2023 WL 11805014 (N.Y.Sup.) (Expert Trial Transcript)
Supreme Court of New York.
Kings County

Petrika DOJCE, Plaintiff,
v.
1302 REALTY COMPANY, LLC, F&D Improvements Incorporated and Mesivta Yeshiva Rabbi Chaim Berlin, Defendants.

No. 508449/2016.
November 8, 2023.

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: Kings County, New York

For the Plaintiff: Law Office of Peter S. Thomas, P.C., 108-18 Queens Boulevard, Forest Hills, New York 11375, By: Peter S. Thomas, Esq.

For the Defendants: Catalano Gallardo & Petropoulos, LLP, 100 Jericho Quadrangle, Suite 326, Jericho, NY 11753, By: Domingo R. Gallardo, Esq., Michele R. Levin, Esq.

Before: Honorable Peter Sweeney.

THE COURT: Have a seat. Thank you.

Please call your next witness, counsel.

MR. THOMAS: At this time we call Dr. Debra Dwyer to the witness stand.

(Whereupon, the witness took the witness stand.)

(Whereupon, the witness was sworn in by the clerk of the court.)

THE CLERK: Please state your name and spell your name for the record slowly.

THE WITNESS: Debra Dwyer, D-E-B-R-A, D-W-Y-E-R. 17 Springbriar Lane. Springbriar is one word, B-R-I-A-R.

THE CLERK: Springbriar?

THE WITNESS: Yes. Centereach, New York 11720.

THE COURT: Good afternoon.

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DIRECT EXAMINATION BY

MR. THOMAS:

Q Good afternoon. Thank you for your patience, I know you have been here since lunch time.

Please tell the jury what do you do?

A I am an economist, so I am a professor of economics, I do economy research and economy consulting.

Q Can you tell the jury a little bit about your educational background?

A I got my bachelors degree from Queens College in Flushing, New York. That was in English literature and economics. And then I went on to get my masters and my PHD in economics from Cornell University, and that was in labor and health economics. And then I did a one-year post doctoral fellowship at the Center For Policy Research at Syracuse University.

From there I was recruited to the Social Security Administration in Washington, D.C. where I worked for their division of economic research on disability policy. And then I spent the last couple of decades working for the State University of New York System primarily Stony Brook where I am a faculty member. I was a chair, I was a dean and now more recently I am working with Farmingdale State College teaching economics but working on a grant to provide financial literacy education to vulnerable populations.

Q And have you been offered as an expert in the area of economics in the courts of the State of New York?

A I have.

MR. THOMAS: Your Honor, at this time I wish to offer Dr. Dwyer as an expert in the field of economics as an expert economist to be able to render opinions with respect to this case.

MR. GALLARDO: I have no exception with respect to the doctor being found to be an expert in the field of economics, Your Honor.

THE COURT: All right. So the Court will deem Dr. Dwyer qualified in the field of economics to render opinions in this case.

Q Dr. Dwyer, as an expert in the field of economics you work for free?

A No.

Q Please tell the jury at what rate are you compensated?

A For this work -- I should take that back, I do work for free on some things. On this case I get paid $4,800.

Q Tell the jury what information you are able to impart to them that is going to help them to be able to understand some of the aspects of future wages that Mr. Dojce would be expected to earn and future medical care, the cost of future medical care that he might be expected to incur as a result of the injuries from this accident.

A Sure. So, my job here as an economist is to let you know what he would have earned had this not happened and he was able to continue to work through his complete work life expectancy.

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So in order to do that I need to come up with what I believe his earnings capacity is and that is going to be based on what his occupation is. The other reason I am here is I am here to tell you how much money he will need to be able to afford all of the services that a medical expert prescribes that he will need based on the injuries he sustained.

The reason you need an economist for that is prices go up over time. So the medical expert can tell you the frequency and the type of care and the frequency, the duration and the cost in today's dollars. But what the medical expert can't tell you as to what is going to happen 20, 30 years from now to the price of those same services, so that is my job.

Q And these are projections?

A Yes.

Q And do you use various assumptions in reaching those projections?

A Yes, I do.

Q Tell us about that.

A Sure, I almost used that word a minute ago, the economist make assumptions. I am projecting into the future. So I don't have a crystal ball, I am projecting into the future and there is uncertainty what is going to happen in the future. That is precisely why you bring someone like me if you want to be able to predict within a reasonable degree of certainty using probabilities and date.

So the assumptions I have to make are based on data and my expertise. And for example, I just finished saying I have to tell you what he would have earned for the rest of his work life, so I have to come up with what I believe his earnings capacity was in a labor market and how his earnings would have risen over time. Because wages run on average over time, people get raises, sometimes they keep up with inflation, sometimes they don't. All of that will be based on educated assumptions that I make.

Q Can you tell the jury what information you were provided before you came up with your final analysis and projections?

A Sure. I was provided with some background information on the case, of course. And then the life care plan of Dr. Rauchwerger, which was dated October 23, 2023. That is the most recent life care plan.

Q If you could tell the jury as it relates to the medicals, start with the medicals, what areas of analysis did you use to come up with the medical projections?

A Sure. So for every category of care that Dr. Rauchwerger prescribes and he gives me the starting cost. So let me give you an example, there are various office visits like pain management visits, orthopedic visits, neuro -- that is not a neuroscience visit. There are two types of visits, pain management and orthopedist. He will give me the cost for each visit and the number of times a year that Mr. Dojce would have to go. And then I take that value and I project it.

So in order to do that I have to make an assumption about what I think is going to happen to medical inflation into the future. I am projecting over the next 31 years. So in order to do that I look back historically. I could just take the current inflation rate, that would be absolutely the wrong thing to do because right now the current inflation rate is very high. And you don't want to pick a year what we call an outlier year, a year where we are at an unusually high peak. You also don't want to pick a year we are in a recession. So if this were 2010 our inflation rates were below one or two percent.

What you do is take an average. My job is how far back do you go to take an average to reasonably project what is going to happen to the same office visit, the price of that office visit over the next 31 years. The amount of time that I deem to be reasonable is 25 years.

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So I take the 25-year average of data that is provided by the US Bureau of Labor Statistics, they are the ones that put out the consumer price index which is used to give you the inflation rate. They collect that data for various goods and services that your average household consumes and that includes medical care. They break it down.

I match the category of care for Dr. Rauchwerger from the data from Bureau of Labor Statistics, I can take the 25-year average on what happened to prices over time and I use that as the inflation rate or the growth rate.

So for example, for pain management Dr. Rauchwerger said that he would need $4200 worth of pain management. That is 12 visits per year. And the cost for each visit is $350 in today's dollars. That same $4200 annually for 12 visits is going to cost, let me just pick a couple of years from now, $4,438 dollars in 2026. That is using a 2.8 percent growth rate. That is the average. So you heard it was over 8 percent over the last year, but again it has fallen to below 2 percent some years so we take this average and the average for that particular category is 2.8 percent.

Q And did you do that analysis for each of those categories that Dr. Rauchwerger testified to?

A Yes, I did physical therapy which has a lower growth rate. That falls into the category of other professional services. And inflation hasn't risen as quickly from that. Medications is slightly higher growth rate. You probably hear about high drug prices all the time. It is 3.5 percent, which is pretty reasonable given what it had been historically. I did orthopedist. Everything else was at 2.8 percent. They all fall into that general medical care category.

Q I know you have prepared some numbers for the jury to look at. Do you want to do the medical stuff first or talk about the wages first?

A Why don't we talk about the wages and I will step down and do both. I am flexible but.

Q Did you do an analysis with regard to future wages that Mr. Dojce could except to make had he continued in the work force?

A Yes.

Q Tell us about that.

A What I did there I said I had to make an assumption about what he is worth on the labor market. What I used -- I knew he was a construction laborer, I knew he hadn't been doing it that long. I did look at what the average earnings were annually for a construction laborer in New York City from the same date of US Bureau of Labor Statistics. They are the biggest agency from the Department of Labor that collects this sort of data.

MR. GALLARDO: I would like to note my objection on this issue, Your Honor.

THE COURT: I think you did already, but go ahead.

MR. GALLARDO: Thank you, Your Honor.

THE COURT: Again reserving on that whole issue we talked about.

MR. GALLARDO: Thank you.

Q And using this statistical average, what is the hourly rate that you used initially to do your evaluation?

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A So I used, I have the annually rate in front of me which is annually $54,008 dollars which comes to about 24, 25 dollars.

THE COURT: Can I see counsel up here.

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

Q Please continue.

A So I was saying the hourly rate was about 24, 25. I do have the data with me so it is $26 an hour which annualized the average is $54,008. But that is at the time of the incident in 2016. That is what I used for his earnings capacity.

Q Now I want you to assume there has been testimony in this case that the employer that he had for just that short period of time was only paying him $15 an hour, below the rate of the average construction laborer at that time. Are you able to do an analysis based on a $15-an-hour wage?

A Could I do it, yes.

Q So, anything else you want to tell us aside from the amount of money that you use to do your analysis, anything else you want to tell the jury about how you project future wages?

A Sure. So again I am giving him his worth on the labor market. So that is not what he was being paid at the time, it is his work on the labor market. I start with $54,000. Again I have to assume that his wages are going to rise over time because on average they do. And the assumption is by how much.

And so what I use there again you can say the same thing I said about price inflation to wage inflation. Right now wages are rising faster than inflation still. They rose 6.4 percent between 2022 and 2023. But I take a 20-year average. I went 25 years for health care, 20 years for wages. That is pretty standard among economists. What we are doing is we are capturing what we call a reasonable amount of time for a business cycle where we have periods of peaks and those low points, troughs. 20 years captures an adequate amount of time for the average wage growth which is 3 percent. All of that was to say I give him a 3 percent you raise every year.

There is one other assumption I have to make. When would he retire. I am going to be doing this every year until he retires. His normal age of retirement under the Social Security system would be 67. The earliest he could collect is 62 and most people who do that have other form of savings or pension. I gave him 65 because that tends to be the normal age for construction workers.

So I have him working until the age of 65 which takes us to the year 2044 with a 3 percent raise every year.

Q Can you go to the boards?

A Yes.

Q Let's start with the medicals first.

MR. THOMAS: Your Honor, with the Court's permission can we ask the doctor to step down?

THE COURT: You may.

MR. THOMAS: Can I offer this as Plaintiff's Exhibit 22 and the other one will be 23?

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MR. GALLARDO: For demonstrative purposes?

MR. THOMAS: No, I will offer it first for identification.

THE COURT: All right, so it is marked for identification.

MR. THOMAS: All right.

Q Dr. Dwyer, we are going to give the camera a rest and go to the old fashion blowup boards here. Plaintiff's Exhibit 22 for identification. What are we looking at here?

A This is the chart of my findings on future health care cost for Mr. Dojce based on Dr. Rauchwerger's life care plan.

Q Who came up with all these numbers?

A I did.

Q Our office blew it up bigger than eight and a half by eleven for the purposes of showing the jury.

A Yes.

Q Are these numbers true and accurate with the information you were provided with and the assumptions and projections you made?

A Yes.

MR. THOMAS: At this time I would like to move Plaintiff's Exhibit 22 into evidence with regard to future cost of health care.

MR. GALLARDO: Objection, Your Honor.

THE COURT: I am sorry?

MR. GALLARDO: I object to it.

THE COURT: You could use it for now. I will determine whether or not it will be received in evidence.

MR. THOMAS: Very good.

Q Doctor, tell us what we are looking at, what these numbers are and how they relate to Mr. Dojce and what we can except for future health care.

A This just shows you everything I explained. I will not go ad nauseam into detail about all of this. I told you I took each category of medical services prescribed by Dr. Rauchwerger. I start in 2024 and that is because my role is only to project future health care cost. What happened in the past happened in the past and that is a no number. I am only dealing with, you know, certainly of the starting January 1, 2024 12 visits of pain management office at $350 a year comes out to $4,200 annually. As I said earlier the gross rate based on the Department of Labor data is 2.8 percent and that is why you see these numbers going up over time.

There is another assumption I had not mentioned, for how long will he be receiving this medical care until he dies. That is what Dr. Rauchwerger prescribed. So I have to assign a life expectancy and I don't do that on my own of course. That comes from

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the US National Center For Health Statistics. Every year they put what is known as the life tables, the probability you will live a certain number of years given the year you were born and gender.

Based on the tables the Court rely upon his life expectancy age is 76.1. That is from the 1997 life tables.

If you take that $4200, grow it by 2.8 percent every year he passes when he turns the age of 76.1 which is a partial year, you get a total lifetime cost for $204,764. He is still getting 12 visits a year, it is just the price is going up.

Same methodology for every other category. I will provide you with the growth rate, the starting rate and the total because they are all going to over go over this 31-year period.

Physical therapy three times a week at $125, 52 weeks comes out to $19,500 worth of physical therapy every year. Growth rate of 2.2 percent for a lifetime cost of $860,307.

Medications I said earlier is a slightly higher growth rate of 3.5 percent. Annually, and this includes pain medicines and creams and that sort of thing. Dr. Rauchwerger said $18,000 worth of medication every year. With a 3.5 percent growth rate gives us a lifetime total of $988,620.

Interventional treatment is pain management treatments like injections. Annually Dr. Rauchwerger said it will cost $22,500. If it is done in a pain management office the growth rate is 2.8 percent. I went conservative and made that assumption. If it is done in a hospital or an outpatient setting it is slightly higher. So using the 2.8 percent growth rate the cost of interventional treatment over his life will be $1,096,953.

The visits to the orthopedist, I knew I saw a neurologist. Three visits at 300, annually 900. Growth rate 2.8 percent. Lifetime cost $43,878.

This neuro modulation, this is a procedure that he expects to happen twice over his lifetime at a cost of $100,000 each. But I did not have a specific time period because it is over his lifetime sometime in the future. So I divided the 200,000 by 31 and that annualizes it. And I used the growth rate there of also 2.8 percent. The same assumption holds that it is happening in an office and the lifetime cost is $314,557.

And finally this is a surgery, the joint fusion is one time so I put it in at 65,000 in current dollars. Total lifetime 65,000.

If you add these totals you get a total lifetime cost of all of the health care recommended by Dr. Rauchwerger for Mr. Dojce related to these injuries $3,574,080.

Q This doesn't guarantee he will make every single one of these visits that you projected, is it?

A No, my job is not to deal with whether he is compliant or does this. My job is to say this is what it would cost if he has the recommended care based on a medical expert.

Q And this doesn't cover every potential category cost of health care that he might be able to anticipate or expect, does it?

A This is -- this is a medical expert and a medical expert is projecting into the future and there is uncertainty. It is always give and take. There might be some categories he left out that the client is going to end up needing, there might be some things he will be using less of.

This number should be within a reasonable degree of medical certainty and if that is the case then it is within a reasonable degree of economic certainty as well.

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Q You anticipated my next question, do you have an opinion within a reasonable degree of economic certainty as an expert in the field of economics whether the projected numbers for these items of medical care, future medical care and treatment that Mr. Dojce might except to have to be the total of around $3,574,080?

A Yes, I do.

Q Once again tell the jury why you have come up with that number?

A Because I am an expert in economics and I follow what is happening with prices and policy and health care. So I am pretty confident that that is a good number to reflect what Dr. Rauchwerger recommends.

Q These numbers are conservative?

A Yes.

Q Anything else you want to tell the jury about his future cost of health care over the course of his life?

A No.

MR. THOMAS: May we take a two-minute break at this time?

THE COURT: Sure.

THE OFFICER: All rise. Jury exiting.

(Whereupon, the jury is exiting the courtroom.)

MR. GALLARDO: The doctor seems to be doing recalculations during this break, I have not been given any new 3101d's and I will object to anything outside the 3101d.

MR. THOMAS: He doesn't need the 3101d for this.

THE COURT: I will reserve on that also, counsel.

MR. GALLARDO: Thank you, Your Honor.

MR. THOMAS: Ready to proceed, Judge.

THE COURT: All right.

THE OFFICER: All rise. Jury entering.

(Whereupon, the jury is entering the courtroom.)

Q Doctor, with regard to future wages I know you told the jury you did an initial analysis based on average annual income for a laborer in New York. And you prepared certain numbers and again I will put up what is marked as Plaintiff's Exhibit 23 for identification.

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So this board that we have here in front of us, tell us what we are looking at here.

A So this is what I calculated for the income loss, this is what he would have earned every year for the rest of his life had he worked at the average income of a New York laborer. And it starts at the time incident which occurred in April of 2016 and it goes through the age of 65 at his birthday as I said earlier.

Q I want you to assume that there has been testimony that Mr. Dojce in that short period of time he was working was being paid less than the average income for a laborer at $15 an hour. And so based on $15 an hour, did you do a calculation with regard to the breakdown for income loss over the course of his work life?

A Yes.

Q Can you please tell us what those numbers are?

A Sure. What I did was I calculated what his earnings would be every ten years rather than write out every number. So his income in 2016, 2017 annually. Because remember I said it starts in April in 2016 would be 31,200 if he worked full-time. Take that ten years out to about 2026 using that three percent growth rate which is what I use for income growth you get $41,931. Ten years later he would be earning in the $42,000 range with a three percent raise. Ten years after that around here it would be $56,351 would be his salary. And by the time he retired his income would be up to $75,731.

Now that doesn't mean he is earning in between here, in between here you give him a raise every three years just like I had done here. I just didn't write out all those numbers. So then you would get a total income loss under this, what is the current minimum wage of, and I didn't get it precisely, it is about $2,000,010.

Q And that is again your assumption based on $15 an hour throughout with the adjusted growth rate?

A Correct.

Q That is what he could be expected to earn had he not been injured and continued at that rate without any further increases above the three percent that you have projected?

A So, that would mean he would never get promoted or never go out on the general labor market and get the average wages.

Q Doctor, do you have an opinion within a reasonable degree of economic certainty whether the projected loss of income at the rate that he was being paid on the day of this accident would total $2,000,010 over the projected life of his, over the projected work life of Mr. Dojce?

A Within a reasonable degree of economic certainty.

Q Once again the numbers that you used, projections and assumptions you made are considered conservative that three percent?

A Yes.

Q Anything else you want to tell the jury other than what you just told us about his projected loss of income at the rate he was being paid on the date of the accident?

A No.

MR. THOMAS: Thank you. I have nothing further with this witness.

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THE COURT: Your witness, counsel.

MR. GALLARDO: Thank you.

CROSS EXAMINATION BY

MR. GALLARDO:

Q Doctor, I will try to be as quickly as possible and try to get you out of here.

Doctor, we have never spoken before, it was my true pleasure to meet you.

A Thank you, same.

Q You work with Dr. Ryke (phonetic), is that correct?

A Yes.

Q And the two of you are professors and you also give the plaintiffs economic analysis?

A Correct.

Q And you testified, you have testified for Mr. Thomas before, is that correct?

A Yes.

Q And actually you have testified once for Mr. Thomas and for Lipsig Shapey these trial counsel Lipsig Shapey I counted four, five times you testified for them?

A That sounds about right.

Q And you have testified about, I read one transcript you testified about once a month, 12 times a year?

A It is probably a little bit more than that now after Covid, and now I am doing this more full-time so probably twice a month.

Q Twice a month you are in front of a jury testifying and giving the details. I am not going to argue with the numbers because the numbers don't lie. You do the mathematics, you increase, you get the rate of inflation and you increase things.

But would you agree with me that your numbers, your application of these numbers are only as good as the data that is given to you?

A Correct.

Q If Dr. Rauchwerger -- if the good doctor, if he is wrong your numbers would be wrong, is that correct?

A That is correct.

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Q So, when you tell the ladies and gentlemen of the jury that he is the one that came up with the numbers and when you tell them that you know the loss in medicals is going to be $3,574,000, if Dr. Rauchwerger is wrong and they award that number and he never gets any treatment then he has just gotten $3,574,000 and never had any treatment, is that fair to say?

MR. THOMAS: Objection.

THE COURT: You can answer the question if you understand it.

A Yes, that is under a very strict assumption that he doesn't need anything.

Q But you would agree if he only needs a million the extra 2.5 million would be thank you very much?

MR. THOMAS: Objection.

THE COURT: You just asked that question.

Q So, Doctor, you teach, is that correct?

A Yes.

Q And you have students to whom you give assignments and they have to apply mathematical economic formulas to data, is that correct?

A Yes.

Q How would you feel about a student who tells you with respect to the data I kind of know because I asked around? Would that be sensible or would you just say, hey, that doesn't work for me, you got to go get hard data on this?

A So I am not entirely clear on the question, but I think you are saying if I give an assignment to a student and they don't do the math.

Q No, they do the math, they base it on data from asking other peers around the school. Instead of doing any hard research, they ask around because they hear it.

A There is such a thing as qualitative data analysis, so it really depends how it is done and what the assignment was.

Q How would you feel about the following, I will read from the trial transcript from Dr. Rauchwerger, page 754 line 22:

It starts and doctor --

MR. THOMAS: Question.

Q “QUESTION: Do you have any familiarity with the cause of maintaining therapy and this treatment, the cost of pain management and the various procedures?

ANSWER: Absolutely. I am all the time at the hospital.”

It goes on to the next page line 1:

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“They tell us what it is costing us. They tell us what it is going to cost, you know. The patients, the insurance companies don't want to prove things, they want the patients to self pay. They tell us what the cost is going to be.”

Have you heard that testimony before?

A No, I haven't.

Q Did you know that that was the basis of Dr. Rauchwerger, how he came up with the numbers that you used for these ladies and gentlemen to calculate this over $3.5 million verdict on damages, that is how he came up with, that is what he testified to, did you know that?

MR. THOMAS: Objection to the characterization, Your Honor.

THE COURT: Assuming what he read is true I guess.

A I am not a medical expert so how a medical expert goes about collecting data or using -- I mean there are a lot of things that I know from my 20, at this point almost 30 years of experience as an economist, and so I do bring what is in here my experience to my analysis. I am not a medical expert to be able to judge how Dr. Rauchwerger comes up with his numbers, I take them.

Q It doesn't disturb you at all that is how he testified he came up with the numbers?

A No, not really.

Q There was no comparison, no research, no data as to what the cost of any of these things are?

A I did read a narrative from him that looked like he performed a medical assessment so.

Q That is within his field of medicine which is pain management, is that what you are talking about, pain management data reports?

A He had a whole narrative to accompany the life care plan that I used and it seemed reasonable to me that he sounded like a doctor who did an assessment. Again I am not qualified to judge.

Q Okay. And, Doctor, would you agree that if for instance with respect to physical therapy, the physical therapy is, actually it has gone down, it is $860,000, is that correct?

A Yes.

Q And if he does not receive physical therapy three times a week going forward that $860,000, that would just be given to him. You can't assure that he is going to go to the physical therapy, right?

A I think I mentioned earlier I don't deal with compliance whether he goes or not. This is the value of the cost of treating the injuries. If he doesn't use something I am not a medical expert to be able to say it might not cost more because he didn't follow the prescribed treatment.

Q Were you aware that he has not gone to physical therapy in 2022 or 2023?

A Not aware, no.

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Q That doesn't matter in your calculations?

A What is done prior is irrelevant to me.

Q And you are basing the numbers is that he will go because that is, if the jury accepts your number and awards $860,000 for physical therapy the assumption is he is going to use that for physical therapy, correct?

A Correct.

Q Now with respect to the economic loss, I have had the pleasure of reading some of your transcripts and I was reading the Sullivan transcript, that was recent, right?

A Yes.

Q That was fairly recent, 2022, is that correct?

A Yes.

Q And in that case the plaintiff had -- you averaged out, he was a realtor, am I not mistaken, and you averaged out what he had made over the course of many years and you came to a conclusion as to what the value of his earnings were?

A Honestly I don't remember the specifics of the case, but that sounds like something I would do, yes.

Q Normally if I lost my job you would say how long were you working, what were you making, let's take all the years and average them out and figure out what you would have made, right?

A Not always, every case is different. I take an average in specifications. If a plaintiff has the traditional wage trajectory where wages go up over time with the raise over the national average I take the last year.

If it is up and down and sporadic like a realtor which would have good years and bad years I take an average.

Q You take the last full year or last couple of years?

A Yes.

Q In this case you don't that do because he only had 20 days?

A I don't know the precise number of days but I know it was short.

Q You couldn't do it?

A Yes.

Q You had to make assumptions and you had to assume and kind of speculate, would you agree, that he is going to continue to work in something he had just worked for all we know in the United States for about 20 days?

A It is the most reasonable assignment of annual earnings given what his career was.

Q You didn't do the calculations -- by the way, $15 an hour in 2009, do you know what the --

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MR. THOMAS: Objection. 2009?

MR. GALLARDO: I am sorry, I am mixing my numbers up. I am not good with them, that is why I became a lawyer.

Q 2016 the minimum wage was $9 an hour from what I saw, is that correct?

A It was not 15, I thought it was more like 11 but I don't recall.

Q I saw a 9.

A Okay.

Q We can ask the judge to take judicial notice later on. At any rate, I will come up with the chart from the Labor of Bureau Statistics either 11 or 9. So he was making over minimum wage, correct?

A Correct.

Q And actually it is odd but some of these projections you have projected based on the average but I see in 2016 you said he would have made $34,000, right?

A That was starting in April.

Q Oh, that is why it is short, I am sorry. So you were basing it on a -- so your basis for this whole testimony before this jury is on the assumption that he would have made, he was making, he would have made the average laborer, is that fair to say?

MR. THOMAS: Objection. Objection, Judge.

THE COURT: He can ask for the loss of earnings. Your assumption to this jury is that it was based upon the perceived, the perception that he would have earned what the average laborer makes, that is what you are basing it on.

A The assumption is he would have had the opportunity to earn at that rate.

Q But you are not basing it on his earnings because he only had 20 days?

A That is right.

MR. GALLARDO: I have no further questions. Thank you.

MR. THOMAS: Nothing, Judge. Thank you very much, Doctor.

THE COURT: Thank you very much, Miss Dwyer. You can step down.

(Whereupon, the witness exited the witness stand.)

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