EXPERT TRIAL TRANSCRIPT OF DEBRA DWYER, M.D.; 2018 Trial Trans. LEXIS 244

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

Index: 154612/12

March 16, 2018

Reporter
2018 Trial Trans. LEXIS 244 *

NICHOLAS NATOLI, Plaintiff. -against- THE CITY OF NEW YORK, THE NEW YORK CITY DEPARTMENT OF EDUCATION AND THE NEW YORK CITY SCHOOL CONSTRUCTION AUTHORITY, Defendants.

Expert Name: Debra Dwyer, M.D.

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Counsel

[*1] ASTA & ASSOCIATES, PC, Attorneys for the Plaintiff, New York, New York, BY: REZA REZVANI, ESQ.

COZEN O'CONNOR, Attorneys for the Defendants, New York, New York, BY: MICHAEL A. SAVINO, ESQ.

Judges

BEFORE HONORABLE LISA A. SOKOLOFF, Justice of the Supreme Court

Proceedings

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[11]

March 16, 2018

[12]80 Centre Street

New York, New York 10013

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Denise Paternoster

[25]Monica A. Martinez

Senior Court Reporters

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[2]MR. REZVANI: Before bringing the jury in, I

[3]want to premark some things to expedite.

[4]THE COURT: Sure, but let's go. Put it on

[5]the record.

[6]MR. REZVANI: **[*2]** Okay. I would like to premark

[7]--

[8]THE COURT: No, I want the issue with the

[9]doctor on the record, please.

[10]MR. REZVANI: Okay. Your Honor, as I advised

[11]you previously, Dr. Krishna, one of plaintiff's

[12]treating doctors who defendants have known about for

[13]quite some time, he is going on vacation on Wednesday

[14]to India. Dr. Krishna has an active medical practice.

[15]He's a neurologist. So in order to accommodate his

[16]patients he has crammed a non-stop schedule in terms of

[17]treating patients and seeing patients leading up to the

[18]time of vacation.

[19]However, so given that, he cannot come to

[20]court and testify because of the travel time it would

[21]take to get here, probably approximately 45 minutes and

[22]to get back, and to testify in between would, you know,

[23]hurt patients that need to see him. So I've made a

[24]tremendous amount of effort, and I was able last night

[25]at about four or 4:30 to secure a time slot for a video

[26]deposition to take place in lieu of the trial testimony
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[2]which can be used as trial testimony, and I've

[3]scheduled that for this Tuesday from 11:30 to 1:30,

[4]probably a little **[*3]** longer if need be at Dr. Krishna's

[5]office and I set up the videographers and video stuff

[6]on that, so that part will be seamless.

[7]So I think pursuant to the C.P.L.R., I don't

[8]think there is a valid objection here. There is no

[9]requirement I have to show any availability, I've just

[10]shown enough that your Honor in the exercise of your

[11]discretion to permit this video deposition to take

[12]place. That's it.

[13]Counsel has advised that he has a liability

[14]expert that needs to come on Tuesday morning. My

[15]position on that is that --

[16]THE COURT: Let him make his comments.

[17]All right. Mr. Savino.

[18]MR. SAVINO: Mr. Rezvani said, yes, we had

[19]been aware of Dr. Krishna for some time. Dr. Krishna

[20]should have been aware of the scheduling of this trial

[21]as he knew what date we were suppose to pick a jury,

[22]knew what date the trial was progressing in front of

[23]your Honor, and the fact that he has scheduled

[24]vacation, I'm sympathetic and would like to get him in

[25]before that. I don't think the fact that he is a

[26]witness in this case and simply can't be inconvenienced
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[2]by coming to the court **[*4]** and testifying in front of the

[3]jury is a good enough excuse.

[4]Further, pursuant to the C.P.L.R., if you

[5]were to take a videotape deposition or trial testimony

[6]there has to be sufficient notice thereof for which

[7]there is not. So I think it would prejudice us if

[8]Dr. Krishna is not subject to cross-examination in

[9]front of the jury, and not only that, if Dr. Krishna is

[10]giving us a limited window in which he can give

[11]testimony, both direct and cross-examination, I would

[12]need assurances that we're able to complete the full

[13]direct and cross-examination, and that none of the

[14]other witnesses will be thrown of course by this and

[15]resist the trial extended. I would also like to make

[16]another point on the record to the extent --

[17]THE COURT: Are we talking about the doctor

[18]or somebody else?

[19]MR. SAVINO: The doctor connecting to this

[20]testimony this morning, in terms of Dr. Dwyer will

[21]testify based on Dr. Krishna's report. If Dr. Krishna

[22]is not coming to court and if your Honor holds that

[23]Dr. Krishna either must come to court or would be

[24]precluded, I would say Dr. Dwyer is not able to testify

[25] **[*5]** on future medical care outlined by Dr. Krishna.

[26]THE COURT: Anything that doctor, what is the
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[2]expert?

[3]MR. REZVANI: Krishna.

[4]THE COURT: Today?

[5]MR. REZVANI: Dr. Dwyer.

[6]THE COURT: Anything that Dr. Dwyer testifies

[7]about about future medical care will be subject to

[8]connection.

[9]Now, in terms of Dr. Krishna, um, the court

[10]has accommodated the defense witnesses who only had

[11]limited, limited windows of availability to get them in

[12]so they could testify. I'm going to permit something

[13]to be done so that Dr. Krishna can testify, and even if

[14]it means that the court will come with you for the

[15]deposition, however, um, I would like us to arrange it

[16]in such a way that it would be the least amount of down

[17]time for the jury, okay, and that everybody can work

[18]out their witnesses. I want you to make it happen.

[19]I've already said that I will make myself available so

[20]that we can rule on things and have everything done in

[21]one fell swoop instead of having to screen the

[22]videotape, have it cut, et cetera. And I only do that

[23]because we took some of the defense witnesses out **[*6]** of

[24]turn for their convenience, okay, and I am willing to

[25]do this so that I understand that this is a crucial

[26]witness for the plaintiff and that the plaintiffs, I'm
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[2]sure that the plaintiff is taken by surprise to find

[3]this out that his witness that he believed availability

[4]was confirmed for, was suddenly not available. And,

[5]yes, I know you put your witnesses in. There was some

[6]prearrangement. I'm just saying, we've worked here in

[7]this trial to make things convenient for each side, so

[8]we will have to work it out, and if Tuesday is a bad

[9]day, if we can do it on Monday, whatever, but I would

[10]like the least amount of down time for the jury. I've

[11]made my ruling on that.

[12]How long do you need? We are already up to

[13]seven minutes of 11, so I'm getting concerned about the

[14]rest of today, and I do apologize for my own delay in

[15]being 15 minutes late this morning because of the death

[16]of a friend and, please get your documents premarked.

[17]It is wonderful we will get -- just show them, get them

[18]premarked so we can get the jurors in, please.

[19]MR. SAVINO: Your Honor, if I may make a

[20]brief **[*7]** statement and note my exception to the ruling.

[21]THE COURT: Of course.

[22]MR. SAVINO: I will no doubt work to

[23]accommodate the scheduling of the trial.

[24]THE COURT: I know you will.

[25]MR. SAVINO: One other brief point regarding

[26]my witnesses. I know your Honor mentioned it, my SCA
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[2]witnesses were originally subpoenaed by plaintiff and

[3]the subpoena was drawn the night before, so I produced

[4]my witnesses in order to allow the trial to move on.

[5]Thank you.

[6]THE COURT: Do you have the color photograph

[7]marked Plaintiff's 11?

[8]MR. REZVANI: I might in my bag. We'll do

[9]that after.

[10]MR. SAVINO: Your Honor, I object to these

[11]based on the documents were not attached to the

[12]3101(d). Seeing them here for the first time in terms

[13]of the breakdown.

[14]MR. REZVANI: Judge, this witness is an

[15]economist. It is -- 3101(d) lays out the basis for

[16]projections, the numbers that she used to calculate the

[17]end numbers. This is just a chart that explains --

[18]THE COURT: How she arrived that.

[19]MR. REZVANI: Yeah.

[20]THE COURT: I'll permit it. Okay.

[21]MR. REZVANI: **[*8]** So we are up to 10 now.

[22]THE COURT: No, it would be -- 10 was

[23]something that was marked for identification, but not

[24]moved into evidence, and 11 was a color photograph

[25]which plaintiff has, the flagman. That is not -- also

[26]hasn't been marked, but we discussed it as
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[2]Plaintiff's 11. So this would be Plaintiff's 12 and

[3]13, correct.

[4]MR. REZVANI: That's correct.

[5]THE COURT OFFICER: Two separate.

[6]MR. REZVANI: Yes, and following suit, we

[7]will do 12A and 12B (sic.)

[8]THE COURT: All right. What is 12, and what

[9]is 13; do we have a differentiation?

[10]MR. REZVANI: Twelve is a chart with economic

[11]loss.

[12]THE COURT: Okay.

[13]MR. REZVANI: Thirteen will be a chart with

[14]health care.

[15]THE COURT: Okay.

[16]MR. SAVINO: Counsel, are you going to mark

[17]Dr. Krishna's report in which the opinions are based

[18]on?

[19]MR. REZVANI: I was going to do it as a hypo

[20]subject because we are going out of order here. Assume

[21]that Dr. Krishna testifies X, Y, Z, assume Dr. Baum

[22]testifies to X, Y, Z.

[23]THE COURT: Fine.

[24](Whereupon, the items referred to are

[25] **[*9]** received and marked Plaintiff's Exhibits 12, 12A, 13

[26]and 13A for Identification.)
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[2]THE COURT: Since we are starting an hour

[3]later and we have Juror No. 8 who needs to leave at a

[4]certain time, and I don't think there is anyway we will

[5]be finished by that time, I think we should excuse that

[6]juror.

[7]Does everyone agree?

[8]MR. REZVANI: Yes.

[9]MR. SAVINO: I do, your Honor.

[10]THE COURT: Let's bring Juror No. 8 and then

[11]we will bring everybody else in.

[12]MR. REZVANI: While the court officer is

[13]doing that, thank you for letting me premark those.

[14]Dr. Dwyer is in one of the jury rooms, has

[15]other documents we will mark. She has them, I don't

[16]have them so.

[17]MR. SAVINO: What other documents?

[18]MR. REZVANI: She'll be relying on, as stated

[19]in the 3101(d), union documents, contracts, wage

[20]history, documents that custodian from the union will

[21]be coming to lay foundation for. So again, subject to

[22]--

[23]THE COURT OFFICER: Juror entering.

[24](Whereupon, Juror No. 8 enters the

[25]courtroom.)

[26]THE COURT: Sir, sadly, we are not getting
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[2] **[*10]** going until 11 o'clock and that means we are not going

[3]to be able to break in time to accommodate you. So I

[4]wanted to give you the option of leaving, and you will

[5]get credit for your service.

[6]Is that what you prefer so you could make

[7]your appointments, or do you want to stay with us?

[8]THE SWORN JUROR: Um, I thought I was going

[9]to be excused for today and still be able to --

[10]THE COURT: No, you can't still serve once --

[11]if you miss testimony, you can't still serve so, okay.

[12]THE SWORN JUROR: All right. Then I will

[13]then take a leave then as you say.

[14]THE COURT: Okay. Best of luck to you, and

[15]thank you so much for participating. I hope this was a

[16]pleasurable experience for you and that you got

[17]something out of it. I know that for us your

[18]participation was very helpful, and we want to thank

[19]you. All right.

[20]THE SWORN JUROR: Thank you. You are a very

[21]nice, fair Judge.

[22]THE COURT: Thank you very much, sir. I

[23]appreciate that. Okay. All right.

[24]MR. REZVANI: Good luck.

[25]MR. SAVINO: Thank you.

[26]THE COURT: When the jury is brought back in,
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[2] **[*11]** you will remain outside when the jury is brought back

[3]in. You will remain outside and Laura will -- do you

[4]have to give him his card.

[5]THE COURT OFFICER: He'll get something.

[6]THE COURT: At some point you will get

[7]notification and I believe you wouldn't be called for

[8]six years.

[9]THE WITNESS: Okay.

[10]THE COURT: Best of luck, sir.

[11]THE WITNESS: Thank you.

[12](Whereupon, the juror is excused.)

[13]THE COURT OFFICER: We are ready for the

[14]jury.

[15]THE COURT: We are ready, yes.

[16]THE COURT OFFICER: Okay.

[17](A brief pause.)

[18]THE COURT OFFICER: Jury entering.

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

[20]THE COURT: Good morning. Welcome.

[21]Good morning, everyone. Please be seated.

[22]As you may have noticed, we've lost a juror

[23]due to some personal scheduling issues that could not

[24]be accommodated. I also want to apologize to you.

[25]There was a death of somebody close to me in the middle

[26]of the night, and so I was a little late this morning,

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[2]and then we had quite a bit of business that we had to

[3]do. So please don't take it out **[*12]** on the attorneys. It

[4]was really because, at least some portion was because

[5]of me, and I really do feel terrible and apologize, but

[6]you know life goes on. We have things we have to deal

[7]with so, and I thank you all for being here.

[8]We're about to have a witness. Some of the

[9]next witnesses will be testifying based on information

[10]that other witnesses will be providing. We call this

[11]subject to connection. You will hear things that will

[12]be subject to connection to other information provided

[13]by other witnesses because sometimes you can't always

[14]get your witnesses in in the order you would like them

[15]to come in, and you are subject to their schedules and

[16]availability, and when that happens you will hear that

[17]it is based on somebody else's information and then you

[18]are going to have to wait and hear if that witness

[19]provides that information later on when that witness

[20]testifies which will, obviously those, maybe not that,

[21]but those witnesses, and that will be next week. Okay.

[22]So I just want to warn you about that. We are aware of

[23]that. We'll handle it, but you will hear that and you

[24]will hear whose information **[*13]** that is so that when you

[25]hear it you can connect it up and see if it does in

[26]fact match. All right.

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[2]So are we ready for the witness?

[3]MR. REZVANI: We are.

[4]THE COURT: All right. Thank you.

[5]MR. REZVANI: Plaintiff calls Dr. Debra

[6]Dwyer.

[7](Whereupon, the witness takes the stand.)

[8]THE COURT CLERK: Remain standing.

[9]Raise your right hand, please.

[10]Do you swear or affirm the testimony you give

[11]will be the truth, the whole truth and nothing but the

[12]truth?

[13]THE WITNESS: I do.

[14]DR. DEBRA DWYER,

[15]called by the Plaintiff, after being duly sworn, testified

[16]as follows:

[17]THE COURT CLERK: Your name.

[18]THE WITNESS: Debra, DEBRA, Dwyer,

[19]DWYER.

[20]THE COURT CLERK: Address?

[21]THE WITNESS: 17 Springbriar Lane, one word,

[22]BRIAR. That is in Centereach,

[23]CENTEREACH, New York 11720.

[24]THE COURT CLERK: Thank you.

[25]MR. REZVANI: May I inquire, Judge?

[26]THE COURT: Yes, absolutely.

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[2]DIRECT EXAMINATION

[3]BY MR. REZVANI:

[4]Q Good morning, Dr. Dwyer. Can you introduce

[5]yourself to the jury and tell the jury **[*14]** what you do for work

[6]and go from there?

[7]A Sure. Okay. My name is Deb Dwyer. I'm an

[8]economist professor at Stony Brook University and

[9]assistant Dean there.

[10]Let me start by telling you what my

[11]background is. Education bachelor of science in economics

[12]and English literature from Queens College in Flushing,

[13]New York. Went onto get my masters and Ph.D. in labor

[14]health economics at Cornell University. Did a one year

[15]postdoctoral fellowship at Syracuse University in the

[16]center for policy research. From there I spent two years

[17]at the Social Security Administration in the division of

[18]economic research studying disability work and retirement

[19]policies, and for the last 20 years I've been a professor

[20]at Stony Brook University an affiliated with economics

[21]department, health sciences and engineering. Currently

[22]I'm assistant Dean. That means what I do, I teach, I do

[23]research, a lot of administrative work.

[24]Q Now that you told us about your education,

[25]training and experience, have you ever been qualified as an

[26]expert in any courts in the State of New York?

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[2]A Yes.

[3]Q And **[*15]** how many times?

[4]A About 65 times.

[5]Q Okay. How about federal court, ever qualified as

[6]an expert in federal court?

[7]A Yes.

[8]Q How many times?

[9]A About five times.

[10]Q And all of those times that you've been qualified

[11]as an expert, has it been in the field of economics?

[12]A Yes.

[13]Q Now, in addition to the work that you described

[14]for us just now, do you also do economic evaluations?

[15]A I do.

[16]Q Okay. So can you tell the jury a little bit

[17]generally about what you do when you are doing an economic

[18]analysis?

[19]A Sure. I do a lot of economic analysis and do it

[20]for my research, and do it in cases like this because I'm

[21]a labor and health economist. That means I study trends,

[22]prices, employment, and labor markets, and health markets.

[23]I pay attention to what is going on with health policy and

[24]labor policies, like minimum wage and unemployment.

[25]In cases like this what I would do is, the

[26]reason I'm brought in is to assess what the damages are
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[2]that are associated with an injury. So typically there

[3]are two categories of loss or potential **[*16]** loss and they have

[4]value. One of them would be earnings loss, so if the

[5]plaintiff is not able to work then I would have to

[6]calculate the degree to which, well, given degree of which

[7]they are not able to work. So if they are never able to

[8]work again it would be my job to figure out what would

[9]they have earned had they completed their work life

[10]expectancy. In order to do that, I have to make a few

[11]assumptions because what we are doing is talking about

[12]projecting into the future and there is always uncertainty

[13]in the future. What I do, I'm trying to capture the whole

[14]value of the loss of not being able to work a whole

[15]compensation package, that means wages and fringe

[16]benefits. If we start with wages, what I need to do is

[17]figure out the earnings capacity of the plaintiff. How

[18]much would they have earned if they continued is going to

[19]be based on what they had earned in the past.

[20]Now, as labor economists, we know wages tend

[21]to trend upwards. They don't tend to go down. Call that

[22]sticky wages phenomenon. Might go up at a slower rate as

[23]you get older, but they go up. So the most accurate

[24]source of **[*17]** information to be able to tell what the person

[25]would have been able to earn on the labor market or the

[26]earnings capacity is the last full year of work. So what

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[2]I want to see in a case like this is something to indicate

[3]what the last full year of work was worth or earnings for

[4]that year. That is the basis for the starting point. The

[5]next thing I need to do is figure out what would have

[6]happened to those earnings over time, over the next ten,

[7]20 years, however long they are going to be working. For

[8]that I need to know what kinds of pay increases. As I

[9]said, wages tend to go up over time. They tend to go up

[10]and keep up on average with inflation. So I need to come

[11]up with an inflation rate for wages. We call that a wage
[12]growth rate. What I do for that is look at the national
[13]statistic. Bureau of Labor statistics collects a lot of
[14]data, and included in that is what we call employment and
[15]earnings data, and they let us know what happens
[16]historically. So I go back about 20 years, capture what I
[17]call a business cycle in trends and wages, and that is
[18]periods where wage growth is high, economy is doing **[*18]** well.
[19]Periods where wage growth is really low, we just came out
[20]of a recession, we know we had a period of that recently,
[21]and in order to be able to predict into the future, I want
[22]to capture both the high periods and low periods I take an
[23]average. So the growth rate I use in general, most
[24]economists use, labor economists in particular, is three
[25]percent. So I take that base, I grow it by three percent
[26]per year, and that is making the assumption that the
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[2]plaintiff would have earned a raise of three percent per
[3]year.
[4]The last assumption I have to make is when he
[5]stops working. So how far into the future do I make this
[6]calculation? And so I have to come up in the specific
[7]case with when I think that person will retire. So I will
[8]talk about the specifics in this case. That is generally
[9]what is involved. That is usually one of the biggest
[10]sources of loss when it comes to not being able to work is
[11]the earnings. Then I also do the same thing for any
[12]fringe benefits. Again, I have to project into the future
[13]what I think the value of the benefits will be. So in a

[14]case like this, for a **[*19]** union worker I'm going to take into

[15]account health insurance and public and private pension.

[16]That doesn't mean the whole value of Social Security

[17]pension or the whole value of the pension privately. What

[18]it means is the difference between what he would have

[19]earned had he continued to work until his work life

[20]expectancy and what he will get because he will get

[21]something for having worked already. So that is the first

[22]category of loss economics. The other is health care.

[23]If there are injuries that require future

[24]medical care, then I don't decide who is liable to pay for

[25]them, and I don't decide what medical requirements there

[26]are because I'm not a medical doctor. What I do is take
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[2]the recommendations of the physicians of the medical

[3]doctors and I project what is going to happen to the

[4]prices of those services into the future. So again, I

[5]have to make some assumptions. I take the starting

[6]recommendations of physicians for medical expert, and they

[7]give me the value, the starting value because prices in

[8]the health care sector are a little odd. The same

[9]services might have different prices **[*20]** because of different

[10]levels of service or intensity. So I take all of that

[11]from the physician and it is my job to say how much is

[12]that same service going to cost next year and the year

[13]after and for the rest of the person's life. So the

[14]physician tells me what kinds of services, the quantity,

[15]the frequency, so how many times a week or a year, and the

[16]duration, for how many years. I take those values and I

[17]have to come up with inflation rate for those prices. So

[18]the growth rate in medicine is the inflation rate of

[19]medicine. For that I go back 25 years, and so the way I

[20]-- one of the assumptions is how far back do you go to

[21]take the average. Again, it is in an attempt to predict

[22]into the future. I'm going to need a business cycle.

[23]Health care it tends to be 25 years that economists

[24]believe would be, capture that growth rate that was moved

[25]out into the future, and so on average medical prices have

[26]been rising at a rate of 4.2 percent. Fortunately, the
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[2]Bureau of Labor statistics breaks that down into other

[3]categories of medical services so I can be more precise

[4]depending on the services recommended. **[*21]** So just to give

[5]you an example of what a growth rate is, if a physical

[6]therapy visit costs $ 150 today, that same physical therapy

[7]visit is going to cost a lot more ten years from now. It

[8]is the same visit, the same intensity, the same physician

[9]even it is, just costs more. That is what a growth rate

[10]is for a medical inflation. Those are the two categories

[11]of loss that I'm here to talk about today.

[12](Transcript continues on the next page.)

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[2]Q Okay. And did you conduct an analysis -- an economic

[3]loss analysis -- a health care economic health care analysis

[4]with respect to Nicholas Natoli?

[5]A I did.

[6]Q Did you apply those methods you just told us about to

[7]your analyses of Mr. Natoli?

[8]A Yes.

[9]Q You talked about how you were qualified before as an

[10]expert. Just tell the jury real quick how you are compensated

[11]for your time?

[12]A Oh, sure. I charge a flat rate of $ 4,500 for preparing

[13]the report and for being here today.

[14]MR. REZVANI: Your Honor, at this time, given the

[15]testimony about the witness's **[*22]** training and experience and

[16]being qualified previously in courts, at this time I would

[17]ask your Honor to qualify this witness as an expert in the

[18]field of economics.

[19]MR. SAVINO: No objection, your Honor.

[20]THE COURT: All right. The witness is so

[21]qualified.

[22]MR. REZVANI: Thank you, your Honor.

[23]Q Now -- let's talk about your economic analysis first.

[24]A Sure.

[25]Q When you were doing the economic analysis, did you

[26]review documents from Mr. Natoli's union?

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[2]A Yes.

[3]Q Okay. And do you have those documents in front of you?

[4]A Yes, I have them in a folder.

[5]Q Okay.

[6]MR. REZVANI: So just some housekeeping. Do we

[7]need to mark those?

[8]A Okay. The whole file of everything --

[9]MR. REZVANI: What we can do --

[10]THE COURT: Let's mark them as you refer to them.

[11]MR. REZVANI: All right.

[12]Q So, I'm about to ask questions about your economic

[13]analysis. If you don't mind, as you are explaining it to the

[14]jury, if there is a document that you are referring to, at that

[15]time I'll just interrupt and have it marked.

[16]A Okay. **[*23]**

[17]Q And do a little housekeeping, okay?

[18]A Sure, that's fine.

[19]Q Okay. So, the union documents that you have and the

[20]employment records that you have, I want you to assume that

[21]someone from the union will come and tell this jury about those

[22]records and get those records into evidence at the appropriate

[23]time.

[24]I would also like you to assume that Dr. Baum testified

[25]to this jury that Mr. Natoli sustained injuries as a result of

[26]an incident on a construction site on July 6th, 2011.
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[2]I want you to also assume that he will testify that

[3]Mr. Natoli, as a result of those injuries, is disabled from

[4]returning to work.

[5]And I want you to further assume that Dr. Baum

[6]testified to this jury that his disability is permanent.

[7]Based on the documents that you reviewed, do you have

[8]an opinion within a reasonable degree of economic certainty as

[9]to what the plaintiff's economic loss is?

[10]A Yes.

[11]MR. SAVINO: Objection, your Honor. It assumes

[12]facts not in evidence but are subject to connection.

[13]THE COURT: I'm going to permit it subject to

[14]connection.

[15] **[*24]** MR. SAVINO: Thank you, your Honor.

[16]Q So did you form an opinion?

[17]A Yes.

[18]Q And would it help you in explaining your opinion -- did

[19]you prepare any charts?

[20]A Yes.

[21]Q Okay. Did you prepare a chart with respect to the

[22]economic loss?

[23]A Yes.

[24]MR. REZVANI: Permission to show the witness what

[25]has been marked for identification as Plaintiff's

[26]Exhibit 12.
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[2](Handing.

[3]A Yes, this is it.

[4]MR. REZVANI: I would like to move that into

[5]evidence as Plaintiff's Exhibit 12. Just make to make it

[6]faster, you want to do it both?

[7]THE COURT: Yes.

[8]Q Did you also do a charted with respect to the health

[9]care costs?

[10]A Yes.

[11]Q I will show you what has been marked as Plaintiff's

[12]Exhibit 13 for identification.

[13](Handing.)

[14]Q Is that the chart that you prepared?

[15]A Yes.

[16]Q Okay.

[17]MR. REZVANI: At this time, your Honor, I would

[18]like to move both charts, Plaintiff's Exhibits 12 and 13

[19]into evidence, as well as the enlargements, 12 A and 13 A.

[20]MR. SAVINO: Over my objection.

[21]THE COURT: We **[*25]** will permit this subject to

[22]connection on the underlying information.

[23]MR. SAVINO: Thank you, your Honor.

[24](Plaintiff's Exhibits 12, 13, 12 A and 13 A marked

[25]in evidence, as of this date.)

[26]MR. REZVANI: Your Honor, with the Court's
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[2]permission, can we put the easel somewhere in the well over

[3]here and have the witness step down to explain her testimony

[4]using the chart (indicating)?

[5]THE COURT: Surely.

[6]Counselor, do you want to move back so you will be

[7]able to see it?

[8]MR. SAVINO: Sure.

[9](So done.)

[10]THE COURT: Before we get to the chart, could she

[11]just explain and itemize the documents she looked at in

[12]order to prepare this material, please?

[13]MR. REZVANI: Yes, Judge.

[14]THE COURT: Okay.

[15]Q So, in order to prepare -- just focusing on the

[16]economic loss, can you just identify the sources of the

[17]information and the assumptions that you made? You told us

[18]before you make certain assumptions, and the records that are

[19]the basis for that.

[20]Does that question make sense?

[21]A Yes.

[22]Q Good.

[23]A So, I said before that **[*26]** I needed a couple of pieces of

[24]information to get started. And the first one is the earnings

[25]loss. For that I use the union contract that's dated from 2013

[26]through 2015. And I also had the numbers for 2010 through 2012

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[2]from the union contract.

[3]Q And what information did you learn?

[4]THE COURT: And that was the union that Mr. Natoli

[5]was a member of at the time of his accident?

[6]THE WITNESS: Yes, Local 79.

[7]THE COURT: Okay.

[8]Q Yes.

[9]A So I can proceed?

[10]Q Yes, continue.

[11]A So I got it from the union contract. Basically, the

[12]union contract will tell me what the rate is for hourly work.

[13]So I'm going to write what that rate is for each year based on

[14]that Local 79 union contract.

[15]What I also need to use is the number of hours of work

[16]that Mr. Natoli worked for a year. And I also have documents

[17]from the union that had his hours of work every year for the

[18]time that he worked as a construction worker as part of that

[19]union.

[20]What I did was I took the average number of hours of

[21]work for three full years of work and it comes out to an average

[22] **[*27]** of 1275 hours of work a year. So, what I'm going to do is write

[23]here that the hours of work that I assume for this analysis is

[24]1275, okay?

[25]Again, that is based on what he actually worked for

[26]three years. It was between 20 -- I'm sorry, I have it in my
354

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[2]file. It was 2009, '10 and '11, I think it was -- or '8, '9 and

[3]'10. I took a three-year average.

[4]Q At any point, if you want, you can grab your records.

[5]A It was '7, '8, '9, I'm picturing it in my head.

[6]Q Okay?

[7]A So the average hours of work was 1275. According to

[8]the union contract, someone in his position earned $ 35.44 an

[9]hour, so that is where I got the first number; $ 45,186.

[10]The accident took place in 2011, as far as I know he

[11]hasn't returned to full-time work or any work, and so the annual

[12]loss is $ 45,186.

[13]Now, I don't have to make any assumptions in the

[14]beginning because the union contract tells me what the growth

[15]rate is going to be. So in 2013, according to the union

[16]contract, his average hours of work, the average hourly rate was

[17]35.59 -- that is not an average, it is actual.

[18]In 2014, **[*28]** it was $ 37.00. In 2015, it was $ 38.67. So if

[19]you multiply these hourly rates by the number of hours, you get

[20]these numbers (indicating).

[21]Beginning in 2016 is when I start to do the growth

[22]rate, because I don't have the contract from there on. And

[23]that's where I start using a growth rate of three percent all

[24]the way down.

[25]Q Where are you getting that three percent growth rate

[26]from, explain that to the jury again?
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[2]A That is from the Bureau Labor of Statistics Average

[3]Growth Rate for the national over the last 20 years. So that's

[4]where I get the growth rate.

[5]So then I had to determine when I was going to stop,

[6]when I was going to have him work until. So I used the age of

[7]62. This is the age where Mr. Natoli turns 62. 62 is the

[8]earliest age that you can retire and collect Social Security

[9]benefits, albeit with a penalty.

[10]His normal age of retirement would have been 67, that

[11]is the age he could collect a full pension. In this case I used

[12]the age 62, based on the fact that he was a construction worker

[13]and that is more consistent with the averages.

[14]So I have **[*29]** him retiring at his birthday in 2033. His

[15]birthday is in September. So you can see that that last year is

[16]a little bit lower because he retired.

[17]Given those assumptions and the union contract

[18]information and the union information, we get a total loss over

[19]the course of his lifetime of $ 1,352,512. That would have been

[20]the value of his work between 2012 and 2033.

[21]I split that into past earnings, which would be up

[22]until 2018 -- I'm sorry, in this case it was 2017, because that

[23]is when we did the analysis. The past was $ 302,676. And the

[24]future value -- so what he would earn from 2017 forward -- was

[25]$ 1,049,836. So that is the earnings loss category.

[26]
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[2]Can I go on?

[3]Q Yes.

[4]A So one of the benefits he had was health insurance.

[5]And I get that again from the union contract. What we do for

[6]health insurance is in order to have the same benefit, we would

[7]have to replace the benefit. So what we do is what would it

[8]cost him to buy health insurance that would have been at least

[9]somewhat equivalent to what he would get from a union benefit?

[10]So, we used the rate in 2013 **[*30]** for New York State -- it

[11]is not an average. We go to the Department of Health, New York

[12]Department of Health, and get what it would cost to buy health

[13]insurance in this area.

[14]And what we get -- you can get a pretty basic plan for

[15]$ 12,000 a year for a single person, which is what Mr. Natoli

[16]would need.

[17]We have to grow that now because health insurance

[18]prices rise over time, as well. So you're not getting the same

[19]plan for the same price every year.

[20]We begin later on in what we consider the future, 2017,

[21]for a couple of years. One, there is a benefit called COBRA

[22]under the government that you can pay for your own health

[23]insurance for a number of years -- up to three typically. And

[24]then also, because he may not have used those services as much,

[25]so we are just a little bit conservative and start a little bit

[26]more in the future. But it is a benefit that would he would
357

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[2]have had access to every year.

[3]The growth rate we use is four percent, and that is

[4]because that is the average growth rate in health insurance

[5]premiums for the last 25 years.

[6]So using a growth rate of **[*31]** four percent on that premium,

[7]in the first full loss year of loss we calculated in 2017,

[8]health insurance would cost $ 134,038. Again, that is to replace

[9]a plan in New York.

[10]We do that again until he retires. That is not the age

[11]he qualifies for Medicare, just the age that he retires, that we

[12]stop the health insurance benefit.

[13]Total value of the health insurance loss is $ 325,567,

[14]of which only 17,688 would be the past -- I must be starting the

[15]past in 2018, otherwise it would be zero, because I didn't start

[16]the loss until 2017.

[17]And then the past -- I mean, the future value for

[18]health insurance premium is $ 307,879.

[19]Go on?

[20]Q Yes.

[21]A Next category, we have two categories of retirement

[22]benefits from the union contract. That is the annuity and a

[23]private pension. So those are two sources of retirement

[24]benefits. And then the last column is going to be the public

[25]retirement benefit, the loss from Social Security.

[26]The annuity is based on a contribution. So according
358

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[2]to the union contract, the union contract every year dictates an

[3]hourly rate that the employee **[*32]** pays towards this annuity, and

[4]that is the value of loss. We begin it in 2012, when the

[5]employer is no longer contributing. So it doesn't account for

[6]an annuity he contributed to in the past that he will get, but

[7]from the point that he stops working he is losing that hourly

[8]rate.

[9]So the hourly rate that we have for the annuity

[10]starting in 2012, the employer paid $ 5.50 for every hour worked.

[11]Again, I'm using the 1275 as the basis for the hours; that comes

[12]out to $ 7013.

[13]In, 2013 $ 6 for each hour. $ 6.50 in 2014. And in 2015

[14]it is 7.25. Again, all according to the union contract. And

[15]then from there on, since I don't have the union contract after

[16]that, I use a growth rate of three percent. So it is three

[17]percent until retirement.

[18]And the total loss from the annuity contributions is

[19]$ 250,882, with the past of $ 54,048 and a future value of

[20]$ 196,835.

[21]The next category is the pension. So the difference

[22]between an annuity and a pension this is what we call a defined

[23]contribution; you pay in and you get a savings plan. You can

[24]choose a lump sum or annuity at the end. **[*33]**

[25]A pension is a formula. So this is an amount that the

[26]employer puts away but then pays you upon retirement based on a
359

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[2]formula. That formula also comes from the pension fund plan

[3]description from the union, and I have that in my file as well.

[4]And that formula is based on a rate times a number of

[5]credits earned -- sorry, number of credit earned per year times

[6]the number of years of loss. So, again, remember I said I

[7]calculate the difference between what he was going to get and

[8]what he would have gotten?

[9]So I only account for the 22 years that he's not going

[10]to be working. I multiply that by the rate of 12.50, which we

[11]get from the contract. Again, this is a formula and that's why

[12]it's called a defined benefit. It's based on a formula.

[13]We use eight credits per year based on information that

[14]we got from the union a report on the number of credits per

[15]year. And it is also a formula based on hours of work. So it

[16]is eight times 22 years, and that's how we get to the annual

[17]value of the pension.

[18]Now, because he's retiring at his birthday, the first

[19]year is lower because **[*34]** that is just from September to December.

[20]The annual amount based on that formula is $ 43,635, and that

[21]doesn't grow. So they get that amount every year for the rest

[22]of their lives without any growth rate. That is why it doesn't

[23]change.

[24]Now, we come to the next assumption. I gave you the

[25]age at which he would likely retire. Now, I have to give you

[26]the age at which he would likely die, and that is the life
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[2]expectancy. That we get from the National Center for Health

[3]Statistics. And we use the 1997 tables. That is just standard

[4]in courts. We have later data, but the courts tend to use this

[5]1997 table. And the age that we use is 76.8. So that's the

[6]year 2048, where he turns 76. Okay, so that's what we used for

[7]life expectancy.

[8]The total value then of that pension being paid every

[9]year until his expected death date is $ 644,490, and that is all

[10]in the future since it happens after retirement.

[11]The final category is Social Security retirement

[12]income. That is really based on -- it's another formula like

[13]the pension formula that the private sector uses, but it's the

[14]public sector **[*35]** formula. And there what we did was we calculated

[15]what he would have gotten had he retired at age 62.

[16]So that age 62 benefit and subtract off what he will

[17]get because of the number of years he had already worked, and

[18]that difference comes out to $ 10,882 annually beginning in 2034.

[19]Again, it is a partial year in 2033. And we use the growth rate

[20]that the federal government would use of 2.5 percent for Social

[21]Security.

[22]So, we grow that at a rate of 2.5 percent, so that the

[23]total loss from his Social Security pension is $ 190,313.

[24]So, the total loss in all categories for Mr. Natoli

[25]would be -- total economic loss is the sum of this row here,

[26]these totals (indicating), would be $ 2,760,764.

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[2]Q Just a few follow-up questions. You say when you were

[3]calculating the hours worked per year based on the records, the

[4]average was 1275. And you said you used 2007, 2008 and 2009.

[5]A Yes.

[6]Q The accident happened in 2011. Did you have a reason

[7]why you didn't use his work history from 2010 into part of 2011

[8]in your analysis into the average hours worked?

[9]A Yes.

[10] **[*36]** Q Please explain.

[11]A So, let me explain, yes. So I used three years.

[12]Typically, what I do is take the last full year of earnings.

[13]Full is the keyword there.

[14]So if you look at his earnings history -- and I did

[15]look past that, longer -- farther passed 2007, you get a rate of

[16]earnings that is pretty consistent until you get to 2008, 2009,

[17]and 2010.

[18]Now, that was the peak of the recession. That was the

[19]time where we saw very high unemployment rates. And so

[20]consistent with that, he was not attached to the labor force

[21]full-time.

[22]And so if I had used those outlier years during a

[23]recession -- remember, I said you never want to capture a point

[24]that is either a peak or a low. So I took an average during

[25]what looked like his full-time work years; not the years that he

[26]may have been on unemployment or was not attached to the labor
362

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[2]force for part of that time.

[3]So that's why I used -- if I had used those years, it

[4]would look like he was out of work for two-thirds of the year

[5]for 2009 and 2010. And I believe that would have been an

[6]underestimate and exaggerating the role that **[*37]** the recession

[7]played.

[8]Q In terms of the role the recession played in the

[9]construction history, did you look at any documents or any data

[10]that experts in your field reply upon in calculating the effects

[11]of the recession?

[12]A Yes. Besides the fact that I am an economist and I

[13]teach economics and public policy and I keep track of what is

[14]going on in the economy, for this particular case I looked at

[15]the unemployment rates in the construction industry and, indeed,

[16]the shape of it is -- can I draw on this?

[17]Q Yes.

[18]A So if you look at the unemployment on an a Y axis and

[19]you have time and if you start with something like 2005 and go

[20]to present, what it looks like is something like this

[21](indicating) where that peak is exactly 2008 to 2011 in

[22]unemployment.

[23]So if I capture that as the average hours of work, I

[24]would be taking -- remember, I said you never want a high point

[25]like that. And it has been consistently declining and still

[26]going down. So the number of construction worker jobs has gone
363

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[2]up considerably since that recession and it has been on a

[3]downward trend, the **[*38]** unemployment, rate since then.

[4]Q Thank you, Doctor.

[5]So shifting gears now to your analysis of health care

[6]costs.

[7]MR. REZVANI: Do I have permission to show the

[8]witness and publish and move into evidence what is 13 A?

[9]COURT REPORTER: It was already marked in evidence.

[10]MR. REZVANI: Okay.

[11]THE COURT: Subject to connection.

[12]MR. REZVANI: Yes.

[13]Q Dr. Dwyer, you talk earlier about some of the

[14]assumptions you made. And specifically when you're doing a

[15]health care, you know, analysis, that you relied upon doctors

[16]and their recommendations in terms of future care.

[17]Did you review -- let me just ask you this: When you

[18]were doing -- I want you to assume that Dr. Krishna will testify

[19]to this jury that Mr. Natoli, as a result of the injuries

[20]sustained in this incident, will need the following treatment,

[21]going into the future. We will do each one separately.

[22]A Sure.

[23]Q So with respect to Dr. Krishna will testify to this

[24]jury that Mr. Natoli needs follow-up neurological care at a

[25]frequency of once a month at the annual cost of $ 3,000.

[26]Did you conduct **[*39]** an analysis with respect to that
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[2]recommendation?

[3]A Yes. Just so the jury is clear, I received a report

[4]from Dr. Krishna that spelled out what the required care would

[5]be and the value of it annually beginning with today's dollars.

[6]And so as Mr. Revani --

[7]Q Rezvani.

[8]A Sorry -- said, the annual amount is $ 3,000 for

[9]neurologist visits. On the average over the last 25 years,

[10]health care prices overall -- you hear we have medical inflation

[11]-- rise at 4.2 percent, which is considerably higher than the

[12]general rate of inflation, which averages three percent.

[13]However, with doctor visits it is consistent with

[14]inflation, so the neurologist visit growth rate that I use is

[15]three percent. Take that $ 3,000.

[16]What that says is the number -- that same doctor's

[17]office visit is going to cost more, so that annually

[18]out-of-pocket expenses would be $ 3090 if you pay for them in

[19]full.

[20]And you do that for the rest of his work life

[21]expectancy -- which, again, I said was about 67.9 -- and the

[22]total value then for those doctor visits every year over the

[23]remainder of his life **[*40]** would be $ 146,367.

[24]Q Did you do one with orthopaedic care based on the

[25]recommendation of Dr. Krishna that Mr. Natoli would need

[26]follow-up care once a month at annual cost of $ 3,000?
365

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[2]A Yes. So there you will see exactly the same thing. So

[3]you can already tell me that the growth rate is three percent.

[4]Again, it is another specialist doctor's office visit growth

[5]rate of three percent for the same total, $ 146,367.

[6]Q Next category was pain management. Can you tell us the

[7]assumption that you were basing that off of?

[8]A Same thing.

[9]Q It gets pretty clear on there.

[10]A Same thing. So, again, we get three percent growth

[11]rate for the office visit, this time with the pain manager. The

[12]value is the same so the total loss is $ 146,367.

[13]Q And assuming Dr. Krishna will tell this jury that

[14]Mr. Natoli requires trigger point injections once a month at an

[15]annual cost of $ 4,800 per year for the duration of his life --

[16]as all these recommendations were -- what is your analysis with

[17]respect to that?

[18]A We put that three percent, again, on trigger point

[19]injections **[*41]** with that starting at $ 4,800 value, the total loss

[20]would be $ 234,187.

[21]Q Next category is physical therapy. Dr. Krishna will

[22]testify to this jury that Mr. Natoli requires future physical

[23]therapy for the remainder of his life at a cost of approximately

[24]7,000 to 10,000 per year. Given that recommendation, tell us

[25]about your analysis on that one.

[26]A So whenever I get a range, I take the midpoint. That
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[2]is the expected value. So somewhere between seven and 10 would

[3]be 8,500 a year.

[4]And physical therapy is one of those categories of

[5]medical services that had prices rise slower than the general

[6]rate of inflation, so we use a growth rate of 2.5 percent,

[7]again, based on a 25 year average. So the total loss for having

[8]to pay for physical therapy visits is $ 382,088.

[9]Q Okay. Last category, did Dr. Krishna make any

[10]recommendations in terms of the cost and the requirement for

[11]surgery to his cervical spine in the future?

[12]A Yes.

[13]Q And --

[14]A So the value of the surgery is $ 125,000.

[15]Q That is based on what Dr. Krishna told you?

[16]A Yes. So Dr. Krishna says **[*42]** that he's going to need a

[17]surgery in the amount of $ 125,000. That is a one time thing, so

[18]I just put it at the first year and don't grow it.

[19]Had I grown it, it would have been a higher growth rate

[20]because hospitalizations and surgeries had a faster rate than

[21]inflation. So that rate is just nominal at $ 125,000, it has not

[22]grown.

[23]So the total if you sum all those columns, the total in

[24]health care, the value of the health care recommendations that

[25]have been made is $ 1,180,376.

[26]Q Okay.

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[2]MR. REZVANI: Just a few moments to review my

[3]notes.

[4]Doctor, you can step back on the stand.

[5](Witness complies.)

[6]THE COURT: While he's taking that time, I hope the

[7]temperature is a little bit better for you. There was a

[8]window open overnight and I closed it, so it should get a

[9]little bit warmer for you. Sorry about that.

[10]MR. REZVANI: I believe I'm done, Judge. Can we

[11]approach very quickly before we start cross?

[12]THE COURT: Sure.

[13](Whereupon, the following sidebar conference was

[14]held out of the hearing of the jury:)

[15]MR. REZVANI: I didn't want **[*43]** to have colloquy in

[16]front of the jury.

[17]THE COURT: Okay.

[18]MR. REZVANI: So I just wanted to ask your Honor in

[19]terms of logistics. She testified in terms of the source of

[20]all her information. Just in terms of logistics, at the end

[21]questioning we'll actually move those things into evidence?

[22]I didn't know what your Honor -- what your preference is.

[23]The documents she was referring to -- bottom line, can I

[24]just do that at the end of the examination if need be, as

[25]opposed to breaking up the flow?

[26]THE COURT: If they are all going to be brought in
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[2]and moved into evidence by other witnesses, maybe she can

[3]just outline what the documents are.

[4]And then what do you suggest or what would you

[5]prefer, Mr. Savino?

[6]MR. SAVINO: I would say she can talk about the

[7]documents, but in terms of moving them into evidence, in

[8]terms of the union records, I wold object to her moving them

[9]into evidence.

[10]MR. REZVANI: It is just to -- it is awkward doing

[11]her before the union. It was just to make it clear it was

[12]subject to connection.

[13]THE COURT: Why don't she just go through **[*44]** her

[14]folder and identify this is the union records, this is

[15]exactly -- not just saying union records, but this record,

[16]that record, et cetera.

[17]MR. REZVANI: Okay.

[18]THE COURT: And, hopefully, your union witness will

[19]bring all of those physically in and identify them as they

[20]the keeper of those records.

[21]MR. REZVANI: Yes.

[22]THE COURT: Just what those records, what

[23]information is contained in those records and anything --

[24]she has the contracts, the --

[25]MR. REZVANI: Just an offer of proof. She has

[26]excerpts of the contract that gave her the basis for her
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[2]opinion. So she is going to say I have an excerpt from the

[3]contract dated this, and that way it is clear when the union

[4]person comes in here.

[5]THE COURT: Yes.

[6]MR. REZVANI: That's all.

[7]MR. REZVANI: The union contracts are are huge.

[8]She didn't bring in all the union contracts for the pension,

[9]the annuity, for the wages. They are all separate. But the

[10]union guy will have the entire document.

[11]THE COURT: He will have the entire document, the

[12]contract.

[13]MR. REZVANI: That's what they told **[*45]** me. So in

[14]terms -- it is not like he's going to come in with the

[15]excerpts. He'll say this is an excerpt from this contract.

[16]I believe that's what they told me, that the witness they

[17]are producing will say.

[18]THE COURT: Let her just say -- if there is any

[19]pagination that she has, let her say what that pagination is

[20]in case the jurors, although she seems straightforward --

[21]MR. REZVANI: Okay, I just needed logistics.

[22]THE COURT: Just identify it so we're clear once we

[23]have the connection from the union witness.

[24]MR. REZVANI: Okay.

[25]MR. SAVINO: Just for identification, nothing is

[26]being marked for put into evidence from her?
370

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[2]THE COURT: No. Just to refer to what she relied

[3]upon.

[4]MR. SAVINO: Absolutely.

[5](Whereupon, the sidebar conference was concluded

[6]and the following took place in open Court:)

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

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[2]Q So Dr. Dwyer, you laid out your opinions and

[3]explained throughout the basis of those opinions. Just

[4]before I finish **[*46]** my questioning, I just want to make sure

[5]that we go through, now that you are sitting down with your

[6]records in front, that you go through and identify

[7]generally the source of each of them so when the union

[8]person comes in later?

[9]A Sure. That is fine.

[10]Q Dr. Dwyer, if you refer to the union contract,

[11]tell us the year of it; if there is a page number that you

[12]have, refer to that?

[13]A Okay.

[14]Q If there are any documents from the pension you

[15]are talking about, work history, um, you know, we'll go

[16]just --

[17]A Okay. And does it matter order?

[18]Q No.

[19]A Okay. The first thing I have here is the total

[20]care plan by Dr. Krishna. That is dated January 25, 2018

[21]for date of consultation December 14, 2017. So that is

[22]when Dr. Krishna examined Mr. Natoli and made those

[23]recommendations. That is the basis for the health care

[24]clause. Now what I'm looking at is Mason Tenders District

[25]Council of Greater New York and Long Island. Wage and

[26]fringe benefit rates Local 79 laborers. I have 2013.
372

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[2]THE COURT: Do you have excerpts from pages

[3]of those documents or is it, **[*47]** is there any further way

[4]you can describe where you got those particular

[5]documents that you relied upon?

[6]THE WITNESS: They are excerpts from the

[7]union contract, but I don't see page numbers on them.

[8]It is the section on wage and fringe benefits and I

[9]took all of that section and printed it.

[10]THE COURT: Okay.

[11]THE WITNESS: I don't see a page number.

[12]THE COURT: All right. But it is the fringe

[13]benefits section?

[14]THE WITNESS: Yes.

[15]THE COURT: Okay.

[16]THE WITNESS: So it is --

[17]Q The wage and fringe benefits section?

[18]A Yes. So I said 2013. I have 2012, 2014 and

[19]2015. Okay. Then I have the Mason Tenders District

[20]Council annuity funds. This was a report printed by the

[21]union. It is dated February 20, 2018. So that tells me

[22]about the annuity.

[23]THE COURT: Where did you get that from?

[24]THE WITNESS: I got it from the law firm, but

[25]it is from the union to the law firm. So it is a

[26]printed, a report. Okay. Then I have the Mason
373

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[2]Tenders defined contribution pension fund, and what

[3]that gave me was specifically to Nicholas Natoli's, his

[4] **[*48]** pension work history dated February 21, 2018.

[5]So again, the union prints out reports for us

[6]upon request and I needed the years investing service

[7]and years of credited service in order to be able to

[8]calculate the retirement benefits.

[9]THE COURT: And that was at your request?

[10]THE WITNESS: That was at my request through

[11]the law firm though. I never go directly to the union.

[12]THE COURT: Okay.

[13]THE WITNESS: Okay. And finally the I have a

[14]Masters Tenders defined contribution trust funds

[15]document printed for our purposes. This one, yes, it

[16]does have a date. February 20, 2018, and what this is,

[17]is the statement of contributions which includes hours

[18]of work from 2002 which is when Mr. Natoli started with

[19]the union until 2011.

[20]Q Okay.

[21]A That is everything.

[22]Q Dr. Dwyer, thank you for doing that.

[23]MR. REZVANI: I have no further questions, at

[24]this time.

[25]THE COURT: Mr. Savino.

[26]MR. SAVINO: Yes.

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[2]CROSS-EXAMINATION

[3]BY MR. SAVINO:

[4]Q Good morning, Doctor?

[5]A Good morning.

[6]Q You testified about your analysis of **[*49]** the

[7]economics, in this case.

[8]In terms of the documents that you reviewed,

[9]were those all provided to you by counsel?

[10]A Yes.

[11]Q Did you ask for any documents you weren't

[12]provided?

[13]A Um, I don't recall. I may have asked for can you

[14]give me something more on the annuity kind of thing, but

[15]they came through him. I didn't do it directly.

[16]Q Tax records, did you review those?

[17]A No.

[18]Q Did you ask for them?

[19]A No.

[20]Q Would it have been helpful to get a full picture

[21]of plaintiff's earning capacity from the time period you

[22]looked at to have the actual tax records?

[23]A No, not necessarily, because I had enough of the

[24]printout directly from the union that he worked for that

[25]had his annual earnings and all of the information I

[26]needed, so I don't make requests if it is not necessary.
375

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[2]Q So you went based solely on the union documents

[3]you talked about that outlined plaintiff's hours, right?

[4]A Yes.

[5]Q Did you have the full union printout when

[6]plaintiff first became a member of the union?

[7]A Yes.

[8]Q And he started **[*50]** in 2002, correct?

[9]A Correct.

[10]Q And he worked up until 2011?

[11]A Yes.

[12]Q Did he work after 2011?

[13]A As far as I know, no.

[14]Q Okay. Now, you say for certain assumptions when

[15]you look at growth rates in terms of economics and the

[16]damages, you would go back 20 years, and sometimes 25

[17]years, correct?

[18]A Correct.

[19]Q That is to give a better picture as to what the

[20]actual growth rate should be going forward, correct?

[21]A Correct.

[22]Q But for this you only looked at three years of his

[23]union history to come up with this 1275 hours, correct?

[24]A Correct.

[25]Q You didn't include 2010; is that correct?

[26]A Correct.

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[2]Q And in 2010, do you know how many hours Mr. Natoli

[3]worked?

[4]A Yes. Can you give me a minute to look up?

[5]Q Sure.

[6]A 199 hours -- wait, that was 2011. Sorry. 2010

[7]was 248 hours.

[8]Q And you indicated that you believed that is

[9]because of the slow economy plaintiff only worked 248

[10]hours?

[11]A That is the assumption I am making that he was

[12]unemployed for a couple of years. **[*51]**

[13]Q Because the situation where you have to make

[14]assumptions based on the documents that are provided to

[15]you, correct?

[16]A Correct.

[17]Q And you can't make assumptions outside of

[18]documents provided to you, correct?

[19]A I can, but I would have to use different sources,

[20]so I used the documents provided when I have them.

[21]Q Were you ever provided any documents from counsel

[22]that Mr. Natoli was involved in a motor vehicle accident in

[23]2010?

[24]A No.

[25]Q Ever provided any documents about any injuries

[26]that Mr. Natoli sustained in that motor vehicle accident in
377

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[2]2010?

[3]A No.

[4]Q So as you sit here today, you are unable to tell

[5]whether or not he only worked 248 hours in 2010 because of

[6]slow economy or injuries; is that correct?

[7]A Well, I do know he was on unemployment, so given

[8]he collected unemployment benefits, I'm -- I made the

[9]assumption, yes, that it was due to the slow economy. It

[10]would not be unusual for that to happen given in the

[11]construction industry the unemployment rate was very high

[12]during that time.

[13]Q You also didn't see any **[*52]** records corresponding to

[14]the injury he sustained in the motor vehicle accident,

[15]right?

[16]A No, I did not.

[17]Q You mentioned 199 hours. Those are the hours

[18]Mr. Natoli worked in 2011 before his accident, correct?

[19]A Correct.

[20]Q And his accident happened on July 6th of 2011?

[21]A Correct.

[22]Q So the year was more than halfway over at that

[23]point?

[24]A Right.

[25]Q So you didn't kind of extrapolate from July to

[26]December in coming up with your assumptions, did you?
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[2]A No, I did not. I didn't include 2011 at all for

[3]the loss. For that reason, I started with 2012.

[4]Typically I would do that, but given it seemed like he was

[5]in this extended unemployment or departure from the labor

[6]force, really didn't include it.

[7]Q You indicated that you had this little, I don't

[8]know, called a bill chart?

[9]A It is not a bill chart. I did not draw a test

[10]scale. It is suppose to be skewed to the left, and most

[11]of the years are going down.

[12]Q And right here, this section here, 2008 to 2011,

[13]you said that was the height of the basic slowdown in

[14]construction **[*53]** industry?

[15]A I could pull out the precise years, doing it off

[16]the top of my head. The problem with the recession is we

[17]don't come out of it just like that. It is a gradual

[18]thing. So 2012, still in the recession. I said to 2011

[19]was the peak. I could tell you more precisely.

[20]Q You said basically --

[21]THE COURT: Hold on. She is looking to

[22]finish answering your question.

[23]A Right. So what I show is actually like, it is

[24]not that smooth. 2008 was when it got really bad. 2010

[25]was even worse. 2011 was still pretty bad. By 2012 we

[26]see it is coming down.
379

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[2]Q But you say you don't generally like to use the

[3]peak numbers whether it is too low or too high when coming

[4]up with your assumptions, correct?

[5]A Correct.

[6]Q So you used 2007, 2008, 2009, and those years you

[7]said he worked an average of 1275 hours, correct?

[8]A Correct.

[9]Q The year before in 2006, do you know how many

[10]hours he worked?

[11]A 523.5.

[12]Q And in 2005 he only worked 643 and half hours,

[13]correct?

[14]A 643.5.

[15]Q You don't know why he only worked **[*54]** 643 hours in

[16]2005, right?

[17]A No.

[18]Q You don't know why he worked 523 hours in 2006,

[19]correct?

[20]A Correct.

[21]Q So if you look at the total hours that Mr. Natoli

[22]worked for the union from the time he began in 2002 up

[23]until the date of his accident, he worked 9148 and half

[24]hours, correct?

[25]A You mean total?

[26]Q Total?
380

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[2]A I didn't -- does it say the total on here? I

[3]didn't add it up is my point.

[4]Q Okay.

[5]A Yes, final total 9148.5.

[6]Q Worked total of ten years in the union if you

[7]include 2011, correct?

[8]A Yes.

[9]Q So would a better measurement be to divide the

[10]total number of hours than the total number of time that he

[11]had in the union?

[12]A First of all, I would never include the 2011, so

[13]given that was the year of the accident, but the lowest

[14]years, even if it is 700 or 900, the lowest years were the

[15]recession every year where it was less than 300. I

[16]wouldn't want to include them anyway.

[17]If I do go all the way back to 2002, and I

[18]don't know what the story was in 2002, why he was working

[19]less, it would **[*55]** be less than 1275. What I'm looking for is

[20]what in general closer to the end of, right before the

[21]incident, what was he doing, what was his working

[22]capacity, and it was more in that 1200 range. I made an

[23]assumption, I will be honest, that it was the recession.

[24]So from 2007 forward, he was averaging 1275.

[25]Some years more, some years less. The highest year was

[26]right before the recession, so it was on the order of 1400

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[2]or 1500 hours, and then it drops because he's on

[3]unemployment. And so to me that was representative of

[4]what he was doing just before the incident by choice.

[5]Q So you chose to take that year out because it was

[6]the lowest year, 2010?

[7]A No, I took it out because it was a recessionary

[8]year and I firmly believe that is not representative of

[9]what will happen in the future. We don't anticipate

[10]getting into that level of recession again.

[11]Q Well, let me talk to you about that. You

[12]basically outlined 1275 hours until the end of his working

[13]life, correct?

[14]A Correct.

[15]Q And you can't anticipate any future recession,

[16]correct?

[17]A I can anticipate **[*56]** with some degree but, no, not

[18]perfectly. We will probably have another low point right

[19]now. We're heading into a high period, and we're

[20]expecting growth in jobs and earnings, all of that. So

[21]the three percent would be underestimated if I only looked

[22]at the next five years.

[23]Q Once again?

[24]A We expect it to go down.

[25]Q You can't tell whether or not in the future there

[26]will be a low in construction through the end of
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[1]

[2]Mr. Natoli's work life?

[3]A I can predict it will happen. Can't predict when

[4]or by how much.

[5]Q No one can predict that, otherwise we'd be a

[6]little bit more prepared if the economy went down?

[7]A That is why we use historical averages.

[8]Q We don't have a crystal ball that we can predict

[9]what happens in the future with the economy?

[10]A Sure.

[11]Q So you agree with me then if you were to take in

[12]2010, the number would be lower in terms of the average --

[13]A Yes.

[14]Q -- yearly income.

[15]Once again, if you took Mr. Natoli's entire

[16]work history and divided by the number of years he was in

[17]the union, that would be lower than **[*57]** the 1275, correct?

[18]A It would. I'm not saying I would do that, but it

[19]would.

[20]Q Sure, but it would be?

[21]A Sure.

[22]Q Okay. Now, once again, you can't predict any

[23]downturn in the economy, can't predict Mr. Natoli would

[24]work until 62, correct?

[25]A No, I'm assuming average.

[26]Q Some people in the union retire earlier, some
383

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[2]people later, correct?

[3]A Correct.

[4]Q Once again, that is another assumption that you

[5]are making if he would retire at age 62?

[6]A Yes, that is what I said. I have to make some

[7]assumptions. That is one of them.

[8]Q In terms of certain things such as the pension,

[9]the pension credits are dependent upon the hours Mr. Natoli

[10]works, correct?

[11]A Correct.

[12]Q Once again if he worked less hours or averaged

[13]less hours, this number would be smaller too?

[14]A That's correct.

[15]Q In terms of the annuity, let's go back to some

[16]other points. You indicated for 2016 and 2017 in terms of

[17]the yearly income you used three percent growth rate,

[18]correct?

[19]A Correct.

[20]Q Those union contracts are available today, **[*58]**

[21]correct?

[22]A I didn't have access to it.

[23]Q Because they weren't provided to you?

[24]A Correct.

[25]Q So this number could be less than three percent or

[26]more than three percent, you don't know because you didn't
384

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[2]see the contract?

[3]A Correct.

[4]Q Because we're in 2018 now -- 2018 contract, is

[5]that available?

[6]A I'm sure, well, I don't know.

[7]Q Okay. Once again, that wasn't provided to you?

[8]A Correct.

[9]Q Would that be helpful to know when you are looking

[10]at loss of income going back from today?

[11]A Accurate is always better. Growth rate for the

[12]last couple of years on the 2015 contract was between four

[13]and 4.5 percent except for the recession year which was .5

[14]percent or something.

[15]Q Fact of the matter is, when you are coming to

[16]court and giving projections, you like to have the most

[17]information available to you at that time?

[18]A Always better, yes. Certainty is better than

[19]uncertainty.

[20]Q That wasn't provided to you, so you estimated,

[21]made assumptions it would grow three percent 2016, 2017,

[22]2018?

[23]A Pretty **[*59]** comfortable with the three percent

[24]assumption but, yes.

[25]Q I understand your are comfortable. Once again,

[26]you don't know what the actual rate was, at that time?

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[2]A You're right, yes.

[3]Q In terms of loss of insurance, you indicated that

[4]insurance was 12,000 a year to get similar insurance?

[5]A Correct.

[6]Q But we're in 2018 now, and you have 14,000, did

[7]you put the growth rate onto that 12,000?

[8]A Yes.

[9]Q Okay. Um, wouldn't the insurance for this year be

[10]12,000?

[11]A No, the insurance is valued at 2013 dollars.

[12]Q In terms of loss of Social Security income as

[13]well, you are also making assumptions that Mr. Natoli is

[14]going to pay into Social Security a certain amount before

[15]he gets --

[16]A Correct.

[17]Q And once again, these numbers are based on him

[18]working 1275 hours until age 62?

[19]A That's correct.

[20]Q So these numbers if you worked less, if he was to

[21]average less wouldn't be accurate, correct?

[22]A Correct, and if he worked more they wouldn't be

[23]accurate either.

[24]Q Right. Now, I want to move over to, now to --

[25] **[*60]** THE COURT OFFICER: Counsel, you want the

[26]easel?

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[2]MR. SAVINO: Sure. Thought I was doing a

[3]good job balancing.

[4]Q I'm not going to ask you questions very specific,

[5]strain your eyes too bad?

[6]A I have it in front of me anyway.

[7]Q So once again, the healthcare costs, you make

[8]certain assumptions, correct?

[9]A Yes.

[10]Q You're a Ph.D., correct, but not a medical doctor?

[11]A That is right.

[12]Q So you never examined Mr. Natoli medically?

[13]A No.

[14]Q And no offense if you did, you wouldn't really

[15]know what is going on with him medically, correct?

[16]A No, I don't think he wants me to.

[17]Q So in terms of this, once again, you are given

[18]information from counsel and you are asked to come up with

[19]certain assumptions and you use growth rates and went

[20]through all of that, correct?

[21]A Yes.

[22]Q And you don't question any of the information that

[23]you get in terms of future medical care, correct?

[24]A Right, I have no reason to.

[25]Q In terms of the future medical care, the numbers

[26]you gave us, that came from a Dr. Krishna, correct? **[*61]**
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[2]A Yes.

[3]Q And did you review a narrative report from

[4]Dr. Krishna to come up with this?

[5]A I have a couple of pages, yeah.

[6]Q Would that be the January 25, 2018 narrative

[7]report?

[8]A I believe so, yes.

[9]Q And in that report Dr. Krishna lists certain

[10]injuries, certain -- it is under the impression section?

[11]A Yes.

[12]Q Regarding certain injuries that require this

[13]medical care, correct?

[14]A Yes.

[15]Q Okay. And did you read the injuries --

[16]MR. REZVANI: Objection.

[17]THE COURT: Sidebar.

[18](Whereupon, the following discussion takes

[19]place on the record, in the robing room, in the

[20]presence of the Court and counsels, and out of the

[21]hearing of the jury.)

[22]THE COURT: So I assume where you are going

[23]is that the injury to the left shoulder which has been

[24]withdrawn is listed in that report.

[25]MR. SAVINO: Correct, as well as, a

[26]lumbosacral disc herniation which there will be no
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[2]evidence that was sustained in this accident either.

[3]MR. REZVANI: I don't know if that is true.

[4]Regardless, it is for Dr. Krishna, **[*62]** not Dr. Dwyer.

[5]MR. SAVINO: Goes to the weight of her

[6]testimony. She is incorporating these numbers basing

[7]injuries --

[8]THE COURT: She didn't base it.

[9]MR. SAVINO: Correct.

[10]THE COURT: When you cross Dr. Krishna and

[11]you are able to wipe out or reduce some of those

[12]categories, that is fine, but you can only establish

[13]this is based on numbers gave him and she has no

[14]qualifications to review the injuries.

[15]MR. SAVINO: Well --

[16]THE COURT: All right. So where are you

[17]going with this? I mean, I understand so let's hear

[18]what you are going to do and I'll tell you if I will

[19]permit it. I mean, I will permit you to get her to

[20]indicate that if in fact the treatment is not for, is

[21]not -- withdraw that. I will certainly let you go into

[22]the fact that if in fact his recommendations are not,

[23]are for injuries that are not claimed here or not

[24]coming out of here, then --

[25]THE COURT OFFICER: Sorry, Judge. The jurors

[26]need a break.
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[2]THE COURT: Take a break. Let them take a

[3]break.

[4]I think you know what I'm trying to say.

[5]MR. SAVINO: Yes.

[6] **[*63]** THE COURT: Sorry.

[7]MR. SAVINO: What I will do, I will say, what

[8]I will say, what I will agree to, I fully intend to

[9]cross Dr. Krishna on this. I think for Dr. Dwyer, I

[10]will ask her whether or not she is aware of all the

[11]injuries. In the impression section are injuries

[12]sustained by Mr. --

[13]THE COURT: No, but if in fact Dr. Krishna

[14]says that the recommendations upon which she is basing

[15]her testimony either isn't fully supported or isn't the

[16]amount she based it on, then her calculations are not

[17]correct. I'll certainly let you go there.

[18]MR. SAVINO: I think I have a right, your

[19]Honor, to question her. The basis of her projection is

[20]fraud, and that number is inflated and she is relying

[21]on her report by a doctor that she now says she relied

[22]on it, looked at it, took those numbers and she --

[23]THE COURT: But she didn't, she didn't rely

[24]on it for the diagnosis because she, and she said she

[25]doesn't have any qualifications for that.

[26]MR. SAVINO: Right.

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[2]THE COURT: Only for the treatment

[3]recommended and the current cost of that treatment. So

[4]you can only go into whether **[*64]** or not if those numbers

[5]turn out to be fraud or incorrect, then her

[6]calculations are wrong.

[7]MR. SAVINO: Well, I should be able to ask

[8]her if she knows the treatment is necessary.

[9]THE COURT: No. No.

[10]MR. SAVINO: Okay.

[11]THE COURT: All right. You can have your

[12]exception to that.

[13]MR. SAVINO: I will take my exception.

[14]THE COURT: All right.

[15](Whereupon, a short recess is taken.)

[16]THE COURT OFFICER: Jury entering.

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

[18]THE COURT: You maybe seated.

[19]Q Dr. Dwyer, before we took our break I was asking

[20]you about the Dr. Krishna report --

[21]A Yes.

[22]Q -- you used in figuring out the future of

[23]healthcare?

[24]A Yes.

[25]Q The numbers that are here, those numbers came from

[26]Dr. Krishna, correct?

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[2]A Correct.

[3]Q And you didn't have any role in terms of giving

[4]these numbers or assessing value to the services for

[5]plaintiff in the future, correct?

[6]A That's correct.

[7]Q Okay. So this is one hundred percent you're

[8]relying on Dr. Krishna's opinion as to what **[*65]** would be

[9]necessary?

[10]A Yes.

[11]Q Okay. Did you speak to Dr. Krishna?

[12]A No, I did not.

[13]Q So you just reviewed his last report?

[14]A Yes.

[15]Q And once again, based on that last report that we

[16]discussed, that is where these numbers came from?

[17]A That's correct. Well, I don't know if it was the

[18]last one. It was the report that the law firm provided me

[19]with.

[20]Q That was the January of 2018 report?

[21]A Yes.

[22]Q Okay. So now just a couple more questions.

[23]In terms of the future wages, you indicated

[24]that if there is a recession in the future it takes a

[25]number of years to come out of that recession, correct?

[26]A Correct.
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[2]Q And if there is a factor recession in the future,

[3]the work history, work hours would be affected for not just

[4]one year, but multiple years, correct?

[5]A Probably two or three.

[6]Q So once again, we don't have a crystal ball, can't

[7]predict it, but if there was to be a recession in the

[8]future from 2018 up until the date that Mr. Natoli was

[9]going to leave the work force, his hours would be affected

[10] **[*66]** for a number of years, correct?

[11]A They would, but I looked back over the entire

[12]history and it does come out to even including the low

[13]years. There was some high years of 1700 and more hours

[14]that I didn't add in, so if you do that and divide by the

[15]number of years that he works it comes out to about 1200,

[16]like in that range anyway. I did a crude estimate.

[17]Q You are saying it comes out to 1200 for his entire

[18]career?

[19]A Yes.

[20]Q I think we established he worked about 9100 hours

[21]or so from the time he began?

[22]A Right, and he began in September of 2002 and

[23]ended in --

[24]Q July of 2011?

[25]A -- July of 2011. So we're talking about eight

[26]and half years or something along those lines. It comes
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[2]out to about 11, 1200.

[3]Q Well, it is a little bit of a difference 11 to

[4]1200?

[5]A It is a little bit less than what I had

[6]calculated, but I still feel pretty comfortable. He had

[7]-- when the economy is doing well he exhibits that he

[8]works a decent amount. We were heading into a pretty good

[9]spell, we may end up in a bad spell again. If you wanted

[10]to knock **[*67]** off 75 hours.

[11]Q The economy was doing well in 2005 and 2006,

[12]correct, that is before the collapse that you put down

[13]there?

[14]A Right.

[15]Q The hours were very low?

[16]A It wasn't a collapse, but it was a lower term.

[17]Q The hours were low, wasn't a thousand hours in

[18]those two years?

[19]A Yes, but there were 1700 in 2003 and 2004.

[20]Q But five and six they were low?

[21]A Right. It is a little volatile. I'm trying to

[22]smooth it out and I'm saying in trying to smooth out 1275

[23]is reasonable, it is in that range.

[24]Q 1275 reasonable, 1275 is 2007, 2008, 2009 --

[25]A Right.

[26]Q -- and that is it?
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[2]If you take the entire history, it is less

[3]than 1275?

[4]A I can actually precisely calculate it if you let

[5]me get my phone and calculator.

[6]Q The jury will be able to see it and draw on that

[7]on their own.

[8]A Okay.

[9]Q Once again, your assumptions here that Mr. Natoli

[10]would remain a member of Local 79 until he retired,

[11]correct?

[12]A Yes.

[13]Q So doesn't take into account him leaving Local 79

[14]or what those numbers **[*68]** would be?

[15]A Correct. I -- typically I use work capacity and

[16]it is not contingent on being in a particular job. So

[17]that demonstrates what he can command in the labor market

[18]whether it is that union or a different union, that is the

[19]industry in the earnings that he commanded.

[20]Q And that is the industry as a Local 79 person if

[21]-- you don't have any opinion as to whether Mr. Natoli can

[22]work again in the future, correct?

[23]A Correct.

[24]Q So if Mr. Natoli was to get another job today,

[25]then those numbers would not be --

[26]A You would -- if he could work, then you would
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[2]deduct whatever he could earn from what he would have

[3]earned.

[4]Q Were you ever given by counsel a letter from

[5]Mr. Natoli's treating physician, Dr. Baum, in 2013 that

[6]said he could return to work in full capacity?

[7]A I was not.

[8]MR. SAVINO: Thank you, Dr. Dwyer.

[9]THE WITNESS: You are welcome.

[10]MR. REZVANI: May I inquire, Judge.

[11]REDIRECT EXAMINATION

[12]BY MR. REZVANI:

[13]Q Let's look backwards and let's stop talking about

[14]wishing recession upon us.

[15]Let's look at the **[*69]** recession that happens.

[16]You were referring to some studies over there. Pointing

[17]something out when counsel was asking you about the

[18]recession and the unemployment rate, can you just --

[19]first, is that from the Bureau of Labor statistics?

[20]A Yes. Current it is Bureau of Labor statistics

[21]with data from the current population.

[22]Q Is that in the construction field what you are

[23]referring to?

[24]A Yes.

[25]Q And tell us when you were pointing and answering

[26]his questions, tell us what you learned from the Bureau of
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[2]Labor statistics in terms of unemployment rates on

[3]construction workers during the time period that you are

[4]talking about with the recession?

[5]A So in 2010 the unemployment rate for construction

[6]workers was about 21 percent which is huge and then for

[7]2011 it was about 17 percent. So it was still very high.

[8]If you go to 2012 we're down to 13 percent, still very

[9]high, but if you look at where we are at today we are at

[10]like 5.4 percent and that is, has been a steady decline.

[11]That is more normal more the average for that industry.

[12]Q So Dr. Dwyer let's talk about **[*70]** the work histories

[13]in the pension records. You talked about the reason why

[14]you used the three years that you did, but then you were

[15]asked questions about the entire work history. Let's look

[16]at it.

[17]A Okay.

[18]Q Um, so do you have the printout?

[19]A Yes.

[20]Q 2002, what date did Mr. Natoli first start working

[21]for the union in terms of the first pay scale?

[22]A September 25 --

[23]Q 2002?

[24]A Yes.

[25](Transcript continues on the next page.)

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[2]Q And through the year from September 25, 2002, up until

[3]the end of the year, how many hours did he work?

[4]A 302.

[5]Q 302 hours for how many months?

[6]A For two-and-a-half months.

[7]Q Extrapolate that over the course of a year, what have

[8]you got?

[9]MR. SAVINO: Objection.

[10]THE COURT: Overruled.

[11]A So, it would be about 1,200.

[12]Q So, in his first full year he was at the pace of

[13]working the 1,200 hours; correct?

[14]A Correct.

[15]Q Now, let's go to his actual full year in the union.

[16]Tell the jury how many total hours he had in his first full year

[17]in **[*71]** 2003?

[18]A 1674 hours.

[19]Q Which is greater than the rate that you gave him?

[20]A Yes.

[21]Q Now, let's go to 2004. Counsel didn't ask you about

[22]either. How many hours in all 2004 for Mr. Natoli?

[23]A 1715 hours.

[24]Q Also far bigger than the estimate that you told us

[25]about before?

[26]A Correct.
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[2]Q Then, counselor did focus your attention on 2005,

[3]which was 623, and 2006, which was 523; right?

[4]A Yes.

[5]Q But then 2007 was how many hours?

[6]A 1,213.5.

[7]Q 2008, how many hours total?

[8]A 1,221.

[9]Q 2009, how many total hours?

[10]A 1,425.

[11]Q And then we have the recession?

[12]A Yes.

[13]Q Okay. We just did the math. Do you want to do it?

[14]Take out your calculator and do it? I mean, if you calculated

[15]the years -- forget anything about the 2002, because that was a

[16]fraction of a year -- if you do 2003 all the way to 2009, what

[17]is the average?

[18]A You would be in the ballpark of 1,200.

[19]MR. REZVANI: Thank you. I have no further

[20]questions.

[21] **[*72]** MR. SAVINO: Nothing, your Honor.

[22]THE COURT: All right, thank you very much.

[23]THE WITNESS: Thank you.

[24](Witness excused.)

[25]THE COURT: Mr. Rezvani, do you have your other

[26]witness?