SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF KINGS - CIVIL TERM- PART 84
----------X

FEIM KOLARI,

Plaintiff,

-against-

WHITESTONE CONSTRUCTION, CORP.,

Defendant.
----------X
Index # 5514/12

TRIAL-DAMAGES
(Continued)

360 Adams Street
Brooklyn, New York

August 3, 2016

B E F O R E:

HONORABLE CAROLYN E. WADE,
Justice and jury.

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

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DOREEN M. GAETA-MILELLA
Senior Court Reporter

(In open court.)

THE COURT: On the record.

MR. O'MALLEY: The plaintiff would intend to introduce this item as demonstrative evidence to indicate the projections regarding lost earnings that would include loss of health insurance, loss of pension, loss of annuity, loss of vacation and loss of social security income, your Honor.

MR. BOTTARI: No objection to it going into evidence. I have no problem if the witness shows it to the jury as a demonstrative tool as to what she did and how she arrived at those numbers.

I object to it going into evidence.

THE COURT: Why is this going into evidence?

MR. O'MALLEY: Just for demonstrative purposes.

THE COURT: Just for ID only.

MR. O'MALLEY: Ah, I guess so. For demonstrative would be ID only.

THE COURT: ID, that's number 16.

(Whereupon, item is so marked as Plaintiff's Exhibit 16 for identification.)

THE COURT OFFICER: So marked.

MR. O'MALLEY: Okay, if we could, your Honor, is not a big deal, if we could just move this chair because I'm going to use this easel for Doctor Dwyer.

THE COURT: Yes.

MR. O'MALLEY: Okay. Thank you.

THE COURT: So are we ready for the jury? It is 10:30. We don't want to waste valuable time.

MR. O'MALLEY: Yes, we are.

(Pause.).

THE COURT: All right, counsel, we have the jury here.

Mr. O'Malley?

MR. O'MALLEY: Yes, I'm ready.

THE COURT: And Mr. O'Malley, what was --

MR. O'MALLEY: I just want to mark for identification purposes employment records of the plaintiff from Galloway, Nickerson and Galloway, which, your Honor, I don't think it is going to be much of an issue.

THE COURT: ID only.

MR. O'MALLEY: ID only.

THE COURT: This will be marked as plaintiff's exhibit?

THE CLERK: 17.

THE COURT: Right.

(Whereupon, document is so marked as Plaintiff's

Exhibit 17 for identification.)

THE COURT: And we have employment records from where?

MR. O'MALLEY: Nickleson and Galloway.

THE COURT: Thank you.

THE COURT: Okay, are we ready?

MR. O'MALLEY: Yes.

MR. BOTTARI: Yes, your Honor.

THE COURT OFFICER: All rise, jury entering.

THE COURT: Move over, you are in the way. Move over.

(Whereupon, the jury enters the courtroom.)

THE COURT: You may be seated.

Good morning, ladies and gentlemen. How are you today?

(Affirmative responses.)

THE COURT: Great. You all look wonderful. Thank you for being here on time this morning.

We had some other matters to attend to. As you see, we have been setting up to show you a video perhaps before lunch or maybe even after lunch. So I apologize for keeping you waiting.

A JUROR: Can we have the fan turned off a little bit?

A JUROR: Or a different direction.

A JUROR: Or a different direction.

THE COURT: Sure sure.

Anything else? Everyone is comfortable?

(Affirmative responses.)

THE COURT: Let's proceed. Mr. O'Malley.

MR. O'MALLEY: At this time, the plaintiff calls a Doctor Debra Dwyer to the stand.

THE COURT OFFICER: Watch your step.

THE CLERK: Remain standing. Raise your right hand.

D E B R A D W Y E R , PhD., called as a witness for the Plaintiff, having been first affirmed by the clerk of the court, was examined and testified as follows:

THE CLERK: What is your first name, last name?

THE WITNESS: First name, Debra, D-E-B-R-A, and last name is Dwyer, D-W-Y-E-R.

THE CLERK: And your address?

THE WITNESS: 17 Springbriar Lane. Springbriar is one word, B-R-I-A-R. That's in Centerreach, C-E-N-T-E-R-R-E-A-C-H, New York 11720.

THE CLERK: You may be seated.

THE COURT: Good morning.

Please speak slowly and keep your voice up.

THE WITNESS: Okay.

DIRECT EXAMINATION

BY MR. O'MALLEY:

Q Good morning, Doctor.

A Good morning, Mr. O'Malley.

Q Would you please tell these the ladies and gentlemen of the jury your educational background.

A Sure. I received my Bachelor's of Science in Economics and English Literature from Queens College in Flushing, New York.

I went on to get my Master's and my Ph.D. in Labor and Health Economics from Cornell University.

From there, I went to the Syracuse Center for Policy Research, where I did a postdoctoral fellowship.

Q And did you attain any degrees at Cornell and Syracuse?

A I received my Master's and Ph.D., and then I completed a postdoctoral fellowship.

Q In what fields, Doctor?

A Labor Economics and Health Economics.

Q And can you tell the ladies and gentlemen of the jury what is that, labor and --

A Health Economics.

Q Thank you.

A So, basically that's my specialties are in labor and health.

So economists, in general, study how resources are allocated in the market; and, we can specialize in different markets. I specialize in health care and labor markets, which are very large, complex markets.

Q And, Doctor, you said you got a Ph.D., can you tell the ladies and gentlemen of the jury what it takes for someone like yourself to get a Ph.D.

A So you have to complete a Bachelor's degree. And then, you go and do schooling that requires at least two years of coursework.

You have to pass what's call comprehensive or qualifying exams in the field of economics, which is across all markets.

So, basically, general economic exams, you have to pass at least two of those. You have to pass field exams. So there's a lot of exams, a lot of courses.

Then you have to work an equivalent of a book called a dissertation and you receive your doctorate in philosophy.

That dissertation has to contribute something new to knowledge and society. My contributions crossed the labor and health market; so, how does health or disability affect work, how do we measure these things. That sort of thing.

Q That was your dissertation?

A Yes.

Q And after you got your PhD, can you tell the ladies and

gentlemen of the jury, what did you pursue?

A So I was recruited to the Social Security Administration in Washington, DC in 1996, the end of '96.

I worked there for a couple of years as an economist and a researcher in the Division for Economic Research.

I was specifically assigned a task of evaluating our disability policies.

From there, I came to Stony Brook University, where I had been a faculty member for the last 18 years.

I have affiliations in the Economic Department, the College of Engineering and Health Sciences.

I also -- so I teach. I taught everything from high school, all the way through to the doctoral programs. So I teach PhD. students.

I do research. I've published over 30 articles. I am in the process of writing a book.

And, I also serve on the Finance and Budget Committee of the University. So I provide service as an economist for the University.

Q And can you tell the ladies and gentlemen of the jury, what are some of the articles you've written, specifically in the field of economics.

A So I published in journals like:

The Journal of Health Economics;

The Journal of Labor Economics;

I published in general journals like:

Statistics and Empirical Economics.

So basically I publish in the field of: Labor policy, health policy, children's and adolescent health, older workers; and, also, methodology, how we measure things, is an area that I'm interested in.

Q When you say methodology, what sort of methodology are we talking about?

A One of my main contributions and its a work that has been cited one of the best in health economics, one of the top 200 papers ever written, is about how we measure health and disability using data for which we are trying to assess policies of how those indicators affect our work capacity.

Q And you said teaching, could you tell the ladies and gentlemen of the jury in what sort of frequency do you teach high school students, college kids, et cetera?

A Well, high school students, I advise on projects. So I will help them learn how to do research, learn what economics is. So that's more mentoring.

I have taught Principles of Economics at the undergraduate level. I have run a masters program in health care policy and management, where I taught economic and public policies to health care workers.

And now, I'm working primarily with Ph.D. students, teaching economics, public policy and how to do research.

Q And can you explain to the jury what is, what's the field of economics, what does it involve?

A So it is pretty broad. And, it really does involve how we allocate our -- how we decide who gets what in society, how we answer some of the big questions in society, what should we produce, how we should produce it, who gets what. That's the broad field.

I'm a micro economist, and I teach public policy. I'm a producing public policy analyst. So we focus in on fields that have to do with what happens in individual markets like health care, like energy, like anything that the government gets involved with in particular.

Q And, Doctor, in addition to teaching as a professor at Stony Brook, have you also worked as a consultant?

A Yes, I have.

Q And could you tell what type of consulting work have you done, as an economist, specifically.

A Primarily forensic economics. So that is the economics of assessing the value of damages or losses in cases like this one, where someone is injured and no longer able to work.

I've also done other consulting projects for government or public policy analysts.

Q And, Doctor, have you consulted with attorneys, such as myself?

A Yes, sir, I have.

Q In what sort of frequency, Doctor?

A I average probably about -- I started off one a month. It's grown since then to probably about two a month. I try to keep it limited because I work full time.

Q And, Doctor, have you ever testified in open court?

A Yes, I have.

Q Approximately how many times, Doctor?

A Probably about 45 to 50.

Q And that would be in the field of economics?

A Yes.

Q During that time, have you ever been denied expert status in the field of economics?

A Never.

MR. O'MALLEY: I now ask that Doctor Dwyer be deemed an expert in the field of forensic economics?

MR. BOTTARI: No objection.

THE COURT: There being no objection, you are qualified as an expert.

THE WITNESS: Thank you.

THE COURT: Mr. O'Malley.

Q Yes.

Now, Doctor, do you recall whether our firm provided you with the documents and asked to you render an opinion?

A Yes.

Q What, if anything, did you review before coming in here

to testify today?

A So I reviewed a bunch of documents. What I was doing was looking at the economic loss associated with not being able to work. So in order to do that, I needed to look at what his past earnings history was.

So I looked at his W-2s from the years 2009 to 2011. I want the most recent years to be accurate and relevant.

I looked at his income tax returns.

I also had various union documents on his earnings history.

And, I had his union contract.

So that's to determine losses from wages, losses from fringe benefits.

I also reviewed a medical plan, a narrative evaluation put out by Doctor Winiarsky, if I'm pronouncing that right, from the Brooklyn Premier Orthopedic Group. He put together an assessment of what the future health care needs would be for services associated with this injury.

My job is to calculate based on that narrative what would be the future cost of those service.

Q And we're talking about --

MR. BOTTARI: Your Honor, objection.

May we approach for a second?

THE COURT: Outside?

MR. BOTTARI: Yes.

(Whereupon, a sidebar conference was held off the record.)

THE COURT: You may proceed.

Objection is sustained.

Q Doctor, I'm going to ask you to please focus just on the year 2010 regarding the W-2s and the union records of Feim, if you don't mind.

A Sure.

Q Based on the W-2s from 2010 and the union records that are in evidence -- by the way, did you find out what union he was a member of, Doctor?

A Yes. It was, I should have written that down, Local 8.

Hold on one second. Sorry.

(Pause.)

A I have it. It is the journeymen, so it's roofers local union number 8.

MR. O'MALLEY: I ask that the plaintiff be shown what's been marked as plaintiff's number 17 for ID.

(Handing.)

Q Specifically regarding the W-2 for 2010, were you provided with that, Doctor?

A Yes, I was.

Q Thank you, Doctor.

And, Doctor, based on the union records that are into evidence, Local 8 union records, as well as the W-2s that you

reviewed for only 2010, did you perform an economic analysis regarding economic loss regarding Mr. Kolari?

A Yes, I did.

Q And what did you base your analysis on?

A So I based it on his last full year of earnings, which as Mr. O'Malley said was the year 2010.

And, his last full year of earnings, according to his W-2s and his income tax returns amounted to $59,028.

MR. BOTTARI: Objection.

THE COURT: Sustained.

MR. BOTTARI: We are just talking about W-2s.

MR. O'MALLEY: Yes.

Q Just W-2s. We should have told you.

Are you able to add up the W-2s and find out what his income was for 2010?

A Yes.

Q And what was it?

A Was $59,028.

Q Very good, Doctor.

Once you had that information and had the union records from Local 8, what projections did you have, Doctor?

A So for income loss, what I do is I take the 2010 earnings and I have to figure out what he would have earned over the remainder of his work life.

Now, we don't know the future, that's why I'm hired as

an expert, to be able to project over the remainder of his work life.

So the first thing I had to decide is how long is his work life going to be. So I used the earliest age that he could collect social security benefits, and that's the age of 62.

The normal age is 67. He can retire at 62 with a penalty. I used the age of 62.

And, I then had to decide what would he have earned every year between 2011, when the accident occurred, and the year 2032, when he turns the age of 62.

What we do, and this is standard practice, is we grow it by the average growth rate and wages over the last 20 years; and, that average growth rate was three percent.

So all of us earn -- our wages on average rise every year by a little bit, by three percent on average.

So I used the three percent average. I took the $59,028, and I grew it so that in 2012, that amount would be $60,799 and so on up until year 2032.

I did include the year 2011. But he did work part of that year, because the accident occurred in July, so I subtracted his earnings in 2011 from the total amount.

We get a total loss in the category of income of $1,706,923. That is the complete loss all of earnings he would have had from 2011 until 2032.

Q And just for the record, do you know his date of birth,

so we could --

A Yes, June 15, 1970.

Q All right.

And besides the projections of lost income of, I believe, 1.7, did you make any other projections, Doctor?

A Yes. So then I used the union records to determine what the fringe benefits were.

And the union is very clear about the kind of benefits that he had, so:

He had health insurance;

He had a pension;

He had an annuity;

He had a vacation time, so the employer contributed to a vacation fund.

And then, I also calculated losses in the public social security. So he would have earned a pension from social security.

So that's all the categories that I would have included.

I can go step by step, what I used for the loss of insurance. Again, I used the same time period 2011 to 2032 to calculate the loss in health insurance, because he would have no longer received the benefit once he retires.

So the average replacement rate in New York is $12,000. That's what I used standardly, it is actually a little bit

lower. $12,000 for the cost of the health insurance for the whole year, if he had to replace that health insurance.

Now, health care prices have risen faster than the general rate of inflation. So health care costs has risen on average over the last 25 years by about 4 .8 to 5 percent.

Health insurance costs have risen on average by 4.6 percent.

So the growth rate that I use is 4.6 percent. So that $12,000, beginning in the year 2014, that's when we commenced the loss was $12,576.

We grow that until the year that he retires. And we have him retiring on his birth date in June at $12,715, is the value of the loss in 2032.

The total loss and the value of the health insurance amounts to $353,588.

The pension --

Q All right, if we could, Doctor.

Would a diagram help to illustrate to the jury your projections?

A Yes, it would.

MR. O'MALLEY: At this time I ask that the witness be able that leave the witness box around refer to a diagram that has been previously marked for ID for demonstrative evidence, your Honor.

THE COURT: Is that Plaintiff's Exhibit 16?

Which exhibit, is it?

MR. O'MALLEY: It is 16, your Honor.

With the Court's permission, if the witness can leave the witness box.

THE COURT: Yes. You can step down.

MR. O'MALLEY: Let me bring it a little closer.

(Witness steps down and approaches exhibit.)

Q Okay, if we can just start.

You mentioned income loss, could you show the ladies and gentlemen of the jury your projections on this board.

A Sure. This is actually very helpful.

So I said earlier that I grew that 59,000-- to give the precise number --and $28, that he earned in 2010, I grew it by three percent.

And I said in 2011 he earned something up until July, when he had the accident; he earned about $35,000. So I subtracted that from the 59,000.

I didn't grow that for the 2011 year. I just kept it flat at 59,000. And, you get this $23,817.

So the first full year of loss is in 2012, and the value of his earnings would have been $60,799.

And, this is the total now, you see down here, I broke it into past loss, future loss and total loss.

The total loss is that 1.7 million that I mentioned earlier.

Q And, Doctor, the projection, the 2012, you have 60,799, is that the 59,028 times three percent?

A Yes.

Q Okay.

And I guess that increases every year?

A Yes. So it increases every year by three percent.

Now, I used the average for the general population of growth rate, not the average for union workers, which would have been higher.

Q And if you would please proceed, you have the next category, you have loss in health insurance?

A Yes. And I mentioned that I used a rate of 4.6 percent higher than the three percent that we see in wage growth because health care costs have risen faster than the general rate of inflation.

And I said that the value of that health insurance is $12,000, if you grow it by 4.6 percent.

Then we begin in the year 2014. We don't start with the year of the accident, COBRA coverage. So they continue their coverage from their health insurance plan for two or three years following the injury.

Q Those little dashes, that means that Kolari and his family are protected during these years through COBRA?

A Yes. Yes.

So we begin in 2014. We continue to grow that rate of

$12,000 by 4.6 percent. So that the cost for exactly the same health insurance plan in the year 2031 would be $27,014. So that's inflation.

Again, it is a partial year in 2032, as he retires around his birthday.

And, we get a total loss in health insurance $353,588.

Q And the next category?

A So pension. So the employer pays into a pension fund on behalf of the employee. And, they use a formula. And I took the formula from the union contract of 2011.

And that formula was $3.50 for every hour worked.

So I used, I looked over his earnings history. He works on average about 1600 a year of hours. I used 1400, just to be conservative.

Q If you can just explain this to the jury, you are talking about looking at the records, the union records that are in evidence. How does someone like yourself make a determination if that number is solid or not?

A So I tend to err on the side of being conservative. He does work 1600, 1500 hours a year. I used 1400.

Q So the fellow is making such and such an hour, is that extra money tacked on to what he makes?

A If he's working more than that.

So this is separate from wages. This is just based on the fact of the category of worker he is, as a roofer and a

journeyman. He gets -- regardless of what his pay rate is, he gets 3.50 an hour for every hour he works.

And, 3.50 an hour for every hour that you work, rising at the rate of three percent, per year again, because benefits also grow over time, gives us a total value of 4900 per year.

And, we begin the first year of loss, full year, at 2012.

Q And his union contract, the union records that you are looking at, do you recall what years we're talking about?

A This was the 2011 rate.

Q Very good?

A That I used.

Q You may proceed.

A So if you sum that up, up until his retirement age 62, you get total loss of$137,677 from the pension that he no longer gets.

The next category is annuity, another form of savings plan that the employer contributes towards; and, that rate was $8 an hour for every hour worked. So times 1400. So it is higher than the pension rate.

And the first full year, if you do the math, is $11,200. And again, we grow that at a rate of three percent, what benefits rise on average.

Also, the compensation package rises on average by three percent.

Retirement at age 62.

Total loss of annuity benefit, $314,691.

Q Please proceed.

A Okay.

So additional benefit that's listed in the union contract is a contribution towards a vacation fund. And, the contribution towards the vacation fund was $7 an hour times the 1400 hours growing at three percent.

So $7 an hour amounts to an annual loss of $9,800 at retirement. The value of that loss would $275,355.

Q And the next?

A So the last category is not based on union contract, the last category is our retirement program, the public one, Social Security System.

Now, the Social Security System is based on your years of working and how much you've earned.

So he will collect something from social security at the age of 62, but it will be substantially less than what he would have collected had he worked his complete work life.

Q And why would that be?

A Because the formula is based on average index monthly earnings for the top years of earnings, 35 years. That's how it is calculated.

So he lost roughly 22 years of work. He is going to lose the highest years of earning because your income go up over

time. So there is a loss associated with this.

I took the full social security benefits. So I calculated what his full benefit would be, had he continued to work until 62; and, I subtracted off what he will be collecting from Social Security.

So that amounts to about $8,000 a year. The difference is about $8,000 a year.

Now, Social Security is also indexed to inflation. The Social Security Administration increases benefits by 2.5 percent per year.

So I take the $8,000 and $2016 and I grow it into the future for the date of retirement at age 62.

Now, you see it's a lower value at age 62 because, again, he works half the year.

So the full amount of loss in social security is $12,876. That's the value in the year 2033.

Now, we have to grow that over the remainder of his life, which means we have to use life expectancy.

In order to calculate, Mr. Kolari's life expectancy, we go to the National Center for Health Statistics. They collect a lot of data, and they perform survivor analysis on this data. And, they are able to project what the average life expectancy would be by gender and by year of birth.

So if you use the life expectancy tables based on what came out in 2014, Mr. Kolari would live to the age of 76.5,

which brings us to the end of 2046. So that's what we use for life expectancy.

If you grow his social security pension, then the loss in social security pension over the remainder of his life, the value of that loss is $219,607.

And, you see that that's not lit in the past and future, that's all in the future.

Q And, Doctor, if you were to add up all these numbers, total loss, loss of insurance, annuity, vacation, loss of social security, how much are we talking about?

A We are talking about a total loss of $3,007,840.

MR. O'MALLEY: Thank you.

If you could please take your seat.

(Witness resumed stand.)

Q Doctor, did you make any projections regarding future medical expenses regarding Mr. Kolari?

A Yes, I did.

Q Mr. Kolari said he is no longer taking pain medications, okay?

A Okay.

Q If we can just focus on some of your projections, besides medications, if you don't mind, you mentioned that you looked at a report from a Doctor Winiarsky?

A Yes.

Q And were you able to make any sort of projections

regarding how much it is going to cost to take care of Mr. Kolari?

A Yes, I did.

Q And could you tell me what your findings were and what was it based on?

A So what I do, I'm not a medical doctor, what I do is I take the opinion of an expert. That was the narrative that Mr. Winiarsky produced. And, what he does is he says this is what Mr. Kolari is going to need: Physical therapy, orthopedist visits, diagnostic tests, injections, surgery.

What I do is I take what services are recommended and I'm able to project them into the future over the remainder of his life. What are those services going to cost every year and what is the grand total. So that's what I did.

Now, in order to be able to do that, I have to predict what is going to happen to medical prices into the future.

And, the way economists do predictions is we look to the past. We have to go to sufficiently far enough to capture what we refer to as a business cycle.

So we need to capture the periods in history where we saw very high levels of inflation in health care, very low levels of growth and prices in health care. And, we average them out.

And, as I said, in health care, the average prices are rising much faster, at a rate of 4.9 or 5 percent.

What I did was I took the category, so let's take the first category that Doctor Winiarsky recommended, four visits per year for an orthopedist. And he tells us that each visit is $400 a year. So that's $1,600 a year to go see an orthopedist.

What I have to project, in order to make sure that Mr. Kolari's expenses are covered, is what will those four visits cost in 2017. And, I grow that at a rate of four percent.

So the Bureau of Labor statistics where I get this price data from, they actually break down the medical category into subcategories.

So I took the subcategory that orthopedist visits would fall into, those professional services, and use the average over the past 25 years.

So the growth rate is four percent, the cost of the four visits in 2017 would be $1,664. Grow that all the way out until the last year of life, the year 2046, those same four visits now cost $5,189.

The total cost over the remainder of his life for orthopedist visits is projected to be $93,885.

Then I do the same thing for every other medical service that is recommended by Doctor Winiarsky.

Q And what are those?

A So for physical therapy, two visits per month at a $120 per visit comes out to 24 visits per year, $2,800 a year on average.

Now, physical therapy prices have not risen as fast as other prices in health care. The growth rate is three percent for physical therapy.

Using that growth rate, the same services by the last year of his life would cost $6,991 for a total loss in physical therapy cost of $142,117.

Q What are some the other projected losses?

A Diagnostic tests. So x-rays, CAT scans. Those sort of things amount to $1,500 every other year.

So if you analyze that, that's $750 a year growing at a rate of four percent. So that the total loss in diagnostic tests would be $44,009.

The final category of services that Mr. Kolari will need every year for the remainder of his life are the steroid injections. The lumbar epidural, that's three per year. 4500 for all three of them, so for a set.

That amounts to $14,595 for those injections in his final year of life, growing at a rate of four percent.

So that the total loss would be $263,603.

Q And regarding your projections, are they within a reasonable degree of certainty within the field of economics?

A Yes, they are.

Q As far as the total of $3,007,840, was that projection within a reasonable degree of certainty within the field of economics?

A Yes.

Q And, again, I guess these projections are your making, you are speculating regarding when Mr. Kolari is going to die, correct?

A Yes. So it's -- we don't usually say speculate, we are projecting.

Q Oh, I'm sorry.

A Over uncertainty.

So there's uncertainty into the future. My expertise is the understanding of where people fall in the distribution of uncertainty.

Som we know some things about that distribution. And so, they're not speculation, they're projection.

Q Now regarding, you said you looked at union records that are in evidence, did they give you an idea regarding how much Mr. Kolari is getting paid an hour overtime, et cetera, et cetera?

A Yes.

Q And did you have an opportunity to look at those records?

A I did. I examined a lot of material in this case.

Q And regarding those materials, the union records would, grow consistent with the W-2, with how much he is making over time, et cetera?

A Yes.

MR. O'MALLEY: Thank you.

I have no further questions.

THE COURT: Thank you, Mr. O'Malley.

Mr. Bottari.

CROSS EXAMINATION

BY MR. BOTTARI:

Q Good morning, Doctor.

A Good morning.

Q All of your assumptions -- all of your projections are based on the assumption that Mr. Kolari can never go back to work in any capacity and needs all of these treatments for the rest of his life; am I correct?

A That's correct.

Q And that's based on Doctor Winiarsky's notes, correct, among other things?

A Right, right.

Q And the union records and things of that, right?

A Right.

Q Did you have in your file any notes from Doctor Mills?

A No.

Q Did you have in your file any notes from a Doctor Sherry?

A No.

Q Any notes from Doctor Bonomo?

A No.

Q How about did you ever see a vocational report from someone by the name of Mark Ramnauth?

A No, I didn't see any vocational report.

Q Okay.

So you have no knowledge that subject to connection, someone is going to testify and say that Mr. Kolari can go back to work in a number of different capacities?

MR. O'MALLEY: Objection.

THE COURT: Overruled.

A So, no, these rejections are based on Mr. Kolari's inability to go back to work.

Q Okay.

Up until today, did you know that Mr. Kolari did not need any Oxycodan or wasn't taking it for a year or two?

A Yes. Well, I'm sorry, can you, I missed the question. Could you ask again?

Q Let me ask you this. Up until the last few days, did you know that Mr. Kolari was no longer taking any prescription medication?

A So up until the past few days, today I did not.

Q Okay.

In fact, the only people you have been dealing with are the plaintiff's firm, correct?

A Correct.

Q They retaken you?

A Yes.

Q Did you ask if anyone had given a vocational report on Mr. Kolari or did you just say is he unemployable?

A I always ask the question, is he unemployable.

And am I assuming that he's not returning to work, I do ask that question.

I was asked to determine the loss based on an inability to return to work.

Q Okay. So, and we will get to this in a few minutes.

If there was someone, and I asked you to assume that there will be testimony that Mr. Kolari can go back to work and make anywhere from 27-odd-thousand-dollars to 46- or 47-odd-thousand-dollars, that would certainly offset a number of these projections; am I right?

A So it would offset income.

So if he was able to earn something, then we would have to deduct from the total loss in income whatever he was earning.

But those jobs may not have the same fringe benefits, so those are separate categories.

Q That's understood. That's understood.

A Right.

Q And before I get to this chart, let me ask you something, you are giving Mr. Kolari in your projections benefits for loss of insurance; am I right?

A Correct.

Q But isn't it a fair statement that Mr. Kolari, in fact, and if the jury gives him money for this health insurance, which you say is going to cost $353,000 through age -- through the rest of his life, right? Right?

A Yes.

Q Then he wouldn't need to have to worry about paying for doctors bills, MRIs, injections, physical therapy, whatever, right?

A That's a separate category. So health insurance plans do not guarantee that the services that are recommended just be covered, especially in their entirety.

The other issue is who is responsible to pay for those bills. Because --

Q Well, let me get it straight, right, Doctor.

If he has health insurance and he goes to the doctor and the doctor says, you need an x-ray, right, or he says, I need an x-ray and he goes to an orthopedist, the orthopedist is going to bill his health insurance company, right?

A Of course.

Q And most likely they're going to pay for it, right?

A Yes.

Q And if the doctor that he goes to says, you need another spinal injection because you have pain, right --

A Yes.

Q -- he gets it, and the insurance company is going to

pay X amount of it, right?

A Not necessarily, depending on the benefits. But yes, you are going to try to get paid or reimbursed from an insurance company.

Q And you didn't see, as you sit here today, whether any of Mr. Kolari's back problems are related to this incident where he fell, right; you are assuming they are?

A Yes. That's not my expertise.

Q You don't know if his knee problems are related to it, right?

A Correct.

Q And you don't know if all of his ankle problems are related to this?

A Right.

Q And you just assume that Mr. Kolari will never be employed again, you plugged in 59-odd-dollars from his W-2, you used a growth factor of three percent and you went to age 62?

A Correct.

Q And the reason you went to 62, that's when he first gets social security benefits?

A Correct.

Q Did you ask anyone at the union what the normal retirement age is for roofers, yes or no?

A Not in this case.

Q Oh. Are you aware from other cases at what age roofers

can retire, first age?

A 65 is typical.

Q 65 for a roofer?

A Or journeymen. I have worked on cases before, correct.

Q Have you ever worked on cases where people are retired at age 57, or 60?

A Yes.

Q Now, are you familiar with what's known as the Work Life Expectancy Tables?

A Yes, I am.

Q Okay.

And does it vary for people by various levels of education?

A Yes.

Q And are you familiar, I want you to assume two things:

One Mr. Kolari testified in this court that he only had nine years of education in Macedonia;

He never graduated from high school.

Are you familiar with that?

A No, I'm not.

Q Okay.

What is the normal work life expectancy for someone who has not completed high school, who's age 46 in the US approximately?

A It is lower than the average, which is around 64, 65.

Q Would it surprise you to know that the work life expectancy -- oh, by the way, what's the difference between inactive and active in the labor work force?

A Inactive would mean that you are not actively participating in the labor force, so you drop out of the labor force.

Q Okay.

Would it surprise you to know that someone with less than a high school education on average is expected to work at age 46, approximately 12-and-a-half more years; yes? Yes or no?

A No.

Q And if you used that statistic, where do you go from today, 12-and-a-half years down?

Seven, one, two, three, four, five, six...

That would get you to 2028, correct?

A Or 2029, yes.

Q Okay.

So if you were to lop off the last five, six years, from 2028 down, that would knock off -- 100, 200, 300 -- $453,000, approximately?

A Correct.

Q Of wages and benefits, right?

A Correct.

Q Okay.

And let's get to the differential.

MR. BOTTARI: Your Honor, I believe this is a blow-up of defendant's E in evidence.

It is either D or E.

THE COURT: It's not D.

MR. BOTTARI: This is the monetary chart.

THE COURT: That's not even marked.

MR. BOTTARI: It's not marked. It is a blow-up of one of the exhibits.

THE COURT: That would be Defendant's E.

THE CLERK: This is the salary tables that we did the other day.

MR. BOTTARI: So this is B.

THE CLERK: Yes, sir.

Q I'm going to show you -- I apologize for the confusion.

MR. BOTTARI: This is a blow-up of Defendant's B in evidence, and I would ask that I be allowed to approach the witness and show so we can make some quick calculations here.

No, no cord today.

Q You've never seen that before today, right?

A Correct.

Q Okay. Now, I know --

THE COURT: Counsel, you want the jury to see it as well.

MR. BOTTARI: Yes.

Q This is a list of potential jobs that is subject to connection, a witness will testify about this afternoon, that Mr. Kolari, in this person's opinion, can do, okay?

A Okay.

Q And you'll see they go from telephone operator, gate guard, dispatcher, parking lot attender, et cetera, to locker room attendant.

And, the jobs range in salary from a low of $27,372 to a high of $46,903.

Okay?

A That's not starting salaries.

Q No, it is medium.

Mr. Kolari is 46-years old, he has transferable skills, I want to you assume --

MR. O'MALLEY: Objection to that assumption.

THE COURT: On what grounds, counsel?

MR. O'MALLEY: Because he's testifying again.

If he wants to say, subject to connection.

THE COURT: No, he said assumed.

MR. O'MALLEY: Okay.

THE COURT: I'm going to overrule your objection.

Q Now, I know you brought a calculator with you. I thank you for that. And I know from some of the your prior testimony you like to bring things up to date?

A Yes.

Q So this was done in 2013, so these are 2013?

A Yes.

Q So if you're going to bring this up to date, I ask you try to bring it up to date just using three percent, fine, three percent to be consistent.

So the low of 27,372 will now become?

A $28,193.

Q Okay. And the high of 46,903?

$46,903 becomes what?

A $48,310.

Q Now, what I would like you to do, if you can do it fairly quickly, is utilize the low number and give us what the lost wages quote differential would be?

A Could you repeat the low number, because I didn't write it down.

Q The low number is 28,193.

In fact, why don't we do three numbers just so we have a fair representation, if you will.

The low number is 28,193.

The high number is 48,310.

And, if you can add these two and divide by two, so we get a median or midpoint number, okay?

A Um-hum.

(Perusing.)

38,252.

Q Okay.

Now, what I would like you to do, if you can do it fairly quickly, is just on the wages portion, just use those three sets of numbers and come up with differentials, if you will?

A So I'm starting with that midpoint, the 38,000.

Q Fine. Start with whatever you'd like.

A So if you take the 59,000 that he earned at 2010 and subtract off the 38,000, you get $20,776 as the loss. Okay?

Q Okay.

A So now, I'm going to do that until age 62?

Q Yes, do it to age 62, so we can compare apples to apples, if you will.

A (Perusing.)

So the loss comes out to $457,072.

Q Okay.

A Now you want me to do?

Q Do with the low and then with the high, if you could, and I thank you for your cooperation.

A No problem.

(Pause.)

A What were the last numbers?

Q 38,000 -- I'm sorry, salary with the three percent inflation to today is $48,310?

A Okay.

Sorry, I accidentally cleared it, so I have to do it again.

698,721.

Q That's the low?

A That's for the low.

Q What was that?

A 698,721.

So that's from, subtracts off the lower salary that he would earn, which was $28,193.

Now, I'm going to do it for the high, which was $48,310.

$242,870.

Q Now, I know we can't do a dollar-for-dollar benefit reduction, if you will, because you don't know what different employers give different employees; am I right?

A Correct.

Q Most employers give you a health insurance benefit today; am I right?

A Union workers are more likely to have it than nonworkers, particularly at this level of education it is not as likely that the employer would have those benefits.

Q But a number of employers do give you health insurance, it maybe something else?

A Correct.

Q So we don't want to speculate as to what an employer

would do, but is a fair statement that most employers give health benefits?

A Not at this scale level, unless they are unionized.

I won't say most. If you are taking about general population of jobs, yes, it is more than average.

Q Okay, let's put it this way, if, if you are an inspector or dispatcher or security guard, are there various types of benefits you normally get with those jobs?

A The union ones, yes.

Q Okay.

Well, let me, let's talk about the pension for a second. This pension benefit -- well, let me ask you a question, you know what I mean when I say a dollar-for-dollar loss?

A Not really.

Q If I get hurt, right, and I can't collect my salary and my salary is $100 a week and I work for a year, that's 52 weeks times a 100, $5200, right?

A Yes.

Q I lost that, dollar-for-dollar, right?

A Yes.

Q This pension benefit, Mr. Kolari doesn't get in 2012 $4900 in his paycheck; does he?

A No, he doesn't.

Q He doesn't get $5,047 in 2013, right; or, he doesn't

get any of these numbers, right?

A Not until retirement.

Q Not until he retires, right?

A Correct.

Q So in actuality, the pension loss is not a dollar-for-dollar loss, right, he has to retire, whether it is 55, 58, 60, 62, 65 to get his pension benefit, correct?

A Correct.

Q And then when he retires, he doesn't get 137,677; does he?

A He doesn't get a lump sum.

Q No, but --

A But he would opt for a lump sum.

Q But he gets an annuity, correct? Isn't that what the pension plan calls for?

A The pension plan, typically they opt for an annuity, sometimes they allow for a lump sum.

Q But what I'm saying is these numbers reflect what he's going to get either in 2027, '28, he gets either an annuity or lump sum, but that's way down the road, right?

A Right. At retire. It is a formula, typically --

Q That's right.

A -- for the pension.

Q It depends how much hours you work, you get the credit, what you say, whatever, the three-and-a-half, whatever it is,

employer puts in his pension, but that's not a, quote, dollar-for-dollar loss today?

A That just represents the value of what that pension will be into the future.

Q But the value is not in today's dollars, right, this is a future dollar because he does not get this money until he's 57, whenever he retires, whatever that is?

A Correct.

Q All right.

Now, this annuity fund, is he entitled to this -- okay, let's go to 2012, the $11,200, where does that go?

A So that's kind of like a savings plan, where the defined benefit plan, the pension is a formula; the defined contribution plan is a savings plan.

So an annuity means the employer is socking away that money. And, that's the one I was incorrect, I misspoke when I said they get a lump sum on the pension.

The annuity is, and I said despite the name, is the one where they could collect a lump sum, because it works like a savings plan.

So every year in the year 2012, $11,200 means that's how much the employer put away towards that savings plan upon retirement.

Q Okay.

So can the employee access this money at any time?

A Some plans allow you to deduct early, but it is not typically done.

Q So this is not, again, a dollar-for-dollar loss, it is something that the employer puts in and he gets on retirement, essentially?

A Correct. Yes.

Q Okay.

So this 314,000 that you have here --

THE COURT: Could you just move back, so all the jurors can hear.

Q So this 314,000 that you have here as the total of loss annuity, that's really something that's, again, in the future that he can get when he retires or something like that?

A Yes.

Q Correct?

A Yes.

Q Okay.

Now, the loss of the vacation fund, is that something, again, does the employer put this into an account for him?

A Yes.

Q When can he use it?

A My understanding of the vacation fund is they could draw upon it, but they can also use it as a savings plan; so they have a little more flexibility than they would with an annuity or pension.

Q Not necessarily dollar-for-dollar, but they may be able to tap into it; is that what you are saying?

A Yes.

Q That was $275,000, $355,000, correct?

A Yes.

Q Now, I know you are not aware of this, but at least one person will testify that Mr. Kolari can go back to work as a roofer, okay?

A Okay.

Q And if he would be able to go back to work as a roofer, whenever he goes back, either as a supervisor or as a roofer, all of the lost wages, benefits, et cetera, annuity, vacation would all be moot; am I right?

A As long as he could go back in the same capacity that he was able to before, yes.

Q Okay.

And the loss in social security retirement, that's again, this is not something that's happening today, correct, this is an amount, 219,000 when he retires he would have lost this?

A That's when he would started collecting it, yes. That's the value of a loss.

Q Again, that's not something today, that he lost today and from now until retirement, whatever age he retires at, correct?

A So the loss is being incurred today, but you are right, the benefit doesn't come, wouldn't have come until later.

Q So if he were to get $219,000 for his loss today, that would be, how can I say this, he isn't technically entitled to this $219,000 until he is out of work and everything else for the next, all these years, right?

A Yes.

Q Because if he gets any job, he'll be putting in money into the Social Security System, correct?

A So it would change the value of the loss, depending on what he earned, given his formula. Depending on his salary, given his formula.

Q Right.

So if he made 40,000, for argument's sake, as opposed to 60, his benefits would be only one-third, as opposed to the full hundred percent, just on average?

A On average.

Q Something like that.

I know there's a formula and the Government takes out a percentage, but every employer is supposed to take out social security, right?

A Correct.

Q So if he had any job at all, it would diminish this $219,607 by whatever percentage his replacement job paid, right?

A Yes.

Q And just for argument's sake, I used the example 40,000 versus 60, that's two-thirds, 40 over 60 is two-thirds?

A Yes.

Q I'm not trying to trick you.

A Right.

Q So are you aware of actuarial life tables?

A Yes.

Q So this computation of his economic loss, did you not take into consideration the fact that Mr. Kolari could pass away between now and 2032, right?

A No, I used average life expectancy, which would reflect that he lived past his work life.

Q I understand.

But aren't there tables out there that tell you the mortality of someone who's 46 between now and 2032?

A They calculate the probability of surviving another year.

Q Right.

And it's nine percent, ten percent, 12 percent?

A I, honestly, off the top of my head, I'm not sure.

Q All right. But it's in that area?

A Yes.

Q Let's say ten percent? Right?

A Okay.

Q And what we're saying, just so the jury understands us,

is that there's no guarantee he's going to live to 2032, correct?

A Correct.

Q Okay.

And, statistically, there are tables that tell us someone his age, 46, on average, there's about a ten percent chance that he may not make it to 2032. I may not make it to 2032; probably won't.

A I'm not confident of the precise number.

Q Okay. We hold you to it.

A There's some positive probability, yes.

Q And there's also, according to the Social Security Administration, a probability that he would become disabled between today and 2032, right?

A Yes.

Q And, again, that's a percentage probably between 5 and 15 percent; are you familiar with those statistics?

A So I know on average five percent of the population will become eligible. I'm not sure if that translates completely to 5 to 15 percent chance for him. But that sounds reasonable.

Q And you said your degrees are in health and economics, right, or health economics?

A Yes.

Q So you are aware what smoking does to life expectancy?

A Yes, I am.

Q It diminishes life expectancy five to seven years on average?

A It is actually five to ten years.

Q Five to ten years?

A On average. And it really depends on a lot of things, comorbidity.

Q Are you familiar that Mr. Kolari smokes a pack a day?

A Yes.

Q And he smoked a pack a day for a long time?

A I didn't know how long. I just know he smoked a pack a day.

Q And that could affect his life expectancy?

A That's correct.

Q And there's a lot of other problems you get from smoking?

A That's correct.

MR. BOTTARI: Can we take a short break.

THE COURT: Yes.

Members of the jury, why don't we take a five minute, ten-minute cell phone, bathroom beak.

Please do not discuss the case among yourselves.

Thank you.

THE COURT OFFICER: All rise. Jury exiting.

(Whereupon, the jury leaves the

courtroom.)

THE COURT: You may be seated.

Mr. O'Malley, you want your witness on the stand?

MR. O'MALLEY: If she would like to use the facilities?

THE WITNESS: Yes, that would be good. Thank you.

(Witness stepped down.)

MR. O'MALLEY: I just want to say something once the witness leaves.

THE COURT: You want to approach?

MR. O'MALLEY: Yes, that would be good.

THE COURT: Off the record.

(Whereupon, a discussion was held off the record.)

(Whereupon, a brief recess was taken after which the proceedings continued as follows:)

THE COURT: Are we ready?

MR. O'MALLEY: Yes.

MR. BOTTARI: Yes.

THE COURT: Okay.

THE COURT OFFICER: Jury entering.

(Whereupon, the jury enters the courtroom.)

THE COURT: You may be seated.

(Whereupon, the witness had resumed the witness stand.)

THE COURT: Mr. Bottari, you can proceed.

MR. BOTTARI: Yes, thank you.

CONTINUED CROSS-EXAMINATION

BY MR. BOTTARI:

Q Now, Ms. Dwyer, you said you probably testified 40 or 50 times in the last several years or over the course of your professional career?

A Approximately, yeah.

Q And you know the difference between a plaintiff and a defendant?

A Yes, I do.

Q Okay.

And would it be a fair statement that maybe 90 percent of the time you testify for plaintiffs?

A 100 percent.

Q A hundred percent, okay.

Never ever testified for a defendant?

A No.

Q And you're affiliated with Doctor Leiken, another noted economist?

MR. O'MALLEY: Objection. Noted.

A Yes.

THE COURT: Overruled.

Q Another economist?

A Yes, Doctor Lincoln, L-E-I-K-E-N.

Q And does Doctor Leiken also do, in addition to his teaching responsibilities and economic responsibilities, if he still has any, does he do a lot forensic work?

A Yes, he does.

Q He testified probably over a thousand times?

MR. O'MALLEY: Your Honor, objection.

This is cross examination of this witness. I don't understand why he's talking about someone else.

THE COURT: Sustained.

I allowed to you ask questions about Doctor Leiken.

Q Is Doctor Leiken your partner in this field of forensic economics?

A Yes, he's an informal, we have informal partnership.

Q He works at the same, does he work at the same facility that you do?

A He works at Stony Brook University, yes.

Q And would it be a fair statement that he has testified hundreds of times for plaintiffs in the last 30 years?

MR. O'MALLEY: Objection.

THE COURT: Sustained.

Q Well let me ask you, Doctor, are you paid for your time today?

A Yes, I am.

Q And how much?

A I'm being paid $4,000 for the preparation and being here today. It's a flat rate.

Q How about for the report that you authored?

A The report was, I want to say 3,000.

Q Okay.

And I don't mean to be cruel, but once you get the first set of numbers and put in an inflation rate or a growth factor, just push a button, right?

A What I'm being paid for is not the Excel spread sheet. What I'm being paid for is the expertise, what to plug in. But, yes, you put in the numbers, you put in formulas.

Q And you prepared -- you testified 40 or 50 times, you prepared hundreds of these types of spreadsheets, right, lost earnings?

A In conjunction with Doctor Leiken, yes.

Q Now, one more group of questions about the loss in health insurance, right.

Do you know what the premium is for Obama Care for a person in Mr. Kolari's situation?

A So the premium, that's a difficult question to answer. Under the Affordable Care Act, there are various levels of types of insurance. So you could go for platinum or silver or gold.

Union benefits tend to be on the high end, so a very valuable health insurance premium -- plan, so the premium would be higher.

The 12,000 represents the lowest category. So I took the most conservative estimate of what a plan would cost in New York State.

Q Well, do you remember my questions before, if the jury gives Mr. Kolari all of these benefits, which health insurance costs which I presume are premium coverages, right, that's the cost of the premium that he would have to pay, right?

A Yes.

Q All right.

If he was to pay a premium for he and his family under the Affordable Care Act, about how much would it be approximately, would it be 12,000 or isn't there a limit of 96,00 percent family or 86,00?

A That's only if you qualified.

Q Well, I don't think they could turn down anybody, right?

A They can't turn down anybody, but they only subsidize for people who are eligible for Medicaid or close to it. So, otherwise you pay the full price.

And, the reason why it is considered a benefit is that because they have these group rates, you are paying less than you would without the Affordable Care Act.

But the value of that health care that came from the union was higher than 12,000, and they are going up because the insurance companies have had trouble, they are under estimating

what the premium should be.

So I would say the replacement rate more accurately for a plan like that would are 14,000 or 15,000.

Q If he gets that plan and pays the 14,000, then all these other costs that you talked about go by the wayside, right, because they can't turn him down, correct?

A They can't turn him down for the insurance, but insurance plans are constantly evolving and changing what they cover and what the co-pay is, there's no guaranty.

Q I understand, but what we are taking about are exams to an orthopedist, right?

A Yes. That's typically covered.

Q That's typically covered.

Epidural injections, if a doctor says is necessary, that would be typically covered, right?

A Typically covered.

Q Okay.

So the 14-some-odd-dollars, if that is in fact the cost, that would get rid of all of the health things that Doctor Winiarsky says this gentleman would need in the future, right; and you don't have any position on whether he really needs them or not, due to this injury?

A That was more than one question, sorry.

Q Okay, let's break it up.

If he pays $14,000 for whatever the Obama Care,

Affordable Care Act premium is, is it a fair statement that virtually all of those other costs that Doctor Winiarsky talks about that he thinks Mr. Kolari needs are paid for?

A No.

Q What isn't paid for?

A I couldn't tell you specifically what isn't paid for, but it is my understanding that the value of those services is, should be guaranteed and it wouldn't be, especially given the uncertainty about the Affordable Care Act into the future in and of itself. There's that.

There's also, as an economist, we have this issue of who should pay and if the federal government plan or private insurance company is now paying all of those bills that affects the premiums.

So the question is, should that health insurance plan, which he would have had without an injury that is a benefit to cover his general health expenses, also pay for injuries that somebody else is liable for.

So there are two reasons why I continue to use the value of the services that are necessarily associated with that injury.

Q All right.

Well, let me ask you this, I guess it comes down to one of the biggest components of your projected future medical expenses are the steroidal injections, right?

A Yes.

Q Now, isn't it a fact that many doctors will bill you, let's for argument say they bill you a thousand dollars for something, right?

A Okay.

Q Your insurance company pays 750, right?

A Right.

Q And many times the doctor never, he can but never asks you, the patient, to pay 250; am I right?

A Depending in-network, out-of-network.

Q That's a fair statement, right?

A Yes.

Q So while these are -- by the way, where did you get the costs of their steroidal injections from?

A I got them from Doctor Winiarsky.

Q Winiarsky?

A Yes.

Q Do you know, okay, so you don't know if that's low, medium, high or if that was Medicare rates, Medicaid rates or his independent rate that he made up, right?

A It is in the ballpark. But the reason I won't assign the rate is there's some variation in the severity or the type of services so only a medical expert could determine whether it should be the low or the high.

Q All right.

But you would agree with me that if someone was on Medicaid, Medicare or Medicaid, the rate of reimbursement would be much lower?

A Their different. So Medicaid would be even lower than Medicare. But, yes.

Q Do you know if Mr. Kolari is undergoing physical therapy, as we sit here today?

A I believe he is not.

Q Do you know when the last time Mr. Kolari went to go to physical therapy?

A That, I do not know.

Q Okay.

Do you know if any doctor has prescribed physical therapy for him at any time since 2015?

A Other than, other than the narrative of Doctor Winiarsky?

Q Other than that, right.

A No, I'm not aware of it.

Q Well, if I told you that Mr. Kolari testified that he's not undergoing physical therapy today, and I know you don't make the medical decision whether he should have physical therapy or not, but he's had not going today, would that influence whether in your projection he should get physical therapy from now until doomsday when he passes away?

A It would not influence my decision.

Whether or not he, he's going for physical therapy or not could very well be a function of the fact that it is no longer covered.

Physical therapy is one of those carve-outs. There's a lot of variations across plans. I can't base his current utilization on what a doctor's recommended he needs, I shouldn't base the loss on what he's took, but rather what the doctor recommends, because that's the value of the injury and the loss.

Q Okay.

Well, let me ask you this, you didn't see Doctor Sherry's report?

A I did not, no.

Q Subject to connection, this Doctor Sherry report--

MR. O'MALLEY: Objection.

MR. BOTTARI: Doctor Sherry will be here tomorrow.

MR. O'MALLEY: I don't care if he testifies. That's fine. But reading a report that's not in evidence, I object.

THE COURT: Sustained.

MR. BOTTARI: I'm not reading from anything.

Q Subject to connection, if Doctor Sherry was to come in and say Mr. Kolari needed no further physical therapy years ago, would that influence any of your numbers; or, do you just put down what the plaintiff tells you and that's it?

MR. O'MALLEY: Objection.

Not what the plaintiff did, what Doctor Winiarsky put in his report.

THE COURT: That's right, rephrase the report.

Q You have no idea -- well, let me ask you this, is the only medical report that you based your projected future medical expenses and needs on solely the report of Doctor Raz Winiarsky; yes or no?

A Yes.

Q So when you say you didn't take anything else into account, that's exactly what you mean, correct, you didn't take into account if someone other Doctor Winiarsky said he didn't need anything, correct?

A Correct. I could not possibly discern which doctor is correct if they disagree. So what I did was, given in his expert opinion, and I have no reason to question it, this is the value of those services, should you agree that that's what he needed. If it changes, then the numbers change.

Q Right.

So if, in fact, various other doctors said Mr. Kolari doesn't need future physical therapy from now until 76-point-something years, right?

A Um-hum.

Q And if, in fact, he didn't go for any physical therapy at the current time and isn't planning to go for any physical therapy, it may be that that, the physical therapy numbers that

you are projecting were in accord with what Doctor Winiarsky suggests, and have no relation to reality, correct?

A They would change, yes.

Q And the same thing about the steroidal injections?

A Sure.

Q If he's not going to them any more, and the last time he had them was over a year-and-a-half ago, you have him going or Doctor Winiarsky has him going, what, three times a year?

A Yes.

Q When was the last, do you know when the last time he had those injections was?

A I do not.

Q It wasn't this year.

A Okay.

Q He's having them three times a year, he would have had at least two this year or maybe one?

MR. O'MALLEY: Objection.

He's testifying again.

THE COURT: No, that's a question.

Overruled.

Q Right. If he was supposed to have them three times a year, he would likely have had one this year, correct?

A Correct.

Q Maybe even two?

A Correct.

Q Or maybe one or two in 2015, correct?

A Correct.

Q So when you make your projections as to what Mr. Kolari, quote, unquote, needs, based on Doctor Winiarsky's report, right, you are not saying, I certify with a hundred degree reliability that this is accurate as to what he needs; all you're saying is based on what Doctor Winiarsky said, I made these calculations, I used reasonable growth factors, and I extended them out for his life span? Am I correct?

A That is absolutely correct.

MR. BOTTARI: I have nothing further.

THE COURT: Thank you, counsel.

REDIRECT EXAMINATION

BY MR. O'MALLEY:

Q Ma'am, this gentleman showed that chart, those ten dream jobs; do you remember that?

A Yes.

MR. BOTTARI: Objection to "dream jobs," Judge.

THE COURT: Sustained.

Q Would you agree those jobs weren't as good from an economic point of view then this union group?

A Correct.

Q And when he was taking this mean, could you tell the ladies and gentlemen of the jury --

MR. O'MALLEY: Where is that chart, can we put it

up here?

MR. BOTTARI: It's right here.

Q This is what Doctor Ramnauth will be testifying via video this afternoon or perhaps just after you, when they put mean salary down, does that mean the guy is going to get it 33,470 when it comes to telephone operator?

A No, it does not.

So the reason I asked the question is that starting salary is, because we all know salaries grow over time, particularly if it's a union job, seniority matters. So it takes the average, given all levels of seniority and experience.

Q So we got a guy who's 46 years old, speaks broken English and is applying for a job as a telephone operator?

A Okay.

Q And, in fact, if he had the broken English and is applying at 46, do you think perhaps he'd may get paid less than 33,470?

MR. BOTTARI: Objection.

THE COURT: Sustained.

Q Now, as far as -- did you know the projection that Doctor Ramnauth is putting down as far as these ten jobs was based on Mr. Kolari having a high school education; did you know that?

A Yes.

Q But we know now Mr. Kolari has a Macedonia-limited

education; would that affect any of these jobs that this gentleman is making projections: Gate guard, dispatcher, parking lot attendant?

MR. BOTTARI: Objection.

THE COURT: No. Overruled.

You can respond.

A I forgot the question. Sorry.

THE COURT: You want to read it back?

MR. BOTTARI: May we approach for a second.

(Whereupon, a sidebar conference was held off the record.).

THE COURT: Objection is sustained.

Q From an economic point of view, what's called an outlier; have you ever heard of the term?

A Yes, of course.

So an outlier is when you are far from the means so oftentimes we use median rather than mean, because the mean is very sensitive to outlier. So averages, if you have everybody in the ballpark of earning 50,000 but you have a millionaire in there, that's going to throw off the mean, that millionaire is an outlier.

Q And would you agree regarding this projection of an inspector, which you would have to be skilled for that, by the way, you have a projection of $46,000, that would be considered an outlier concerning their median salary?

MR. BOTTARI: Objection.

THE COURT: Sustained.

Q Now, when he asked you, and he told you to take out your calculator and find out what the median salary would be, did he tell you to take all these jobs and divide it by ten?

A No, he did not.

Q And you think that would be fair?

MR. BOTTARI: Objection.

THE COURT: Sustained.

Q Well, what would be the purpose of me taking these ten jobs, these proposed jobs and actually adding them all up and dividing them by ten?

A So you would be getting the average in assuming those are jobs that Mr. Kolari could perform, based on a vocational expert's opinion, then that's the market he would be in; and, as an economist, I would want to know probabilities, so which ones would be higher probability that he would match to.

But let's assume that he had equal shot and it just depends on vacancies, then, well, yes, I would want to take the average of all these jobs for a variety of reasons.

I'm not sure I trust the median salary to predict what he's going to start off at for a lot of reasons.

Q Tell me, why don't you trust when these charts are putting down median salary?

MR. BOTTARI: Objection.

THE COURT: Sustained.

Counsel, sustained.

MR. O'MALLEY: What?

THE COURT: Sustained.

MR. O'MALLEY: Doctor at most is putting in this--

THE COURT: Next question.

MR. O'MALLEY: Fine.

Q Could you just take these numbers, Doctor, if you could, and just take these jobs, add them all together and divide it by ten?

A I do need it closer.

THE COURT: Counsel, I can give her this chart. This is the Court's copy.

MR. O'MALLEY: Okay, thank you.

(Handing.)

A $35,445.

Q That's lower than the number that you had before, correct; that would be the middle?

A That's the middle, yes.

Q And if you could take those numbers, what would be the low, so the number you had before, the middle defense counsel presented to the jury, that would be how many thousands less?

A Um, I'm trying to figure out what I did. Sorry. I actually didn't write down the number for the --

Q That's fine.

35,000. So if you take the outlier, as far as the inspector skilled, 47, now, that would lower, the number?

MR. BOTTARI: Objection.

The inspector's skills is not an outlier. I object to the phrasing the question, the form of the question.

THE COURT: Sustained.

Q As you sit here today, do you know what type of education you need to be an inspector?

A I do not. I can assume high school.

MR. BOTTARI: Objection. She's not a vocational--

THE COURT: Sustained.

Q If you just add up those names -- withdrawn.

Now, they have locker room attendant, and you work as an economist for quite sometime, correct?

A Yes.

Q Have you ever seen a locker room attendant with the medical benefits, the pension, the annuity, the vacation fund that Mr. Kolari was getting?

MR. BOTTARI: Objection.

THE COURT: Overruled.

A It is not likely that someone with a high school diploma or less would be in a job other than union jobs that they would have those kinds of benefits.

Q That's for all ten of these, correct?

A Correct.

Can I just add? I don't know if I'm allowed to do that. I would have to look at each one of them, but from glancing at it, yes, they seem, they seem like lower-skilled jobs that are less likely to have those kind of benefits.

Q And the gentleman said we never know what's in store for someone, someone could die earlier then your projection, correct?

A Correct.

Q And some people actually live longer?

A Correct.

Q As far as work, Mr. Kolari indicated he was going to work longer than, as long as he could?

A I'm aware of that, yes.

Q And would you agree that some roofers, this gentleman brought up some retire 57, some retire past 62?

A Correct.

Q So if they went past 62, your numbers, 1.7 would be larger; would they not?

A Yes.

62 is pretty conservative, given I had the information that he would have worked longer and his work, his attachment to the labor force seemed pretty strong from his work history.

Q And could you be so kind to tell us about Health Republic?

THE COURT: You are going to fast. I hadn't heard the question. What?

Q He brought up Obama Care, can you let the ladies and gentlemen of the jury know what happened --

MR. BOTTARI: Objection.

THE COURT: Sustained.

Q Well, ma'am, you know --

THE COURT: Counsel, slow down a bit.

Q You know about medical coverage, right?

A Yes.

Q And would you agree that if you are going to a doctor and you go to the doctor and say, I know I owe you this money but tough, do you think it would perhaps affect his care and treatment?

MR. BOTTARI: Objection.

THE COURT: Overruled.

A So, yes, in my experience, ability to pay is correlated with quality of care.

Q And would you, I know this may not be your expertise, you are affiliated with the Hospital of Stony Brook?

A Yes, I am.

Q Do Medicaid patients normally get treated as well as people with insurance?

MR. BOTTARI: Objection.

THE COURT: Sustained.

Where are we going with this, counsel?

MR. O'MALLEY: Well, the quality --

THE COURT: Counsel.

Q But he's saying he could do Obama and get paid under Medicaid?

MR. BOTTARI: Objection.

THE COURT: Counsel, sustained.

Q You said he had a premium policy with the union?

A Correct.

Q What does that mean?

A That means it is covered. So I explained earlier, coverage Varied by plan and by how much the premium is.

There are some plans that are just catastrophic, meaning only pay the big stuff, you pay everything else out of pocket. Those are very low premium plans.

Then they range all the way to gold star premium plans that cover everything with low co-payments and you could go to anybody you want.

So there are ranges of health insurance plans available through the Affordable Care Act, and also that exist on the market.

Q The ones with less coverage, you don't have to pay as much, correct?

A Correct.

Q Higher deductibles?

A Yes.

Q Higher co-pays?

MR. BOTTARI: Objection.

THE COURT: Overruled.

A Yes.

So the less you pay in premium, the more you are paying out-of-pocket.

Q And this gentleman said something, well, you know your projections are off as far as future medical expenses?

THE COURT: Counsel, slow down.

This is the third time I'm asking you to speak slowly so that the court reporter can get everything.

Q This gentleman is saying --

THE COURT: Slow down.

Q This gentleman is saying regarding future medical costs that your projections are out of whack because his union shouldn't be paying, the Federal Government should be paying for the injuries that are caused by defendant.

MR. BOTTARI: Objection.

THE COURT: Sustained. That's not -- that's sustained.

MR. O'MALLEY: Well, he said that the Federal Government was, Obama Care should be paying for Mr. Kolari's treatment due to the injury.

MR. BOTTARI: Objection.

THE COURT: Sustained.

Q Would you agree that his union, and that's the one when he's putting this money for medical coverage, that was covering medical expenses?

A His health insurance plan was covering medical expenses and paid for by the insurance company.

Q And pensions, when a fellow quirks off, dies, does the pension go to the wife?

MR. BOTTARI: Objection.

THE COURT: Overruled.

A Yes, so their survivors benefit, they name a beneficiary, typically the wife.

Q That's typically under a union contract, right?

MR. BOTTARI: Objection.

THE COURT: Overruled.

A Any pension plan, whether you get it directly from a bank or from your employer, is a family benefit.

Q And would you agree that when a fellow is 46-years-old and he wants to apply for, say, health insurance or a pension, it costs more than if a guy is 25-years old and he wants to get some sort of pension?

A Oh, yes.

Q Why is that?

A Sure. So the pension, it depends on what kind, you are lumping a lot together.

Q I apologize. Let's just talk pension.

A So if you wanted to invest in a pension privately, the only reason your age would matter is if you are seeking a level of consumption or benefit at retirement, you would have to pay more because you have a less amount of time.

If you are talking about life insurance or health insurance or for that sort of thing, then they take into account your probability of using the services.

Now, under the Affordable Care Act, we did put that, we had to create the same conditions. So some of that is in check.

A lot of these questions that are coming at me are more complex than just yes or no. But, in the case of the health insurance plan, what I was trying to say is it represents a benefit that is more than the medical services he would be using. It represents insurance.

Insurance means certainty in the presence of uncertainty. And so, if you remove that cushion, that security interest having insurance, you are removing something.

MR. O'MALLEY: Thank you.

No further questions.

REDIRECT EXAMINATION

BY MR. BOTTARI:

Q Doctor, if he gets the money to keep his gold plan, as you call it, the loss of health insurance benefits, suppose he pays in some piece, the jury gives him all of this money,

assuming he never gets another job, et cetera, right --

A Okay.

Q -- isn't it a fair statement that most, if not at all of those health problems that Doctor Winiarsky talks about are going to be covered by his gold star plan from his local union; yes or no?

A I did not assign a gold star plan there, I assigned the lowest level.

Q You said gold star plan is 14 versus 12?

A Some of them are 30,000. So I'm just throwing out numbers. There's a range. I'm saying his is somewhere between 12,000 and 30,000.

Q Well, Doctor, he had a plan that cost about 12500, right that's what Mr. Kolari had, correct?

A That's what I assigned.

Q Right. Well, you know what benefits he had and what plan he had, right?

A So I'm saying I'm being conservative.

Q Okay.

So wasn't his plan a good plan, we heard about what great benefits union workers have, right?

A I underestimated the value of the actual benefit, and partially to offset some of what you're talking about.

He's going to get the medical services, I'll give him the cheapest plan.

If I were going to get rid of the medical services, I have to increase the value of that health insurance.

Q But he's getting insurance, right?

The orthopedic visits are going to be covered, right, we went through this, right, from his insurance company?

A How much is going to be covered and who he gets to see is going to depend on the quality of the plan.

Q Right. But he didn't have a $30,000 plan to start with, right?

A He had a better than $12,000 plan.

Q Okay.

So if he spends 14,000, right, and we don't know, and he's not -- well, what I'm saying is if you give him all of this money for insurance, right --

A Yes.

Q -- or, if you give him none of this and just pay him all the other stuff, right, isn't there some area of overlap, just yes or no, between what his insurance benefits would be with this health insurance that you are projecting out to be 353,000 versus all the things that Doctor Winiarsky said?

A So there is certainly some things that would be covered--

Q Right?

A -- and that would qualify as overlap.

Q Yes, but you don't know for sure because you don't know

what the plan specified?

A It definitely covers some of them.

What I'm saying is I'm still comfortable with what I produced as being reasonable.

Q Well, you don't know what Doctor Winiarsky says is accurate or not, assuming it is accurate?

A Yes, absolutely.

Q So there is some overlap, right?

A There would certainly be some overlap.

MR. BOTTARI: I have nothing further.

MR. O'MALLEY: I have no further questions.

THE COURT: Thank you, Doctor. You can step down.

(Witness excused.)

THE COURT: Counsel, any other witnesses Mr. O'Malley.

MR. O'MALLEY: Not for this morning.

THE COURT: You want to step up.

(Whereupon, a sidebar conference was held off the record.)

MR. BOTTARI: Judge, if we can start in about a minute with the video.

(Pause in proceedings.)

THE COURT: Members of the jury, if you will recall from my opening statements that I gave you a last week, I said that sometimes because of scheduling issues a