TRIAL TRANSCRIPT OF DEBRA SABATINI DWYER, M.S., Ph.D.; 2017 Trial Trans. LEXIS 510

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

Index: 800049/2012

October 20, 2017

Reporter
2017 Trial Trans. LEXIS 510 *

N.S., an Infant by Her Parents and Natural Guardians, SRIDEVI KALIDAS and SIVA SANKARAN, Plaintiff(s). - against - ROBERT F. WARD, M.D. WEILL CORNELL MEDICAL COLLEGE and THE NEW YORK-PRESBYTERIAN/WEILL CORNELL MEDICAL CENTER, Defendant(s).

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

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Counsel

[*1] DUFFY & DUFFY, PLLC, Attorneys for the Plaintiffs, 1370 RXR Plaza, Uniondale, New York 11556, BY: JIM DUFFY, ESQ.

HEIDELL PITTONI MURPHY & BACH, Attorneys for the Defendants, 99 Park Avenue, 7th Floor, New York, New York 10016, BY: CHARLES BACH, ESQ.

Judges

BEFORE HONORABLE BARBARA JAFFE, JUSTICE

Proceedings

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[11]
60 Centre Street

[12]New York, N.Y. 10007

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[24]
SHAMEEKA HARRIS, CSR, RMR, CLR

[25]CHARISSE KITT, CRI, CSR, RMR, FCRR
Senior Court Reporters

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[2]A F **[*2]** T E R N O O N S E S S I O N

[3]COURT OFFICER: Jury entering.

[4](Whereupon, the sworn jurors enter the courtroom

[5]and take their respective seats.)

[6]THE COURT: Good afternoon, everybody. Please be

[7]seated. Mr. Duffy.

[8]MR. DUFFY: The plaintiff calls Debra Dwyer.

[9]D E B R A D W Y E R, a witness called by and on behalf of

[10]the Plaintiff, upon being duly sworn, was examined and testified

[11]as follows:

[12]THE WITNESS: I do.

[13]THE COURT: You may be seated. Please state your

[14]name loudly and clearly for the record and give your

[15]business address.

[16]THE WITNESS: Sure. Debra D-E-B-R-A, Dwyer,

[17]D-W-Y-E-R. My address is 17 Springbriar Lane. Springbriar

[18]is one word, B-R-I-A-R, Centereach, C-E-N-T-E-R-E-A-C-H,

[19]New York 11720.

[20]THE COURT: Thank you.

[21]DIRECT EXAMINATION

[22]BY MR. DUFFY:

[23]Q. Would you inform the Court and the jury of your

[24]educational and professional background, I suggest doing it

[25]chronologically?

[26]A. Sure. I got my bachelor's degree in Queens College in
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[2]Flushing, New York in economics and English literature. I went

[3]on to get my master's **[*3]** and my Ph.D. from Cornell University in

[4]labor economics and health economics. From there, I did a

[5]postdoctorate fellowship at the Center for Policy Research in

[6]Syracuse University. I spent a year there studying

[7]international labor disability policies. From there, I was

[8]recruited to the Social Security Administration where I spent

[9]two years working in the division of economic research on

[10]disability policy. And then for the last 19, almost 20 years, I

[11]have been working at Stony Brook University as a faculty member.

[12]I have affiliations as a professor at the Department of

[13]Economics and Health Sciences and also in the College of

[14]Engineering where I teach economics and public policy. I also

[15]recently accepted a position as the assistant dean in the

[16]College of Arts and Sciences to work on strategic planning and

[17]research.

[18]Q. So your undergraduate and graduate degrees are what?

[19]A. Economics and English literature under graduate and

[20]then PHD -- master's and Ph.D. in labor and health economics.

[21]Q. And you are here today as an economist?

[22]A. Yes.

[23]Q. So all of us think we know what **[*4]** that is, what is an

[24]economist? What do you deal with? What does the field deal

[25]with, then we'll narrow it down to how it applies to what you're

[26]doing here today?
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[2]A. Sure. Economics in general is about how the economy or

[3]society decides what to do with their resources. It's broadly

[4]defined. Our resources are scarce and so we have to answer

[5]questions like what to produce, how to produce them and who gets

[6]what. I am a health and labor economist which means I focus at

[7]micro level on two specific markets, very large markets. So

[8]just about everybody is in the market for work, labor, and

[9]everybody is in the market for health care. And I study the

[10]trends in those two markets.

[11]I would study things like growth rate and health care

[12]prices and what's going on with health care policies. I study

[13]the market, the job market, the education market and what's

[14]happening with fringes and wages and those sorts of things.

[15]Q. Have you published peer review materials in the field

[16]of specialty on economics and your related field of special

[17]interest?

[18]A. Sure.

[19]Q. Give us an idea **[*5]** of a couple of them? How many -- first

[20]of all, give us an idea?

[21]A. So how many is peer review, journals, articles not

[22]including book chapters, probably about 20. And then book

[23]chapters about three. I also --

[24]Q. Give us an idea of a couple of -- just so we have an

[25]idea of what you've written in?

[26]A. Sure. Most of my research has been at the intersection
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[2]of health and work. So I began my career for six or seven years

[3]focusing on social security policy questions. That had to do

[4]with how does health affect work, how does disability policies

[5]affect people who have disabilities in the labor market. So I

[6]published some papers in those areas. One of the more prominent

[7]works that I produced in that area is actually how to measure

[8]health and data so that you can put it into models to study how

[9]it will impact how people work. That's one of my most cited

[10]papers. It has been cited one of the most prominent papers in

[11]the field.

[12]I've also done a lot of work on how to measure things

[13]like health care and disability and then more recently I have

[14]been doing a lot of work on addiction **[*6]** which also falls into the

[15]health care and work sector, how addictions affect particularly

[16]young people, their educational outcome, their work outcome. So

[17]I have looked at all the different types of addictions. Right

[18]now what I am really focused in on is addition to technology,

[19]how is cellphone use and internet use and being tied to a

[20]cellphone affect our young people particularly those people who

[21]have no life without it.

[22]Q. Give us an idea research projects you are involved with

[23]and any grants and honors that you have been awarded? Give us

[24]an overview of that?

[25]A. So I have received grants from the National Institute

[26]of Health through the National Institute of Ageing. I received
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[1]

[2]several grants from the Social Security Administration

[3]administered through the University of Michigan, so a number of

[4]foundational grounds along the way. I've earned awards in

[5]research. I have been nominated. My work has been nominated

[6]among the top 200 papers of all times in health economics.

[7]Q. Now, as part of the field of economics and part of your

[8]function in economics, do you get involved in **[*7]** economic loss

[9]analysis for people seeking your input who are litigants in a

[10]lawsuit whether it is a plaintiff asking you to do that or

[11]whether it is a defendant asking -- in other words, anybody

[12]that's a litigant in a lawsuit do they seek out someone like

[13]yourself to do an economic loss analysis?

[14]A. Yes, for the most part plaintiffs.

[15]Q. And did you do such an economic loss analysis at our

[16]request in this case for N.S. Sankaran?

[17]A. Yes.

[18]Q. Now, we have already in evidence -- the way this has to

[19]go in, as you know, is we have the categories in flat numbers

[20]from Dr. Root. You are aware of that?

[21]A. Yes.

[22]Q. But your role as to that aspect of the proof is to

[23]provide, under the law, growth rates or inflation rates for each

[24]specific category; is that a correct statement?

[25]A. Yes.

[26]Q. And did you do that for us here?
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[1]

[2]A. Yes.

[3]Q. And so if I could first move to that aspect. We have

[4]up on the screen the category and have you provided for each

[5]category the inflation rate that you feel is applicable for each

[6]category?

[7]A. Yes.

[8] **[*8]** Q. Could you go through and explain and perhaps certainly

[9]on the first one, explain how you come up with that. For

[10]example, one category is three percent. Another one is 3.8,

[11]another is 1.5. So as you go through, would you explain for the

[12]jury how these are different and why they're different?

[13]A. Sure. I think to do that first I should explain what a

[14]growth rate is.

[15]Q. Please do that, yes. I should have asked myself.

[16]A. So, otherwise, it won't make any sense. So what

[17]Dr. Root provides is the category of services that Ms. Sankaran

[18]will need over the remainder of her life but gives the flat rate

[19]starting off in today's dollars. Those medical services are

[20]going to be required next year and the year after and for the

[21]next seven years or so. And so in order to be able to project

[22]into the future, we have to know what's going to happen with the

[23]prices for those same exact services.

[24]So if we're talking about a doctor's visit that cost

[25]$ 100 today, it is not going to cost $ 100, 10 years from now. As

[26]we know, walking through the door for the same doctor visit you

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[2]are going to pay **[*9]** a little bit more because prices go up over

[3]time. As a health economist, what I'm looking at is what

[4]happens to prices over time so I can predict what I think is

[5]going to happen over the next few decades in order to be able to

[6]predict what the actual cost will be for the medical care for

[7]Miss Sankaran's medical needs for the rest of her life.

[8]Q. I am interrupting you and I know and I apologize.

[9]Could you further explain how is it you come you with future

[10]growth rate? What information do you use as to what is

[11]happened, what is happening and what is expected to happen? How

[12]does that all fit in?

[13]A. Sure. So what we use is federal data, federal

[14]statistics, the Bureau of Labor Statistics collects all kind of

[15]data on what happens in prices in general. You probably heard

[16]of the inflation rate, the Consumer Price Index, which is a

[17]standard bundle of goods that households use that combines the

[18]prices, all of them, and every year for decades they have been

[19]calculating what has been happening to the prices and what the

[20]growth rate has been in the prices. That's the inflation rate.

[21]They also do this **[*10]** for subcategories of goods and

[22]services including medical services, but they don't just use

[23]overall medical services. So overall medical services for the

[24]past 25 years had been rising at an average rate of 4.2 percent

[25]per year. That means for every hundred dollars, you are

[26]spending another $ 4.20 every year for those services on average.
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[1]

[2]So what I need to decide is how far back do I go to

[3]look at the average growth rate and prices in order to be able

[4]to say what's going to happen into the future. And I've

[5]selected 25 years and that's the standard in my field. What we

[6]do is we look at business cycles. We look to see the trends in

[7]prices. Sometimes they go up. Sometimes they go down, capture

[8]enough periods of ups and downs that are representatives of

[9]what's going to happen in the future. That's what I did here.

[10]And I did it for different subcategories as available

[11]by the Bureau of Labor Statistics so that's why you see for

[12]medical care that's things like pain specialists, orthopedists

[13]medical professionals, doctor/office visits have risen on

[14]average three percent per year for the **[*11]** last 25 years. That's

[15]the growth rate that I will recommend for projecting what's

[16]going to happen to those prices into the future. Should I go on

[17]then?

[18]Q. Please do.

[19]A. So then we do the same thing for all of the other

[20]categories. And as you can see, as Mr. Duffy said, they're

[21]different across the different categories. Diagnostic tests

[22]like x-rays, same rate, three percent per year.

[23]Pharmaceuticals, medications, prescription drugs had risen at a

[24]faster rate than the other services I've mentioned. They've

[25]grown on average over the last 25 years by 3.8 percent. And I

[26]should say I am being somewhat conservative on these growth

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[1]

[2]rates. Pharmaceutics have risen pretty fast on -- I am being

[3]pretty conservative in terms of what I think is going to happen

[4]in the future.

[5]The next three categories all fall into medical

[6]supplies, so disposable consumables, orthotics, durable medical

[7]equipment, this is going to include things like wheelchairs,

[8]diapers, tubes, various replacement items on hardware that

[9]Miss Sankaran will need and the growth rate on that is actually

[10]slower than **[*12]** the general rate of inflation at 1.5 percent.

[11]For therapeutic interventions like physical therapy,

[12]2.5 percent; transportation and mobility also 2.5 percent. Home

[13]care, so that -- so now we have these two categories of care for

[14]the day-to-day needs for Miss Sankaran and that can either be

[15]done in the home and prices in the home care have risen at a

[16]rate of 2.5 percent or it can be done in a facility and there it

[17]would be a growth rate of four percent per year. That's all of

[18]the categories.

[19]Q. Now, I am going to hand you this piece of paper. Is

[20]this from your report, the sheet that details those specific

[21]growth rates?

[22]A. Yes.

[23]MR. DUFFY: Your Honor, I would offer this in

[24]evidence.

[25]THE COURT: Any objection?

[26]MR. BACH: No objection.
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[2]THE COURT: Very well. That will be plaintiff's

[3]three.

[4](Whereupon, the item was received and marked

[5]Plaintiff's Exhibit 3, Suggested Health Inflation Rates, in

[6]Evidence.)

[7]Q. Now, based on this information in the testimony in this

[8]case that this child is totally disabled and, therefore, will

[9]never work, **[*13]** did you do, at our request, an economic loss

[10]projection for lost income for this child's lifetime -- work

[11]life I should say?

[12]A. I have.

[13]Q. Now, first of all, in doing an economic loss analysis

[14]dealing with future loss earnings, does the education level of

[15]the parents play any role in forming such an analysis?

[16]A. Absolutely.

[17]Q. Explain why?

[18]A. So in my research, I mentioned that in my research I

[19]looked at educational outcomes and psychological outcomes also

[20]for kids who may or may not be addicted to various drugs. So in

[21]that work, I'm required to think about what their expected

[22]educational outcomes would be and in the literature, the

[23]strongest predictor of educational outcomes for a child is the

[24]parent's educational outcome. So it is one of the most

[25]important predictors in what you think is going to happen with

[26]educational outcome for the kid.
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[2]BY MR. DUFFY:

[3]Q Now, in this case the testimony is that both

[4]of **[*14]** these parents have master's degrees. In doing your

[5]analysis, did you use that level or were you more

[6]conservative in what you used as the basis; and, if so,

[7]why?

[8]A So the parents do have master's degrees in

[9]psychology and computer science, so they're a pretty

[10]educated family. I chose to be conservative. I

[11]usually err on the side of conservative. And I had

[12]N.S. going only for a bachelor's degree.

[13]So Ms. Sankaran, what we used was the average

[14]weight rate for college. So we had her graduating

[15]college to determine what her annual earnings would be.

[16]Q Did you then set forth -- we have it up on

[17]the screen, but its important that you not only tell us

[18]what it is but explain how this comes to be. First of

[19]all, what's the basis of these numbers, you know,

[20]what's the source and how do you project? Go ahead.

[21]A Sure. So the US Census Bureau does surveys

[22]nationwide, they're a national representative, and they

[23]collect all kinds of data, also by gender, by year of

[24]birth, by educational status. So that $ 66,059 per year

[25]that you see under yearly loss in current dollars is

[26]the average earnings **[*15]** of a college graduate female in
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[1]

[2]2014. So that's what was available from the US Census

[3]Bureau. And, again, I used for the bachelor's degree

[4]not the master's degree.

[5]Q Okay. And then you have a projection of

[6]number of years and then you have inflation rate.

[7]Explain that.

[8]A So besides -- if you really want to calculate

[9]what the future earnings would have been had

[10]Ms. Sankaran been able to work an entire worklife

[11]expectancy, we begin with age 26, which is being

[12]conservative, that she would finish. It would take her

[13]that long to finish her college degree and also get

[14]established in a career. So 26.

[15]We have her working to the age of 67. The reason

[16]we use 67, is under the Social Security Administration

[17]that is the normal age of retirement, which means

[18]that's the earliest age you can retire and collect your

[19]full benefit. So you can retire earlier than that but

[20]you would take a penalty. So we tend to use the normal

[21]age of retirement for people who we believe will have a

[22]career and will be tied to the labor force full time.

[23]So that's what we used for Ms. Sankaran. That

[24] **[*16]** represents 41 years of work that she would have lost.

[25]And the growth rate, the inflation rate is what

[26]has happened on average over the last 20 years in the
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[1]

[2]labor market. So we also follow trends and wages on

[3]average wages, and all categories for the most part

[4]have increased at 3 percent per year.

[5]Q Now, the loss of income for a career, that is

[6]a definable item from beginning to end and is based on

[7]the worklife expectancy that you've talked about. Is

[8]that correct?

[9]A Correct.

[10]Q And in the statistical analysis that you draw

[11]upon, there is a difference, is there not, between

[12]worklife expectancy and life expectancy?

[13]A Sure.

[14]Q Now, you have another item here.

[15]A Yes.

[16]Q Loss in -- go ahead, explain what that is.

[17]A So besides income, we usually have benefits

[18]tied to a job and the employer is responsible for

[19]paying for at least part of those benefits. So in

[20]order to calculate the value of those benefits, again

[21]from the Census Bureau and also from the Bureau of

[22]Labor Statistics, we have data on the average

[23]percentage an employer pays **[*17]** for somebody's benefits.

[24]The average is 25 percent of someone's income and so

[25]that represents -- that's where that $ 16,515 per year

[26]comes in. So we add in the value of the lost benefits

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[1]

[2]for the same amount of time the worklife expectancy.

[3]And that, too, rises at an average rate of 3 percent

[4]per year.

[5]Q Now, is this page the page from your report

[6]that deals with that particular projection?

[7]A Yes.

[8]MR. DUFFY: Your Honor, I'd offer that into

[9]evidence.

[10]MR. BACH: No objection.

[11]THE COURT: That will be Plaintiff's 4.

[12](Plaintiff's Exhibit 4 marked in evidence, as

[13]of this date.)

[14]Q Now, you are paid for your time in doing your

[15]analysis, your time here in court today?

[16]A Yes.

[17]Q And any time you spent discussing these

[18]things with me or my staff?

[19]A Yes.

[20]Q And can you tell the jury how is it you're

[21]paid? What is the rate that you are paid at?

[22]A So I charge a flat rate of $ 4,400 for

[23]preparing and for being here today.

[24]MR. DUFFY: Nothing further. Thank you.

[25]THE COURT: Mr. Bach.

[26]CROSS EXAMINATION

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[2]BY MR. BACH:

[3]Q Good afternoon, Dr. Dwyer. How are you?

[4]A Good. How are you?

[5]Q I'm fine, thanks.

[6]Would you agree with me that it is difficult to

[7]project economically what's going to happen a year from

[8]now, two years from now, or three years from now? And

[9]certainly economists will project that the economy is

[10]going to grow at 3 percent and it turns out it grows at

[11]3.5 percent. Does that happen?

[12]A Year to year we're not particularly precise,

[13]on average we are.

[14]Q With respect to the wages of a college grad,

[15]are you saying that a college grad now, who is 26 and

[16]enters the workforce, earns on average $ 66,000 a year?

[17]A That's not the starting pay, that's the

[18]average pay over a lifetime of work.

[19]Q So, in other words, that $ 66,000 figure a

[20]year for a college grad, that takes into account a

[21]college grad who's been working 40 years. True?

[22]A Yes.

[23]Q Thirty-five years. True?

[24]A Yes.

[25]Q So adult children who -- adult children who

[26]are -- who are in the workforce now and they're age 30,

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[1]

[2]if they're earning, **[*19]** say, 30, $ 35,000 a year with no

[3]benefits, that's not unusual. True?

[4]A I can tell you what the average is for that

[5]age range but -- it sounds a little low, 30,000. But

[6]do you want me to look at --

[7]Q Well, a little -- I want to see how badly I

[8]should feel about my daughter's income.

[9]A Yeah. So a 30-year-old today would be

[10]earning, with a college degree, without benefits,

[11]61,000.

[12]Q I feel pretty badly, then.

[13]So English majors with college degrees nowadays,

[14]fair statement, probably earn less than economics

[15]majors?

[16]A Most likely, yes.

[17]Q And of course we don't have a crystal ball.

[18]We have no idea what this child would have majored in.

[19]True?

[20]A Right. Except --

[21]Q No idea?

[22]A Not no idea. They have parents who are on

[23]social science and computer science, but, yes, it could

[24]go in another direction.

[25]Q Well, if the parents are in a particular

[26]profession, is it also likely that the child will not
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[1]

[2]want to do what the parents have been doing?

[3]A It's possible, yes.

[4]Q Okay.

[5]A The tentative -- but **[*20]** what they say and what

[6]they do, but tends to be somewhat -- you're right, we

[7]don't know which way it's going to go. This is the

[8]average for everybody, whether they're English or

[9]economics.

[10]Q Okay. So would it have been more accurate to

[11]do this year by year, in terms of projected wage for

[12]picking, let's say, 30,000 or 40,000 and going year by

[13]year?

[14]A No. I have actually done those comparisons

[15]and it comes out about the same.

[16]Q And could we agree, also, that people who

[17]join the workforce then may go part time when they have

[18]children, they come out of the workforce, be

[19]stay-at-home moms, that happens from time to time as

[20]well. True?

[21]A There are breaks, yes.

[22]Q I think N.S.'s mom is a stay-at-home mom?

[23]A Her mom you mean?

[24]Q Yes.

[25]A I'm not sure.

[26]Q Would that be relevant to your analysis at
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[1]

[2]all? Just yes or no.

[3]A No.

[4]Q Okay. Fair enough.

[5]I wanted to ask you a question about the nursing

[6]care and specifically the cost of nursing care as

[7]Dr. Root described it.

[8]A Okay.

[9]Q You took whatever **[*21]** numbers Dr. Root provided

[10]and used those numbers to formulate your projections.

[11]Fair statement?

[12]A I didn't use any numbers, I just used the

[13]categories.

[14]Q The categories, okay. So you're not coming

[15]in here with any numbers, but you know that Dr. Root's

[16]numbers are the numbers that the plaintiff's attorney

[17]has put before this jury. True?

[18]A Yes.

[19]Q And you've seen his life care report and you

[20]know what his numbers are --

[21]A Yes.

[22]Q -- true?

[23]A Yes.

[24]Q So I want to focus in on the nursing care

[25]component.

[26]A Okay.

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[1]

[2]Q Do you recall what he said the average cost

[3]to hire a nurse would be per hour?

[4]A I don't recall it, given I didn't have to use

[5]it for this report I just needed a category, but I can

[6]look it up for you.

[7]Q Well, look up what Dr. Root said.

[8]A What he had in his original report?

[9]Q I'm going to -- you can look it up, check me

[10]out, but I'm going to ask you to assume that he said

[11]$ 75 per hour --

[12]A Okay.

[13]Q -- okay? Now, if you were advising parents

[14]who really needed to **[*22]** hire a skilled nurse, would you

[15]tell them to do the research and that they can get a

[16]skilled nurse for $ 40 an hour?

[17]A Would I tell them that?

[18]Q Uh-huh.

[19]A I would tell them to do the research but I

[20]don't think I would tell them to hire someone at $ 40 an

[21]hour.

[22]Q Well, let's do the math. If a nurse really

[23]costs $ 75 an hour, that nurse working 40 hours a week,

[24]52 weeks a year, their salary would be, I think it's

[25]$ 438,000. True?

[26]A I didn't do the math but that sounds about
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[2]right.

[3]Q Nurses would sure like to earn $ 438,000 a

[4]year. Right?

[5]A You're making some assumptions to draw

[6]that --

[7]Q Would you agree with me that if parents

[8]really needed to hire a nurse, they could go out and

[9]get competitive bids from agencies, part-time nurses,

[10]et cetera, and they could do a whole lot better than

[11]spending $ 75 an hour to get a nurse. True or false?

[12]A False. I can explain that.

[13]Q No, that's okay.

[14]So, you've told us that the average age of

[15]retirement is 67. So you're projecting, I think you

[16]said 41 years of this child **[*23]** when she grows up, 41

[17]consecutive years of being actively involved in the

[18]workforce. True?

[19]A Part of that was true and part of it wasn't.

[20]I didn't say the average age, I said the normal age,

[21]which is not the same thing.

[22]Q Okay. And you're saying that to forecast

[23]this to reasonable economic certainty you have to

[24]include fringe benefits as well as salary. So you have

[25]66,000 roughly in salary, 16,000 roughly in fringe

[26]benefits. And you're multiplying that each year by
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[2]what percentage?

[3]A 3 percent.

[4]Q So that salary including fringe benefits

[5]every year for 41 years, multiplied compounded by

[6]3 percent?

[7]A Correct.

[8]Q Okay. Those come to enormous numbers, don't

[9]they, when you multiply that out 3 percent every year?

[10]A It would be a large number in future value,

[11]yes.

[12]MR. BACH: I have no more questions.

[13]REDIRECT EXAMINATION

[14]BY MR. DUFFY:

[15]Q A couple of things. First of all, you were

[16]being challenged on presenting the figures, the

[17]categories of the percentages and that the numbers came

[18]from Dr. Root. You know that under the **[*24]** law that's how

[19]you have to put it in. Right?

[20]A Yes.

[21]Q I mean, that's what has to happen --

[22]MR. BACH: Objection, Judge.

[23]THE COURT: Please rephrase it.

[24]Q In order to properly do an economic analysis

[25]for a lawsuit, you have to know what the law requires

[26]that you provide so that that can go onto a jury sheet
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[2]for the jury. You have to follow the format, don't

[3]you?

[4]MR. BACH: Objection.

[5]THE COURT: Sustained.

[6]Q In presenting those categories and the

[7]percentages the way you did, were you following what

[8]you understood was the requirement that you have for

[9]what you must do?

[10]A Yes.

[11]Q Now, Mr. Bach asked you a number of questions

[12]about what would be the cost and what the options are

[13]for the nurses utilizing a number from Dr. Root. Do

[14]you remember that?

[15]A Yes.

[16]Q I just want to ask you, are you aware that he

[17]didn't bother asking Dr. Root any of those questions?

[18]A No, I'm not aware.

[19]Q Okay. Who would be better qualified to

[20]answer why Dr. Root had $ 75 an hour? Dr. Root?

[21]A So that's exactly why **[*25]** I said do you want me

[22]to explain, I think that's where I said that. But in

[23]any case, yes, I'm not qualified to say the value of

[24]the services that are required. There is a lot of

[25]variation in prices for specific services and I rely

[26]totally on the medical expertise to decide.

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[2]Q When Mr. Bach asked you the question, he did

[3]a little transposition, didn't he, he said the nurse is

[4]getting the full $ 75. Right? Isn't that what he was

[5]saying?

[6]A Yes.

[7]Q But the way these things are done, the proper

[8]way to get coverage for someone who needs full coverage

[9]every day is through an agency, isn't it?

[10]A Yes.

[11]Q And the agency charges the number 75 and

[12]they --

[13]MR. BACH: Objection, Judge. Objection.

[14]THE COURT: Are you testifying?

[15]MR. BACH: It sounds that way.

[16]THE COURT: I don't think you should be

[17]testifying, Mr. Duffy.

[18]Q If an agency is getting $ 75 an hour for

[19]providing a nurse, does the nurse get the full $ 75?

[20]A No, that's where I said, "Do you want me to

[21]explain?" Now I recall. I said the $ 438,000 a year,

[22]he was making **[*26]** an assumption. The assumption he was

[23]making was that the nurse would get the full value of

[24]those services.

[25]MR. DUFFY: Thank you.

[26]THE COURT: Anything further, Mr. Duffy?
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[2]MR. DUFFY: Nothing further.

[3]RECROSS-EXAMINATION

[4]BY DEFENSE COUNSEL:

[5]Q You would agree with me that in the real

[6]world that we live in, parents can do better, in terms

[7]of getting a nurse to cover, they don't -- if they

[8]really had to spend the money, they wouldn't have to

[9]spend $ 75 an hour, they could get an excellent nurse on

[10]Long Island for $ 40 an hour. Agree or disagree?

[11]A Disagree.

[12]MR. BACH: All right. I'll leave it at that.

[13]Thank you.

[14]THE COURT: Thank you. You're excused.

[15]MR. DUFFY: Those are my witnesses for today,

[16]your Honor.

[17]THE COURT: Okay. That completes the

[18]evidence for today. We're still on track. Not to

[19]worry, we are on track. So I will see you on Monday

[20]at 9:30. Don't discuss the case.

[21](Jury not present.)

[22]THE COURT: Okay, I'll see you Monday. You

[23]may discuss the case.

[24](Matter adjourned to Monday, October 24,

[25]2017, **[*27]** at 10 a.m.)

[26]

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