasn't clear about her

[13]answer.

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

[15]Q Would you agree with me that if someone was

[16]hospitalized **[*34]** for a period of time, they wouldn't be able to go

[17]to work, right?

[18]A Correct.

[19]Q So you're unaware of any hospitalizations that

[20]Ms. O'Brien had between 2008 and the present, right?

[21]A Correct.

[22]Q Ms. Dwyer, I want you to go back to September 2007,

[23]okay?

[24]A Okay.

[25]Q At that point Ms. O'Brien was working for Citigroup,

[26]right?
1285

[1]

[2]A September, you said?

[3]Q September of 2007, right?

[4]A Okay.

[5]Q In September of 2007, Ms. O'Brien was working at

[6]Citigroup. She attempted to go back to work at Citigroup,

[7]right?

[8]A Yes.

[9]Q Would you agree with me that in the end of 2007 and

[10]continuing into 2009, the United States went into an economic

[11]recession, right?

[12]A Yes, it did.

[13]Q And Citigroup, in fact, started laying off employees

[14]at the end of 2007, right?

[15]MS. BOOKSON: Objection.

[16]THE COURT: Overruled.

[17]A There were a lot of layoffs, yes.

[18]Q But Citigroup, do you know that they started laying

[19]off employees in 2007 due to the economic recession?

[20]A Yes, the banks.

[21]Q In 2008, Citigroup, **[*35]** in fact, laid off 73,000

[22]employment, isn't that right?

[23]A I don't know the exact number.

[24]Q Do you have any basis to disagree with my

[25]representation?

[26]A No.
1286

[1]

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

[3]I'm going to read another page from the trial

[4]testimony here last week. Ms. O'Brien was asked the following

[5]question:

[6]"Question: What was different about your

[7]job duties when you came back to work after Labor

[8]Day in 2007?

[9]"Answer: There was some layoffs going on

[10]into the department and I was being put in charge

[11]of credit cards on the front side of the

[12]business, you know, the solicitations that go out

[13]in the mail, making sure that the type was right,

[14]there was no claim that should not have been

[15]paid, it was the right trademark, and the letter

[16]had to be a certain way, and I never did that

[17]before, you know, with the application. I was

[18]always on pretty much the back end."

[19]Did I read that correctly?

[20]A For the most part, yes.

[21]Q Would you agree with me that Ms. O'Brien testified

[22]that there was some layoffs going **[*36]** on in her department when she

[23]returned to work in 2007?

[24]A Yes.

[25]THE COURT: Counsel, if you're standing up,

[26]you're not speaking.
1287

[1]

[2]MS. BOOKSON: I'm sorry. I'm sorry. I was

[3]waiting. I thought there was a question coming and I was

[4]waiting for that. I'm sorry. Go ahead.

[5]Q Ms. Dwyer, do you know that Citigroup laid off more

[6]employees in 2008 other than any other companies in the entire

[7]United States?

[8]MS. BOOKSON: Objection.

[9]THE COURT: Sustained.

[10]Q Ms. Dwyer, the unemployment rate at the end of 2007,

[11]do you have an idea of what the unemployment rate in the United

[12]States was at that time?

[13]A At the end of 2007?

[14]Q At the end of 2007.

[15]A I'm going to say it was about seven, but I don't

[16]remember.

[17]Q And by October 2009, the nation's unemployment rate

[18]had risen to over 10 percent, isn't that true?

[19]A Yes.

[20]Q Okay.

[21]And in the past 50 years, only one point in this

[22]nation's history had the unemployment rate risen to over

[23]10 percent, isn't that true?

[24]MS. BOOKSON: Objection.

[25]THE COURT: Overruled.

[26] **[*37]** A Yes.
1288

[1]

[2]Q And that was back in 1982, 1983, right?

[3]A Yes.

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

[5]MS. BOOKSON: Objection.

[6]THE COURT: Sustained.

[7]Q Ms. Dwyer, are you familiar with a general business

[8]concept in terms of layoffs called "last in, first out"? Have

[9]you heard of that before?

[10]A Yes.

[11]Q And that generally means that when a company starts

[12]laying off employees, they lay off the last employee that came

[13]in first, right?

[14]A Correct.

[15]Q Thank you.

[16]So despite the economic recession, despite the layoffs

[17]at Citigroup, despite the unemployment rate rising to over 10

[18]percent in 2009, it's your testimony that Ms. O'Brien would

[19]have worked for almost 17 consecutive years up until she was 66

[20]years old with a positive growth rate of 3 percent. That's

[21]your testimony here today?

[22]MS. BOOKSON: Objection.

[23]THE COURT: Overruled.

[24]A Yes. So can I explain?

[25]Q No. Thank you, Ms. Dwyer.

[26]Ms. Dwyer, you're being compensated for your time
1289

[1]

[2]today, right?

[3]A Correct.

[4] **[*38]** Q And you're getting paid $ 4,000 to be here today?

[5]A Correct.

[6]Q And you also prepared a report in preparation for

[7]today, correct?

[8]A Yes.

[9]Q Okay.

[10]And did you charge for that report as well?

[11]A With my partner, yes.

[12]Q How much did you charge for that report?

[13]A $ 3,200.

[14]Q $ 3,200, okay.

[15]So, again, to make the numbers easy, let's say

[16]approximately $ 7,000, right?

[17]A Correct.

[18]Q It's your preference to come to court and testify once

[19]per week, right?

[20]A No.

[21]Q I'm going to read to you a portion of your testimony

[22]from a trial entitled Carol Howard, C-A-R-O-L, H-O-W-A-R-D,

[23]versus Long Island Jewish Hospital. This was venued in Queens

[24]County, State of New York, before the Honorable Peter

[25]O'Donoghue.

[26]THE COURT: Can you give me the date of that
1290

[1]

[2]transcript, Counselor?

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

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

[5]"Question: And your intent is for this to

[6]be more work going forward?

[7]"Answer: No. We have an agreement that I,

[8]given **[*39]** I am the chair of the department and my

[9]primary responsibilities are the university, I

[10]wouldn't do more than a couple a week, preferably

[11]one a week.

[12]"Question: You prefer one a week?

[13]"Answer: One trial a week. Sorry.

[14]"Question: One trial a week, 52 a year?

[15]"Answer: Yes."

[16]Do you recall giving that testimony in 2013,

[17]Ms. Dwyer?

[18]A I believe it occurred, yes.

[19]Q So was it your preference at that time to give trial

[20]testimony once per week?

[21]A I believe it was out of context.

[22]Q But that's what you said. You prefer one per week,

[23]right?

[24]A Yes.

[25]Q Okay.

[26]So you agree there's 52 weeks in a year?
1291

[1]

[2]A Correct.

[3]Q If you testified that your preference is once per

[4]week, that would be -- let's say, to make numbers easy -- 50

[5]times in a year, okay? Do you agree with me?

[6]A Yes.

[7]MS. BOOKSON: Objection to the form.

[8]THE COURT: Overruled.

[9]Q If you earned $ 7,000 on a case for a report and your

[10]trial testimony over 50 weeks, that would be over $ 350,000,

[11]right?

[12]MS. BOOKSON: Objection. **[*40]**

[13]THE COURT: Counsel, you're just -- you're asking

[14]her to do the math at this point or whether she earned that

[15]money?

[16]MR. ALT: I'm asking, her based on her

[17]preference, that would add up to $ 350,000.

[18]THE COURT: That's the question you're doing the

[19]math at this point?

[20]MR. ALT: Correct.

[21]THE COURT: Okay. I'll allow it, with that

[22]clarification.

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

[24]A I have a partner. So it would not, and it's not my

[25]preference. I agreed that it is what I said.

[26]Q Just yes or no. Would that add up to $ 350,000 a year?
1292

[1]

[2]A That number would add up to $ 350,000, yes.

[3]Q Okay.

[4]And isn't it also true that you produce more reports

[5]than you do trial testimony, right?

[6]A Not me personally, but yes.

[7]Q Your business partnership. Okay.

[8]So you have a business partner, Alan Leiken, right?

[9]A Correct.

[10]Q Alan Leiken is also an economist, right?

[11]A Yes.

[12]Q And he's testified on many occasions in court, right?

[13]A Yes.

[14]Q There have been times where Mr. Liken has testified

[15] **[*41]** almost a hundred times in a given year, right?

[16]MS. BOOKSON: Objection.

[17]THE COURT: Sustained.

[18]Q Isn't it true that Dr. Leiken testifies approximately

[19]six or seven times a month?

[20]MS. BOOKSON: Objection.

[21]THE COURT: Sustained.

[22]Q Ms. Dwyer, do you give any of the money that you earn

[23]for your legal work back to the university?

[24]A No, I do not.

[25]Q Is it fair to say that your hourly rate for legal work

[26]far exceeds what your hourly rate is as a professor?
1293

[1]

[2]MS. BOOKSON: Objection.

[3]THE COURT: Overruled.

[4]A It's higher, yes.

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

[6]A Okay.

[7]Q Okay.

[8]This report is three pages long, right?

[9]A Correct.

[10]Q There are four written paragraphs on this report?

[11]A Yes.

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

[13]A Dr. Leiken, yes.

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

[15]A Yes.

[16]Q So on the first page you told us that Ms. O -- or your

[17]testimony here today is that Ms. O'Brien was earning $ 90,000 a

[18]year, right, and **[*42]** that was the starting point for your economic

[19]estimation of lost earnings?

[20]A Correct.

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

[22]A Correct.

[23]Q Okay.

[24]And then you put a chart on the first page. Is that

[25]chart readily accessible to you?

[26]A You're talking about --
1294

[1]

[2]Q On the first page, the annual percent changes in

[3]wages.

[4]A Yes. I produced that from Bureau of Labor Statistics

[5]numbers.

[6]Q Okay.

[7]And on the first page, you also indicate that your

[8]estimation is the 66 and eight months for her retirement age,

[9]right?

[10]A Correct.

[11]Q On the second page, you performed the math, which you

[12]did for us this morning, right, and there is information about

[13]your calculations, right?

[14]A Correct.

[15]Q Would you agree with me that these calculations can be

[16]performed in Microsoft Excel in a matter of seconds?

[17]A Minutes, yes.

[18]Q Minutes.

[19]And on the third page, you gave us the growth rate for

[20]future costs of healthcare, right?

[21]A Correct.

[22]Q And you were given information from Ms. Bookson **[*43]** about

[23]what specific types of healthcare Ms. O'Brien would require,

[24]right?

[25]A Correct.

[26]Q Did this report take you more than 15 minutes to do?
1295

[1]

[2]A Absolutely.

[3]Q Approximately how long did this report take?

[4]A Again, I work in conjunction with Dr. Leiken. So it

[5]was his time that went predominantly into the production of

[6]this report, and then I review it on top of what he had done.

[7]So it really is hard to put a total number of hours.

[8]Q So a report just like this, you've produced them in

[9]the past, right?

[10]A Yes.

[11]Q How long would you say it takes for you to produce the

[12]same report similar to this?

[13]A I usually allocate a work day to it.

[14]Q This report takes you a full work day?

[15]A This particular report probably a little bit less,

[16]probably four or five hours. What I do when I do these

[17]reports --

[18]MR. ALT: Your Honor, move to strike.

[19]MS. BOOKSON: Your Honor --

[20]THE COURT: I think she's answering the question.

[21]I'll allow her to complete her answer.

[22]Go ahead.

[23]THE WITNESS: So I'm not being paid to plug

[24] **[*44]** numbers into an Excel spreadsheet. I can train a student

[25]to do that. What I am paid for is my expertise in

[26]understanding what's happening in the healthcare sector, in
1296

[1]

[2]the labor market, and I brush up on that. On the days that

[3]I am doing a report, I check on what's going on with the

[4]labor market wage growth, inflation, that sort of thing,

[5]and I update my tables and then I produce the report.

[6]Q Ms. Dwyer, on the third page you talk about future

[7]medical costs, right?

[8]A Correct.

[9]Q And it's your testimony that physician costs will go

[10]up approximately 4 percent per year, right?

[11]A Correct.

[12]Q Over the past 40 years, isn't it true that physician

[13]costs have been on the decline? Yes or no or you can't answer

[14]that question yes or no.

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

[16]Q Isn't it true that over the past 20 years, the

[17]physician costs have gone up approximately 2.9 percent, isn't

[18]that true?

[19]A A little higher than that, but lower than 4 percent.

[20]Q Over the past ten years, isn't it true that physician

[21]costs have gone up approximately 2.5 percent? **[*45]**

[22]A That's correct.

[23]Q But it's your testimony that in the future they will

[24]go up at 4 percent, right?

[25]A Yes. Can I explain?

[26]Q No. Thank you.
1297

[1]

[2]Ms. Dwyer, I want you to assume that there has been

[3]testimony from Ms. O'Brien in this case that she's been

[4]receiving $ 4,500 a month in disability income, okay?

[5]A Okay.

[6]Q Wouldn't you agree that when calculating her lost

[7]future earnings, you need to subtract the disability income --

[8]MS. BOOKSON: Objection.

[9]Q -- from the $ 90,000?

[10]THE COURT: Overruled.

[11]A It's my understanding that disability benefits are not

[12]supposed to come up in these cases because it's a collateral

[13]source. However, I --

[14]Q I want you to assume that they did come up in this

[15]case, and that Ms. O'Brien testified that she's been receiving

[16]$ 4,500 a month in disability income. Shouldn't that number be

[17]subtracted from the $ 90,000 that you gave us as a starting

[18]point?

[19]MS. BOOKSON: Objection.

[20]THE COURT: I'll allow it.

[21]A So it's my understanding that we don't subtract it

[22]because she is on disability. **[*46]** That's what we consider

[23]endogenous to the case.

[24]Q Thank you, Ms. Dwyer.

[25]So you're saying her future lost earnings would be

[26]$ 90,000, plus a 3 percent growth rate, and it doesn't matter
1298

[1]

[2]that she's been receiving $ 4,500 a month in disability. Is

[3]that your testimony here today?

[4]MS. BOOKSON: Objection.

[5]THE COURT: I'll sustain that. At this point,

[6]Counsel, there is a question of law which, jurors, there is

[7]a process by which collateral source is applied to any

[8]award after your verdict is in. So I don't want to mislead

[9]you into thinking that will be something you should do in

[10]figuring what her economic loss is, and that so there is no

[11]confusion.

[12]Counsel, why don't you proceed?

[13]Q Ms. Dwyer, you were given certain costs or types of

[14]medical costs that Ms. O'Brien may require in the future,

[15]right?

[16]A Correct.

[17]Q Okay.

[18]So I want you to assume that we haven't heard any

[19]testimony yet about what those specific costs are, okay?

[20]A Okay.

[21]Q So would you agree with me that if that actually comes

[22]out in the future of this trial and **[*47]** those numbers change, that

[23]would change the final numbers in this case, right?

[24]MS. BOOKSON: Objection.

[25]THE COURT: Sustained as to form.

[26]Q Ms. Dwyer, if a doctor comes in, hypothetically, and
1299

[1]

[2]gives -- puts a number of costs for future medical costs, okay,

[3]you then apply your growth rate to that number, right?

[4]A Correct.

[5]Q So you would agree with me that if that cost value

[6]that the doctor comes in and testifies to changes, that would

[7]change the final numbers when applying your growth rate, right?

[8]MS. BOOKSON: Objection.

[9]THE COURT: Overruled.

[10]A Yes, it would change it.

[11]Q Ms. Dwyer, would you agree with me that it's

[12]possible -- and I'm not saying this about you -- but is it

[13]possible that an expert's testimony in court can be influenced

[14]because that expert's getting paid by an attorney?

[15]MS. BOOKSON: Oh, objection.

[16]THE COURT: Sustained.

[17]MR. ALT: Thank you, Ms. Dwyer.

[18]THE COURT: Anything, Mr. Bath?

[19]MR. BATH: Yes. Thank you.

[20](Continued on following page.)

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[2]CROSS-EXAMINATION

[3] **[*48]** BY MR. BATH:

[4]Q Good morning, Miss Dwyer. My name is John Bath, I

[5]represent The Hudson Valley Hospital Center.

[6]You testified that one of your areas of interest was, I

[7]think you said, disability and addiction; is that correct?

[8]A Young people and addiction, yes.

[9]Q And you have done a bunch of research on that, you had

[10]testified?

[11]A Yes.

[12]Q And in connection with all that research that you've

[13]done, have you done research concerning whether addiction and

[14]disability -- mental illness has an impact on a person's work

[15]life expectancy?

[16]A I incorporate that literature, I don't perform that

[17]analysis myself. So my focus was --

[18]Q That was a yes or no.

[19]A Oh, sorry.

[20]Q It was a yes or no question.

[21]MS. BOOKSON: Well, your Honor, objection.

[22]THE COURT: Yes or no or you can't answer with a

[23]yes or no.

[24]A So, could you repeat the question, sorry?

[25]Q Yeah. I mean, you will agree -- withdrawn.

[26]You have done research on the effect addiction and
1301

[1]

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

[3]A I'm going **[*49]** to say in between. But, yes.

[4]Q Okay. And you would agree then that -- withdrawn.

[5]A person who is an alcoholic has a decreased work life

[6]expectancy, by and large; is that what the research shows?

[7]A It is --

[8]Q Either yes or no?

[9]MS. BOOKSON: Or you can't answer.

[10]A Yes.

[11]Q Would you agree that patients who have -- withdrawn.

[12]Would you agree also that people in general who have a

[13]mental illness, have a decreased work life expectancy?

[14]A Not necessarily.

[15]Q You've indicated that if you had reason to believe that

[16]she might have a shortened work life expectancy, that you would

[17]incorporate that into your report; true?

[18]A Yes.

[19]Q And you saw no reason in this case to include that in

[20]your report; is that correct?

[21]A Correct.

[22]Q All right. Did you -- did you review any of the prior

[23]treatment records?

[24]A No.

[25]Q Did you know that Ms. O'Brien had a long history of

[26]anxiety and depression prior to April of 2007?
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[2]A No.

[3]Q All right. You weren't provided with that information,

[4]correct?

[5]A Correct. **[*50]**

[6]Q Would you agree that that information would be

[7]important for you to know if you were projecting out what the

[8]patient's work life expectancy was; yes or no?

[9]A No.

[10]Q You brought some records with you today?

[11]A Yes.

[12]MR. BATH: Could I approach and --

[13]THE COURT: Yes.

[14]MR. BATH: Thank you.

[15]Q The records that you brought, are these all the records

[16]that exist with respect to your work on Miss O'Brien's case?

[17]A It doesn't include all of the federal statistics and

[18]research that I do. But, yes, all the records that I've

[19]reviewed.

[20]Q You've indicated that you reviewed a report of Dr.

[21]Dans-O'Connor; is that correct?

[22]A Correct.

[23]Q And did you review the entire report?

[24]A Allen Leiken did. He sent me the part of it that was

[25]relevant for my analysis.

[26]Q Well, I asked you, does this folder include everything
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[2]that you were provided with or that your office was provided

[3]with concerning Ms. O'Brien?

[4]A What is the question?

[5]Q The question is: Does everything in this folder, does

[6]it represent everything that **[*51]** you -- that your office was

[7]provided with?

[8]A No.

[9]Q Okay. So, I'm just looking at a report -- a letter

[10]here. Do you know who Jennifer Fleming is?

[11]A No.

[12]Q Do you know who Tabak Law is?

[13]A It's a law firm.

[14]Q And is that who sent you this case?

[15]A I don't recall, because first contact was with Dr.

[16]Leiken.

[17]Q Prior to today, have you spoken with Ms. Bookson about

[18]this case?

[19]A Yes.

[20]Q Did you meet with her?

[21]A Not before today.

[22]Q So you saw her this morning, correct?

[23]A Yes.

[24]Q For the first time?

[25]A Yes.

[26]Q Now, in terms of the work that you do as -- your
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[2]medical -- I'm sorry, your legal work that you do, do you and

[3]Dr. Leiken do that work within the State University of New York

[4]out there at Stonybrook?

[5]A Not within the State system, no.

[6]Q All right. Do you and Dr. Leiken have a separate

[7]office where you do your work?

[8]A Yes.

[9]Q All right. And do you and Dr. Leiken have a separate

[10]company?

[11]A No.

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

[13] **[*52]** A I don't do much of this work, so I work out of my home.

[14]And, actually, so does Dr. Leiken.

[15]Q And do you have any employees?

[16]A No.

[17]Q Do you have anybody that prepares these reports?

[18]A No.

[19]Q Have you ever met Miss O'Brien?

[20]A No.

[21]Q Did you ever talk with Miss O'Brien?

[22]A I did not.

[23]Q The report that you produced, the economic loss

[24]analysis, isn't it true that this report is identical, but for

[25]names and monetary figures, to, you know, all the other reports

[26]that you produce for plaintiff's lawyers?
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[2]MS. BOOKSON: Objection.

[3]THE COURT: Sustained.

[4]Q The work that you do, in connection with your business

[5]as an economist testifying in court, all that work is done on

[6]behalf of plaintiffs's attorneys; is that correct?

[7]A It has been, yes.

[8]Q And when was the last time you were in court

[9]testifying?

[10]A Earlier this week.

[11]Q So this year, how many times have you been in court

[12]testifying?

[13]A Three.

[14]Q Has Dr. Leiken, to your knowledge, been in court this

[15]year?

[16]MS. BOOKSON: Objection. **[*53]**

[17]THE COURT: Sustained as to form.

[18]Q Well, do you know if Dr. Leiken has been in court this

[19]year testifying?

[20]MS. BOOKSON: Objection.

[21]THE COURT: In relationship to their joint

[22]business?

[23]MR. BATH: Yes.

[24]THE COURT: I'll allow it.

[25]A Yes.

[26]Q And how many times has he been in court this year
1306

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[2]testifying?

[3]A I don't know.

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

[5]A I'm going to say I average about once a month, but it

[6]comes in clumps, like this week was two. So, about 12.

[7]Q And how about Dr. Leiken?

[8]A I have no idea.

[9]Q You can't say?

[10]A No.

[11]Q Thank you for your time.

[12]A Thank you.

[13]MR. BATH: Nothing further.

[14]THE COURT: Anything further, Miss Bookson?

[15]MS. BOOKSON: Yes, your Honor.

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

[17]THE COURT: Yes.

[18](Handing.)

[19]THE WITNESS: Thank you.

[20]RE-DIRECT EXAMINATION

[21]BY MS. BOOKSON:

[22]Q Hello.

[23]A Hi.

[24]Q A couple of things. You were shown the testimony and

[25]asked some questions **[*54]** about the plaintiff's statement here in

[26]court about what her plans were in terms of her retirement age;
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[2]sometime between 60 and 65.

[3]Does that change your opinion with regard to what the

[4]age of her retirement would be that you used to calculate her

[5]loss?

[6]A I typically do take into account when I hear the

[7]preferences of the plaintiff. So I'm going to say a couple of

[8]things, if that's okay.

[9]Based on her career track, her education, her revealed

[10]preferences for work to the point where she tried to go back,

[11]I'm very comfortable with using the normal age of retirement

[12]that I used. Having said that, again, the preferences do

[13]matter.

[14]One thing I can say as an expert in this area, is

[15]people have been retiring later. The average age has been later

[16]because there were unexpected financial reasons. And so people

[17]want to retire at a given age and then do something different

[18]sometimes. And so it is possible that she's in that group.

[19]So on average people are retiring later because they

[20]find that they have to. In this case -- so what she said was

[21]between 60 and 65, depending **[*55]** upon my financial situation. That

[22]is a paraphrase. That is very much in line with what I observed

[23]on average.

[24]So to answer your question, I'm very comfortable with

[25]the number I used, but I would take into account had I heard

[26]that and lowered it a little bit.

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

[3]A Another age that I would use in a situation like that

[4]is 65.

[5]Q Okay. So we are talking about a one year difference at

[6]most?

[7]A At minimum.

[8]MR. BATH: Objection.

[9]THE COURT: Sustained.

[10]Q You were also asked some questions with regard to her

[11]future work life expectancy and how many years she could be

[12]expected to work going forward from now until into the future,

[13]basically. And you were asked some questions about alcoholism

[14]and mental illness.

[15]Do you believe, in your opinion as an economic expert,

[16]that alcoholism would have interfered with the work life of this

[17]particular individual?

[18]A No.

[19]Q Why not?

[20]A From what I'm understanding, it's a life long disease,

[21]she has had it, she worked 22 years solidly. There was **[*56]** a lapse.

[22]It was my understanding she got rehabilitated and she was able

[23]to land a good job at a vice-president level.

[24]So that suggests to me that this is a high functioning

[25]person. There are different types of alcoholics, and there are

[26]those that are high functioning. So high functioning alcoholics
1309

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

[3]So I'm, again, within a reasonable degree of economic

[4]certainty, very comfortable with the analysis that I had

[5]performed.

[6]Q The same question with regard to any history of anxiety

[7]or depression that Mary Anne O'Brien had. Did you see any

[8]evidence that that interfered with her work life?

[9]A No.

[10]Q Would any of those conditions change your opinion with

[11]regard to how many years you would have expected her to continue

[12]working?

[13]A No.

[14]Q You were asked some questions about the great recession

[15]of our time, starting in 2008; yes?

[16]A Yes.

[17]Q Does that event, does that change your opinion about

[18]how much of a work life she would have had?

[19]A No.

[20]Q Why not?

[21]A So it is quite possible **[*57]** that --

[22]MR. BATH: Objection.

[23]THE COURT: I'll allow the answer.

[24]Continue.

[25]A So even if she lost her job at Citibank, I'm not

[26]performing an analysis on the probability of her retaining the
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[2]same job, I'm performing an analysis based on her propensity to

[3]earn. And that propensity to earn was revealed at this $ 90,000

[4]rate. She was able to attract a position with Citibank pretty

[5]quickly.

[6]I'm believing that she would have found another

[7]position if she were, indeed, one of the people that were let

[8]go. The last and first out may not apply at highly specialized

[9]levels, as well.

[10]Q Now, you were also asked about the potential cost

[11]percents that is in your calculations and your report, about

[12]what is the rate at which physician cost rises.

[13]Why did you choose the rate that you did of four

[14]percent for physician costs?

[15]A So, I'm basing the inflation rate in the medical sector

[16]on the averages, as I said. And had I gone back 40 or 30 years,

[17]it would have been higher because inflation in the medical

[18]sector 26 years ago or 30 years ago was in the double digits. **[*58]**

[19]So, I said I couldn't answer the question about a

[20]steady decline over the last 40 years, because there were some

[21]ups and downs. But it has come down considerably from double

[22]digits, thank God.

[23]So from the 15 percent, 12 percent down to 2.5,

[24]3 percent right now, I want to predict into the future picking

[25]one point in time. As you can see from what I just explained,

[26]it could be really problematic. Because of those fluctuations,
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[2]I don't believe there is going to be a steady decline from the

[3]three percent we see now, I think it is going to go back up.

[4]Therefore, I captured what I believe represents a

[5]business cycle and the most reliable period of time to project

[6]into the future to get that average of what might happen over

[7]the remainder of her life.

[8]Q Okay. And would you explain to us now, in terms of

[9]producing the reports that you did for economic loss for

[10]Maryanne O'Brien, what is your process of producing those

[11]reports and the time involved?

[12]A So, I don't really believe I'm being paid hourly. I

[13]think I'm being paid for my expertise, and I don't think that's

[14] **[*59]** easily substitutable. So when people ask me about -- I charge a

[15]flat rate, I don't charge an hourly rate. So each case is

[16]different. Each has there own little anomalies.

[17]I did ask you some questions. I did not ask the

[18]plaintiff questions because I asked you. I did ask what was in

[19]the transcript, even though I didn't read the transcript of the

[20]deposition. I gather the information I need and I don't time

[21]myself.

[22]So could it have taken -- I don't believe it took me

[23]less than three hours. Somewhere between 3 and 6, on a case

[24]like this.

[25]Q And it's not a matter of just pushing a button on a

[26]computer; is it?
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[2]A No.

[3]Q And then, finally, with regard to testimony, you were

[4]asked some questions about what you would be earning if you

[5]testified 52 weeks of the year, every single week of the year

[6]each year. Do you testify 52 weeks of the year?

[7]A No.

[8]Q In the year 2015, did you testify every week of the

[9]year?

[10]A I don't want to and I couldn't possibly.

[11]Q Why is that?

[12]A I have a full-time job and then some at the State

[13]University of New **[*60]** York.

[14]MS. BOOKSON: Thank you.

[15]THE COURT: Anything else, Mr. Alt?

[16]MR. ALT: Yes, your Honor, very briefly.

[17]RE-CROSS EXAMINATION

[18]BY MR. ALT:

[19]Q Miss Dwyer, you didn't review any of Miss O'Brien's

[20]prior alcohol records, correct?

[21]A Correct.

[22]Q You didn't review any of her deposition testimony in

[23]this case, right?

[24]A Correct.

[25]Q You relied on what was given to you by Miss Bookson,

[26]right?
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[2]MS. BOOKSON: Objection.

[3]THE COURT: Sustained.

[4]Q Are you aware of any of the recent relapses in alcohol

[5]that Miss O'Brien has had?

[6]MS. BOOKSON: Objection.

[7]THE COURT: Sustained, that is not proper recross.

[8]Q Miss Dwyer, you would agree with me that Miss O'Brien's

[9]plan for retirement at the 60 to 65 range is below your

[10]estimation, right?

[11]MS. BOOKSON: Objection.

[12]THE COURT: Sustained.

[13]Q Miss Dwyer, do you know if Miss O'Brien has been

[14]hospitalized in the last four years?

[15]MS. BOOKSON: Objection.

[16]THE COURT: Sustained.

[17]MR. ALT: Thank you.

[18]THE COURT: Anything further, Mr. Bath? **[*61]**

[19]MR. BATH: No, your Honor.

[20]THE COURT: Dr. Dwyer, you can step down and then

[21]we will take a brief recess.

[22](Witness excused.)

[23]THE COURT: We will take five minutes and then we

[24]will go to 12:30 today.

[25]COURT OFFICER: All rise, jury exiting.

[26](Whereupon, the jury exits the courtroom.)

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