2022 WL 21731835 (N.Y.Sup.) (Expert Trial Transcript)
Supreme Court of New York.
New York County

Grace BARCIA, Plaintiff,
v.
COSTCO WHOLESALE CORPORATION and Costco Wholesale Membership, Inc., Defendants.

No. 159881/2015.
October 21, 2022.

Testimony of Plaintiff's Expert Witness, Debra Dwyer - Direct Examination

Name of Expert: Debra S. **Dwyer**, Ph.D.
Area of Expertise: Accounting & Economics >> Economic Damages
Area of Expertise: Employment & Vocational >> Teachers, Instructors & Educators
Representing: Plaintiff
Jurisdiction: New York County, New York

For the Plaintiff: Subin Associates, LLP, 150 Broadway, 23rd Floor, New York, New York 10007, By: Lee Michael Huttner, Esq., Bianca Cacace, Esq., Gregory J. Cerchione, Esq.

For the Defendants: Wilson Elser Moskowitz Edelman & Dicker LLP, 150 East 42nd Street, New York, New York 10017, By: Larry Lum, Esq.

Before: Honorable Lori Sattler.

THE COURT: Be seated. Nice to see you all again. Obviously we have another new -- you can all be seated. I have to emphasize that we really have to try to all make it in from this point on as we no longer have any alternates. So please come on in, if you can, and we can move this along. This isn't going to be that long compared to other trials you may have gotten on and we will get it done.

With that, Mr. Huttner, you want to call your next witness.

MR. HUTTNER: Yes, Your Honor. Pursuant to agreement and the Court's permission, I'm going to call Dr. Debra Dwyer with her testimony subject to connection with Dr. Guy.

THE COURT: Yes. She is out in the hallway?

MR. HUTTNER: She was when I walked in. I hope she is.

THE CLERK: Raise your right hand.

DEBRA DWYER, called as a witness on behalf of the Plaintiff, having been first duly sworn, was examined and proceeded to testify as follows:

THE CLERK: Please state your name and business address for the record.

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THE WITNESS: Sure. It's Debra Dwyer, D-E-B-R-A, D-W-Y-E-R. And the address is 17 Springbriar Lane -- one word, B-R-I-A-R. That's in Centereach, C-E-N-T-E-R-E-A-C-H, New York, New York 11720.

THE CLERK: Thank you.

THE WITNESS: You're welcome.

DIRECT EXAMINATION

BY MR. HUTTNER:

Q. Good morning. Is Dr. Dwyer the correct --

A. Sure. Yes.

Q. Okay. What do you currently do for a living?

A. I'm an economist. And as I said, we have a Ph.D. in economics labor and health economics for the last 22 or 23 years. I've been a professor in the State University of New York system. About 20 of those years or 21 I was at Stony Brook University where I was a professor. I was the chair of the department. I moved on to be a dean.

And since then, I have stepped down and gone more part time, and I teach health economics and public policy still, but I'm funded on a research grant with the chair of economics at Farmingdale State College. We're implementing financial literacy programs on Long Island and expanding into New York, the rest of New York City.

So I'm an economist. I have my own business. I do a lot of consulting. And this financial literacy work is part of my consulting.

Q. Okay. And tell us where you went to school and that kind of thing.

A. Sure. I got my bachelor's degree in economics in English literature from Queens College in Flushing, New York. And then I went on to get my master's and my Ph.D. from Cornell University in economics. And then I did a one-year post-doctoral fellowship at Syracuse University in their center for policy research.

Q. And doing the type of work you do, especially the consulting, does that necessarily mean that you have to come to court to testify on occasion?

A. Yes.

Q. Okay. And what types of circumstances have you testified?

A. Similar to this case. Mostly personal injury, medical malpractice. Those kind of cases. I'm hired to look at what economic damages exist, given there is uncertainty in the future.

Q. And before today, have you been qualified as an expert in courts in the State of New York?

A. Yes.

Q. And how about in federal court?

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A. A couple of times.

Q. Do you know approximately how many times in total you've been qualified as an expert?

A. Over 100.

MR. HUTTNER: Your Honor, I would ask Dr. Dwyer be qualified as an expert in the field of economics.

MR. LUM: No objection, Judge.

THE COURT: Okay. I find that she is qualified as an expert in the area of economics. Right? Yes.

MR. HUTTNER: Thank you, Your Honor.

Q. Now, are you being compensated for your time here with us today?

A. Yes.

Q. And what is your fee?

A. It's a flat rate of $4,800.

Q. And were you paid to render some reports in this case as well?

A. Yes. We were paid -- I believe it was about $3,000 for the report.

Q. Now, can you tell us what -- there is a term “CPI.” Can you tell us what that is?

A. Sure. You might be hearing a lot about this lately. That's called the consumer price index, which is what we use to measure inflation. It's put out by the Bureau of Labor Statistics. And inflation is just a rate of which prices are going up. And again, you might have heard a lot about that lately.

Q. Okay. And does CPI, the consumer price index, does that include medical costs?

A. Yes. So the general rate of inflation, the one you are hearing about that is like at 8 percent, represents prices for what we call the typical basket of goods that a household uses. So the Bureau of Labor Statistics will collect data on typical spending of households and that will be the main inflation rate. But in order to do that, they have to collect what is happening in prices of all subsegments of the economy, so on food, clothing, medicine, and transportation. So they break it down by category and that allows us economists to focus in on different centers of the economy.

Q. Okay. And in determining various inflationary trends and growth rates, do you rely on the CPI?

A. Yes.

Q. Now, in this particular matter, were you retained to determine future health care costs for Ms. Barcia?

A. Yes.

Q. Just so we can be clear with the jury, you didn't determine whether or not she needs at future health care; correct?

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A. No. I'm not a medical doctor.

Q. Okay. So are you relying on somebody else's findings as to what future health care is needed?

A. Yes. I rely on -- in this case, the life care plan of Dr. Ali Guy.

Q. And a life care plan is what?

A. So it is as it sounds, a life care for the rest of the plaintiff's life. This is a medical expert that prescribes the kinds of treatments, frequency of that treatment, the duration of that treatment, so like three times a week or 12 times a year for how many years. I'm not qualified to do that, to say what a plaintiff needs. I'm just here to tell you how much money the plaintiff will need to cover those costs.

Q. Okay. And did you render an analysis and a report with regard to Grace Barcia?

A. Yes.

Q. I want you to assume that Dr. Guy is it going to testify that Ms. Barcia is going to need various medical treatments in the future, and those medical treatments are going to include a spinal surgeon visits, three to four times per year; physiatrist, 14 visits per year; physical therapy, one time per week; MRIs, two MRIs every two to three years; an EMG once a year, every one to two years; epidural injections, three years for the next four years; various medications; a home health aide, two hours per week; and a surgery in the future with regard to her cervical spine. Were those the items that were given to you to render your report?

A. Yes, with one exception. There is a typo. The home health aides was 25 hours per week at $25. That's my mistake. I apologize.

Q. Okay. So the typo, it says two hours per week. It's 25 hours per week?

A. 25.

Q. Your numbers, were those based on the 2 or 25?

A. 25. That's simply a typo.

Q. So the numbers were based on the 25 and the numbers are correct?

A. Yes.

Q. Okay. Would it assist you to use the -- well, you made a chart?

A. Yes.

Q. Okay. If we can have this marked as Plaintiff's 5 for identification, please.

THE COURT: Sure. Let's have it marked.

(Document was marked for identification as Plaintiff's Exhibit 5.)

MR. HUTTNER: To the witness, please.

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MR. LUM: Your Honor, I have no objection to them demonstrating that for demonstrative purposes. I'm just objecting to it going into evidence. She can refer to it for her testimony.

THE COURT: I don't actually know what it is so it's a little --

MR. HUTTNER: You want to look at it, Judge, before we discuss it?

THE WITNESS: I have an extra copy.

THE COURT: Just lay your foundation and we'll see what it is.

Q. You've been handed what is marked Plaintiff's Exhibit 5 for identification purposes. Can you tell us what that is?

A. So this is a yearly breakdown of the future costs of health care for Ms. Barcia. It's a chart that I produced in my report.

Q. Okay. And you produced it in the regular course of your business as an economist?

A. Yes.

Q. And you did that yourself?

A. Yes.

Q. And does it cover -- well, tell us what it covers.

A. So what this does is it takes all of those representations by Dr. Guy that we heard about. And he also provides the cost in current dollars, because there are a lot of variations in costs in medicine. So I take the current dollar value of the services and then I project what they are going to cost in the future based on inflation.

So we know those prices are going to go up. If you multiply 20 years into the future times the rate today, Ms. Barcia wouldn't have enough money to cover her health care expenses because we know those prices are going to go up. So you bring someone like me in to tell you how much we anticipate they are going to go up since there is uncertainty in the future.

MR. HUTTNER: Your Honor, I would ask that that chart be marked into evidence as Plaintiff's Exhibit 5.

MR. LUM: I object, Your Honor. It's hearsay. It's not a business record. More importantly, it's cumulative of her testimony. We can certainly use it for purposes of demonstrating.

THE COURT: Are you going to be asking her what is contained in this?

MR. HUTTNER: Yes.

THE COURT: Because it is cumulative.

MR. HUTTNER: It's -

THE COURT: Can I see it, please.

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THE WITNESS: Sure.

(Whereupon, the item was handed to the Court.)

MR. HUTTNER: It's because the testimony is detailed and complicated, and this breaks it down and just keeps a record for it for the jury in addition to what the court reporter is doing for us.

THE COURT: You prepared this chart?

THE WITNESS: Yes.

THE COURT: I'll allow it in. Let's have it marked 5 in evidence.

MR. HUTTNER: Thank you, Your Honor.

(Whereupon, the chart was marked Plaintiff's Exhibit 5 in evidence.)

Q. Would it assist -- thank you. Would it assist you in your testimony today if you were to take Exhibit 5 that's now in evidence and put it on the screen in a bigger -- so the jury can see it?

A. Sure.

MR. HUTTNER: Your Honor, with your permission, we would like to show it. And if the doctor could step down to the chart.

THE COURT: She has the chart?

MR. HUTTNER: She does.

THE COURT: Do you need to see the chart on the screen?

THE WITNESS: I don't. I could just point to things for the jury as I'm speaking.

THE COURT: All right.

MR. HUTTNER: All right.

MR. LUM: Do you have a laser --

THE COURT: Why don't we do this. Put the chart up and explain things, other than pointing, and we'll do it that way.

MR. HUTTNER: Fair enough.

Q. I'm going to make it as big as possible so we can make it as large as possible. What I want to do is point to the bottom line, and then we could make it larger and focus on the individuals.

So what did you determine the total future health care costs, assuming she needs what Dr. Guy says she needs? What do you determine the future health care to be?

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A. So the total sums from all the categories and services she will require for the rest of her life is $1,908,186. That's the number on the bottom.

Q. And could we get rid of this and try to make it a little bigger so hopefully the jury can see it. Can you explain, and if you need to point to something or --

A. Sure.

Q. -- ask the judge permission if you feel you need to.

A. I may have a laser in my bag, if you want me to look for it.

THE COURT: Okay.

Q. Sure. Why not.

THE COURT: Most people don't carry a laser. I'm impressed.

THE WITNESS: I'm a professor, so. The problem is I have too much stuff in my purse. I can usually grab it, but I don't want to waste time.

THE COURT: We have a minute if you want to take your time. We have a minute.

THE WITNESS: I do.

THE COURT: Stuff always falls to the bottom of our bags, that's the rule.

THE WITNESS: I was thinking now you see how messy I am. Let me make sure.

I don't think it reaches. It's too small. Not a good one. Sorry. All of that trouble. Actually, I can probably -- it will reach from where you are standing.

MR. HUTTNER: I'm not going to testify, just laser it. May I, Judge?

THE COURT: Yes.

MR. HUTTNER: Thank you.

THE WITNESS: It's the top button. I think you have to stand pretty close to it. I didn't bring my powerful one.

MR. LUM: I don't think it's working. I think you need batteries.

MR. HUTTNER: All right. We'll do without.

THE WITNESS: Sorry about that.

Q. All right. What we've done is, so it's easier for the jury to see, instead of having the whole thing at once, we are highlighting the top where it has the categories of costs.

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A. Okay.

Q. Okay. So can you just discuss what categories of costs and the initial price, and then we'll get into the specifics of the increases.

A. Sure. I mean that makes sense because what you see on the top of the screen are the categories, so you can see what Dr. Guy recommended. It also shows you the growth rates I used, the growth rates for that inflation rate that I was talking about. And it shows you the starting value in 2022. So I'll go through each category with that information and then we can get to the totals on the bottom and scroll down.

So the first category is spinal surgeon visits, three to four visit per year at $300 per visit. So you see in 2022 the starting value annually is $1,050 and $22. And these losses commence December 31, 2022, because I only calculate into the future and we are already to the end of October, so. But the starting value is 1,050, and you see right above that 2.8 percent.

So the inflation rate I'm using is 2.8 percent. That's based on the data from the U.S. Bureau of Labor Statistics. That's the annual average for that category for office visits for the last 25 years. So 2.8 is pretty good. It sounds pretty good.

The average costs overall for medical care inflation is 4 percent over the last 25 years, but office visits, the prices have risen slower than that. In fact, all of the categories have risen slower than 4 percent. The rate right now is 6 percent. So next year's is going to be a little higher.

So the next category is also office visits, which is why the rate is still 2.8 percent. And Dr. Guy prescribed 14 visits per year at $200 per visit, which comes out to $2800 starting point.

Now physical therapy falls under the category of other professional services, something we call carve outs. They are not the same as medical doctor visits, and so they have a lower growth rate. So that one visit per week at $200 comes out to $10,400 per year, because she'd be going weekly. And the growth rate there is only 2.2 percent. That's how fast the prices have been rising.

MRIs, two every two to three years at $1,500 each. So since it's every two to three years, it's only $600 annually. I take the midpoint. So when it says to two to three years, I use 2.5 years. So the starting value is 600. And MRIs, EMGs, diagnostics, growing at a rate of 2.8 percent as well. So 2.8 percent is applied there.

And for the next category, EMGs, which is also a diagnostic test, once every 1.5 years at 22.50, which comes out to $1,500 annually.

Epidural injections, three per year for the next four years at $5,000 each. So this is only going to happen for four years. We started in 2023 since we are already at the end of 2022, and we use a 2.8 percent growth rate. Now, epidural injections can take place in a hospital, outside of a hospital. We use the growth rate for an office visit for that.

Q. So would that be less or more than a hospital?

A. If it's an outpatient facility, the average growth rate is 3 percent. If it's an inpatient facility, it's 4 percent. We just use it in a general doctor's office at 2.8. So this is lower than it would be than a hospital.

Q. So are you using the lowest numbers?

A. They are pretty conservative, yes.

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Medications, that growth rate is a little higher, as you see. We know that pharmaceutical prices rise faster than average. So 3.5 percent is a little bit faster than the average for the general of inflation, not counting this year. So $12,000 worth of medication annually. It's various medications Dr. Guy prescribed. Again 3.5 percent.

Home health aide, 25 hours per week. That's a typo up there. That says 2 hours. 25 hours per week at $25 per hour. And home health aide prices fall into other professional services with the 2.2 percent growth rate.

And lastly, one cervical spine surgery at a cost of $255,500, and that's in current dollars, because the timing of the surgery is indefinite. So I didn't apply any growth rate there.

Q. So if the spinal surgery were to be ten years from now that number would actually be higher?

A. It would be a 4 percent growth rate since that requires hospitalization.

Q. Since you didn't know that, you just left it in today's dollars?

A. Yes.

If you could scroll to the bottom.

Q. I'm going to try my hand at this technology. Is this where you want to go?

A. Yes.

Q. All right.

A. So now I'm going to read to you -- there is another assumption. This is all assumptions, right. Economists make assumptions. We're making assumptions about what's going to happen with inflation. There is another important assumption, and that is life expectancy; for how many years will Ms. Barcia need to invest in these services and it was prescribed for the rest of her life.

So for that we use a life expectancy age of 84.3. That comes from data from the National Center For Health Statistics for Females. So on average, females who were born in the year Ms. Barcia was born will live to the age of 84.3, and that takes us into the year 2043. So that's why you see that at the bottom. And you see that that last year is a lower number because the expected life expectancy is set at the beginning the year.

So the total costs of spinal surgeon visits for the rest of her life would be $28,505. So adding it up for every year. And I'll read that number for every category. So the physiatrist visits, the total cost over her lifetime is 76,013; for physical therapy visits, the total cost is $264,290; the MRIs cost $16,289; the EMGs for the next 20 years, $40,721; the epidural injections, which are only for four years, cost $48,767; the medications over her lifetime will cost $352,194; home health aide services will cost $825,907; and again, the surgeries in current dollars at $255,500 for a total future costs -- that's where I got that total from the beginning -- $1,908,186 worth of services over her lifetime.

CONTINUED DIRECT EXAMINATION

BY MR. HUTTNER:

Q. All of these numbers and the projections, are those done within a reasonable degree of economic certainty?

A. Yes, they are.

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Q. Anything else you can tell us or I can sit down?

A. You can sit down.

MR. HUTTNER: Thank you.

MR. LUM: May I proceed, Judge?

THE COURT: Yes.

MR. LUM: Thank you.

CROSS-EXAMINATION

BY MR. HUTTNER (PLAINTIFF):

Q. Hi, Dr. Dwyer. How are you?

A. Good morning. How are you?

Q. We may be wearing the same suit, but we're different people.

So, Dr. Dwyer, if I understand your testimony correctly, I just want to make sure the jury understands there are two basic set of summations that you bring to your testimony, one is well within your expertise as an economist, and that is the economic projections and the testimony about how these numbers fit into an economic model, correct?

A. Yes.

Q. Okay. The other set of assumptions is an area that you have no expertise on, aside from you testifying in these cases like this, and giving numbers to life care plans that are projected by Dr. Guy, correct?

A. Right. So the basis is Dr. Guy, I don't have any expertise on the validity of the life care plan.

Q. Understood. First let's speak to your economic projections. If I understood your testimony correctly for this jury, assuming whatever Dr. Guy said is correct or is deemed to be worthy of belief by this jury, the projected growth that you've associated with these numbers is conservative, the 2.8 percent, and the 2.2 percent for -- I guess it was for the therapy?

A. Yes.

Q. And 3.5 for medications, right?

A. Yes.

Q. And you're not just pulling the current inflation rate out of the air, right?

A. Oh, yes, correct, yes.

Q. At the current inflation rate those numbers would be much higher?

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A. Yes, right.

Q. So when you do these economic models, Dr. Dwyer, would you agree with me that past facts and circumstances are the basis for your projections going forward to a large degree?

A. Yes.

Q. So when you're making these projections and theories about the future, you're looking at what has occurred over the course of the past, what, 30, 40, 50 years or longer?

A. So I'm aware of it going back, 30, 20, 50. But I use 25 as part a of decision making.

Q. That's important to you as a Ph.D. and an economist in rooting your projections in some sense of factual accuracy, right?

A. If I understood you correctly, I think -- It is my way of using my expert opinion to determine these things, yes.

Q. And that's something that's done customarily by economists, people in your trade?

A. Yes.

Q. And the fact that you're being paid for those services is something that is natural, right, the fact that you're being paid thousands of dollars to do this, is that you bring some expertise to the table?

A. Yes.

Q. And this is your time you're out from other endeavors and you're in court for that purpose, right?

A. Right.

Q. Now, let's go to the other set of assumptions.

Do you know anything about this plaintiff on whose behalf you've been called to testify?

A. No, not much.

Q. Again, you're not a medical doctor, right?

A. Correct.

Q. So you can't speak to the validity of any of these projections, correct?

A. I can speak to the validity of the projections. I can't speak to the basis.

Q. Yes, my question was a little overbroad.

You can't speak to the validity of Dr. Guy's opinions regarding these things?

A. Right, I take that as a given.

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Q. Right. Okay. So let's look at each category, if you don't mind?

A. Sure.

Q. So this calls for three to four spinal visits a year, correct?

A. Yes.

Q. And you totaled that to $28,505 for her life expectancy, correct?

A. Yes.

Q. That's through 2043, which I guess would be 21 years from now?

A. Correct.

Q. So each year, based on what Dr. Guy said, the numbers you calculated envision the plaintiff going to see a spinal surgeon three to four times a year for the next 21 years, correct?

A. Correct.

Q. Do you know how many times she saw a spinal surgeon in the last five years?

A. No.

Q. Do you know when the last time it was that she saw a spinal surgeon?

A. No.

Q. These assumptions -- oh, by the way, before I move to the next category, the actual cost, the dollars associated with those visits, that's not something that you came up with, right?

A. Correct.

Q. It's the base amount that you're calculating your growth is a number that Dr. Guy associated with those visits, right?

A. Correct.

Q. So if I understand correctly, the base numbers from which you made your economic projections are all from Dr. Guy, as well?

A. Correct.

Q. So the next category is a physiatrist, where there's 14 visits per year at $200 per visit. And each year you've projected numbers that total $76,000 for the next 21 years?

A. Correct.

Q. And that includes the growth for inflation?

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A. Correct.

Q. Do you know how many times the plaintiff has seen a physiatrist in the last five years?

A. I do not.

Q. Do you know when the last time she saw a physiatrist?

A. I do not.

Q. But these numbers -- I want to reiterate, these numbers envision her going every year 14 times a year for the next 21 years?

A. What she did in the past is not relevant to my analysis.

Q. Absolutely. But, certainly, when you're doing your economic models what happens in the past is very relevant, right?

A. Because that's a different kind of scenario.

Q. So, yes or no, when you're looking at the area of your expertise, which is economics, you're looking at the last 25 years, right --

A. Right.

Q. For trends?

A. Correct.

Q. Physical therapy, one visit per week at $200 for the visit.

And total of that is a whopping $264,290 for the next 21 years, correct?

A. Yes.

Q. So that would be 52 visits a year?

A. Correct.

Q. Do you know the last time she went to physical therapy?

A. I do not.

Q. So now we're talking about MRIs, once every two to three years. It's looks like you've averaged that out over the 21-year period?

A. Yes, I divided the value by 2.5, it's 3,000 divided by 2.5, to get that 600, because it's two MRIs.

Q. And then subcategory amount of that comes out to is 16,289, correct?

A. Correct.

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Q. You also have her doing EMGs every one to two years or so?

A. Yes.

Q. That's also broken down annually?

A. Correct.

Q. That's a total of **$40,728, correct?

A. Correct.

Q. So the epidural injections, three per year for the next four years, and you have no idea why it's only for the next four years, do you?

A. My understanding is that's the maximum number of injection s you can get. But, again I'm not a medical expert.

Q. Then the medication is the largest -- well, actually, no.

In terms of medical services, that seems to be the largest number set aside or stand alone: $352,194 for medication, correct?

A. Yes.

Q. Now, are you aware that the plaintiff already testified to this jury that she has not incurred any medical bills that she had to pay?

A. I'm not aware.

Q. All right. Are you aware of whether she's in need of a home attendant?

A. I'm not qualified to say.

Q. Right. So I understand there's a typo because the last category -- actually, there's two more categories, the next to last category is home health aide for 25 hours per week at $25 per hour.

So the original -- when you prepared this was two hours, and that's just missing a five, it should be two-five?

A. Right.

Q. And when did you notice that mistake?

A. This morning.

Q. Okay. That happens. That's really the largest number, that's $825,907?

A. Yes.

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Q. In connection with a home health aide for this time period, you're not aware of the circumstances of why she would need a home health aide now, when she hasn't had one since the accident had occurred some seven years ago?

A. I'm not aware of that.

Q. And then there's the future surgery, which you associated $255,500 to, right?

A. Yes.

Q. That's a one-time shots, because there's no growth rate?

A. Right, because we don't know when it's going to happen.

Q. So, Dr. Dwyer, do you remember you and I had this back and forth when you testified back in July, correct, for a case in Queens, correct?

A. Yes.

Q. And then I asked you some questions about the Affordable Care Act?

A. I think I recall, yes. That was you, okay.

Q. So what would her having insure under the Affordable Care Act do to these projections in terms of what her out-of-pocket costs would be?

A. Nothing, in my opinion.

Q. Why?

A. Because my job here is to determine the value of the damages and what it's going to cost for healthcare, but not who should pay.

Q. Got it. So basically yours are the numbers, and you can't speak to whether health insurance would otherwise cover it or whether these have to be paid out of her own pocket, correct?

A. Correct.

Q. But you are familiar with the Affordable Care Act, right?

A. Correct.

MR. LUM: That's all I have, Judge.

MR. HUTTNER: Just one question, Your Honor?

THE COURT: Sure. REDIRECT EXAMINATION BY MR. HUTTNER:

Q. Counsel has asked you some questions with regard to whether you knew whether Ms. Barcia went to this type of treatment or that type of treatment in the last five years, and you said you had no idea, correct?

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A. Correct.

Q. Do you know whether or not Ms. Barcia could afford to go for those types of treatments during the last five years?

MR. LUM: Objection.

THE COURT: Sustained.

Q. Counsel, asked you if she went, but neglected to ask you if you knew why she didn't go.

MR. LUM: Objection, argumentative.

THE COURT: I am not argumentative. I'm not arguing with my own witness.

THE COURT: Is that your question?

Q. Does the fact -- Do you wish to explain further about what he talked about with regard to your knowledge of her economic circumstances during the last five years?

A. I can certainly explain, yes.

Q. Please do.

A. So as an economist, I've told you what my job is. The difference between looking back 25 years at the inflation rates is that there are many factors that cause inflation to go up or down.

And so relying on one year could be an outlier here, so I take this average, but it's over a very large population.

When you're talking about behavior, that's a very different model than macroeconomic conditions.

When you're talking about behavior, now you're getting into a model of why somebody is compliant or not with medical recommendations.

And there are factors that are economic, like, perhaps, it's --

MR. LUM: Your Honor, I'm going to object as speculative at this point. It's unresponsive to his question.

THE COURT: Well, as as to the responsiveness --

MR. HUTTNER: I asked her if she can explain further.

THE COURT: This doesn't relate. You need to give -- I'll allow her to finish, but...

A. So in a nutshell, there are many reasons why she may not have gone before that are irrelevant to me. I'm just saying what the doctor recommends and what the cost of having been injured in this way is.

MR. HUTTNER: That's all I have. Thank you.

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MR. LUM: Nothing.

THE COURT: Okay. Thank you.

A. Thank you.

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