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SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK - CIVIL TERM: PART 15

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JOSEPH MARANDOLA and ANTONELLA MARANDOLA,
Plaintiffs,

-against- Index No.
154546/2012

CF 620 OWNER ONE, LLC, CF 620 OWNER TWO, LLC, CF 620 OWNER THREE, LLC, BONJOUR 620 I, LLC, BONJOUR 620 II, LLC, YL 620 SIXTH, LLC, HENEGAN CONSTRUCTION CO., INC., SERVICE EMPLOYEES INTERNATIONAL UNION 32BJ,
Defendants.

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80 CENTRE STREET
NEW YORK, NEW YORK
APRIL 12, 2018

B E F O R E:

THE HONORABLE JAMES E. d'AUGUSTE,
Justice

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(Appearances continued on the next page.)

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- Proceedings -

THE COURT: On the record. You have something you want to put on.

MR. PERKEL: Good morning, your Honor. Yesterday evening, your Honor, we received by Mr. Mastroianni from plaintiffs' counsels' office an email with a two page chart from Dr. Dwyer, and it said, "Gentleman, attached, please, find chart produced by economist, expert Debra Dwyer, Debra will be using tomorrow."

Can I show this to your Honor?

THE COURT: Yes.

MR. PERKEL: Judge, I have no problem with the first page, which is just a reproduction of what was produced by Mr. McManus in his affirmation with Dr. Leiken's or Dr. Dwyer's 3101(d), but I do have an issue with the second page which is the health care breakdown which was not exchanged previously. I would deem that as quite untimely, obviously, and based on the testimony of Dr. Root yesterday, I believe that would be cumulative in nature. The only thing that this is doing is bolstering what Dr. Root said, and that's outside the expertise of Dr. Dwyer. So, therefore, I ask the Court to respectfully limit Dr. Dwyer from not using the yearly breakdown of future cost of health care since it has already been discussed by Dr. Root and was only exchanged at 5:30

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yesterday evening when we had no time for our economist to review it and do any projections based on the numbers that Dr. Dwyer is projecting.

Thank you.

MR. WILKENS: Judge, it was exchanged.

MR. MASTROIANNI: Good morning, your Honor. Anthony Mastroianni on behalf of the plaintiffs. There was a supplemental 3101(d) related to the loss of health care that had been served timely. I don't have a copy of it right now, but I will have our office produce a copy.

THE COURT: Okay. Well, if it had been exchanged --

MR. PERKEL: If it has been exchanged, regarding the second page, your Honor, then I have no issue, but the only thing I have ever seen from plaintiffs' office is the one by Mr. McManus.

MR. MASTROIANNI: Right. There was a second 3101(d) to supplement Mr. Leiken's and Dr. Dwyer's reports. I'll have that produced.

THE COURT: I'll withhold decision premised upon receipt of the supplemental 3101(d)

MR. PERKEL: That will be fine.

(Brief discussion held off the record.)

THE COURT: Okay. One of the defense counsel actually has the supplemental report. So, I guess that

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resolves that issue.

MR. WILKENS: Just to clear one thing up for your Honor, the reason why a new copy was served last night is we can't know -- there's no way of knowing exactly when the witness is going to testify. So, we can't know which part of the earnings loss is past earnings and which part is future earnings until she comes.

MR. PERKEL: Obviously, your Honor, I did not see this supplemental copy.

THE COURT: That's fine.

MR. PERKEL: I withdraw.

THE COURT: It happens in every case, Counsel, and I have said this, I think, on the record to the jurors, that we have some really good lawyers here that are zealously advocating for their clients' interest, and you are doing exactly that.

MR. PERKEL: Thank you, your Honor.

THE COURT: I have no issue with your performance. It's been excellent to date.

MR. PERKEL: Thanks.

THE COURT: Okay.

THE COURT OFFICER: All rise. Jury entering.

(Jury present.)

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J. Marandola/EBT Reading/Wilkens

THE COURT: Okay. Please, be seated, everyone. So, members of the jury, yesterday there was an examination of Mr. Marandola. Mr. Kaminsky inquired, you know, if he had received funds from pensions, comp benefits, disability SSI, those sort of things, and how much. These are something that is called collateral sources of income. They are not for you to reduce any award on the basis of that. That's something that after a trial I deal with. Okay? But you may consider Mr. Marandola's sources of income that are coming into him with regard to his ability to pay for medical treatment that he claims he was unable to afford. In other words, you can consider it, but only for the limited purpose of determining the validity of an excuse for not getting that treatment but nothing else. Okay? You understand this instruction? Okay. All right.

MR. WILKENS: Judge, before I call my next witness, I just want to read some excerpts from Mr. Marandola's transcript of his deposition.

THE COURT: So, you're now going to hear plaintiffs' counsel read certain pages of a transcript. The CPLR, which is the Civil Practice Law and Rules, permits for the reading of additional depositions and testimony if the other side that didn't read that testimony believes that it would clarify the answers. It

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puts it in context, so to speak. So, you heard certain readings by Mr. Kaminsky. There's certain readings now that you will hear from counsel for plaintiff, Mr. Wilkens, and essentially, you're going to consider all. Testimony that's taken in depositions are to be treated as if the testimony had taken place here on the stand, even though that testimony was taken out of the courtroom and before the trial, and that's because it's taken under oath just like the testimony that's taken in the courtroom.

Okay.

MR. WILKENS: Thanks, Judge. Just for the point of reference, the deposition was November 8th, 2013. Mr. Marandola at that time was represented by the law firm that was representing him at that time Loscalzo and Loscalzo. Page 123, Line 16:

"When for the first time prior to 2011 did you experience any issues regarding your lower back?

"ANSWER: I don't recall.

"QUESTION: Approximately when was it, in '90?

"ANSWER: It could have been '90. Maybe 2000. I don't know."

Page 124, Line 2.

MR. PERKEL: Can I get there?

MR. WILKENS: Sure.

"QUESTION: Do you remember the name of the

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first physician you made complaints to with regards to your lower back?

"ANSWER: It might have been Dr. Fulop, my family doctor.

"QUESTION: How long has Dr. Fulop been your family doctor?

"ANSWER: Since I've been in Staten Island, 13, 12 years.

"QUESTION: Do you know a Dr. Valauri?

"ANSWER: Same office. Another practicing physician there.

"QUESTION: When you complained of problems with regard to your lower back prior to May of 2011, what were the complaints?

"ANSWER: Just like muscle spasms kind of pain.

"QUESTION: Where were they?

"ANSWER: Like, on my side. Like, here on my left side or my right side. It would be like -- it would be just like spasms, kind of like a shooting, kind of like a throbbing pain.

"QUESTION: Was it confined to that part of your body?

"ANSWER: Excuse me?

"QUESTION: Was it confined to either your left

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or your right side of your back?

"ANSWER: No. It would vary. It would be wherever.

"QUESTION: What do you mean whatever?

"ANSWER: It would just be a pain. That's it. I couldn't tell you where it comes from. It kind of radiates. I don't know.

"QUESTION: Where would it radiate?

"ANSWER: Just on my back.

"QUESTION: Did it ever go down your legs?

"ANSWER: No, not at that time."

Page 126, Line 6 through 17:

"QUESTION: When you're having these complaints with Dr. Fulop with regards to your lower back, what, if anything, did he do for you?

"ANSWER: Nothing. He would prescribe me an anti-inflammatory or maybe a narcotic pill, maybe like a narcotic pill. The pain would go away, and that would be the end of it.

"QUESTION: How many times between the first time you went to Dr. Fulop for complaints regarding your lower back up until May of 2011 did you see physicians with regard to your lower back?

"ANSWER: Five maybe, four, five.

"QUESTION: Did you ever go to a hospital for

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your lower back before the date of the accident?

"ANSWER: One time.

"QUESTION: What hospital?

"ANSWER: Staten Island University. I don't know if it was north or south. I'm not too familiar with that.

"QUESTION: When was that?

"ANSWER: 2006 maybe.

"QUESTION: Why did you go to Staten Island University Hospital for your back at that point?

"ANSWER: I was glazing a wall for my wife, and I twisted my back, and no one was home at the time. My wife was out with my daughter. So, I called 911.

"QUESTION: You went to the emergency room?

"ANSWER: Yes.

"QUESTION: And what was done for you at the emergency room at Staten Island University Hospital.

"ANSWER: A shot of morphine and sent home.

"QUESTION: Did you have any followup treatment?

"ANSWER: No. I don't think so.

"QUESTION: As a result of that, did any doctor send you for an MRI or X-ray or CAT scan as a result of that visit?

"ANSWER: I may have. It might be 2007. One at New Dorp MRI from Dr. Patel, if I'm not mistaken.

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J. Marandola/EBT Reading/Wilkens

"QUESTION: Dr. Patel or Dr. Peral?

"ANSWER: I get confused. Peral.

"QUESTION: And you had an MRI in 2007 in New Dorp?

"ANSWER: Yes, ma'am, or Regional. I'm not sure of the facility.

"QUESTION: And at that point did Dr. Peral, if it was the physician who sent you, advise you of the results of that MRI?

"ANSWER: Yes.

"QUESTION: And what did he say?

"ANSWER: He said it was a minor disc something and it should go away by itself. He said it's minor, and people live with it every day, and it should go away by itself."

That's all I have judge.

THE COURT: Anything additional?

MR. KAMINSKY: Not right now.

THE COURT: Okay.

MR. WILKENS: The plaintiff calls Professor Debra Dwyer.

D E B R A D W Y E R, 17 Springbriar Lane, Center Reach, New York, 11720, called as a witness, after being duly sworn, testified as follows:

THE COURT: You may commence your examination.

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MR. WILKENS: Thank you, Judge.

DIRECT EXAMINATION

BY MR. WILKENS:

Q Good morning, Professor Dwyer.

A Good morning, Mr. Wilkens.

Q Can you at the outset layout your education and training for the jury.

A Sure. I got my bachelor of science in economics and English literature from Queens College in Flushing, New York. I went on to get my masters and PhD in labor and health economics from Cornell University, and I spent one year doing a post doctoral fellowship at the Center for Policy Research in Syracuse.

Q What have you done professionally since then?

A So, from Syracuse I was recruited to the Social Security Administration in Washington D.C. where I spent a couple of years studying disability policy for the Division of Economic Research, and since then I spent the last 20 years at Stoney Brook University where I've been a faculty member. I have affiliations in the College of Arts and Sciences in the economics department. I also teach in engineering. I've taught in health sciences and in the College of Business.

Currently, I'm teaching economics and public policy to graduate students, and I'm the assistant dean for strategic planning and research for the College of Arts and Sciences. I

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do research, some administration, and I monitor students from high school all the way through to the doctor of philosophy, PhD.

Q When, if you can recall, was it determined that it would be you, physically, who was going to come to court to testify on economic issues in this case?

A About a month ago.

Q Are you aware that I advised Mr. Haynes and Mr. Perkel at the start of jury selection that it would be you who would testify?

MR. KAMINSKY: Objection.

THE COURT: Sustained.

Q Is there a concept in economics called "present value"?

A Yes.

Q Can you explain to the jury what present value is?

A Sure. Present value is, just what it sounds like, the amount of money this would take today to be equivalent to a stream of money into the future. So, if I wanted to have a thousand dollars next year, I would need less than a thousand dollars this year, because I can invest it and earn interest on it so that it would be equivalent to a thousand dollars next year.

So, what we use present value for is if we're projecting, in a case like this, if we're projecting over the

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future an amount of money annually, how much money would you need today to be equivalent to that stream of money to be able to pay something over the next 10, 20, years, whatever it is.

Q So, for example, if it was going to cost -- I'm going to pick a figure -- $50,000 for somebody to pay for something over the next 20 years, they wouldn't need $50,000 now. They would needless than $50,000?

A That's correct.

Q Okay. Did you project -- make certain projections as to economic losses of income for Mr. Marandola?

A Yes, I did.

Q Did you also project economic costs of certain medical expenses and therapies?

A Yes, I did.

Q When you were projecting those into the future, did you include a growth rate year to year for that loss of earnings and the cost of those services?

A Yes, I did.

Q Explain why you did that. When we go through the numbers, it might make more sense. Explain why you apply a growth rate to somebody's loss of earnings, for example.

A Sure. So, a growth rate, when we talk about present value, we talk about discount rates, and a discount rate is how much interest you can earn on that money to be equivalent for that future value. When we talk about growth rates, what we

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are talking about there is equivalent to inflation. You have all heard of inflation. Prices go up over time for the same goods and services. So, a physical therapy visit today might cost $150. The exact same visit 10 years from now would cost more than $150. We know that because historically that has always been true. So, the growth rate is the amount by which we believe the prices for particular services are going to grow over time, and we have that data, those statistics from the federal government.

Q And so you included growth rate to make those expenses larger than they would be if there was no growth rate; right?

A I used the growth rate to accurately predict what the same services would cost in the future.

Q Without going to the numbers you got yet, did you also reduce the numbers you got by the present value?

A No.

Q So, in giving an accurate economic analysis as to what somebody would need now, would you, if you weren't in the courtroom, if you were somewhere else, would you apply both the growth rate in order to account for inflation, but would you also reduce it by present value?

A Yes, definitely.

Q But you didn't do that in this case?

A No, I did not.

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Q If you did do that in this case, would the ultimate numbers that you told the jury be lower than you're actually going to tell them?

A Yes.

Q How come you didn't in this case --

MR. KAMINSKY: Objection.

Q -- reduce the present value?

THE COURT: Overruled.

THE WITNESS: It's my understanding that that is not done at this time. So, I could reduce to present value. I would reduce to present value if I were going to do research and trying to project. I try to do things, like, project nursing home costs over the remainder of the life of average people in nursing homes when I do policy research in those areas. In a case like that, I'm told we don't do present value. So, I'm not discounting the present value. I'm giving you the future values, and my understanding is the courts take care of that afterwards.

Q So, can you tell the jury -- let me just ask you something. Is this the first time that you've ever testified in court?

A No.

Q Is this the first time you ever testified in court where I was the attorney for somebody?

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A No.

Q How many times have you testified in court in a case where I was the attorney, if you remember?

A Probably about three.

Q So, in your own words, explain to the jury your role in cases like this and the activities that you've done since you started doing this kind of work. Just tell the jury what it's been like.

A Sure. I'll start with I began this kind of work in 2012. I was a faculty member at Stoney Brook University, and I got involved with this kind of work with another faculty member from Stoney Brook, and our role in a case like this as an economist is to predict the damages that are associated with this injury. So, those damages will include things like if the plaintiff is no longer able to work what would that plaintiff have earned over the remainder of his life in total compensation. So, that would include income and fringe benefits, anything associated with the injury that he would have gotten and he's not going to get. In this case it's a he. Medical expenses that are associated with the injury, if it is found somebody is going to be liable or somebody has to pay for that, what is the value of those services. I'm not a medical doctor. I cannot make recommendations about what I believe Mr. Marandola or anybody in a case like this would need, but the reason I'm hired is because I have expertise in the area of

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health care and studying health care markets. So, I have an idea of what is going to happen with trends and prices based upon policy and current economic conditions. So, I'm going to take the recommendations of a medical doctor, and I'm just going to project what I believe is going to happen to the costs of those services and determine over the remainder of the plaintiff's life what those costs are going to be totaled. So, that's the health care part, and then there's the compensation part that I also do the same things. Economists, anybody, have to make assumptions about what is going to happen in the future. When you're trying to calculate these damages, the reason you hire someone like me is because this is what I do for a living, and I have expertise in these areas. I have to make those kinds of assumptions in my research, and I can apply them here.

Q In terms of the costs, the health costs you talked about, are your projections in terms of health costs based upon a life care plan and estimates given by a Dr. Barry Root?

A Yes.

Q If his estimates are wrong, ultimately your numbers are wrong?

A Absolutely.

Q If his numbers are too low, your numbers are going to be too low?

A That's right.

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Q If his numbers are too high, your numbers are going to be too high?

A That's right.

Q Does Dr. Root's analysis have anything to do with your projection with regard to the loss of income?

A No.

Q I want to ask you this. In opening statements Mr. Kaminsky told the jury that you based your projections of Mr. Marandola's lost earnings on your assumption and your use him working 1,800 hours a year; is that accurate?

A No, it's not. I used 1610 hours a year.

Q How did you get that?

A That's an average for electrical workers and service workers in this industry.

Q Okay. So, that's not particular to Mr. Marandola. You didn't look at how many hours he worked in the past and tried to read a crystal ball as to how many hours he worked in the future?

A To be honest, I did look at what he worked in the past, but I decided to base it on the average rather than what he had been working. The industry tends to be somewhat sporadic, and the average is 1600 which is less than the typical 2000 work hour a year, because of things like furloughs and seasonality of the work. So, we just chose to go with the average. His last full year of work was in 2009, and at that

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time he was working over 2000 hours.

Q 2010, how many hours did he work?

A He worked a lot less because he was furloughed.

Q Seven hours?

A Yes.

Q So, what was the state of the economy in 2010 and 2011 as compared to now?

A We were in a recessionary period. We tend to not base a lot of our assumptions on outlier years. What I mean by that is years that are particularly low in the economy or particularly high, but 2010, wherever I see something like that, a dip in hours, we typically assume that's from the recession.

Q In a field that has furloughs and layoffs, how does how good the economy is doing effect whether or not a worker will have to have a layoff or a furlough?

A Less work available, more furloughs, more layoffs.

Q How is it doing now, the economy?

A I'm sorry?

Q How is the economy doing now?

A Much better.

Q When after 2011 did it start to so improve?

A It was a very gradual improvement. So, the recession began really technically in 2008 and 2009 and continued until about 2012. 2013 is when we started to see it pick up. So,

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we're talking about growth rates, and I'm going to refer to wages now, because that's one of the indicators that we use to see how the economy is doing. During the recession wages were only rising by one percent, even less than one percent some quarters. It was up to like two and a half percent by the time we were reaching 2013, 2014. I would say 2012 is when we started to see the upturn.

(Continued on the next page.)

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Q Now you mentioned something about that's why you used 1610 hours instead of 2000 hours. What's the significance of 2000 hours?

A That's a 40-hour work week. So that's the norms that we use for the general population is people work on average 40 hours a week if they are full-time, and that amounts to 2000 hours of work for 50 work weeks.

Q And how many hours a week did you then project the 1610 hours project?

A So it's less than 40, it's probably about 32, 30.

Q Did you reduce your analysis to any charts?

A Yes.

Q Would it be helpful to the jury if you could show charts reflecting the loss of earnings?

A Yes, it would.

MR. WILKENS: Your Honor, may the witness use the chart?

THE COURT: Yes, you may.

MR. WILKENS: Your Honor, can I have this marked as plaintiffs next.

THE COURT: Yes.

(Whereupon, Plaintiff's Exhibit 23 was deemed marked in Evidence at this time.)

(Whereupon, the witness approaches the exhibit.)

Q Let's first start with what this chart is.

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A Okay, this is -- I said there were two categories of loss that I work on. One is compensation, and the other the is health care expenses. This is the compensation chart. So it has the categories of compensation based on the union contract, because Mr. Marandola was a union worker, electrical worker, Local 3.

So the categories are the earnings, income loss, health insurance. He had pretty good health insurance. The deferred salary plan is like a 401K type plan, we call that a defined contribution plan. The pension plan, which is a defined benefit plan based on a formula, and Social Security losses.

Q And so why did you include all those things, just explain to the jury?

A So this will give us a value of his work over the remainder of his work life expectancy. Both the income for each year that he does work and the value of those fringe benefits even into retirement up until death.

So there are a couple of assumptions I have to make along the way about timing that I didn't talk about. The first assumption is how long will he work. So we use the age of 65, that's the normal age in the union contract for the pension. Under Social Security his normal age would be 67. We use the age 65.

Then we also have to assume how long he'll be

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collecting his pension benefits. Again that's the amount of money he would have gotten that he is not going to get because he wasn't working. And that's going to be from the time of retirement until the time that he passes. And we use life expectancy from the National Center for Health Statistics. Annually they put out life expectancy. These are survival probabilities given you survive to a certain age, what's the probability that you're going to live another year and another year after that. And they calculate the probabilities, the number of years left that you can all do this for yourselves.

MR. KAMINSKY: That's a pleasant thought.

Q I just want to ask you, there's been testimony he's already getting some of his pension because he's retired much earlier, is that reflected anywhere in the chart?

A Yes. So these pension values, Social Security pension and the annuity, is all the difference between what he would have gotten and what he is getting. So we do account for the money that he is already collecting and the pensions. So this is a formula based on the years of service. And so we only use the years that he is not working to calculate that benefit for example.

These are the amounts of contributions that would have been made toward the lump sum that he would get upon retirement that he is not going to get. So if he's collecting something, we are accounting for that by not including it in these losses.

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Q And with regards to health insurance, there has been testimony that his wife and his daughter are still covered under the same health insurance as always. Is that reflected in your loss in health insurance?

A Yes, so the replacement rate that I use, and we use the term replacement rate, that means how much money would he have to spend to get the same coverage that he had while he was in the union. We only use it for the individual plan, not for the family plan. So it's my understanding that he doesn't have those benefits anymore.

And so we took the value of that plan which was $12,000 in 2013. We consider that future loss, in particular because health insurance you still have access to it for a couple of years after you stop working under COBRA, it's legislation. So we started in 2017 which is when we did this report. And again a growth rate is applied.

So if it cost $12,000 in 2013 in New York State, we use a growth rate of four percent because that's the average that health insurance premiums were rising over the last 25 years. So the first year of loss, the value of the health insurance was $14,038.

Q And so what is column one, income loss?

A So this is how much we project he would have earned if he continued to work. So the accident occurred in 2011, we begin the losses in 2012. And what we use is the hourly rate

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for the journeyman from the union contract, which at the time was $51 an hour.

MR. WILKENS: Just for the record, Judge, the union contract is in evidence as is the pension system.

A So according to the union contract, journeyman would earn $51 an hour in 2012. That's their straight hourly rate. We multiplied it by 1,610 hours to get $82,110. Then 2013, we took the 2013 hourly rate, so they provided it. We had the union contracts up until the year 2018. So we use the actual rates proposed -- not proposed, but assigned in the union contract so $51, $52, and so on until 2018 when it became $56 an hour. It stayed the same in 2017 and 2018, that's why those numbers are the same.

From there on we have to make a projection about what we think is going to happen to earnings because we didn't have any union contracts into the future. We use what is standard and labor economics. The average growth rate for wages over the last 20 years has been 3%. So we just compound that 3%, that means we give him a 3% raise every year. So in 2018 it's $90,000, in 2019 a 3% raise would be $92,865.

Q Let me ask you, we didn't have 3% growth last year, did we?

A No, we didn't.

Q How did you pick 3%?

A It's based, as I said, on the average over the last 20

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years. Again, I would never pick -- no economist would ever pick one year because that could be an outlier year. So last year it was more on the order of 2.4 percent growth rates. But in 2010 it was more like 1.2 percent. And prior to that it was in the four or five percent ranges.

So what we do is take an average because we expect -- we call that a business cycle. We expect that we're going to see a series of increases in the growth rate and decreases in the growth rate over the next 20 years, use the past 20 years to project that, and we smooth it out by taking an average.

Q And so you have a total?

A Yes.

Q What's the total?

A So the total if he works until his birthday at the age of 65 which is in December, the total loss in the value of his earnings would be $2,192,078 which I split into the past which is from prior to March 2018, $451,186. And then the future value, which is the amount that if we were going to take present value it would be on that future value that $1,740,892 is the future value you would get the equivalent value today.

Q I just wanted to ask you where did you get the work life expectancy from?

A From the union contract. Sixty-five is the full age to collect your pension under the union contract. And it's a reasonable age to use in a case like this.

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Q That's a union contract for electricians?

A Yes, Local 3.

Q Do you know anything about whether physically Mr. Marandola would be able to work until 65, do you?

A I don't personally know. I do take into account, I ask questions about what his health status was like before, what his work force attachment was before. My understanding is he was working since he was 14 and he had a pretty strong labor force attachment and was in pretty good health. Therefore, I had no reason to believe he would retire earlier than that.

Q That 65 that comes from the union contract, is that a contract for all electrical workers who are in the union of whatever health they are in?

A Correct, yes.

Q So does that reflect people with health that could work past 65 as well as health of people who would not let them work until 65?

A That's actually a rule, it's not an average. So, yes, I mean it applies to anybody whether you're healthy or not.

Q Are you familiar with statistical work life expectancy?

A Yes.

Q And how does 65 compare to statistical work life expectancies for someone of Mr. Marandola's age?

A That varies based on educational status and type of

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work. But overall the average has been growing over time, and it's about 64.

Q And does that -- is that geared for all people? Does that take into account the fact that some of the people in our population will have health that will stop them from working and some have health that could permit them to work until 75?

A Yes, so an average is going to include general population however they look. So that will be people who are healthy, people who are sick, people who are high educated, people who are low educated, et cetera.

Q So and loss of health insurance you told us that's the replacement for what he lost, not his wife and child?

A Correct.

Q So what's this loss in deferred salary plan?

A So this is, the deferred salary plan is we're going to set aside money. That's what a typical defined contribution 401K plan is. And the employer contributes. It's like a savings plan. And this is the amount that the employer contributes based on the union contract.

So there are components to this deferred salary plan that get included in this, some of it is formulaic based on what the hourly rate of earnings is, and it comes out to $33,012 in 2012. That's a formula from a union contract. There is no uncertainty about that. I didn't have to make assumptions. All I had to do was use the formula from the

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union contract. And that's true again all the way up until the year 2018, because I had the union contracts up until that time. Beyond 2018 then I have to grow it based on assumption, and I use the 3% growth rate there as well.

Q And what's the total, just so we have it in the record, what did you say the total income loss was?

A The total income loss was $2,192,078.

Q What's the total past?

A $451,186.

Q And when it says past, that's the figure from the date of the accident up until today?

A That's the figure from 2012 up until today.

Q And the future is, what's the number?

A $1,740,892.

Q And that's from today into the future?

A Yes.

Q Again not reduce the present value?

A Correct.

Q And loss past, the total loss of health insurance.

A Was $4,071.

Q Past and future?

A $302,302.

Q Total of?

A $306,373.

Q And then loss in deferred salary total?

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A $918,648.

Q Past is?

A $187,763 and the future $730,885.

Q And now tell us how you came about with the loss in pension with income?

A So I mentioned that that's a defined benefit plan. That means it's just based on a formula and your years of service. So using the formula, again from the union contract, I calculated what his benefits would have been had he continued to work until age 65.

In this case he lost 22 years of earnings. So I used that 22 years of loss to calculate the loss part of the pension. So it's not the total pension, but just the difference between what he will get and what he would have gotten, and that is $47,702. And there is no growth rate on that because that is a flat pension, so there is no growth rate.

So that you get a total, and it's all in the future because it starts at retirement, so a total loss of $489,120 in pension income.

Q And again does that amount reflect the fact that he would already be getting some pension benefits?

A Yes.

Q Lastly explain to the jury the loss in social security retirement?

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A That's also a defined benefit formula. So again we just did the difference between what he would have gotten if he continued to work that 22 years and what he will get because it was cut short. And that difference in future dollars is $11,332. Again a formula right from the Social Security Administration.

To calculate that, now the Social Security Administration increases that pension amount by two percent every year. So we use the Social Security growth rate of two percent to get a total future loss in Social Security pension of $157,016.

Q You can take your seat now.

(Witness resumes the stand.)

MR. WILKENS: Judge, I'm going to ask one of two things. Obviously not the big one, but I have a normal size one. I'm going to either offer that into evidence, or to save time at some point be allowed to read each entry into the record. So if the jury needs to see it during deliberations they can either look at the chart or hear each entry.

MR. KAMINSKY: We'll work it out.

MR. WILKENS: We'll work it out. Okay.

Q Did you do an analysis of the life care plan prepared by Dr. Root?

A I did.

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Q Do you have it in front of you?

A Yes.

Q I'm going to ask you some questions about it.

A Okay.

Q He gave categories of medical care, diagnostic testing, medication, epidural steroids injections, lumbar fusion and associated rehab, cervical fusion and associated rehab, physical therapy and DME, and ibuprofen.

A Durable medical equipment.

Q How did you know what that is?

A I just know the category.

MR. KAMINSKY: She's worked with Dr. Root before.

Q Can you tell the jury about your training specifically regards to -- Excuse me, I have to ask you something, doctor, professor, do you, you, would you, because I heard that comment--

MR. KAMINSKY: I take it back.

Q I'll continue please. Would you would you need to depend on Dr. Root to tell you what durable medical expenses are, equipment are? Would you need that?

A No.

Q Would you please educate Mr. Kaminsky and the jury as to your specific background and training and specialty in the economics of medical health?

THE COURT: Sustained. Rephrase the question.

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Q How do you know that?

A I've been working with health care, in the health care industry. I've taught in the health care industry. I do research in the health care industry. That's my acronym on my chart up there. I have experience with these acronyms like durable medical equipment.

Q In your life, have you ever met Dr. Root?

A No, I have not.

Q Okay, have you worked in cases where he was a life care planner?

A Yes, I have.

Q Have you worked in cases where other physicians were life care planners?

A Yes, I have.

Q Have you worked in cases where not just physicians, but people with who aren't physicians but have specialty training in life care plans have done life care plans?

A Yes, I have.

Q Would you know Dr. Root if you fell over him?

THE COURT: Sustained.

Q Now I want to ask you this, Mr. Marandola has testified in no uncertain terms at no point in his life is he ever going to have back surgery again on his lower back. He made it very clear. So if his life goes well enough that his health enables him to live up to that promise, and he would

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never need that surgery, this item should be taken completely off the list, right?

A That's correct. I hesitate a little bit just because as an economist I'm thinking about how do you place a dollar value to the severity of the loss that a doctor says that that's got some positive probability. So you are right, if the probability is zero as Mr. Marandola would like it to be, then, yes, it would go away.

Q I'm not asking you to change your mind. I'm asking you the question.

A Sure.

Q So if unfortunately his body doesn't cooperate and he has to have that surgery, then that would be an appropriate charge, right?

A Correct.

Q And you didn't show up here with a crystal ball, did you?

A No.

Q So kind of the same question because this is back surgery too, cervical fusion, and if he's fortunate enough to have his body cooperate and he doesn't have to have those surgeries, then he wouldn't know that, right?

A Correct.

Q And he wouldn't need that?

A He wouldn't, right. If he's healthy enough he

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wouldn't need it.

Q From all of what you told us, are you familiar with the relative costs charged by medical care providers under certain scenarios, one being private patients, one being Medicare patients, one being patients paying for services by Workers' Comp, and one being patients who are members of group insurance plans.

Are you familiar with how being in one of those categories can affect the amount that the provider of health care costs charge?

A Yes.

Q Can you tell that briefly to the jury, explain that?

A Sure. So there is public and there is private insurance. And within that there are flavors of public and private insurance. And one of the things that I teach when I teach is one of the peculiarities of the health care market is people are paying different things for the same services. And that's true of reimbursements as well.

So some of the public programs tend to pay less, or reimburse less than maybe Medicare or some of the private. Workers' Comp and Medicaid in particular tend to pay less than Medicare or some of the publics -- I mean privates, sorry.

Q So take Medicare, medical care, how did you do your column?

A So I'm provided with the number of visits and the

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value of those visits orthopedic, psychiatric, whatever the office visits are from Dr. Root's report. I sum them up so that in 2018 the value of those office visits over a year is $2,250. So my job, as I said earlier, is to just say how much would those same exact visits cost next year and every year up until he December. And the growth rate --

Q Go ahead?

A So the growth rate that I use comes from the Bureau of Labor Statistics that puts out these inflation rates or what happens to prices every year, price changes every year, for categories of services and products. There is a general category for medical care. Medical care has risen on average at a rate of 4.2 percent over the last 25 years. That's slightly higher than the general rate of inflation.

However, office visits have kept up with the general rate of inflation averaging 3%. So I use a 3% growth rate for office visits or medical care in this case. And I do that up until his life expectancy.

Q Can you pull out Dr. Root's -- do you have a copy of Dr. Root's?

A Yes.

Q In medical care does he have psychiatrists?

A Yes.

Q What does he put annually for psychiatrists?

A So he says in the first year he would go more

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frequently he would go every month, and that would cost $3,000 annually. And then every year after that he would go less frequently every three months for two years, and that was $1,000.

Q And is that in medical care?

A Yes.

Q So that's what I was asking.

A I didn't include the first year of $3,000. I just used $1,000 annually -- biannually, sorry.

Q I just want to ask you something, in terms of your analysis, there has been testimony that Mr. Marandola has never gone to a psychiatrist. Does that in any way affect your analysis?

A No, it doesn't.

Q How come?

A So there is two reasons why that doesn't affect my analysis. One, we call that the endogeneity problem. What that means, endogeneity means it's because of a situation that's related. So if he couldn't afford it that could be a reason why he didn't go to the doctor and that we can --

MR. KAMINSKY: Objection. Move to strike.

MR. WILKENS: That's fine. I'll agree that portion can be stricken. That's fine.

Q What's the other portion?

A Okay, so the other is, again, I said I'm trying to

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determine the value of the damage associated with this injury. And according to a medical expert that value includes psychiatric care, which means that there was a harm done in that way. And so as an economist I tend to include the value of that harm.

Q Okay, I just picked that one out because that same, that would be the same rationale. So that would be the same rationale for every item that Dr. Root included in future needs that perhaps Mr. Marandola has foregone in the past, right?

A That's absolutely true.

Q So who is this guy Alan Leiken?

A Alan Leiken is the faculty member that I mentioned earlier that I began to do this work with back in 2012. He is a health economist as well. And we both work together in the Department of Health care policy and management. So we are informal partners, I would say. Every now and then we work on cases like this.

Q Are you his accountant?

A No.

Q Do you know anything about how much money he earns?

A No.

Q Do you know how many times he testifies in court?

A No.

Q Do you know have an approximation of how much you charge?

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A Yes.

Q How much do you charge?

A $4,500 for preparation and being here today.

Q Now how does your analysis get done? Do you work on it? Does Dr. Leiken work on it, or both?

A We both work on it. He tends to take the lead on them. And then we consult about these assumptions. The important thing, the reason you pay an expert is what's going on in the industries and what are the assumptions. And so we consult on that in these cases. He tends to take the lead, not always. And then we decide who is available to come testify.

MR. WILKENS: I have nothing further.

THE COURT: Okay.

MR. WILKENS: Just the last thing, we can make the same arrangement with regard to these numbers like we said we would work the other one out.

MR. KAMINSKY: Yes.

CROSS-EXAMINATION

BY MR. KAMINSKY:

Q Good morning.

A Good morning.

Q Nice to see you again.

A Good to see you too.

Q I've had the opportunity to cross-examine you several times, correct?

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A A few times, yes.

Q I've also had the opportunity to cross-examination Alan Leiken several times. You're aware of that, correct?

A Not positive. But, yes, I assume so.

Q So when you say you've worked on a few of these, it just so happens that I have had the chance to cross-examine you and your partner numerous times, correct?

A I don't know how many times with Dr. Leiken, and for me define numerous.

Q Well, can we agree that you have done more than a few of these reports?

A Yes.

Q Approximately how many would you say you've done in the last five years?

A So I average about now about 15 a year, whereas when I first started it was more like eight or ten. So I would say by now I've testified probably about 65 times and reports where I have taken the lead less than that.

Q What about the other way around, Mr. Leiken, how many reports has he done?

MR. WILKENS: I'm going to object to that, Judge. He's not here.

MR. KAMINSKY: They are interchangeable.

THE COURT: I'm going to allow the question.

A Okay, I have no idea how many times Dr. Leiken

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testifies or how many reports he does.

THE COURT: The jury is to disregard the comment that they are interchangeable.

Q Well, when you and he prepare a report, you indicate that regardless of who prepares the report, one or the other of you is going to come to court and testify, right?

A Yes, we're both qualified.

Q I'm not talking about your qualifications, I'm talking about whether or not your interchangeable, okay. You decide who is going to come to court, you or him, correct?

A Yes.

(Continued on following page.)

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Q The 65 times you say you've come to court to testify, would it be fair of me to say that the overwhelming majority of those times have been on behalf of plaintiffs' attorney?

A All of them.

Q Oh, all of them?

A Yes.

Q So, 65 out of 65?

A That's correct.

Q Even though you don't know the number of times Mr. Leiken has come to court to testify, would it be fair of me to say that if he's come to court -- well, he's been doing this longer than you; right?

A Yes.

Q Can we assume he's come to court more times than you have?

A Yes.

Q Probably double or triple; correct?

A Correct. He's been doing it a lot longer.

Q So, if you come to court 65 times, can we assume he's come to court about 200 times?

A Sure.

Q Can we --

MR. WILKENS: Judge, I'll stipulate it's way more than that.

MR. KAMINSKY: Okay. Thank you.

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Cross - Dwyer/Kaminsky

MR. WILKENS: Way more.

MR. KAMINSKY: Way more than that.

Q Can we agree that virtually every single one of those times have been on behalf of plaintiffs' attorneys?

A I don't know if it's every single one, but majority I'm sure.

Q Maybe one or two, but most, if not all, have been on behalf of plaintiffs' attorney?

A We don't get asked by the defense.

Q You get asked by the plaintiffs; correct?

A Yes.

Q In fact, your company or you and he, one or the other or both, you've even given lectures to plaintiffs' attorneys; correct?

A No. Well, I don't know if he has. I haven't

Q You're not aware of whether he has or he hasn't?

A Correct.

Q Could you tell us approximately how much income you've received from working on these types of cases in the last five years?

A Let me just do a little calculation.

Q Sure.

A I'd say about 250, $300,000.

Q So, $300,000 to prepare these reports for plaintiffs; correct?

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A I think that might be a little -- I'm doing a crude estimate, but yeah, I would say more like 250,000.

Q And then come into court as well; correct?

A Yes.

Q Okay. Let's start with this chart. All right. When Dr. Root was on the stand I had mentioned a number of $957,000. Okay?

A Okay.

Q I got that number from the report that was exchanged indicating that you or Mr. Leiken was going to testify. Okay. So, we can see the 957,000. That's where that comes from. All right?

A Okay.

Q You have no opinion whatsoever whether or not Mr. Marandola is going to require additional back surgery; true?

A Correct.

Q You have no opinion whether or not he's going to require neck surgery; true?

A True.

Q You have no opinion if he's going to require not only neck surgery, but another surgery to fix the problems from the first neck surgery; true?

A True.

Q And you have no opinion if he's going to need physical therapy; correct?

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A Correct.

Q You have no opinion if he's going to need pain medications; correct?

A Correct.

Q So, same question I asked of Dr. Root, if the jury rejects that testimony, they can reject part or all of the projections that you've made here; true?

A That's right. That's all based on those recommendations being correct.

Q Right. And I think you told us if the representations are invalid, then your testimony is based on invalid information; correct?

A Correct.

Q All right. Let's go on to these projections. Now, you told us you had to make various assumptions; correct?

A Correct.

Q By the way, these total, the claim you allege, the loss of earnings, 2 -- almost 2.2 million dollars?

A Correct.

Q Just so the jury understands. Did you deduct income tax?

A No. It's my understanding --

Q Did you deduct income tax?

A No.

Q If Mr. Marandola had earned this amount of money,

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would he be obligated to pay income tax?

A Sure.

Q Okay. Roughly 30, 35 percent?

A More -- less than that. It probably be about -- in practice, it's more like 15 to 20 percent.

Q Okay. Whatever it is you did not make that deduction?

A That's correct.

Q In addition to that, he has costs associated with going to work; correct?

A Presumably, yes.

Q Well, he has to get there; right?

A Yes.

Q He has to pay union dues; correct?

A Yes.

Q He has to buy equipment; correct?

A I'm not positive on who pays for the equipment but --

Q He has to pay for transportation. He has to pay for dues, miscellaneous things, and so on?

A Sure.

Q Did you make any deduction for his work-related expenses?

A I did not.

Q So, the point I'm trying to make is your projections, you had to make some assumptions, and then you had to decide

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whether or not you were going to make adjustments or not; correct?

A I'm not sure what you mean by "adjustments," but, okay, I guess, you mean taxes, yeah.

Q Well, if we want to be fair about it, don't you have to at least take off his business-related expenses or you didn't do that? You didn't do it; right?

A Well, do you want me to explain?

Q No. I'm asking you.

A Okay.

Q This is a gross projection. This is not a net projection?

A That is gross projection without overtime or anything like that.

Q It's not a net projection, is it?

A That's correct.

Q Okay. Now, the other one of the things you said that caught my attention is in order to make these projections you had to assume what his hourly rate would be; correct?

A No. The hourly --

Q I'm sorry. Not the hourly rate. You had to assume how many hours he would work a year --

A Yes.

Q -- correct? And you had to assume when he would retire; correct?

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A Correct.

Q The more hours he works, the larger these numbers would be?

A Correct. It would effect two of the columns.

Q And the longer he works to retirement age, the greater these numbers would be; correct?

A Correct.

Q Now, one of the assumptions you made was how many hours a year he would work; correct?

A Yes.

Q You came up with the number of 1610?

A Yes.

Q You said that's the average of all electrical workers; correct?

A Correct.

Q That was not the average for Mr. Marandola; correct?

A Correct.

Q Had there been cases that I've cross examined you on where you used the average of the plaintiff and not the average of a universe of other workers?

A Absolutely.

Q Okay. Now, would it be fair of me to say that had you done so in this case the number 1610 would be significantly lower?

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A Not really.

Q Okay. In this case, for whatever reason, you chose to use the average of a universe of workers and not this number specific to Mr. Marandola; true?

A I would argue --

Q True.

A I was conservative, but yes.

Q You were conservative. Let's see about that. Okay. You also had to project his retirement age which you, I'm sorry, his work retirement age to age 65; correct?

A Correct.

Q Isn't it true that 95 percent of electrical union workers retire at or before age 60?

A I don't believe that's true.

Q Okay. Are you aware of the studies that have been prepared and shown that 95 percent of electrical union workers retire at or before age 60? Are you aware; yes or no?

A No.

Q So, if that's true, you're testifying that Mr. Marandola is the one out of the 20 that would work to age 65; correct?

A That's a big if, but yes.

Q Isn't it true that there comes a point in time when a person's pension benefits vest?

A Yes.

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Q At what age would Mr. Marandola's pension benefits have vested?

A Younger than that, but I actually don't know precisely.

Q It's actually younger than age 60; correct?

A Correct.

Q And isn't it true that the overwhelming majority of, in this case, electricians retire at, near or when their pensions vest?

A No. That I don't believe is true.

Q If -- now, since the wages grow every year, if instead of retiring at age 65 Mr. Marandola retired at age 60, we would be taking off the five highest earning years; correct?

A Yes.

Q So, just by making that one change we would take off about $643,000?

A Yes.

Q From that number. Just by that one change; correct?

A Yes.

Q In addition, in this column, just by making that one change you would have to take out $117,000; correct?

A For which column? I didn't see where you pointed.

Q I'm sorry. What you claim for loss in health insurance?

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A Oh, yeah. About a hundred and change.

Q And same thing, just by making that one change in his retirement age, loss and deferred salary plan, take off those five years, that's $270,000; correct?

A Yes.

Q So, in these three columns, just from changing his retirement age from 65 to 60, you would need to reduce your numbers by $1,030,000; correct?

A That sounds about right, yes.

Q Now, the hours, the 1610 hours that you used, okay, is that over a 10 year period?

A No. Well, yeah. I didn't actually calculate the number of years. It's just my understanding that that's about average for the industry. I guess about over a 10 year period sounds right.

Q Well, if we took the 10 year period from Mr. Marandola, his average hours was 1469. Okay?

A I don't have that data.

Q I do.

A Okay.

Q It's 1469. So, you chose in this case to use the average of all of electricians. In other cases that you've testified in, you've used the hours specifically of the plaintiff; true?

A Every case --

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Q True?

A In some cases, yes, but --

Q Let's talk about this case and this plaintiff.

THE COURT: Do not argue. Answer the questions that are posed, and there will be a redirect. Okay?

THE WITNESS: Okay.

Q Can we agree that if you would have used 1469 instead of 1610 these numbers would all be lower?

A Yes.

Q Roughly by 15 percent; correct?

A A little less than, but yeah.

Q Okay. So, just by making that change, we would have to reduce this by, if you add them all up, another half million dollars; correct?

A Yes, if you want to make that change.

Q Well, we're talking about Mr. Marandola's work history. We're not talking about everyone in the union; correct? We're talking about Mr. Marandola; correct?

A Yes.

Q Okay. So, if we make that change, that's another half million dollars; correct?

A True. Again, if you make that change.

Q True?

A Yes.

MR. WILKENS: Can we take a break?

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Cross - Dwyer/Kaminsky

THE COURT: Five to 10 minutes, folks.

THE COURT OFFICER: All rise.

(Jury exits.)

(Recess taken.)

THE COURT OFFICER: All rise.

(Jury present.)

THE COURT: Okay. Let's proceed.

MR. KAMINSKY: I'm sorry. I was trying to catch up to where we left off.

Q One of the other items you had to use here is what you call a growth rate.

A Yes.

Q And what was the growth rate that you used?

A For income loss?

Q Yes.

A Three percent.

Q Okay. Now, isn't it true that the Local 3 electrical hourly wage rates have increased at an average rate of 1.83 percent and not three percent?

A Definitely, less than three percent. I don't know if that's the precise number, but it's probably right.

Q So, in other words, you used an incorrect growth rate?

A No. You're talking about how many years for --

Q Okay. The average for the last 10 years has been

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1.83 percent; true?

A Again --

Q If you know.

A I didn't do that math.

Q You didn't do it. I did.

THE COURT: The jury is to disregard Counsel's comment that he did the math. He is not a witness.

Q If I asked you, assuming you had a calculator with you, if I said, could you redo all this and tell us what you would have to reduce this number by if you used a growth rate of 1.83 percent instead of three percent, would you be able to do it, or would you just like me to tell you the answer?

A You could just tell me the answer.

Q Okay. What's the answer?

MR. HAYNES: It's about a half a million.

THE COURT: Do you agree with that?

THE WITNESS: I didn't hear what you said.

MR. HAYNES: About a half a million.

MR. KAMINSKY: The answer is approximately a half a million dollars just by changing the growth rate. Would you agree?

THE COURT: Is that a fact you agree with?

THE WITNESS: So, are you saying reduce it by half a million or the total would be a half a million?

MR. KAMINSKY: No. No. The total reduction

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would be half a million.

THE WITNESS: Yes. That sounds --

Q That's about right. So, you come up with these gigantic numbers. Just by making a couple of simple changes to your assumptions using a more realistic retirement age, using the plaintiffs' work history, and not the general work population, take out taxes, using the actual growth rate and not the one you chose to use, just from that alone, these numbers have to be reduced by --

MR. WILKENS: My only objection is him characterizing it as the actual growth rate. It's the actual growth rate according to him.

MR. KAMINSKY: No. It's the actual growth rate.

THE COURT: I'm going to allow you --

MR. KAMINSKY: Withdrawn.

THE COURT: -- to have your redirect, and he's going to ask his questions.

MR. WILKENS: Thank you, Judge.

Q So, just by making those changes, we would have to reduce your numbers by close to two and a half million dollars; true?

A So, I'm going to say, no, just because there were many components to that.

Q That's fine. I don't expect you to agree with me.

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How is that? Okay. Now, a couple --

THE COURT: The jury is to disregard the comment that he doesn't expect her to agree.

Q A couple of other things. Did you consider whether or not Mr. Marandola has the -- do you know what offsetting a loss means?

A Yes.

Q Tell the jury.

A So, my understanding, if we're -- I'm not sure what you think of it.

Q In your capacity what you testify to?

A Offsetting a loss would mean to counter the loss with some other benefit so that you have a net loss.

Q So, in this particular case, if he's unable to work as an electrician, it would mean going back to work in some other capacity; correct?

A That would be an example of an offset, yes.

Q So, let's assume he can't go back to work as an electrician, but let's assume he's able to go back to work at some other capacity. So, by means of an example, if he were able to return to work and earn $40,000 a year, okay, you would have to add up all those earnings and deduct it from this number; true?

A Yes.

Q So, it's up to the jury to decide, but if he were

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able to go back to work and earn $40,000 a year and increase that by 1.83 percent, same as the other industry, if he had started in the year 2002 and continued to the year 2027, this would be a reduction of $835,000. I had done the math. I don't expect you to have done it in advance. Okay? Now, you said you knew a little bit about --

MR. KAMINSKY: Judge, I'm going to ask that these pages be marked for identification.

MR. WILKENS: I have no objection for identification.

THE COURT: For identification.

MR. WILKENS: I have no objection.

THE COURT: We'll deem them marked, and then we'll mark them later.

Q Just some smaller things. Loss in deferred salary, you assumed $27,867 a year; correct?

A For the deferred salary plan?

Q Yes.

A So, the value in 2012 was 33,012, and that's based on an hourly rate of $20.56.

Q Isn't it true that according to the union itself the correct number is 24,078?

A I don't believe so.

Q Okay. In 2012 did you take into consideration or did you see the union records that show he was required to take --

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Cross - Dwyer/Kaminsky

MR. KAMINSKY: Rob, was it 39 weeks?

MR. WILKENS: 95 days.

Q -- a 95 day furlough in 2012? Did you deduct for that?

A No, I did not. Well, I'm sorry. I did, because I used 1610 hours. So, that would have deducted for it.

Q You did. Okay.

A Yeah.

Q When Local 3 members are benched, we will call it; right?

A Yes.

Q They receive unemployment insurance, unemployment, don't they?

A Yes.

Q Did you include or reduce this loss by the amount of unemployment benefits they receive?

A Should I answer? It's included in there, yes.

Q Okay. Again, on the health insurance, plaintiff is on SSDI; is that correct?

A It's my understanding he's -- yeah. He's getting some health insurance benefits from the government.

Q Did you deduct that from the losses?

A I did not. It's my understanding --

Q You did not?

A -- that's a collateral source.

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Cross - Dwyer/Kaminsky

Q The answer is you did not.

MR. WILKENS: Judge, I'm going to ask for an instruction from the Court at some point on this issue.

THE COURT: Okay. I think I've given an instruction that the Court will take into account and do it's own deductions. If you do a deduction, then it's a double deduction, because the Court will deal with what is called collateral sources. You can take into account certain funds or benefits in order to determine whether certain services were capable of being obtained, paid for, right, and then, therefore, the excuse for not doing it, but there are going to be proceedings after any judgment.

(Continued on the next page.)

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Q Now I think you said you testified as to your general understanding of the plaintiff's health before this occurrence?

A Yes.

Q And you described him as what?

A A healthy person with no long term chronic conditions that I needed to be aware of.

Q Would a longstanding disc degeneration condition in his spine be something you'd want to be aware of, yes or no?

A No.

Q Not relevant to you?

A No.

Q I want you to assume that the plaintiff's own treating surgeon has acknowledged an extensive history of disc degeneration, okay?

A Okay.

Q I want you to assume that the plaintiff's own treating surgeon said that surgery of the type plaintiff did has an 80 percent chance of success when an injury to a spine is caused by trauma, okay?

A Okay.

Q I want you to assume he also said this is a much lower chance of success when the surgery is being performed because of disc degeneration, okay?

A Okay.

Q I want you to assume that the surgeon said the surgery

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failed, okay.

A Okay.

Q Now I want you to also assume that the surgeon said it's -- I'm trying to think of the exact word he used, possible, potentially, maybe, couldn't rule it out, things like that, that if you take this incident out of the equation, Mr. Marandola's preexisting condition was such that he very well may indeed --

MR. WILKENS: Objection. Completely mischaracterizes his testimony.

THE COURT: Sustained.

Q That he potentially may have needed this surgery anyway?

MR. WILKENS: Again, objection.

THE COURT: Sustained. You have to start your question over again.

MR. KAMINSKY: Okay, I don't want to repeat all those assumptions.

THE COURT: Repeat the whole question.

MR. KAMINSKY: Do I have to?

THE COURT: Yes.

Q All right, I want you to assume -- you just told us --

MR. WILKENS: Judge, can we approach a second? I think I see where he is going. It's not her job.

MR. KAMINSKY: You asked her about his health.

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Cross - Dwyer/Kaminsky

MR. WILKENS: I asked if we could approach a second.

THE COURT: Okay.

(Sidebar discussion held off the record.)

THE COURT: I thank counsel again because we short-circuited a batch of examination through an instruction, okay. Which is, the expert is talking about economic numbers, all right. That doesn't mean that components were caused by the accident. That's factually for you to determine, okay.

Q So my question to you is given that, if Mr. Marandola's back condition was such that for whatever reason he either would have needed back surgery or his degeneration would have just deteriorated to the point that he could no longer work, and he would have had to retire from that field regardless of this incident in 2012, 2013 or even 2014, the jury can just eliminate all of that, true?

MR. WILKENS: I think it's for your Honor to tell the jury what they can do, not for the witness.

THE COURT: Well, the witness can answer that question.

A So I think what you are asking is this would be -- all I do, this is the value of his work. And I'm not determining who is liable.

Q No, we're not asking any of that stuff.

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Cross - Dwyer/Kaminsky

THE COURT: I think the question is if one of the assumptions you took into account based upon various information and you've testified as to why you picked your assumption was that he worked until 65, correct?

THE WITNESS: Correct.

THE COURT: I think the question is, because counsel doesn't want to concede for instance that he only worked to 60, that's why he goes all the way back, right. So you have the extremes. If the jury was to determine that he was, say, going to work until 60, the money after 60 would be eliminated, correct?

THE WITNESS: Correct.

THE COURT: Okay, there you go.

Q So if the plaintiff's condition, degeneration of his back, would have continued to the point where he would have been prevented from working regardless of this incident, let's say the jury decides that point would have come in 2013 or it would have come in 2014, whenever that point is, all the numbers below it in all the categories have to be disregarded, true?

MR. WILKENS: That's actually a legal question, Judge.

MR. KAMINSKY: No, it's a factual question.

MR. WILKENS: No, it's a legal question.

MR. KAMINSKY: It's for the jury to decide.

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Cross - Dwyer/Perkel

THE COURT: I think that's literally the question though I just posed to her. Say 60 would you eliminate everything below. The example I used was 60, okay.

Q Okay I'm going to use an example of a year after the incident, same rules would apply, instead of reducing from 60 on down, it would be from here on down, correct?

A Right, if his work life expectancy was 51, you would get rid of everything after 51.

THE COURT: Usually when you're looking down like that you're running out of questions.

MR. KAMINSKY: Either that, Judge, or I have the most unbelievable question that I am saving for last.

All right, professor. Nice to see you again, and I'm sure I will see you again soon.

THE WITNESS: I hope so.

THE COURT: Counsel.

MR. PERKEL: If I can have a moment.

CROSS-EXAMINATION

BY MR. PERKEL:

Q Professor, do you have a file with you?

A Yes.

Q Could I see it for a minute?

A Sure.

Q Thank you. (Perusing). Thank you, professor.

A Thank you.

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Cross - Dwyer/Perkel

THE COURT: Any questions counsel?

MR. PERKEL: Yes, a couple. Thank you, Judge.

Q Good afternoon, professor.

A Good afternoon.

Q I just have a couple of questions for you.

A Sure.

Q When you did your analysis with Dr. Leiken, did you have a base year that you used?

A We started with 2012 and because we had the union contract we just used the rate from 2012.

Q And regarding the hours that were worked by Mr. Marandola, did you have a year that you picked out in particular regarding that?

A It's probably about a 15 to 20-year average.

Q Okay.

A But it's what I am doing is using what I believe is the most reasonable number, and in my experience that's about the last 15, 20 years.

Q Did you have -- I looked through your file, I didn't see it, but did you have a W-2 or a tax return of Mr. Marandola for your findings?

A Yes, I had the W-2's from 2008 through 2010. I can show you if you want.

Q 2008 through 2010. And did you take into account 2008, 2009 and 2010, when you did your projections regarding

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the income loss for Mr. Marandola?

A I considered them. I didn't use the furlough recession year of 2010 year of seven hours.

Q Why not, ma'am?

A Because that's an outlier year, and it's, 2010 was the peak of the recession. And I read the transcript about how his -- he had a high willingness to work and the economy has recovered. I just did not think it was a representative year.

Q Did you read all of Mr. Marandola's transcripts or just part of it?

A A lot of it, but not all of it. Probably.

Q And did you read about Mr. Marandola previously had injuries to his back?

A That I did not read. Oh, actually I think I might have.

Q Okay, and did you take that into account in regards to any of his income loss that you projected?

A I did not.

Q And you did make several assumptions, you agree you made several assumptions in regards to his income loss in the future, correct?

A Not a lot, I made assumptions about the hours of work and the work life expectancy.

Q And instead of basing the numbers off of Mr. Marandola's actual hours of work, you based them off of

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statistical information that you got from the government, correct?

A What I believed was most reasonable, yes.

Q Okay, was it most reasonable to Mr. Marandola or reasonable to the whole industry in itself?

A Reasonable to Mr. Marandola.

Q Did you ever meet Mr. Marandola?

A I have not.

Q Did you ever meet his wife?

A No.

Q And you testified, correct me if I am wrong, you said you used 65 years because it was the reasonable age in a case like this, correct, ma'am?

A Yes.

Q What does that mean?

A What I meant by that is often what I use is 67, or the age under Social Security, but a case like this, I mean in a union case, where you can still get a full pension earlier than 67 if you're not a union employee, then the earliest you can collect your full pension under Social Security is 67. So I base it on the availability of a private pension.

Q Was that specific to the electrical union that Mr. Marandola was a member of?

A Yes.

Q And do you recall when Mr. Marandola retired from the

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union?

A You mean when he stopped working?

Q Do you know if Mr. Marandola retired from the union at any time?

A I believe he's still in the union.

Q Okay. The first report that was exchanged by doctor -- it says by Dr. Leiken, Dr. Dwyer, did you have any input into that report?

A Yes.

Q And so this was a -- did you sign off on the report?

A Yes.

Q And when you do that you go over all the numbers that Dr. Leiken projected and then see if they are accurate?

A So the way it works is we first go over the assumptions we're going to make, that's why you call us in. We agree to them, he writes it up, and then I check it. That's what I mean by him taking the lead.

Q Got it. Thank you. In regards to 2011 it only has 441 hours on this document. Do you know the reason why he only worked 441 hours?

A Yes, he was furloughed still.

Q Okay.

A So that was just for a few hours -- I mean a few weeks.

Q A few weeks only?

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A So I have April and May was 441 hours at 220 hours a month, he was furloughed the other months.

Q So January, February and March he didn't work, right?

A Correct.

Q Was that taken into account into the income loss?

A It is in the sense of it feeds into what I think is reasonable for the annual hours of work.

Q This is just going on what Mr. Kaminsky said. So in say in 2018, our current year, Mr. Marandola suffered a debilitating injury such as diabetes so he couldn't walk on his feet anymore, so therefore going forward from 2018 to 2027 or 2032, he would have no loss of income, correct?

A I'm sorry. I don't think I understood the question.

Q Okay, say someone gets -- say Mr. Marandola got an injury such as -- or a disease such as diabetes and he couldn't walk on his feet anymore on a daily basis, could not be a electrician anymore, understand?

A Yes.

Q So therefore if he got that in 2018, the numbers that you based on the income loss going forward either into 2027 when he was 60 years-old, or 2032 when he becomes 65, those numbers obviously would be moot?

A So you're saying if the reality were something else happened he couldn't work? Yes. So if his work life expectancy was 51, you'd remove everything past 51.

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Q That would also go for the same thing for the loss of some of the deferred salary plan?

A Correct.

Q And same thing for loss of retirement pension income and loss of Social Security retirement income, correct?

A That's all based on the years of lost work, so, correct.

MR. PERKEL: I have nothing further. Thank you very much.

THE WITNESS: You're welcome.

THE COURT: Redirect.

REDIRECT EXAMINATION

BY MR. WILKENS:

Q So you never met Mr. Marandola you said?

A Correct.

Q And I heard Mr. Kaminsky use the word gigantic number. Somebody like Mr. Marandola or an electrical worker, can we agree that $1,030,000 is a gigantic number?

A Yes.

Q So if Mr. Marandola at 60, you don't know if Joseph Marandola would say to save five years of work I'm going to walk away from a million dollars, do you? Do you?

MR. KAMINSKY: Objection.

A No, what I am using is what I think is --

Q I know but --

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THE COURT: Wait, wait, wait.

MR. PERKEL: Objection, your Honor.

THE COURT: There is an objection. Sustained.

Q If 95 percent of electrical workers retire at 60 instead of 65, that would mean that 95 percent of electrical workers are walking away from a million dollars.

MR. KAMINSKY: Objection.

Q To retire five years earlier isn't that what you testified to you said?

MR. PERKEL: Objection.

THE COURT: Overruled.

A Yes, that's what that would imply. And that's why I said it was a big if.

Q And if Mr. Marandola retired at 60 instead of 65, he'd be walking away from a million dollars?

THE COURT: Overruled.

A Yes, according to those numbers.

Q So if he chose to continue to work from 60 to 65 to not walk away from a million dollars we'd be adding back in that number, right?

A Yes. I would just want to add that the earliest you can collect any benefit from Social Security is 62. So if you walk away at 60, you get nothing from Social Security until 62 and you take penalty. So I just don't buy that 95 percent retire, that's not what I have seen from looking at average

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retirement ages even for electrical workers.

Q How come you didn't take out taxes? You started to tell us how come you didn't take out taxes?

A It's my understanding --

MR. KAMINSKY: Objection.

MR. WILKENS: Judge, can I get an answer to my question? He asked it, Judge.

THE COURT: I know he asked it. Overruled.

A So it's my understanding that in cases like this in the court system --

THE COURT: Sustained then.

Q If at some point the jury learns that they are not supposed to --

MR. KAMINSKY: Objection. No, Jim, come on.

THE COURT: You'll be given instructions at the end of the case about what you should or shouldn't take into account. For instance for personal injuries you will not deduct nor add for taxes because on personal injury awards, at least the award itself, for jury, there is no taxes.

Okay, there are taxes, however, paid on other things. So you will receive an instruction as to what you should consider that will take place at the end of the case. Which is of course one of the reasons that I tell people who are serving on jury's to keep an open mind until

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the end of the case after you've heard closing arguments from the attorneys and then have heard charges on the law from me, okay. Then you will have an opportunity to deliberate and exchange your views and reach a verdict. That verdict is going to be in the form of answers to questions yes or no, or numerical figure, okay. Proceed.

Q Counsel asked you if all of the 65 times you testified, have they all been for plaintiff?

A Yes.

Q Looking at those cases, in how many of those cases, in fact, has a defendant brought in an economist at all?

MR. KAMINSKY: Objection. Irrelevant.

MR. PERKEL: Join.

THE COURT: Overruled.

A My understanding is never. I have seen a couple of cases where I review a report by an economist that the defense attorney brings forth but never testified.

Q So you indicated that 3% is an appropriate growth rate?

A Correct.

Q We haven't heard yet from the economist for the defendant, but Mr. Kaminsky here has said that the appropriate growth rate --

THE COURT: Sustained. The jury's to disregard counsel's comment.

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Q Mr. Kaminsky has suggested that an appropriate growth rate is 1.83 percent. If you are right instead of him, we're going to add back in that $500,000?

A That is correct.

THE COURT: And again the jury is to disregard the comment "if you are right, not him." Counsel on behalf of his client is free to posit questions and to provide information and indeed can use information elicited from the expert obtained called by one party for his own purposes.

Q With regards to hours, did you make any provision for overtime in your analysis?

A I did not.

Q So you didn't make any provision for business expenses and you didn't make any provision for overtime?

A That's correct.

Q In your opinion does the economic structure today provide an avenue for electrical workers to work an average of only 30 hours a week?

MR. KAMINSKY: Objection.

THE COURT: Overruled.

A So I'm not, I think what you are asking is how the economy doing?

Q How does that affect --

A So the economy has improved. He has historically

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earned a lot of overtime. His pay prior to this incident has been as high as $114,000. So I did not take into account overtime, and right now the economy is doing well and he's demonstrated a very high propensity to put in those hours.

Q But you didn't charge overtime, you didn't put in overtime?

A I did not.

Q And you thought 30 hours a week was a reasonable number?

A Yes.

Q And, in fact, if the jury thinks it's a reasonable number, we would add back in that $500,000?

A Yes.

Q How come sometimes you use the average hours for the individual worker?

A Everything is case specific, so it's not that I don't review all of the information that I have, I use my best expert judgment in a particular case. So in this case if I had used the averages, I would have had to have adjusted for the probability of having another year of seven hours, meaning one of the worse recessions we've had, and combined with a give back on furloughs because of how much overtime he had the year before.

It was more reasonable in this case to not take into account the seven hours, but then also not take into account

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the overtime. So in my opinion in this case $1,610 was very reasonable.

Q Just to put it in perspective, how many -- you said this was the worse recession, since when?

A Since the great depression of the 1930s.

MR. WILKENS: Thank you.

THE WITNESS: You're welcome.

THE COURT: Recross.

RECROSS-EXAMINATION

BY MR. KAMINSKY:

Q You said if he retired at 60 he'd be walking away from a million dollars, right?

A That's what he said, yes.

Q Under that theory of logic, if he worked to age 90 he would be walking away from $10 million, correct?

A I think what you mean --

Q Withdrawn.

In economics, okay, isn't it true that --

THE COURT: The jury's to disregard the withdrawn question.

Q Economists such as yourself have to take things into consideration such as -- well, first of all there is no guarantee he's even going to live to age 65, correct?

A There is never a guarantee.

Q Right. But isn't there a theory in economics where

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you have to take the percentage of people that do not live to age 65 and reduce your calculations accordingly? I'm trying to think of what that's called. Maybe you can help me. There is an actual term for it.

A I take into account the life expectancy in this case. So I think what you are saying is a survival probability every year. But I do take that into account.

Q Okay, there is no guarantee. I hope he lives to be a hundred. There is no guarantee he will live to 65?

A There is never a guarantee.

Q And similarly there is no guarantee that if he had continued to work for five years, ten years, he wouldn't have suffered some kind of injury that would cause him to retire, correct?

A Correct.

Q You said everything is case specific. In this case, did Mr. Marandola have any designations to his union membership which would place him ahead or behind other workers that would receive work?

A Not that I am aware of.

Q Okay, do you know what the different designations are in the Local 3 electrical union.

A He mentioned them in the transcript, so A, M, so I read about them, I'm not an expert in them.

Q Okay, do you know if those designations affect when a

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person is called for work and how many hours they may work?

A I don't know precisely how, but I believe it affects it, yes.

Q And so do you know if Mr. Marandola had a designation that would have increased the odds of his working or decreased the odds of his working?

A If I recall correctly I believe it was to increase the odds of his working. So he talks about in his transcript that he was of the lower level and then got boosted to the higher level.

Q Well, if he testified that it was actually a designation that was a problem that would contradict what you are saying, true?

A Oh, yes, if he testified that, yes.

MR. KAMINSKY: Nothing further.

MR. PERKEL: Nothing, your Honor.

MR. WILKENS: Nothing.

THE COURT: Okay, you can step down.

THE WITNESS: Thank you.

THE COURT: We'll see you folks at 2:10.

(Jurors exit courtroom.)

(Continued on following page.)

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Direct - A. Marandola/Wilkens

THE COURT OFFICER: All rise. Jury entering.

(Jury present.)

MR. WILKENS: Plaintiff calls Antonella Marandola.

A N T O N E L L A M A R A N D O L A, 88 Newton Street, Staten Island, New York, 10312, called as a witness, after being duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. WILKENS:

Q Good afternoon, Mrs. Marandola.

A Good afternoon, Mr. Wilkens.

Q I want to get one question out of the way. Have you been involved at all in the bookkeeping or record keeping as to your husband's medical expenses?

A Yes, most of it.

Q Is he -- has he had medical expenses covered by the Workers' Compensation system?

A Yes.

Q Related to his back?

A Related to his back.

Q I just want to ask you one question. Approximately, do you know approximately how much he's received in benefits from Workers' Compensation, not for wages, but just for medical expenses?

A A hundred and -- a little over a hundred thousand, a

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hundred and forty thousand.

Q Was that as of November 2017?

A Yes. Correct.

Q I'm going to ask you a couple of questions, and everybody, I know the defense attorneys have mentioned it, everyone is acutely aware that your daughter is having some health problems, and I don't want to ask you a lot of questions about it at all, but just when did they start?

A When? I'm sorry?

Q When did they start?

A When did what start?

Q Your daughter's health problems?

A September 12th.

Q Now, there was some questions about going and staying with her. Have there been times that she has she spent an extended period of time at a hospital?

A Yes.

Q How long?

A I'm sorry. I have to correct that. September 6th is when I took her to the hospital, Staten Island University.

Q I'm not going to ask which one, but you then took her to another one?

A I took her to another hospital on September 13th.

Q Did there come at least one time that she stayed in that hospital for a prolonged period of time?

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A We stood in that hospital, my daughter and I, 45 days.

Q Did Joe stay overnight in the hospital?

A No, sir.

Q I'm not going to ask you anymore questions. Your son, Joseph Riccobono, he's a little bit -- who does he work for?

A I don't know much about his job, but he works for the FBI.

Q Now, how long were you divorced before you met Joe?

A 14 years, little over.

Q Did you have a courtship before you got married?

A No. It was mutual. We settled in court. It was out of court. I'm sorry. It was attorney to attorney.

Q No. Did you and Joseph have a courtship?

A No. I thought you meant do we have a courtship with my husband. I'm sorry.

Q You had a courtship with Joseph?

A Yes. I'm sorry.

THE COURT: You're showing your age, Counselor.

THE WITNESS: It's not that. Maybe I misinterpreted what he's saying.

MR. WILKENS: I promised the picture. It's actually being enlarged poster size as we speak.

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THE WITNESS: That was my mistake.

MR. WILKENS: I am showing my age and not too well.

Q So, what attracted you to Joe?

A He was respectful, had a great sense of humor. He was funny, and I kind of --

Q Did you mostly raise Joseph as a single mom?

A Yes, I did.

Q How old was he when you got divorced?

A Joseph was three years old.

Q Okay. By the way, did Joseph's dad contribute to his support?

A Yes, he did.

Q But as a single mom, what was your life like raising and supporting Joseph?

A I had three jobs. It was tough.

Q So, what was life like for you, and take your own narrative; take us up through when you and Joe got married, started your family, moved to Staten Island; take us up through all those years up until around the time of the accident, okay, in your own words. If it turns out to be too long of an answer and somebody wants me to ask another question, I'll be happy to, but just this might be the best way.

A We got married in 2002. A year later, 2003, I had my daughter. A great life. Joey wanted me to stay home. He

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didn't want me to go to work, stay home mom, raise my children.

Q Did it change after the accident?

A Yes. It changed a great deal.

Q Did it change before the accident, or did it kind of stay that way?

A No. After the accident was when it all changed.

Q How did it change after the accident?

A After the accident, after his surgery, he was kind of like always laid up in bed. He was in a lot of pain. He was on pain medication, took a lot of muscle relaxers, sleeping pills. The weight was really on my shoulder, and I felt like I was going back to raising a single child again.

Q Was that single child Joseph, Joe?

A No, my daughter.

Q What did you have to do? Did you have to help Joe physically with anything right after the accident?

A I still help Joe physically. Right after the accident, I started to get him to walk again. I would put his pants on. I would cut his toe nails. When he would go to the bathroom, I still do have a walker in my bathroom, because he has a hard time getting himself up.

Q Is there less you have to do from now that you had to do in the beginning?

A No. I still keep the same routine. It's just that I

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do try to get him out of bed. Mentally, I was losing Joe, and that is where my big problem was. Physically, he was hurt. I couldn't take care of that and I knew that. I tried my best, and he wasn't going to get better, but, mentally, Joe just felt like less of a man, less of a father, less of a human being.

Q So, I want to take you back now before the accident. There's already been testimony that at various times Joe had some back issues that he got treatment for or went to the hospital for, but this relationship that you had with Joe, that you're describing how much you had to help him after the accident, did that ever exist for any period of time at all before the accident?

A No. Absolutely not. I was aware of his issues, but they never stopped Joey from going to work or doing things around the house.

Q I'm going to use a different word. You said you were aware of it. Was Joe a complainer?

A No. He never complained.

Q So, you were aware that sometimes he had back issues?

A Yes.

Q But did he complain to you about them?

A No. He never complained about them.

Q Are there things that he used to be able to do around the house that he doesn't do anymore?

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A He can't do anything around the house now.

Q Well --

A He used to.

Q That he used to, because I can't do anything around the house either.

A Well, no. Joe is very handy. He loved, loved to work. He always picked a project up. He would scare me on that, but he would pick a project up and get it completely done.

Q Since this happened, has he tried to go out and get a job?

A Mr. Wilkens, he can't stand or sit a long period of time, and also, my husband is a high school drop out, and it's very difficult to find a job out there.

Q I hate to do this in front of all these people, but I'm going to ask you about your intimate relations with Joseph. Have they changed from before the accident to now?

A Drastically.

Q I remember reading -- they have these things they call depositions. Joe said that before the accident, sometimes you would have physical relations once a day. Am I correct? Your recollection was even more than that?

A Yes. It was more than that.

Q And how about now?

A Honestly, honestly, we can go two, three months. He

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takes a sleeping pill at night to fall asleep. I took away his pain medication. He was on it for a long period of time.

Q I'm going to ask you about that. I'm not going to ask you anymore about your sexual relations. When you say you took away his pain medication, what do you mean you took them away?

A He was dependent on it.

Q How did you know?

A He was angry all the time. He never got out of bed. He started getting mean. He didn't get physical, but now cursing, and I know that wasn't the man I married.

Q Do you miss the man you married?

A Yes, I do. I'm going to get him back.

Q Good for you. Did his behavior get better when -- when you got him to stop, was there something that happened to you right around the time he stopped taking his pain medication so much?

A Yes.

Q Tell the jury about that.

A I was diagnosed with --

MR. KAMINSKY: Objection, Judge.

THE COURT: Overruled.

Q I'll ask you differently. Can you explain to the jury the circumstance under which you observed Joseph changing his habits with pain medication?

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A I'm sorry. What was the question again?

Q You give the same answer. I just asked a different question. What happened, from your perspective, that you observed -- what was going on in your life that corresponded with Joseph changing his pain medication?

A The type of person he was.

Q Did something happen with you?

A I thought I wasn't -- yes.

Q Tell the jury what happened.

MR. KAMINSKY: Objection.

THE COURT: Overruled.

You can answer.

THE WITNESS: I had an irregular heart beat, and I wound up with A-fib. So, they had to zap my heart.

Q How did that effect Joseph taking the medication?

A He stopped it.

Q How did he stop?

A He knew he couldn't lose me, and he knew I tried my best, everything that I was doing for him.

Q Since he stopped the medication, you talked about some of his behaviors that you attributed to the medication. Have those behaviors gotten better?

A Yes, they have.

Q What about -- what about, by your observation, has happened to him as an effect of not being able to take those

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pain medications anymore?

A He takes other medications.

Q Do you ever see Joe, by your observation, he's in physical pain?

A Yes, he is.

Q How often?

A Often.

MR. WILKENS: I don't have any other questions, Judge.

THE COURT: Cross examination.

MR. KAMINSKY: You know, ma'am, I see this is difficult for you. I have no questions.

MR. PERKEL: I have no questions.

THE COURT: Okay. You can step down. Why don't we take 10 minutes, and I'll have some directions with regards to scheduling. Okay?

THE COURT OFFICER: All rise. Jury exiting.

(Jury exits.)

(Whereupon, the case on trial was adjourned to Tuesday, April 16, 2018.)

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