SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU : TRIAL TERM PART 20

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SUSANNE ARCURI, Individually, and as Administrator of the goods, chattels and credits of RICHARD F. ARCURI, SR., deceased, SUSANNE ARCURI, as natural and legal guardian of NICHOLAS ARCURI, a minor child under the age of eighteen, RICHARD F. ARCURI and LINDSAY ARCURI,

Index No. 004464/16

Plaintiffs,

-against-

DAVID NEWMAN, STACY NEWMAN, SAN BROOK CONTRACTING, INC., CALL-BRITE ELECTRICAL CONTRACTING, INC., and GERARD F. PALAZZO,

Defendants.

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October 17, 2024
Mineola, New York

B E F O R E:
HON. CONRAD D. SINGER, Justice

A P P E A R A N C E S:

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MINUTES OF JURY TRIAL

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OFFICIAL COURT REPORTER

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(Whereupon, Plaintiffs' Exhibit 109 was so marked in evidence.)

(Whereupon, Plaintiffs' Exhibit 110 was so marked for identification.)

COURT OFFICER: Jury entering.

(Whereupon, the Jury entered the courtroom.)

THE COURT: Everyone can be seated. Thank you. Good morning.

(Jurors responding.)

THE COURT: I hope everyone had a pleasant evening. We are going to begin. So, Mr. Burke, name your next witness.

MR. BURKE: I would like to call Debra Dwyer.

THE COURT CLERK: In the matter of 004464/16, plaintiffs, Susanne Arcuri, individually, and as administrator of the goods, chattels and credits of Richard F. Arcuri, Sr., deceased, Nicholas Arcuri, Richard F. Arcuri and Lindsay Arcuri against defendants, David Newman, Stacy Newman, San Brook Contracting, Inc., Call-Brite Electrical Contracting, Inc. and Gerard F. Palazzo.

Attorneys, please state your appearance.

MR. BURKE: Kelner & Kelner by Ron Burke for the Arcuri Family.

MS. MASIN: Alba & Masin, Linda Masin for the

Arcuri Family.

MR. LOMINO: Thomas V. Lomino, of counsel to Alba & Masin for the Arcuri Family.

MR. VAN ETTEN: Jeffrey Van Etten, Perry, Van Etten, Rozanski and Perry for Call-Brite Electrical.

MR. STONBERG: Michael Stonberg, Stonberg, Hickman & Pavloff, for defendant Gerard Palazzo.

THE COURT: Mr. Burke, the name of your witness.

MR. BURKE: Debra Dwyer.

THE COURT: Ma'am, you can take the stand.

D E B R A D W Y E R,

after having been first duly sworn by the Clerk of the Court, was examined and testified as follows:

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

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

THE COURT CLERK: Thank you.

THE WITNESS: You are welcome.

THE COURT: You can inquire.

MR. BURKE: Thank you, Judge.

DIRECT EXAMINATION

BY MR. BURKE:

Q Good morning, Dr. Dwyer.

A Good morning.

Q Could you give us some background information concerning your education and professional experience.

A Sure. I got my Bachelors Degree from Queens College in Flushing, New York. That was in Economics and English Literature. I went on to get my Master's and my Ph.D from Cornell University in Economics with an emphasis in Health Labor and Public Health Economics. I did a one-year post doctoral Fellowship at the Center for Policy Research at Syracuse University. And then I was recruited to Washington D.C., which I worked for the Social Security Administration in Economic Research as an economist.

For the last couple of decades, I have been working in the State University of New York System, primarily Stony Brook University, where I served as a faculty member, a chairperson, and ultimately an Assistant Dean.

More recently, I'm teaching and doing research with colleagues at Farmingdale State College where I'm teaching courses in Health Economics and Public Policy, micro and macro. And I also have this consulting business, I do this work.

Q And you referred to this kind of work, what do you mean by that?

A So we refer to this as forensic economics and that is the assessment of economic damages associated with losses. For example, in a case like this when someone, his life is over, what was the value of what he would have been earning for the rest of his life. I do a lot of consulting work on this kind of case or if somebody requires medical care based on injuries, I assess damages. And I also do some consulting as a policy analyst through grants and that sort of thing. I have a grant to do financial literacy training in Suffolk and Nassau County for vulnerable populations.

Q I just want to go back to your degrees. When did you receive your Ph.D?

A Officially in 1996.

Q Could you just give us an idea of the steps along the way, how do you reach that level to obtain a Ph.D or a doctorate?

A So once you are admitted into a Ph.D program, you spend, what we call, the first year in Boot Camp. That is intense course work and you have to pass a series of comprehensive exams not that different from a bar exam where we are asked any questions related to economics or statistics. And once we pass those exams, we engage in

specializing. So I took courses in Public Economics. At that time, there was no health economics so I kind of taught myself, but I have feels in that area. You start doing your research when you are doing your course work. Along the way you typically write a Master's thesis, which is what I have done, and then a dissertation, and then ultimately a dissertation is years of research that usually culminate in publications in peer reviewed journals.

Q Can you tell us, how many years does it take to get a Ph.D in economics, including your college degree, which I assume is four years?

A Yes.

Q How many more years of training and education before you obtain the Ph.D in economics?

A So the minimum is eight years; four years undergrad, four years grad, which is how I did it. The average is nine to ten years. So I did my Ph.D in four years. I was in a rush. And so I worked hard to get done in four years, but the average is more like five or six years of graduate school.

Q And you said you were a faculty member at Stony Brook University?

A Yes.

Q Currently?

A No. Currently, I am at Farmingdale State College.

I am still affiliated with Stony Brook, but I am not teaching there right now.

Q When you were a faculty member, are you teaching students or other economists?

A Both. I am mainly teaching students. Right now it's Health Economics and Public Policy. I am not teaching that course this semester. I am teaching it next semester. I mentor students and other economists as well.

Q Have you authored any peer reviewed publications?

A Yes.

Q Can you just tell the Jury what is a peer reviewed publication?

A So peer review means that before it can get published, your work has to be assessed by other experts in the field to make sure it passes sound tests. So I have published several times in peer review journals. What that means is I submit a paper, for example, to the Journal of Health Economics. And healthy economists -- at least two healthy economists will review that work, give me feedback, maybe go through some iterations of revisions, and then it finally gets published. Peer review means you have other experts reviewing your work to make sure it passes and fits with that journal.

Q So how many peer reviewed publications have you authored in the field of economics?

A Just got another one. I think it's probably about 20.

Q Have you received any grants or honors that you haven't mentioned?

A Yes. I received fellowships while I was in school, both undergraduate. I graduated with honors and awards. And then in graduate school, I have grants from the National Institute of Aging from the Michigan Research Consortium, a number of other grants to do research on retirement and health. And more recently, I have grants from private banks and foundations to do this financial literacy work. I sit on the Board of Directors for an organization that has to do with integrity of research in economics, and I am a member of many professional organizations.

Q Dr. Dwyer, would you please just explain to the Jury how many times that you have previously been qualified to testify as an expert in a court before a Jury in the past?

A So I have been doing this for twelve years, and I would say probably about 150.

Q And how many times have you testified at trials where I was the attorney for the plaintiff?

A I believe it was about three before today.

Q And what do you view your role -- withdrawn.

Did there come a time when my office or Linda Masin's office contacted you and asked you if you would review materials and provide an opinion on your economic analysis of the losses suffered by Mrs. Arcuri?

A Yes.

Q And could you tell the Jury what materials you were provided?

A Sure. Mainly my job here is to determine how much money he would have earned in the labor market and any fringe benefits or anything that goes with that that represents a loss to the estate because he passed away and he is not going to be earning that. In order to do that, I need evidence of what he was earning prior to his death. So I have his tax returns, both personal income tax returns, corporate tax returns, and W-2 statements for 2012 and --

THE COURT: Could you just turn your papers over. Could you turn your papers face down.

THE WITNESS: Sure.

A From 2012 through 2014, so tax returns from 2012 through 2014. I obtained a copy of the summary plan description of the Defined Benefit Pension Plan that was associated with his company Arcuri and Sons. I believe that was it in terms of what I relied upon.

Q And health insurance?

A Yes. Thank you. I turned it over so I missed that one. I also have from Ms. Arcuri all of the expenses she had to pay for health insurance since her husband passed away to cover herself and her kids. And it changed over time when the kids -- as the kids became old enough to get their own insurance or got it as a student, I took all of that into account. So I had all of that information up until 2023.

Q And how long ago were you retained to review these materials, just an approximate date?

A It was some time in 2017.

Q Could you tell the Jury the terms of your being compensated for your review of all these materials, for your appearance here today in court?

A Sure. For the review of the materials and producing my findings in a report, I charged $2,800. And for my time in court, it's $5,000.

Q Since you originally produced -- withdrawn. I will start again.

Since you prepared your initial report over the years, have you amended it?

A Yes.

Q Why did you amend it?

A With the passage of time things change. So from 2017 to 2022, when I amended the report, things like life

expectancy changed because life expectancy -- I have to make assumptions to be able to do this kind of work. One of the assumptions is for how long am I going to project the earnings, and that's where life expectancy comes in. So we get the life expectancy data from the U.S. National Center for Health Statistics. They put out what's called the Life Tables by gender. And that is survival possibilities. Given I was born a certain year, I survived another year, how many years do I have left on average. As time goes on, those life expectancies change because you yet survived another year. Sometimes the tables get updated. So that's one example of how things change over time. We also tend to split things into how much of it was in the past, the loss in the past, and how much in the future. Obviously, the past in 2017 is different from how we measure the past in 2022, so we have to update it to reflect that kind of change.

Q So due to the passage of time, what you previously identified as losses in the past and losses in the future, if you're coming in to testify two years later, I would imagine that the future losses are less and the past losses are higher?

A That's correct.

Q So would you explain to the Jury some of the federal government data that you economists typically rely

upon in arriving at your conclusions in an economic loss analysis?

A Sure. I already mentioned the National Center for Health Statistics that produces the Life Tables. I also heavily rely on the United States Bureau of Labor Statistics data. They are the ones that put out inflation, unemployment rates, anything to do with the labor market. In a case like this what I want to know is what is the average increase in wages over time. Not only am I going to determine what the basis for his earnings loss at the time of his death, his earnings capacity, I also need to know what would have happened to those earnings over time, and for that I used the federal data from the Bureau of Labor Statistics to come up with what the average growth rate is. And average is key because if I use what's happening today, it could be an outlier. Like for the last few years it's been well above average at reaching 6 percent growth rates per year, meaning, you are getting a 6 percent raise a year. If we happen to be doing this around the time of Mr. Arcuri's death in 2014, we were just coming out of a recession and the growth rates were 1.2 percent during that recession. So what we do is we go back historically using this federal data and come up with an average that we think is reasonable to represent some years will be higher, some years will be lower as we are

projecting over 20 to 30 years into the future. So there is the Bureau of Labor Statistics, the National Center for Health Statistics.

And, finally, in a case like this where it involves a death, we calculate something called personal consumption. And what that is is we are removing from any losses the amount of money that would have been used for Mr. Arcuri's, the decedent's, personal consumption because that would not have gone to the estate. And to do that, I rely upon the federal guidelines for personal consumption that come out of the Victim Compensation Fund that was used for the 9/11 cases.

Q And the federal databases that you described and relied upon in arriving at your opinions, is that federal data something which is commonly accepted by economists in your profession as reliable assumptions to make in projecting losses?

A Yes.

Q And you also mentioned that you look back at past trends, whether inflation or the growth of wages, how far back do you look; 5 years, 10 years, 20 years?

A In order to capture -- in this case, I am projecting earnings loss over 20 years, I went back 20 years, which is pretty standard. So the average growth rate on wages over the last 20 years, according to the

Bureau of Labor Statistics, was 3.2 percent. I used 3 percent in this case. We go back 20 years because we want to capture what we call business cycles, periods where we have enough highs and lows to reasonably be able to predict the highs and lows that will happen in the future. Three percent, since I have been a graduate student, labor economists have all agreed that the average is 3 percent, and it pretty much stays at 3 percent. So right now because of those high years that we just experienced it's up to 3.2 percent, probably a little higher next year. But I am still sticking to the 3 percent.

Q Because it's based upon trends over the last 20 years?

A Yes.

Q Does inflation come into the equation for projecting future losses?

A In this case, I mean, often it does. In this case, it does. In the case of health insurance, premiums go up over time. That's inflation. Health insurance inflation. So inflation is how prices go up over time, and, in this case, what's relevant is I'm projecting health insurance loss. And so I have the premiums until 2023. From 2024 forward, I use the 20-year average from the U.S. Bureau of Labor Statistics. They collect the inflation data as well. They put out a report called, "Monthly Labor

Review." And the most recent one shows the premiums are rising on average over 4.5 percent. I use 4 percent. That Monthly Labor Review only goes back like 15 years. If I go back 20 or 25, it's more like 4 percent.

Q After you performed this economic analysis of the losses suffered by Mrs. Arcuri, did you prepare a report and a table of yearly breakdown of economic loss?

A Yes.

Q And did you come to a decision, within a reasonable degree of economic certainty, regarding the economic losses to the estate of Mr. Arcuri?

A I did.

Q Have you discussed the assumptions that you made about growth rates?

A Yes.

Q And I would like to direct your attention to what's been marked as Exhibit 110 for identification.

COURT OFFICER: Sharing with the witness Plaintiffs' ID Exhibit 110.

A Yes.

Q And in Exhibit 110, could you describe just how you categorized each loss suffered by the estate of Mr. Arcuri?

A Sure. So the categories of loss that I include in the analysis are, first of all, earnings, income loss. So

what would his wages have been that he brought home every year. Pension loss. So he was part of a Defined Benefit Pension Plan. What that means it's the kind of plan that's funded by annual contributions from the business. It has a growth rate, so it grows over time the amount that is contributed. And then they draw an annuity from it upon retirement. So I calculate the pension loss. And the way I do that is what the contributions would have been to his account so that I can determine the value of it for the estate. After I calculate income and pension loss, I have a category called Income Plus Pension/Loss Net Personal Consumption. And that is where I remove the percentage of the income that came to the house that would have been used up by Richard Arcuri. Then I have the Health Insurance Loss category that we talked about. And, finally, the Loss in the Value of Household Services. So that was something I didn't mention earlier. The U.S. Bureau of Labor Statistics also has what they call the Time Use Surveys. They collect data on average time men and women spend in various activities, including things like household services, external maintenance, internal maintenance, time spent doing your finances, time spent with grandchildren, time spent with children, all kinds of things, activities that you could spend time on. So I take the average amount of time by males engaging in these activities and I use it

to determine a loss to the estate of the value of his time that he would have used servicing members of his estate. And that -- and the value -- so it's a number of hours, average number of hours.

In this case, I determined it to be 23 hours per week. So the estate is losing 23 hours per week of Richard Arcuri's services. And you have to come up with an hourly rate. If you had to pay for those services, what would it cost? And that also comes from the Bureau of Labor Statistics. And in the time frame that we're looking from 2014 through 2024, it's currently at about $28 per hour. It started at like $20 per hour.

Q So I want you to assume that there was testimony before this Jury from Susanne Arcuri concerning the household services that he commonly provided. And she mentioned that he mowed the lawn, that he maintained an outdoor fish pond, that he maintained the sprinkler system, he maintained the gutters, he would paint inside the house, he would co-financially manage the household alongside of Mrs. Arcuri, he waxed hardwood floors. Based upon those list of household services, is that consistent with the hourly rate that you relied upon in producing this economic loss table?

A It is.

MR. VAN ETTEN: Objection to form.

THE COURT: Sustained. Question is stricken. Answer is stricken. The Jury is asked to disregard.

MR. BURKE: Before I go through that long list, could I have a side bar?

THE COURT: Sure.

(Whereupon, Mr. Burke and Mr. Van Etten confer.)

MR. BURKE: I will rephrase.

MR. VAN ETTEN: Thank you.

Q I want you to assume that Mrs. Arcuri testified that her husband provided all the household services that I just mentioned in my last question. Based upon that assumption, is the table that you prepared for loss of household services based on the number of hours consistent with that testimony of Susanne Arcuri?

A Yes.

Q And in the course of your appearing in court and testifying, do you routinely come into court and present a Table of Economic Losses?

A I do.

Q And during the course of your testifying before juries and courtrooms, which you estimated was at least 150 times, do you show the Jury this Table of Economic Losses and go through each individual column?

A I do.

MR. BURKE: At this time, I would like to move the Table of Economic Losses marked as Exhibit 110 into evidence.

MR. VAN ETTEN: We object as to moving the table into evidence, your Honor. However, as I have told counsel before, I have no objection for this document for identification to assist the expert in testifying for it to be shown to the Jury. It's just an objection as to it being evidence because it's based on opinion and it's cumulative.

THE COURT: Why don't we step to the side.

MR. BURKE: Yes, I just wanted to bring something.

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

THE COURT: We are going to take a brief break.

(Whereupon, the Jury exited the courtroom.)

THE COURT: Please be reminded you are under oath. Please don't discuss your testimony with anyone. Please wait outside the courtroom.

THE WITNESS: Okay.

(Whereupon, the witness was excused.)

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

THE COURT: We are back on the record.

MR. VAN ETTEN: I guess it was my objection, your Honor?

THE COURT: Yes.

MR. VAN ETTEN: The document that the witness was shown, which I did not have an objection to the witness being shown, was for identification, which is a breakdown of economic loss, is a document which I anticipate the witness is going to be talking to the Jury about and providing an opinion on her calculations. It's being offered into evidence now before she has even given her opinions.

MR. BURKE: It's so she can put it up on the board.

MR. VAN ETTEN: I understand that. It's being offered into evidence before she is giving the opinions on this, so, obviously, I can't approve something that she hasn't given an opinion to a Jury on as evidence. I have told counsel I understand the nature of the economist. I have no problem as an exhibit to show the Jury, to present to the Jury, so they can understand how they do it so they understand the numbers. I have no problem with allowing the witness to use the document as identification to assist them in learning.

THE COURT: So you have no objection to Mr. Burke -- what board?

MR. BURKE: I meant the monitor. It's just an old expression.

THE COURT: Putting it up on the monitor?

MR. VAN ETTEN: None whatsoever. I just object to it coming into evidence. And I won't do the anticipatory because you rule only by case by case and objection by objection. So right now that is the basis of my objection. How can this be evidence when it hasn't even been testified to?

MR. BURKE: She is going to testify to it. If you want me to make the application to put it into evidence after she goes through it, but I want the witness to be able to explain showing to the Jury the table because this is complicated. We have economic losses in several different categories. I want it to go into evidence, as it always does, and I got case law to cite.

THE COURT: Always is a strong word.

MR. BURKE: Okay. Most of the time. In my experience, it always goes in.

THE COURT: Well, then if it always goes in in your experience and it always doesn't go in in his experience, I think someone is misrepresenting

themself.

MR. BURKE: We have now met each other for the first time. I think what happened is --

MR. VAN ETTEN: I move object and irresistible force.

MR. BURKE: Either he persuaded plaintiff's attorneys to back down or he is just very good at confusing a trial judge that these don't go into evidence.

THE COURT: So if it don't go in, I am confused?

MR. BURKE: I don't mean it that way.

MR. VAN ETTEN: I will say thank you to both.

MR. BURKE: I don't mean it that way, but, you know, these routinely go into evidence because think of it, Judge, how absurd it is to expect this Jury to remember all these -- I don't remember all these numbers, and I have looked at this a dozen times. When they go out to deliberate, this is a summary sheet. And summary sheets are admitted into evidence when there are complicated issues and voluminous records, which there are with the tax returns. And this is a summary for the benefit of the Jury. Just like I am offering this into evidence. I have also been given a Table of Economic Losses by Mr. Van

Etten's economist, his should go into evidence as well. I have no objection to that.

THE COURT: Is there a rule of evidence that puts it in?

MR. BURKE: It's relevant evidence. There may be a CPLR section that addresses summary charts, but this is a summary chart. The Court of Appeals in Hinlicky, which I gave you that decision, allowed a summary chart to go into evidence.

THE COURT: You know, I am very record anal, so just so the record is clear, Mr. Burke's decision was handed to me about one minute ago before the attorneys started arguing.

MR. BURKE: And the other decision I gave you is People v. Baa, B-A-A, a lower court criminal court decision, which the relevant language in that case, Judge, and I will quote it, quote, charts and other demonstratives prepared by witnesses with a specialized knowledge are routinely allowed into evidence by courts in order to summarize voluminous and complicated evidence so long as there's no conclusions, interpretations or comparisons expressed therein.

THE COURT: I haven't read it, but when you said complicated evidence, evidence is usually things that are before the Jury. And there's nothing before

the Jury on future income, right?

MR. BURKE: This is the first time they are going to hear about it.

THE COURT: Meaning, you can't project future income. It's just an opinion.

MR. BURKE: We have projected future income.

THE COURT: But it's an opinion, whereas past income is, you know, the evidence is based upon the tax returns.

MR. BURKE: Just as physicians' records are opinions of those physicians and they go into evidence. It's all to be considered. Just as I pointed out before, in the interest of fairness, the defense economist table should go into evidence as well. It's a summary chart. I can oppose it. I can argue against it in my closing, as Mr. Van Etten can argue against any of the conclusions arrived at by Ms. Dwyer in her opinions expressed on the chart. But it does go into evidence, and it goes into evidence routinely. I gave you a trial transcript from a Westchester County Supreme Court medical malpractice case from November of 2023, and the plaintiff put in his economist's Table of Losses. Defense counsel didn't even object from one of the premiere defense firms that handles medical malpractice cases.

THE COURT: What was the firm?

MR. BURKE: Vigorito Barker. I guaranty -- now it has been renamed Barker so on and so forth, and that firm routinely covers Nassau County, as well as New York City and Westchester. But my point is, is that there is a practical reason why we would want the Jury to have this in the deliberation room. I appreciate Mr. Van Etten saying he has no objection to my presenting the Table on the monitor, but I want it into evidence because I think it should go back into the deliberations because there's too many numbers in too many different categories for any ordinary person to remember, including myself.

MR. VAN ETTEN: And when we're dealing with some of the other evidence that we've talked about, even the doctors' records that counsel mentioned, they have to be certified. The doctor has to come in and testify and identify them as business records and doing all this. This is not an independent source. This is an expert witness' prepared document to support their testimony, which hasn't been given yet, and no opinions on that testimony, other than saying what documents they have reviewed, they haven't even told the Jury what the income is at this point that was earned by Mr. Arcuri. And now this is going to be in evidence.

THE COURT: But you are allowing it to be published?

MR. VAN ETTEN: I have no problem with that. I told him that.

THE COURT: So what's the difference? Mr. Burke's argument is, well, from Mr. Burke's argument, I see the only difference is they take it into the Jury Room or they do take it into the Jury Room.

MR. VAN ETTEN: Correct. I routinely object to that being evidence because of what it is because certain documents are opinion documents that are not factual documents, particularly here, unlike other cases, you are going to have two experts providing two different sets of numbers. So it is evidence based on the opinions of those experts, and that's for the Jury to consider who they find credible. And, at that point, that is why we have the court reporter. If they have issues on that, they could always go back to the transcript to find out the numbers that they want. If at some point the Jury came back and said to the Court, we would like to see documents that were marked for identification that the experts relied on, then we would have that discussion.

MR. BURKE: Then it's too late. You have rested. You can't do that in deliberation put

something into evidence.

MR. VAN ETTEN: Or at least agree to put into evidence something that was marked for identification and shown to the Jury. At this point, it's premature for it to be in evidence.

THE COURT: What is your position, Mr. Stonberg?

MR. STONBERG: I support Mr. Van Etten's position.

THE COURT: Since you are both in agreement without objection to it being shown on the screen being published I guess you don't need a decision right now.

MR. BURKE: True.

THE COURT: You guys -- I think I should read Mr. Burke -- I don't know how much weight I am going to give to a transcript, but feel free to send me cases.

MR. BURKE: I gave them to you.

THE COURT: You said -- I haven't looked. You said one was a lower court. If it's like the Housing Tenant Court or the Criminal Court, you know they are very good courts, but I don't know the exact type of case that --

MR. VAN ETTEN: The second one was a Criminal Court. The second one was a algorithm that a doctor used during a surgery. Another doctor testified that

he had used similar stuff, so they allowed the algorithm chart to be used as demonstrative evidence because it was specific to that procedure that two different witnesses testified they used during that procedure.

THE COURT: I assume, since you always object, that you could probably find a case or two from a Supreme Court trial judge on the same issue, an economist. I am sure Mr. Burke, since he probably runs into people you know occasionally who object, he probably could find one from a Supreme Court economist.

MR. BURKE: I do have a Supreme Court -- I have the Criminal Court case in Supreme Court Kings County.

THE COURT: Is it a wrongful death?

MR. BURKE: It's a criminal case.

THE COURT: I am curious. Maybe you can find wrongful death. It doesn't seem to be an issue that has to be decided right now since you agree on publication.

MR. BURKE: You don't --

THE COURT: Sound fair?

MR. BURKE: It does sound fair. We can defer this.

THE COURT: All right. So we will bring the

Jury back. Do you want to withdraw your application or do you want to withdraw your objection or do you want me to just say that I am deferring the ruling?

MR. BURKE: Just defer.

THE COURT: Okay.

(Whereupon, the witness resumed the stand.)

COURT OFFICER: Jury entering.

(Whereupon, the Jury entered the courtroom.)

THE COURT: Everyone can be seated. Thank you. Please accept my apologies. The break went a little longer than expected. I am going to reserve decision on the last objection.

Mr. Burke, you can continue.

MR. BURKE: Yes. I would like to publish Exhibit 110.

THE COURT: Plaintiffs' 110 for ID being published. There is no objection.

MR. VAN ETTEN: No objection to that, Judge, absolutely not.

MR. STONBERG: No.

COURT OFFICER: Sharing with the witness Plaintiffs' identification Exhibit 110.

Q Now, Dr. Dwyer, in calculating losses in these different categories noted on the Table, have you expressed your opinions regarding these losses, all of them, within a

reasonable degree of economic certainty, based upon the materials that you identified you relied upon?

A Yes.

Q As well as the assumption as to the household services Mrs. Arcuri testified to having been lost since her husband's death?

A Yes.

MR. BURKE: Tom, could you turn to page 2.

Q So before we focus on page 2, I just want everybody to see both pages.

MR. BURKE: If you could go to Table 1, Tom, the first page.

Q Would you please, Dr. Dwyer, would you explain how you set up this chart for this Table in the fashion that you did?

A Sure. So you see that the numbers run from the year 2014 through the year 2044. 2014 was when he died. 2044 is the age that he is expected to -- would have died had he survived.

Q What number did you use for life expectancy?

A So it's an age of 80.5, and that comes from the 2020 Life Tables produced by the National Center for Health Statistics. That is another 30 years from the time that he died, 30.6 from the time that he died or 20 years from now.

Q Is that just an average of all males who make it

to the age of 49 what they can expect to live down the road?

A That's correct.

Q And some of those men may have died early from unrelated reasons or maybe some men would live to they're 90, and that is how they arrived at an average lifetime expectancy for a 49-year-old?

A Yes.

Q So starting in 2014, could you explain how you arrived at the income losses?

A Sure. So I relied on the 2013 tax returns. That was his last full year of work. So he earned roughly $93,000 in W-2 earnings, meaning, his pay, his salary for the year, plus he had an additional $9,000 and change from his business income, which brought us to about $103,500 and that is what we used as his earnings capacity. So that is the basis for what he has demonstrated he is capable of earning from his W-2 earnings and from his business.

Q So that would be the earnings that he received on his individual W-2 and the earnings he received from Arcuri and Sons, Inc.?

A Correct.

Q So it's $103,000. Could you explain then why 2014 the income loss is at $52,707 as of the date? Is it the date that he died during the calendar year?

A He had earned something up until the time that he died, and so that is not a loss. The loss starts from the time that he died. I did have his 2014 tax return, so I used his actual earnings and offset that from his earnings capacity. And that is how you get the $52,707 loss in 2014.

Then, in 2015, you will see it jumps to $109,522. And that's because, as I said, I give him a 3 percent raise every year. If he earned $103,000 and change in 2013, in 2014, it would have been about $106,000. And in 2015, it would be $109,522. That represents a 3 percent raise every year.

Q So then you assumed from 2015 all the way to 2044 -- I am sorry. So you assumed from 2014 to 2035?

A Correct.

Q Where he would then retire at the age of?

A 71.

Q And so throughout these years, you provided an increase every year of 3 percent flat?

A Correct.

Q And is that consistent with wage growth factors?

A So, yes. So from 2018 through 2024, it's been higher than 3 percent. From 2014 through 2017, it was about ranging between 2.3 and 2.8 percent. So you can see why an average makes sense. I am using some years -- I am

expecting going from 2025 through 2035, that 10-year span, it's going to average about 3 percent, maybe a little bit higher, given where we have been. So I smooth it out with a 3 percent. I should explain the work life expectancy.

Q Would you do that.

A So I use age 71, which is not typical for me. Typically, I use the normal age of retirement under Social Security like 67. I look at every case differently. In this case what I learned was that according to the -- I was about to say Form 5500. I will have to explain what that is. The plan description for his pension estimated a retirement age of 71. At the time of his death when he was 49, his father was still working at age 79. Therefore, using that age 71 that came out of the summary plan description seemed like a reasonable age for a person who owned his own business, who is following in his father's footsteps. So I used age 71 as the retirement age. I said up front, economists make assumptions, we have to, because we have to make a decision about what we believe is reasonable would have happened in the future. And, in this case, I do believe age 71 is reasonable. So if you give him a 3 percent raise, using that basis of an annual salary of 103,000 and change, you get a lifetime earnings of $3,088,575, and that's the number you see at the bottom -- that is not the loss to the estate because I have not

removed personal consumption yet, but that is the amount that I estimate, within reasonable degree of economic certainty, that he would have earned for the remainder of his work life, which would have been about 20 years. So that is 20 years worth of earnings. And, as I mentioned earlier, we split how much of that was in the past, that $1.3 million; how much is in the future, the $1.8 million. So if you want to go to the next column, I will explain.

Q Thank you.

A The Pension Loss.

Q Can you explain the basis of your opinion on Pension Loss.

A So I was glad to be able to get a detailed copy of the summary plan description of his pension plan. What it said in there, there was a lot of information in there.

Q And that is Exhibit 88 before you?

THE COURT: Would you like Plaintiffs' 88 shown to the witness?

COURT OFFICER: I have it. Sharing with the witness Plaintiffs' Evidence Exhibit 88.

Q So tell us about this, you called it, Defined Benefit Plan?

A Yes. So in that plan description it says that the contributions by the business is $45,000 a year.

Q And this is the Arcuri and Sons business?

A Correct.

Q So the way the pension plan works is every year the employer is required to put in a minimal amount to be sure that there is enough money in the account to pay out that annuity for when the person retires. So $45,000 is contributed each year, and that is what I used to determine what the value of that pension would be by the time he retires. And it grows at 3 percent a year. That 3 percent there I am being conservative. I am using the average growth rate again from the Bureau of Labor Statistics on total compensation. But if you read through the summary plan description, they are investing that money that you contribute. And a moderate investment, on average, returns 6 percent. In the summary plan description, it starts at 5 percent. So I'm being conservative using a 3 percent growth rate on that contribution toward the pension. So if you take the $45,000 that's contributed every year, grow it about 3 percent, have it contributed every year until he retires, you get a lifetime accrual of $1.2 million, $1,247,366 in terms of the value of his pension over his lifetime from work.

Q And?

A So the next column is where I deduct personal consumption.

Q Explain that concept and how you factor in when

someone would have consumed for their own benefit?

A Sure.

Q Please.

A So I deduct consumption from all income. So I'm taking the value of his income and the value that he is contributing, that's being contributed towards his pension, and I am adding it together, and then I am removing a percentage of it, and that percentage comes from the federal data. So, for example, in 2015, his income was $109,522. Add $45,000 to that. So you get roughly 154-and-change.

Q So, in other words, instead of contributing $45,000 to his pension plan, he would have earned on top of the $109,000, $45,000 he would have taken?

A Right. There are two ways you can do this. I could have taken the value of the contributions and calculated the annuity at the end and done from the time that he retires until he dies, his pension, the annual pension, and totaled it. I chose to do it this way, the equivalent, and I did it both ways. I chose to do it this way to keep it a little bit simpler in terms of removing that personal consumption. So I just take the personal consumption rate on the whole amount and do it once. So I'm taking 7.6 percent out of his annual earnings in 2015. Where does that 7.6 come from? According to the Victim

Compensation Fund Agency, a family with three kids, a spouse, and a married couple earning at the rate he was earning, they provide me with that data. So 7.6 percent on average is what he would have spent on himself of that $150,000 that I said he would have earned, the value of his total compensation in --

Q So it's just the individual's personal consumption, not his wife or children?

A Correct. Just removing his personal consumption. So that $142,778 that you see for 2015, it's under the column Income Plus Pension Net Personal Consumption. That is the sum of his total compensation, income plus pension, less 7.6 percent. And it continues at that rate until the twins, so their older children, turn the age of 21 when they are no longer dependent. And then the rate goes up, personal consumption, because there's fewer people that are dependent on that income, so he can spend more on himself. I don't have everything memorized. I know it was about 10.5 percent or 10.7 percent that I used when he only had one dependent left. And then when that dependent turns the age of 21, it went up to 12.5 percent. I deduct a little greater percentage as the household gets smaller.

A So you get a total value of his income that would have gone to the estate. And by income, I mean, total compensation of $3,838,300. That number means that for the

20 years of lost work, that would have been the total compensation, less his personal consumption that would have been available to the estate.

Q So at the bottom of the page you calculate the past losses from the date of death up until today or yesterday?

A I did up until October 31. So I start the future November 1.

Q Okay.

A So the past loss up until the end of this month is $1,464,051. And the future commencing November 1 through the year 2044 would be $2,374,250.

Q You used the word annuity before. Could you just tell us what an annuity is.

A Sure.

Q And the purpose of it.

A So an annuity is a guaranteed payout every year from the time that you retire until death. And so it's determined based on the amount of contributions that went in. A Defined Benefit Pension Plan is what we call formulaic. So it's based on a formula given of what your life expectancy is and how much has been contributed, and it's determined what the annual pension would be at the time of retirement. Sometimes it's adjusted for cost of living. Sometimes it's not. You take that amount and you

give it to him for the rest of his life, add it up. That should be equivalent to what I had done here.

Q So have we covered income, column for Pension Loss, column for Income Plus Pension Net Personal Consumption column. Have you explained all the concepts that you want to deliver to the Jury?

A Yes.

Q Can you explain to us how you calculated a health insurance loss.

A So Mr. Mrs. Arcuri provided me with the actual health insurance payments that she made to cover herself and her children from 2014 through 2023. So that brings us -- so the cost that she was paying -- and they came from various sources. Sometimes the children were on a different plan. She added them up and she gave me the totals. Because Mr. Arcuri was able to give them -- provide them with health insurance through the business, now they have to pay it out of pocket, and it's a cost to them. So in 2023, the last year that I had data for, she was paying $8,874 worth of health insurance. At that point, her children were off the plan, so that is just for herself. I used a 4 percent growth rate, so that in today's dollars that same plan, it was an Oscar plan through New York. It's a New York Oscar plan. I have it at $9,229. I did look, because now that data is available,

that same plan would cost about $10,300. So I estimated using a 4 percent growth rate. I said earlier the Department of Labor said right now it's higher than that. It is higher than that. I just kept it at that 4 percent because some years it might be lower than that when he retires. So the lifetime cost using a 4 percent growth rate on that $9,000 premium gives you a loss over her lifetime of $195,878 worth of health insurance.

Q And so then, once again, as you did in the other columns, you allocated $98,000 to the past years from the date of death up until this month?

A Yes.

Q And then the future projection out to what age?

A To the age of 80.5. I am sorry, 71. Oh, sorry. Back up. I stop it at age 65 because at age 65 she would be eligible -- when she turns age 65, she would be eligible for, Medicare so I discontinued the loss when she is eligible for Medicare.

Q Okay. Now, I just want to refer you -- we put some of the evidence on the table. Exhibit 89 in evidence.

COURT OFFICER: Sharing with the witness Plaintiffs' Evidence Exhibit 89.

Q Could you just take a quick look at Exhibit 89, and are those the health insurance costs that were provided to you by Mrs. Arcuri?

A Yes.

Q And the same thing with regard to the tax returns from 2012 to 2014?

A Yes.

Q Which are Exhibits 83, 84 and our new exhibit.

COURT OFFICER: 109.

MR. BURKE: 109. Thank you.

COURT OFFICER: Sharing with the witness Plaintiffs' Exhibits 83, 84 and 109.

Q Are those some of the documents that you identified as having reviewed and based your opinions upon?

A Yes.

MR. BURKE: I would just ask if the court officer would show you Plaintiffs' Exhibits 91 and 87.

COURT OFFICER: Sharing with the witness Plaintiffs' Evidence Exhibit 91 and Exhibit 87.

Q So is Exhibit 87 in evidence the Arcuri and Sons 2014 Form 5500 that you reviewed?

A Yes.

Q Is Exhibit 91 the 2015 final Form 5500 for Arcuri and Sons?

A Yes.

Q Have we covered everything that you wanted to with regard to health insurance loss?

A Yes.

Q Let's move on to household services. How did you arrive a figure for the first year, the second half of 2014?

A Actually, can I -- I can't see that so well so can I have that one?

COURT OFFICER: (Handing).

THE WITNESS: Thank you.

A So the household services I mentioned earlier that I took the average for all men time spent in these activities, as were mentioned earlier, which came out to an average of 23 hours per week. That is over the week and the weekend. And the cost of replacing that in that first full year of loss 2015 was $24,996. So what I'm saying there is it would cost that much if you had to pay someone outside of the household to come in and do those services annually.

Q And just to clarify, so the household services of the first number of $12,000, is that much lower because you are only calculating the loss from, let's say, June 21, 2014 through the end of the year?

A Correct. So the numbers are available through the Bureau of Labor Statistics through the year of 2023. So I am not making any assumptions about growing the costs over time. I am using what the federal data tells us. The only assumption I am making is I believe the federal data. So

when you get to the year 2024, I start using a growth rate of 3 percent, which is giving the person who will be doing these services a 3 percent raise. The actual cost of increasing -- I am sorry, the actual growth rate is higher than 3 percent. If you do the math between 2014 and 2023 there, you will see it's actually higher than 3 percent, but I use the general average of 3 percent.

Q You did that because you are using a flat average based on historical record of 20 years, is that correct?

A Correct. So growing it -- so he would engage in household services until he died. So the assumption there is that he would be available to perform services for his family, the estate, until he died. There are going to be some years where he does more. There are going to be some years where he does less. The nature of those services might change over time. But the average for men is continued through his whole life so that you get a lifetime loss and the volume of the services he could have provided that he can no longer provide of $1,291,141.

Q And you ran those numbers through his life expectancy, which you testified before was 80-point-something?

A 80.5.

Q So, in other words, 80 and-a-half years old?

A Correct.

Q And do those numbers, these averages, do they reflect the fact that some people will live longer than 80 and some people will live fewer years than 80?

MR. VAN ETTEN: Asked and answered.

A Right.

THE COURT: Sustained.

Q And so you, again, broke this down into the categories of past losses of household services, that would have run from the date of death up until October 31 of 2024?

A Yes.

Q And the future losses, in total, would have been $1,019,180 reflecting the time from November 1, 2024 until Mr. Arcuri would have reached the age of 80.5 years old but for what occurred?

A Exactly.

Q Is there anything else you want to cover on this first page?

A No.

Q So the second page. How did you calculate the total past loss looking at that Table? Could you just look at the numbers.

A One correction I should make is in this case I did use October 16, 2024 since I knew the precise date. I misspoke and said October 31. Often I don't know when I am

coming to court, so I do the end of the month. In this case, I did, and so I used the precise. It doesn't make that much of a difference.

Q Everything you said with respect to past and future is being calculated at a determination date, shall we say, of October 16, 2024?

A Yes. I apologize for that.

Q Before that date are the past losses and after that date are the future losses?

A Correct.

Q So now looking at the bottom of the first page and the top of the next one, can you explain how you calculated the total past loss by telling us what you did?

A So what you're going to do is -- you see the totals on the bottom that are bold --

MR. BURKE: Can she step down and point out how she calculated the totals?

THE COURT: Okay.

(Whereupon, the witness left the stand to testify.)

A So basically what I do to get the total past loss, that $1,834,223, is I sum the past loss of the total compensation less personal consumption, this number, $1,464,051, this number, which is the health insurance loss in the past, and this number, which is the household

services loss in the past, from those three numbers from that row that says past, and that is how you get the total. I am only summing bold numbers because the first two columns, remember, didn't remove personal consumption. That is just what his totals would have been. So the same thing with future just add the bold numbers on the row that is called Future and that is the total compensation net personal consumption, $2.4 million, roughly $98,000 lost in the health insurance in the future, and roughly $1 million in the loss in the value of household services. That gives you the total future loss from October 16,2024 for his life expectancy age of 80.5 of $3,491,097.

Now, I was also provided, and I didn't mention this earlier, the total funeral expenses, which were also charged to the -- charged as damages, $27,867 for the funeral expenses. Gives us a total loss both past and future of $5,353,187. That is the total economic damages from his loss of life from age 49.

Q Thank you.

A You are welcome.

(Whereupon, the witness resumed the stand.)

MR. BURKE: I have no further questions, Judge.

THE COURT: Thank you. Mr. Van Etten.

MR. VAN ETTEN: Sure, Judge.

CROSS-EXAMINATION

BY MR. VAN ETTEN:

Q Hi, Dr. Dwyer.

A Hello.

Q Good to see you again.

A Good to see you too.

Q I don't know if you remember that we kind of talked or had question and answer about two years ago in New York County on the Penya case?

A Which case?

Q Penya.

A Okay.

Q I think to maybe help you remember we were talking and your attorney didn't refer to you as doctor, and I asked you why you didn't refer to yourself as doctor because I thought you should. I had said my daughter has got a Ph.D so you want to be a doctor, she wants to be a doctor. Do you remember that?

A Yes, I do.

Q Okay. I am going to follow up with a couple of questions where we just came from, but I would like to ask you first, when you come in here, you are testifying on behalf of, in this instance, the estate of Mr. Arcuri, fair?

A That's correct.

Q And you are coming here as an expert in economics?
A Yes.
Q You are not an actuary?
A No.
Q And pension plans have a lot to do with actuarial issues, fair?
A Yes.
Q When you come in as an expert, aren't you an advocate for this family?
A That is not how I see my role. I am just a number cruncher.
Q Because you talked about some data that you got. We got some of the documents there. And then at some point you also got some health documents that Mrs. Arcuri gave you or the attorneys gave you, fair?
A Yes.
Q Did you review the testimony, I mean -- withdrawn.
Mr. Burke asked you to make some assumptions on some of the testimony of Ms. Arcuri from earlier in this trial about the activities of her husband, do you recall that?
A Yes.
Q You know she testified in this case?
A From being told, yes.
Q You've testified 150 times. You know people come

in and do deposition, fair?

A Yes.

Q And you have reviewed depositions in cases in the past?

A Yes, I have.

Q And I want to know in this case, did you review Ms. Arcuri's deposition from May 21, 2018 when she testified that in 2013 her husband's earnings were $75,000?

A I did not.

Q The numbers you just put up for 2013 were over $100,000, true?

A Yes.

Q And were you aware that Ms. Arcuri also testified that that was the most that he had ever made?

A Okay. I was not aware. That's fine.

Q And when you gave your opinion that you just told everybody, you stated that when you did your initial formulation of opinion, it was only on the 2013 tax return, fair?

A That's correct.

Q But you had the 2012, right?

A Yes.

Q He made less in 2012?

A Correct.

Q You didn't bother to consider that?

A I did consider it, and I made a decision.

Q Okay. And did you make that decision so that you could project a higher number for the family?

A No.

Q Because you talked about going back to get growth rates, consumption, assessments of home assistance or household help, and you went back in time, correct?

A Yes.

Q You do an average?

A That's correct.

Q But when it came to this gentleman's earning capacity, you chose not to do an average of even for the last two years of his employment work, fair?

A I would have -- right, that is what I chose.

Q Thank you. And, again, I think with part of those earnings you said there were W-2 earnings and there was also in 2013 profit sharing from Arcuri and Sons, correct?

A Yes.

Q 2012 he declared a loss for Arcuri and Sons for business loss, didn't he?

A Yes, he did, $14,000.

Q You didn't bother to mention that in your computations of the earnings, fair?

A I can explain, yes.

Q I just said, did you mention it, yes or no?

A Yes.

Q Because that would be relevant when you're making a projection in the future of whether or not somebody would be entitled or may not be entitled to additional income, fair?

A So there is a concept in labor economics called "Sticky Wages", and that is most of the time if you continue to work at the same number of hours at the same level, your earnings go up over time. And so the most relevant piece of information to determine a basis for earnings loss is your last full year of work, which, in this case, was $103,000. His W-2 salary in 2013, I am sorry, 2012, was pretty much the same as it was in 2013, a little bit less. But he did have that loss. One of the things I took into account was 2012 was the year that was continuing to be hit hard from the recession. And so that would explain some decline, and I don't anticipate another recession like that in the next decade. So I only took the last full year. If I had taken the $78,000 that he earned -- so $78,000 was 2012, $103,000 was 2013. That is a pretty big jump. If I had taken the $78,000, I would have projected that he was losing that much every other year. And I didn't believe that was the case. And he wouldn't have caught up to what he demonstrated he is able to earn until like 2018 or 2019. So, in other words, I

would have him at a lower rate than he was earning in the year 2013 all the way until about 2018.

Q I am not an economist. And you just said, I guess, correct me if I am wrong, that you didn't look at the 2012 because it was a bad year economically, is that the short version of what you just said?

A Well, it was a recession.

Q Okay. I didn't see you discount in 2020 or 2021 during the pandemic, did you?

A So --

Q Did you; yes, no?

A No.

Q We had some financial issues in 2020, 2021, true?

A We did.

Q Are you aware of that?

A Yes.

Q People were unable to do all of their jobs and go to people's homes because people were afraid of getting COVID?

A Yes.

Q And this was a person who had to go into people's homes to work, true?

A Yes.

Q So you did not consider that because you were just looking at your analytical assessment of those documents,

fair?

A I adjusted it based upon the smoothed out growth rate. The growth rate was 6 percent. Construction actually recovered very well. And so if I were to do that, I would also have much higher growth rates.

Q When you just gave all those numbers and talked about those numbers, I didn't hear you talk about that factor in taking into considering the pandemic, nor did I hear you say that in 2012 there were some other economic factor for you not to consider it until I raised it with you, is that fair?

A Sure.

Q Would it have been more reliable to go back for two, three, even five years' worth of earnings before you made a projection of what you thought the future earnings would be?

A It would be valuable to have the history so that I can see it's going up every year. I didn't. In this case, I chose the last full year as his demonstrated earnings capacity.

Q And 2012, then, the earnings were only $77,547; correct, give or take?

A Give or take.

MR. BURKE: Is that W-2 or business?

MR. VAN ETTEN: Objection.

THE COURT: Sustained. Please let Mr. Van Etten ask his questions.

MR. BURKE: Thank you.

Q By the way, I have a question for you, in your projections for the future, you were giving numbers for health insurance loss, correct?

A Yes.

Q And that's because Mr. Arcuri was receiving health insurance benefits?

A Correct.

Q And did you discount those benefits on that $103,000 number?

A I did not.

Q So you double counted?

A No. The $103,000 -- so he has his own business. He is drawing a salary from it. He is taking some profit sharing, and then there's expenses, which come into the profit. And the health insurance was paid out of the other -- the business, not his income from the business.

Q In the 2013 tax returns, did she not record the income from the W-2s of Arcuri and sons as being only $72,800 for Mr. Arcuri?

A I don't have it in front of me. I can look in my file.

Q I am sorry.

MR. VAN ETTEN: Could you give her all the documents that counsel had asked. I think they were 81 through 89 and 91, as well as 109, so she has all the ones.

COURT OFFICER: Sharing with the witness Plaintiffs' Exhibits 83, 84, 85, 86, 87, 88, 89, 91 and 109.

Q And 83 is the 2013 returns?

A Yes.

Q It's about eight to ten pages from the back. Actually, it's page 18 on the bottom.

A There is no page numbers on here, right?

Q I thought there was.

A Yeah, there is. Okay.

Q It's got tax exempt interest on the top and then capital gains distribution and it says wages received and taxes withheld?

A Yes.

Q So on the 1040 section of the 2013 tax returns it lists the Arcuri and Sons wages of $72,800, correct?

A And there is another --

Q Is that the first -- I will get to it. Don't worry.

A Yes.

Q And does it also talk about the next one is the

Bay Shore Union Free School District, which would be Mrs. Arcuri's income?

A Correct.

Q And the next one would be the health benefits that he received for $20,717?

A It doesn't say health benefits. It just says taxpayers W-2 income of $20,717.

Q And there were no taxes taken out of that, correct?

A Correct.

Q So you know from the rest of the tax return where it talks about the self-employment, the last page, how much he got in health benefits, it was $20,717, correct?

A I don't see that, so can you point me.

Q Last page.

A Yes, self-employed health insurance, $20,717.

Q And then there was the $5,000 bonus?

A Yes.

Q Right?

A Well --

Q So the earnings that he received were the wages of $72,800 and $5,000 for a bonus, a total of $77,800, correct?

A Yes.

Q And you told this Jury here $103,000, and that's

where you started your projections from, correct?

A That's correct.

Q And then you started to compound interest going up at 3 percent per year from that number, correct?

A That's correct.

Q And you would agree with me that if the base was not 103 and was actually only $77,800, the amount of those earnings projected every year at 3 percent would be substantially less.

A Well, it would be $88,000 because he did have some profit sharing. There was a $9,900 something in profit sharing, so, yes, it would be less. Based on that, I would remove the health insurance loss.

Q That is why I asked you, didn't you double count?

A In this case, yes, I can see I did.

Q So you double counted and you credited him $20,000 in income for a future earning projection, although you gave future earning projections in your third column, true? Fourth column, true?

A Say that again.

Q Well, when you did your projections and you looked at Plaintiffs' 110 for ID, you had an income, a pension loss, a consumption, and a health insurance loss column, correct?

A That's correct.

Q And you awarded past losses for loss of health insurance, fair?

A Yes.

Q And you projected that out both for past and the future, fair?

A Yes.

Q But when you did the income, you used the $20,000 to inflate the amount of earnings because you already were giving the family monies for health benefit losses, true?

A Not deliberately, but yes. But I also removed personal consumption from that. So I would put the personal consumption back and remove the $195,878 in health insurance. That was my mistake. I apologize.

Q So then this is not -- withdraw that.

The numbers you just projected were not accurate because you made an accounting error on the health insurance benefits in what you gave the baseline for future lost earnings, true?

A Yes.

Q And you have done that before, haven't you?

A Done what before?

Q The double counting.

A Not off the top of my head that I can recall. You would have to give me specifics.

Q Did you testify in a case, I don't know, almost a

month ago in Yao in Supreme Court Nassau County, index number 611625 of 2018?

A Yes.

Q That was before Justice Dawn Jiminez?

A That's correct.

Q And, in that case, did you not have an issue of double counting where there were retirement plan contributions discussed?

A I was --

Q Yes or no?

A Repeat the question, please.

Q Sure. In that case, did you not have an issue with a double counting of retirement plan contribution for Mr. Yao?

A So the answer to that is no. I conceded to it, but I was mistaken on the stand.

Q So you conceded under oath that you had done a double counting on a retirement plan?

A Mistakenly, yes.

Q And that was only a month ago?

A Yes.

Q Let me just talk to you real quick about the household services. Mr. Burke asked you a little bit about the activities of Mr. Arcuri as testified by Ms. Arcuri on things he did around the house.

A Yes.

Q And you didn't know that until you came in here?

A Not specifically, no.

Q And something like waxing a floor is not something that somebody does every day?

A Sure. Maybe once a week.

Q I want you to assume also that Ms. Arcuri testified, as did her children, about some of the activities that their father did. And he worked full time and would get up, I think, it was 5:00, 5:30 in the morning with his children and did things like that and went off to work and worked at least 7:00 to 3:00 before he would come home and have dinner around 5:00, discuss the day's events, and at 7:00, 7:30 would go out and start doing estimatings, estimates for other jobs.

A Okay.

Q I want you to assume that that was from the testimony. And he also coached, basically, all of his kids' teams and was out all the time, travel teams, had to take trains to places to go travel. Did you factor in the lifestyle of Mr. Arcuri or relied solely on the statistics for the household services?

A I relied on the federal statistics.

Q Because if a person works lots of hours and does lots of outside activities, the chances are the ability to

do household services is a lot less time available, assuming they want to get at least six hours of sleep, that would be fair, right?

A Transporting the kids and doing coaching is actually included in those household services in the data from the Bureau of Labor Statistics, so that would be considered part of it.

Q Okay.

A Again, I just used the average for all men, not for Mr. Arcuri specifically.

Q And that is a good point because if those types of things are included, the coaching and doing that, the children are now in their 20s. They are not doing that, correct, he is no longer going around, I assume, coaching and would not have been, I apologize?

A No.

Q He would not have been doing that?

A It's the next stage. As I said earlier, the content of what he would be doing would change. The trends are that grandparents are taking care of their grandchildren and so the averages are they are including for caring for children inside and outside of the household.

Q But what you said when you testified to Mr. Burke, specifically, you said, those household services that you

computed would have been if you had to pay for someone to do them, correct?

A That's correct.

Q And did you get any testimony from Ms. Arcuri -- withdraw.

Did you learn of any testimony from Ms. Arcuri that took place at this trial that she had to pay someone to do the things that her husband no longer did?

A Of course not. I am a feminist.

Q I am sorry?

A I am a feminist.

Q You are a feminist?

A These services have value. Whether you are paying someone -- so a woman or these days a parent who chooses to stay home and take care of the kids may not be paid directly, but you value those services at the market value.

Q And what I also never understand, and I am going to allow you free reign on this one because I don't get it.

MR. BURKE: Note my objection --

THE COURT: Please ask a question.

MR. BURKE: -- to the introductory.

MR. VAN ETTEN: I apologize.

Q At the end for age 80 you have those numbers for household services being even higher for an 80-year-old individual, true?

A Because of the cost of replacing the services are higher.

Q Because I -- you have no way of knowing what services an 80-year-old person may need at 80. You don't know whether they are still in their home. You don't know if they are in assisted living. You don't know if they have to live with other family members. You have no way of knowing that, fair?

A What I did know is his father was still working at 79 and is still alive.

Q I said, did you have any way of knowing what the circumstances would be for this family?

A No.

Q And that is why I said I was confused about it. That's all. Same thing. Now, let's go to --

MR. BURKE: Move to strike the preface of his question.

THE COURT: It wasn't a preface. It was afterwards, so it's stricken.

Q Retirement age. I think you said that you normally do it to one age, but in this case you didn't?

A That's correct.

Q And you based this on the Defined Benefit Plan, correct?

A Yes.

Q But you've testified in other cases to age 67 or even earlier, correct, for retirement ages?

A Yes.

Q And retirement age sometimes depend on the type of work that the person is engaged in, is that fair?

A Yes.

Q Frequently you testify, like you did in the Penya case with me, about people and their work life expectancy when they are in construction and hard labor jobs that those people tend to retire earlier, true?

A True.

Q And so sometimes that can be as early as 62?

A That's correct.

Q And here you did not make a consideration that Mr. Arcuri was involved in labor because of the fact that you relied upon the Defined Pension Plan, true?

A True.

Q So you went against the average for the statistics, correct?

A I had reason to, yes.

Q I understand that. But you talked to everybody about all of these statistical averages that you relied on, the United States Bureau of Labor Statistics. Did I get it right?

A Yes.

Q They talk to you about average ages, correct?

A The BLS hasn't put out work life expectancy tables since the 1980s. I actually do the research myself using the Health and Retirement Study, so I am pretty familiar with the averages.

Q Like I say, so that usually when we have people in heavy construction or in construction, they retire earlier, but here you chose a different number?

A Correct.

Q That increased the value of the potential lost earnings exposures, fair?

A Yes.

Q Now, you said you are not an actuary. Do you believe that that allows you to interpret the provisions of the Defined Benefit Pension Plan?

A Yes, particularly since I published a journal article in one of the top journals in Health Economics on retirement and had to calculate Defined Benefit and Defined Contribution Plans.

Q Would you agree though that with this particular plan the normal retirement age per the plan is 62 years of age?

A Yes, I am familiar with it.

Q So the normal retirement age for the very plan was 62, yet you still projected to 71, true?

A Yes.

Q And if, let's just say it was four years less, 71 to 67, one of the years we talked about, would you agree that would result in, minimally, about $500,000 less in future lost earnings?

A Yes.

Q And that is just on a straight line basis?

A Yes.

Q And then if you do the compounding of the 3 percent, that would take it up to about $600,000, give or take?

A Yes.

Q If you did nine years to age 62, that would be more than double those amounts, correct?

A Yes.

Q So was it your purpose in using age 71 as the date of retirement to make the economic loss for the estate as large as possible?

A No. I have no stake in the game.

Q Can you explain then to the Jury how the actuary for Arcuri and Sons' Defined Benefit Plan determined the weighted assumed retirement age to be 71 years of age?

A I am not sure how they came to it. I made the assumption that his father was still working and that he reported he was going to continue to work, and so I used

the 71 based on that history.

Q Am I correct there are only two participants in the plan?

A Yes.

Q And would you agree then that a weighted assumed retirement age figure must be an assumption that the plan's actuary has made not an estimate that is based on an analysis of any actual retirement age data for the particular pension planner?

A That sounds fair.

Q So, therefore, would you agree then the projection to age 71 would not be accurate or a reliable calculation, to a reasonable degree of certainty?

A I think it is reasonable. And, again, I have to do this in my research all the time. So 71 is reasonable in this case for a variety of reasons.

Q You talked about the pension numbers and you put those up and you discussed those, correct?

A Yes.

Q And that's for him working until 71. Again, if we take out to 67 or 62, that reduces accordingly, fair?

A Yes.

THE COURT: Mr. Van Etten, in about a minute or two we are going to break for lunch.

THE COURT: I can't give you that. Do you

want to break now?

MR. VAN ETTEN: Let me go real quick.

THE COURT: You don't have to rush. I can give you after lunch.

MR. VAN ETTEN: What's that?

THE COURT: I can give you after lunch because a minute is a firm break.

MR. VAN ETTEN: Then we will stop now rather than me get in the middle of questioning.

THE COURT: Okay. Ladies and gentlemen, we are going to break now for lunch. Please report by 2:10 to wherever the court officer asks you to report. Hope you enjoy your lunch.

(Jurors responding.)

THE COURT: Thank you. You too.

(Whereupon, the Jury exited the courtroom.)

THE COURT: You are reminded you are still under oath. Please don't discuss your testimony with anyone. Please report outside the courtroom by 2:05.

THE WITNESS: Thank you.

THE COURT: Thank you very much.

(Whereupon, the witness was excused.)

(Whereupon, a luncheon recess was taken.)

* * A F T E R N O O N S E S S I O N * *

(Whereupon, a discussion was held off the

record.)

THE COURT CLERK: Back on the record everybody.

THE COURT: Mr. Stonberg.

MR. STONBERG: Thank you, your Honor. We just briefly discussed off the record, it's my understanding that plaintiffs will rest when the testimony of Debra Dwyer is completed, shortly hopefully, and the defendant Call-Brite has the expert economist here in the courthouse ready to testify and waiting. So to avoid having to take a break and excuse the Jury and all that, I am reserving my right to make a motion to dismiss plaintiffs' claims, hopefully, to be argued at some point tomorrow.

THE COURT: Sure.

MR. VAN ETTEN: I am also reserving my rights for the same reasons.

MR. BURKE: That is agreeable to me.

THE COURT: Okay. So after this witness is done and Mr. Burke says I rest, you want me to ask you for your first witness?

MR. VAN ETTEN: Yes.

THE COURT: Okay.

MR. STONBERG: We don't have to take a break.

THE COURT: That is fine.

MR. VAN ETTEN: I may only be five minutes tops right now. I was close.

THE COURT: Whatever you guys want. The witness can retake the stand, and we will get the Jury.

(Whereupon, the witness resumed the stand.)

THE COURT CLERK: You are reminded you are still under oath.

THE COURT: As I said before we went on the record, you guys will give me your case law tomorrow morning, right?

MR. BURKE: The case law on the issue of the Table?

THE COURT: Yes.

MR. VAN ETTEN: Yes.

MR. BURKE: Yes.

COURT OFFICER: Jury entering.

(Whereupon, the Jury entered the courtroom.)

THE COURT: Everyone can be seated. Thank you. I hope you all had a good lunch, and we are going to continue. Mr. Van Etten.

MR. VAN ETTEN: Okay. Thank you, your Honor.

CROSS-EXAMINATION

BY MR. VAN ETTEN:

Q Hello again.

A Hello.

Q We were just starting to talk a little bit about the pension plan and go back to the pension plan. The fact that this plan is a Defined Benefit Plan, that means that the estate will lose the pension that Mr. Arcuri would have received from the date that he retired until his death, correct?

A Correct.

Q And you didn't estimate that in your numbers?

A That's correct.

Q So your number cannot represent the estate's pension loss, correct?

A It's an equivalent value, so it's actuarially a fair plan.

Q Did your calculations address the amounts of the plan that Mr. Arcuri had accrued prior to his death?

A Did -- I am sorry, repeat the question.

Q Did your losses calculate any of the amounts that Mr. Arcuri had accrued prior to his death?

A I did not include that, no. I know what the number is. I didn't include it.

Q And he had accrued benefits at the time of death, so you just now said you know what those numbers are.

A Yes.

Q Those numbers were actually distributed to Mrs. Arcuri?

A Correct.

Q What was that amount?

A It was over $700,000. I don't have the precise amount.

Q And did you discount your projection for that amount?

A I did not.

Q With this plan as a Defined Benefit Plan, isn't it true that once the maximum amount is reached, the contributions will decrease in the future?

A That's not my understanding.

Q Well, the purpose of the pension, if they get to a certain level and you have to, I think you said before, it has to be in to a certain level, they want to make sure the contributions are there so they can distribute it once the person retires?

A Yes.

Q If that amount is reached, then they stop contributing to the plan?

A The amount is constantly changing. If he is working an additional year, the number of years remaining for retirement changes.

Q But that is why I was asking before with this type of plan, doesn't this plan have a maximum?

A Not necessarily.

Q You already answered that one. I told you I was close. Thank you very much.

A You are welcome.

THE COURT: Mr. Stonberg?

MR. STONBERG: No questions, your Honor.

THE COURT: Mr. Burke?

MR. BURKE: Yes.

REDIRECT EXAMINATION

BY MR. BURKE:

Q Dr. Dwyer, can you explain why you did not take into account the distribution of the 700,000-plus distribution from the pension plan to Mrs. Arcuri?

A So that was the value of the contributions up until his death and they got that benefit, so I didn't include it at all. What I started was the amount of contributions that would have occurred that didn't, and so that starts over. I started over at the $45,000 that was contributed in the year 2015.

Q So, in other words, the distribution of the pension funds that Mr. Arcuri had accumulated up to the time of his death, which were paid out to his wife, that wasn't included in your losses that you've put up on the chart, was it?

A That's correct.

Q And you were asked if you were an actuary and you

said that you can interpret a Defined Benefit Plan. Can you explain why you are qualified to do that.

A So actuaries and economists overlap in some of their skills, but because my research has been in the area of retirement, I have had to do research where I am projecting out when somebody is going to retire like I do this modeling. And in order to do that, I look at the pension plans, the Form 5500s, which is reported to the government for these kinds of plans, and I determine the value of the benefits.

Q Now, you used a 3 percent growth factor for pension loss annually, correct?

A Correct.

Q And in that Defined Pension Benefit Plan, does it indicate a rate of return that the contributions made were accruing?

A So, yes, according to the plan description, the Form 5500, the returns are between 5 and 7 percent. And that's typical of what you do with these funds that are -- that you are saving toward the annuity.

Q So why did you only use a growth rate of 3 percent for the pension fund when the fund itself is making a return of 5 to 7 percent?

A To be a conservative in the event that at some point they decide they do want to contribute less later.

Q Now, I would like to direct your attention to the 2013 tax return.

THE COURT: Plaintiffs'?

MR. VAN ETTEN: 83.

MR. BURKE: Thank you.

MR. VAN ETTEN: You are welcome.

COURT OFFICER: Sharing with the witness Plaintiffs' Evidence Exhibit 83.

THE WITNESS: Thank you.

Q Now, before on cross-examination you were asked about whether the earnings in 2013 should be adjusted because of a $20,000 cost, do you recall those questions?

A Yes.

Q What was that $20,000 cost?

A That was the amount of his salary that he was using to pay for health insurance.

Q Does that fact in any way change the Table of Losses that you've discussed with us?

A No. The Table of Losses are the total that I gave you, and the reason I say within a reasonable degree of economic certainty is because we have uncertainty going into the future. That means it's within a reasonable like 95 percent confidence. So if I take the $20,000, it was $21,000, that he took out of his salary so that he wouldn't have to pay taxes on it and bought his health insurance, I

could have put that in a different column, but he was still getting $20,000 as part of his compensation. So the way I structured this model was to do total compensation. That includes the profit sharing, his salary, and any salary that he used toward health insurance. So while it may look like I double counted because I had a $200,000 loss associated with health insurance, which was then the out-of-pocket expenses, what I could have done was taken the $20,000 out of the total compensation, put it into a health insurance column, used a 4 percent growth rate, and not have it in the total compensation where I am deducting personal consumption. My point is it balances out. I actually did the math over lunch and it's a difference of about less than $10,000.

Q Now, Mr. Van Etten asked you about a case that you recently testified in before Justice Jiminez and he asked you about whether you had double counted retirement plan contributions. Do you recall that?

A Yes.

Q Could you explain to the Jury what occurred.

A It was a similar situation. I was on the stand for three or four hours at that point, and I was asked to look at the tax returns by the defense attorney and off the top of my head at that point I made a mistake and conceded, yeah, I must have double counted, but I was on the spot.

When I am at home and I am doing the analysis, I am in the zone and I am being careful. When I went home that night, I was like, wait a second, it was still within reason. It was kind of a similar situation with buckets of where I put it.

Q Now, you were asked questions about the tax returns from 2012 forward, what was the rate of increase in the combined earnings of Mr. Arcuri between 2012 and 2013?

A It was over 30 percent.

Q And what was the rate of increase in Mr. Arcuri's combined earnings from W-2 income in business income in 2013?

A Was $103,000 and change.

Q What is the rate of increase when compared to the earnings that he made in the first six months of 2014 before his death?

A Yeah, that is a good question. So if you pro rate -- he was on track to earn more than, I don't want to say more than 103. He was on track to earn the same thing in 2014 if you pro rate what I looked at on his 2013 tax returns.

Q Do you take that into account when making these long-term projections and comparing annual increases over a 20-year period averaged out?

A Yes.

Q Now, you were asked questions about whether you considered the impact of the pandemic. Why didn't you consider the impact of the pandemic?

A So by taking the 20-year average on the growth rate, that includes the business cycles, the recessions, and the periods of highs, so that growth rate might have been lower during the pandemic but then significantly higher the years after. So that is how I account for it. I do know that the construction industry bounced back pretty strong after that. When things like Hurricane Sandy happened, again, things like that there are going to be the structural economic changes that are ups and downs. I believe it's accounted for in here.

Q And during the course of the pandemic and in the aftermath, how high have we seen the inflation rate go?

A 8.4 percent.

Q And that has come back down again?

A Yes.

Q And is that why when you make your projections on growth rates, 3 percent is well below 9 percent, you do it over an average of the past 20 years?

A Correct.

MR. BURKE: I have nothing else. Thank you.

MR. VAN ETTEN: Just a couple of follow-ups, your Honor.

THE COURT: Sure. Just give me a minute.

MR. VAN ETTEN: Sure.

THE COURT: Okay.

MR. VAN ETTEN: Thank you.

RECROSS EXAMINATION

BY MR. VAN ETTEN:

MR. VAN ETTEN: Could you give her 109, please.

COURT OFFICER: Sharing with the witness Plaintiffs' Exhibit Evidence 109.

Q I will ask you and let you look at it if you don't mind. You just told Mr. Burke that the difference between 2012 and 2013 was 30 percent increase?

A Yes.

Q And if you take the medical benefits received in 2012 and the other things, it was $91,592?

A That's correct.

Q And $103,000, the difference between 91 and 103 is 30 percent?

A No, you were using -- if you want to compare the 103, that is the W-2, plus the profit sharing. So the W-2, plus the profit sharing in 2012, was $91,592, minus $14,000 and change, which gave you $78,000. So I am saying the 30 percent increase is from the $78,000 to the $103,000. On the W-2, it's nowhere near that. It goes from $91,592

to about 93-and-change, which represents close to a 3 percent increase.

Q Social Security wages that were received by Mr. Arcuri in 2012 were $74,600, correct?

A Correct.

Q And in 2013 it was $72,000, correct, $72,800?

A Yes.

Q That is a 30 percent difference?

A No.

Q Let's go now to where you just talked about switching columns and you had the wrong columns between health insurance and lost earnings.

MR. BURKE: Objection.

THE COURT: Sustained. Please rephrase.

MR. VAN ETTEN: I am sorry. Do you have ID 109? 110. That is what I am looking for.

Q When you just spoke and said over lunch you checked the numbers, correct?

A Yes.

Q And you said, okay, yes, I counted the medical benefits in the income?

A Yes.

Q And I could have put it over in the health insurance loss, fair?

A Yes.

Q Column A to Column B?

A Yeah.

Q Or actually Column 1 to Column 4, to be fair?

A Yeah.

Q My point is that that was $20,000 in 2013, correct?

A Correct.

Q Let's just say it would have been the same in 2015 or roughly, 20, 22, whatever, something like that?

A Health insurance premiums go up, so it would be higher.

Q Four percent?

A Yes.

Q 22 would be about 4 percent, am I correct, somewhere around there?

A It would be about $23,000.

Q $23,000. But you also got the actual costs from Ms. Arcuri as to what the health insurance losses were in 2015?

A Apples and oranges.

Q But that was only $8,000 that they paid for health insurance, true?

A Because that is what they could afford, yes.

Q But they had one less person in the family, so health insurance may well have cost less, correct?

A No. I am an expert in that area. It is not that much less.

Q I am just saying this is the actual numbers. And you had the other actual numbers, and that is what I do not understand when you say if you switch it to that column, and I know there is 4 percent for health versus 3 percent for earnings, fair?

A Yes.

Q But a $20,000 increase compounded by 10 years versus $8,000 at a $12,000 difference or $15,000 difference is a substantial difference, true, not just $10,000?

A No, it would be $10,000, and I can explain.

Q Okay. No, that is fine. Thank you.

MR. VAN ETTEN: There you go.

MR. BURKE: Thank you.

THE COURT: Mr. Stonberg?

MR. STONBERG: Nothing, your Honor.

THE COURT: Mr. Burke?

REDIRECT EXAMINATION

BY MR. BURKE:

Q Would you please explain what you wanted to moments ago.

A So the exhibit I just looked at was the W-2, which is how much you were paid in salary, and there's boxes on the W-2. The first one is the $91,000 that we're talking

about, and then the third one is what's taxable. So he earned $91,000 and he paid $20,000 in health insurance. His compensation, he still is getting that $20,000. So suppose that he stayed alive and somehow the health insurance bill to cover the rest of the family was only $9,000, then he still has part of his compensation of $11,000 that he didn't spend that he keeps. So you can't just say I'm double counting and removed the $20,000. What I am saying is fair is you can remove the $195,000, but I still think that is underestimating it, and I still think what I did was fair. Because the value of that health insurance plan might have been higher quality. The Oscar plan that she is on now is not the best quality.

Q And is that an insurance policy that one can only qualify for if they are very low income?

A Yes.

MR. BURKE: I have nothing else.

THE COURT: Mr. Van Etten?

MR. VAN ETTEN: Nothing, your Honor.

MR. STONBERG: No questions.

THE COURT: You can step down. Thank you for your time.

(Whereupon, the witness was excused.)

THE COURT: Mr. Burke.

MR. BURKE: At this time, your Honor, the

plaintiff rests.

THE COURT: Okay. Thank you. Mr. Van Etten.

MR. VAN ETTEN: Yes, your Honor, I will be presenting my first witness. I just have to change materials, not more than five minutes just to get the witness and change my mess, if I could. Can I go get him?

THE COURT: Should I let the Jury go?

MR. VAN ETTEN: I was going to say five minutes.

THE COURT: We are going to take a brief break.

MR. VAN ETTEN: Thank you.

(Whereupon, the Jury exited the courtroom.)

(Whereupon, Defendant's Call-Brite Exhibit D was so marked for identification.)

(Whereupon, a recess was taken.)

COURT OFFICER: Jury entering.

(Whereupon, the Jury entered the courtroom.)

THE COURT: Everyone can be seated. Thank you. Mr. Van Etten, the name of your first witness.

MR. VAN ETTEN: Yes, your Honor. Leonard Freifelder.

L E O N A R D F R E I F E L D E R,

after having been first duly sworn by the Clerk

of the Court, was examined and testified as follows:

THE COURT CLERK: Please state your name and address.

THE WITNESS: Leonard Freifelder, 300 East 56th Street, Apartment 4D, New York, New York 10022.

DIRECT EXAMINATION

BY MR. VAN ETTEN:

Q Before we start, could you just -- the materials that you have there right now, could you turn them over first. Thank you. Good afternoon.

A Good afternoon.

Q You currently employed, sir?

A I am.

Q What type of work do you do?

A I do forensic economic analyses for plaintiffs and defendants in various types of litigation.

Q And can you tell the Jury what forensic economics is.

A Forensic economics is economic analysis that follows the rules of the court rather than as it were the rules of the classroom or the rules necessarily that economists follow in doing certain types of calculation in the real world. The court system has certain specific rules that the economists has to follow in doing his or her

calculations that don't always comport with the way economic analysis is done in other situations by economists.

Q And so would that be in litigated lawsuits such as the one as we have here?

A Yes.

Q And can you tell the Jury a little bit about your educational background.

A I have an undergraduate degree from the Wharton School of Business at the University of Pennsylvania where I majored in Actuarial Science, and I have a Master's and a Ph.D Degree also from the University of Pennsylvania in a field called Operations Research.

Q And after you got your education, did you have experience in the field of Economics?

A Yes. Well, first -- the first part of my career, I spent as a University Professor, and I taught at Temple University, the University of Connecticut, and at Baruch College, which is part of the city university system. Originally, I was teaching courses in Operations Research and a related field called Operations Management. And because of my research interest when I was in academic, I moved to teaching courses in Risk and Insurance, and so when I was at the University of Connecticut, I was a member of the Department of Finance. And at Baruch College, I was

a member of the Department of Economics and Finance.

After my academic career was over, I went to work for the New Jersey Department of Insurance where I did various types of economic and statistical analyses having to do with the substandard automobile market, which usually is called the Assigned Risk Plan. I worked for the Department of Insurance for three or four years. Then I went to work for a company called Warner Insurance Services, which, at that time, was a third-party administrator of automobile policies, primarily in New Jersey, but also had a small book of business that they handled in New York.

Q What did you do after that?

A After that, I went to work for a company called the Center for Forensic Economic Studies. At that time, the forensic -- the Center for Forensic Economic Studies was in economics and statistical analysis consulting firm that handled matters in litigation. So the economists did the types of calculations that I do or I have done here and the statistics did various types of statistical work.

I left the Center for Forensic Economic Studies in 1997, and I started my own firm Freifelder and Associates Consulting. And for the past 27 years I have done economic analyses, some statistical analyses, occasionally an actuarial science evaluation, but that was very early in

that period for plaintiffs and defendants in matters that are in litigation.

Q Okay. I will ask you that right now. When you talk about plaintiffs and defendants and litigation, do you testify ten for both sides?

A I do.

Q Do you have a frequency one side or the other?

A My testimony is about 75 or 80 percent for the plaintiff and 25 percent -- 20, 25 percent for the defense, but I'm retained almost equally by plaintiffs or defendants or I have been over my career.

Q And would this be the first time that you and I have been in court together where I brought you in?

A Yes, it would be the first time we have been in court together when you brought me in.

Q We have been in court together when we were adverse parties?

A Correct.

Q Are you being compensated?

A My fee for testifying is $4,000.

Q Prior, obviously, than today, were you retained by my firm in order to provide an opinion on economic issues related to this litigation?

A Yes.

Q Did you review various materials and documents?

A Yes.

Q Did you charge me for that?

A I did.

Q Do you recall what that was?

A The total bill, including the testimony fee, will be about $10,000, some of which has been paid.

Q We will get there.

A Some hasn't been billed.

Q You talked before about some of the background, what are actuary studies?

A Actuaries are the individuals who do economic -- all of the economic calculations that have to be done for an insurance company. So insurance companies, obviously, sell policies for which they charge a premium, and those premiums are based on estimates of the claims that the insurance company will have to pay on the policies, the promises that they have made. And so what an actuary does is he or she does various types of forecasting analyses to determine or try to estimate in advance what the cost of the policies the company is selling will be, and then based on the estimate of the cost a premium is determined that will allow the company to pay the claims of the people who have claims and to pay their marketing or investigation expenses and to make a profit. One of the unique characteristics of the insurance business is that in the

insurance business you have to determine what it's going to cost you to produce your product before you actually sell the product. In other words, Elon Musk and Tesla pretty much know all the steps to producing the cars and what they are paying their workers, et cetera. So they can determine with good specificity what it's going to cost them to produce a particular vehicle, and then they can charge a price that would allow them to recoup that cost and their marketing expenses and make a profit. In the insurance industry, I, as an actuary, have to decide today what the price of the product will be and a year or two or three, and in some cases ten years from now, I actually find out what it cost me. And my premium may not have been enough or it may have been too much, and then I have to deal with that problem in the future.

Q Do actuary studies apply to things like pension plans?

A Oh, yes, absolutely. That's one.

Q Can you explain how that applies.

A With a pension plan -- so there is, let's say, three types of insurance. There is life insurance, which a person buys and then when that person passes away, a claim is paid. There is property and liability insurance like auto insurance or homeowners or malpractice insurance. And that covers various types of events. And when those events

occur, the insurer who has written the policy pays them.

A pension is sort of the reverse of life insurance. Because what happens is the promise is to pay a stated amount of money at some point in the future and that that payment will continue monthly or annually for the rest of the person's life. And so in order to price that policy, the actuary has to determine how likely a particular individual, let's say it's a 40-year-old, how likely that 40-year-old is going to reach whatever age the pension would begin, let's say it's 65, and then what the amount of the pension will be, and there's usually a formula which tells you how to determine that. And then how likely that 40-year-old who got to retirement at 65 how many more years they are going to live, et cetera, and how many -- how much more has to be paid.

In addition to that, the actuary has to make assumptions about how the assets, the hundred that is being held to be used to pay the pension, will be invested and what rates of return will be achieved on those investments, and that's all part of the calculation that determines what the cost of a pension will be.

Q Do you have experience in that field?

A Well, I have experience in that field in the sense that I took actuarial exams about those types of calculations.

Q Now, when we talked about the retention that you had, did you review various documents and materials in order to provide opinions after we hired you?

A Yes, I did.

Q What type of materials did you review?

A I reviewed the pleadings in this case. I reviewed Mr. and Mrs. Arcuri's 2012, '13 and '14 income tax returns, including supporting schedules and W-2 statements, things like that. I reviewed some documents from the, I think, the Arcuri Brothers pension plan, including the report of the actuary. I reviewed Dr. Dwyer's economic reports, and I supplemented some of that because of the claims in this case with a review of various legal documents. I am sorry, various standard economic documents to help me do the calculations.

Q What documents are you talking about?

A Such as personal consumption rate tables. There is a study called the Dollar Value of a Day, which contains data about how much time men and women spend doing household services, depending on their employment status, their age, whether there are children in the home or not. I reviewed documents about the health insurance that Mrs. Arcuri and her children have paid for since her husband died, and there's something else.

MR. VAN ETTEN: With permission, may he just

check some of the documents that he reviewed?

THE COURT: Sure.

A There is one other thing I may have forgotten.

THE COURT: When you are done, just turn it back over, please.

A No, I think that is everything.

Q You said that you reviewed various calculations by Dr. Dwyer?

A Yes.

Q And have you and Dr. Dwyer been on cases before in the past?

A We have been on opposite sides of many cases in the past.

Q Jumping a little bit ahead, having reviewed that and having conducted your review, do you agree with her opinions or do you disagree with her opinions?

A I disagree with her opinion.

Q And before we get to all of that, did she address actuarial issues in her opinions?

MR. BURKE: Objection.

THE COURT: Please rephrase.

Q Are you aware of whether any of Dr. Dwyer's opinions addressed computations by actuaries, and I will say specifically with the pension plan involving the Arcuris?

MR. BURKE: Objection. Can we approach?

THE COURT: Sure.

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

Q Earlier Dr. Dwyer testified and she addressed various issues involving the pension plan of the Arcuris.

A Okay.

Q And on those prior cases where you've testified she been there, has she addressed actuary issues on those occasions?

A None of the cases that we've testified we both testified, nor have I seen her address actuarial issues in any of the reports that I have reviewed in other matters.

Q And were you recently one of the economists that testified in the Yao case about a month ago?

A Yes.

Q Now, jumping here, based on the documentation materials that you reviewed, were you able to render opinions in regard to the Arcuri Family claims and any losses that they sustained as a result of the passing of Mr. Arcuri?

A Yes.

Q And at any point from when you first retained you until now, have you changed any of those calculations?

A Yes, I have.

Q Did you send me some yesterday?

A Yes.

MR. VAN ETTEN: And, counsel, I sent those to you as well?

MR. BURKE: Yes, you did.

Q And did you bring any documentation in with you today to help you to educate the Jury on your opinions?

A Yes. I have some notes and I have the Tables I have created and the Summary Table that I prepared.

MR. BURKE: I have one table.

MR. VAN ETTEN: With the Court's permission, we marked Exhibit Defendant's D.

MR. BURKE: For ID?

MR. VAN ETTEN: For ID.

THE COURT: Is that marked already?

MR. VAN ETTEN: We marked it before, Judge.

THE COURT: Okay.

Q I am going to quickly show the witness. Is that the Summary Table that you prepared and forwarded yesterday?

A I can't really see the numbers from that distance.

MR. BURKE: Why doesn't he look at his Table?

Q Do you have yours in front of you?

A I do.

Q I want to make sure it's the same one when we show

the Jury.

THE COURT: Which one was marked, that one or the one he has?

MR. VAN ETTEN: This one.

THE COURT: Okay. So that is the one he needs to identify first.

Q Can you identify this first, is that a blowup of yours?

A Well, it's not my blowup, but it's a blowup of my -- of the Summary Table that I developed for this case for my calculations.

Q Okay. Now, when I asked you before whether you agree with Dr. Dwyer's opinions, was your disagreement to a degree of economic certainty?

A Yes.

Q Can you tell us, generally, before we get to your calculations, in what way you disagree with Dr. Dwyer to an economic certainty?

A Well, there's a number of disagreements.

MR. BURKE: Just note my objection. What is he basing this on? No foundation.

THE COURT: I am going to allow it.

Q Go ahead.

A There are a number of disagreements. One disagreement was that Dr. Dwyer calculated the estate's

economic loss assuming he would have worked, so to speak, with certainty to age 71. That is not, in my opinion, a reasonable assumption.

That is not the only pocket. There was a double counting that in her loss of earnings calculation, loss of fringe benefits calculation, involving the payment of health insurance premiums, which are included as part of -- were included as part of Mr. Arcuri's W-2, but they aren't actually earnings. And if you look at the tax return, you'll see that the amounts that were paid for health insurance, while they show up in line 7 of the tax return as part of his earnings, they also show up as a deduction at a lower point in the tax return. So it's not -- and it's clear it's not earnings. There's also -- so that is a second problem.

There's also the third issue is that the estate's economic loss of pension benefits is the economic value of the pension Mr. Arcuri would have received from the date he retired to the end of his life. It is not, as Dr. Dwyer has estimated it, the contributions that the Arcuri firm was making to the pension plan. The Arcuri pension plan is what actuaries call a Defined Benefit Pension Plan. It's the same type of pension plan that you get if you work for a union, if you work for the federal government, if you work for New York State, New York City, New York City State

or City agencies. What you earn in terms of retirement benefits are a certain amount of money payable to you each year from the date you retire for the end of your life based on what your earnings were, how long you worked for the company, et cetera. It is distinct from and different from what most people understand to be a 401(k) retirement plan, which is what actuaries call the Defined Contribution Plan to which the employee, and possibly the employer, make contributions to that account. And when the person retires, they then use that money however they want during their retirement hoping that it will last for the rest of their life. But they are not promised a specific annual benefit. The Arcuri plan promises a specific annual benefit, and it's not proper to use the contributions as an estimate because it wasn't income that was coming to the Arcuri Family from the date of his death, 50, to the date he would have retired in the 60s or possibly as late as 71.

And then, finally, the household services claim is, in my opinion, incorrect because Dr. Dwyer's assumption that he was going to spend 24 or 25 hours a week doing household services is inconsistent with generally accepted data on how many hours of household services men who work full time provide to their families. And her value for those services in 2014 of $20 or $21 an hour is far in excess of the generally accepted value of those services 10

years ago.

Q And what were the values of those services 10 years ago?

A About $15 an hour, $16, something like that.

Q So if she testified earlier today, I may be wrong and I will probably be corrected, it was $21 or $24 an hour, would it have been $21 an hour back in 2014?

A No, it would have been less.

Q That is roughly a 25 percent difference?

A Yes. Maybe 25 or 30, yes.

Q And what did you mean by double counted?

A There is a claim in Dr. Dwyer's report and a claim in my report where the estate is seeking to be compensated for their out-of-pocket costs for the health insurance that Mrs. Arcuri has purchased for herself and her children since her husband died because under the theory that that health insurance would have been paid by the business because it was being paid by the business at the time Mr. Arcuri died. That's fine. I have no problem with that. She's -- Mrs. Arcuri and her children have spent money out of pocket and they are entitled to be reimbursed for the money they spent if and because the business would have paid that money if Mr. Arcuri was still alive.

Because Dr. Dwyer's calculations include that claim as a separate health insurance claim, you can't count

the value of the health insurance again as part of his earnings, even though it appears on his W-2s. It does appear on his W-2s, but as I explained a moment ago, the money that is there on the W-2 is later subtracted so he doesn't pay taxes on it. So it's treated -- in an accounting sense, it's treated properly, but it's not part of his earnings.

Q Let me ask you a question. I want you to assume that earlier that Dr. Dwyer said she came back from lunch and had done more research on the issue and had looked at that double counting issue with the health benefits, and then said she calculated it and moved the monies from the economic loss section over to the health benefit section and computed it out to be a $10,000 difference. Do you have an opinion, with a reasonable degree of economic certainty, whether that would be a proper means of computing the loss by taking from that column for economic loss to health benefit?

A No. You have to take the health benefit out of the financial support claim because you have accounted for it as part of the loss of health insurance claim. You get reimbursed for the health insurance once. If the Arcuri Family has spent -- apparently, to date, they have spent 105, $110,000 to purchase health insurance that they would have gotten from the business. They are entitled to be

reimbursed for that $110,000. But that $110,000 or some number like it is also part of Dr. Dwyer's loss of financial support claim to date. So that claim is overstated. And you can't -- even if she moves it over to the health insurance column, she has still got the health insurance twice. She still counted for it twice, so I don't see there is any difference.

Q Now, you just talked about that and we have your chart up here. Did you, in fact, provide for and have an opinion on that the Arcuri Family would be entitled to a recovery for health insurance benefits past and future?

A I did.

Q And what were the numbers that you computed, to a reasonable degree of economic certainty, that the family would be entitled to?

THE WITNESS: May I look at my sheet here, your Honor?

THE COURT: Sure.

THE WITNESS: I can't see that far.

A So the past -- my estimate of the estate's past loss of health insurance is 106 --

THE COURT: Why don't you wait until Mr. Van Etten -- Mr. Van Etten, do you have a courtesy copy for the Court?

MR. VAN ETTEN: Yes, I do, if I can find it.

THE COURT: Don't worry about it.

MR. VAN ETTEN: I have it. One second. My apologies, Judge.

COURT OFFICER: (Handing).

THE COURT: Do you remember the question, sir?

THE WITNESS: Yes.

A So the past loss of health insurance I estimated as $106,662. That is the actual out-of-pocket payments that Mrs. Arcuri made from the Fall of 2014 through 2023, plus what I have estimated she's paid through October of 2024 by increasing her 2023 premium by 4 percent, the same amount that Dr. Dwyer used as a growth rate.

Q So you used the same projection amount of 4 percent for computing economic -- for computing health insurance?

A Future. All of the past years, the nine years in the past, 2014 to 2023, there's actual data that I received a couple weeks ago as to what Mrs. Arcuri paid for her health insurance and her children's health insurance during that period.

Q So that would be the second number on your summary chart, the 106?

A Correct.

Q And you said the future?

A I will do this backwards for a reason. If you assume Mr. Arcuri was going to work until 71, the future cost of health insurance I have estimated as $83,662 for the 7.67 years to his wife's 65th birthday when she becomes eligible for Medicare. The total loss of health insurance both past and future of $190,321 is roughly comparable to Dr. Dwyer's estimate, which I think was $195,000.

Q And that is on the section which says Future Economic Loss starting from November 1, is that correct?

A Of this year and running to Mrs. Arcuri's 65th birthday, correct.

Q So in your computations, though, you did it for the future to age 71. You have two other areas where you measured it to?

A I do.

Q What were they?

A I measured it to 62 and I measured it to 67.

Q Why 62?

A 62 is the actual normal retirement age under the Arcuri company's pension plan. That means -- I mean, this is a little bit unusual, but if the Arcuri company was a big firm, a big company with lots of employees, 62 would be the age that the company expects their employees to retire. Now, there are actually only two people in the Arcuri pension plan; Mr. Arcuri and his father, Frank. But 62 is

the normal retirement age for the plan. It is also the age at which any eligible worker can retire and receive an early Social Security -- reduced early Social Security retirement benefit. So at age 62 Mr. Arcuri could have received both a pension from his company's pension plan and Social Security retirement benefits. The two amounts replacing probably 70 percent or 75 percent of his earnings. So there would be some economic incentive to retire at 62.

Q And the third one that you did was?

A Age 67.

Q And that's you put Social Security retirement?

A Yes. That is the full benefit retirement age for anyone who was born after 1959. For people who were born prior to 1959, such as myself, the retirement age was younger, the full retirement age was younger. Now it's 67. So 67 was a possibility.

I also, as part of my analysis, look at the work life statistics for a 50-year-old man with Mr. Arcuri's level of education. And the Work Life Tables tell me he would be expected to work into his mid-60s, 64, 65. So typically what I would do is I would bracket that 64, 65. 62 is retiring a little earlier. 67 is retiring later. And so in those cases the future claim for health insurance is smaller than the $83,662, and the total is somewhat less

than the $190,000.

Q I think you said it was $177,937?

A For age 67, the future loss is $71,275 for the 6.64 years until Mr. Arcuri's 67th birthday and the total is $177,937. And if he retired at 62, which would occur in 1.64 more years, the future months of health insurance would be $16,127, for a total loss at age 62 of $122,789.

Q So when you did your computations to try to assess what the losses might be to the family, you didn't just focus on one area, you provided more than one possible loss?

A Well, that's correct. I did 71 even though 71, in my opinion, is an unreasonable retirement date for Mr. Arcuri. And if you understand the pension plan, which I do because I am an actuary, you'll understand that when the actuary said the weighted assumed retirement age for the plan is 71, that is not a databased figure. In other words, the actuary for the Arcuri plan did not analyze any data. He couldn't analyze any data. There's only two people in the plan. So his weighted assumed retirement age is his assumption of who would be, so to speak, the retirement age for somebody in this plan. So it's a fictitious number.

Q Do you have an opinion, with a reasonable degree of economic certainty, whether computing the amount of

pension benefits to age 71 or even economic loss to age 71, were reasonable in this scenario with Mr. Arcuri?

A I do.

Q And what is your opinion?

A My opinion is it is not a reasonable calculation to have done in this case. And it certainly is not reasonable for that to be the only calculation of economic loss that you would do in this case. I acknowledged that it certainly is possible that Mr. Arcuri could have worked into his 70s, but that is not a likely outcome. It's not an outcome based on work life statistics and other indicia that is accurate and reasonable to a reasonable degree of economic certainty.

Q You said you look at work life statistic as one area, and you did look at the Defined Benefit Plan, and you said it was based on an assumption, is that correct?

A Right. The actuaries -- so it is standard for actuarial evaluations of pension plans to include an estimate of the weighted average service retirement date. Now, this requires me to explain a little bit.

Q Go ahead.

A One can leave a pension plan in three ways, basically. You can leave by retiring, taking a service retirement. You can leave by becoming disabled and entitled to a disability retirement. You can also leave a

pension plan by dying. Those are basically the only options. I mean, technically, there is an option that you can leave the plan before you have accrued any benefits. You can withdraw and leave the business.

So actuaries routinely calculate what they call the average date or what is the average date of a service retirement. That, in other words, if you knew, let's say you started with 100 people, and you knew all 100 people were going to work until they retire and they weren't going to die along the way, and they weren't going to become disabled, and they weren't going to quit the business, the weighted average retirement age is the average date that they would take their service retirement benefits. That is what age 71 purports to estimate for the Arcuri business. The only problem with it is it's not a database number, which it can't be because there's only two people in the pension plan.

Q So that age, based on the pension plan, is not something that should be relied on by an economist?

MR. BURKE: Objection.

Q Do you have an opinion as an economist whether that data is something that should be relied on by an economist to project the pension benefits in this matter?

A I do.

Q And what is the opinion?

A Opinion is it is not data that should be relied upon by the economist to determine when Mr. Arcuri would retire and what the economic loss is of his estate to age 71 would be.

Q Did you make calculations on the future loss of past and future lost earnings of the Arcuri family?

A I did.

Q How did you do that?

A So what I did is I took the amount that Mr. Arcuri actually earned in 2012 and 2013, which was about in the $70,000 range, and I added to that amount his share of the business' profits in each of those two years, which is the same analysis that Dr. Dwyer did, but she limited her calculations to 2013. And she also included the health insurance, which was improper. So if you -- when I did that, I found that Mr. Arcuri's actual earnings in 2012 were about $60,500. In other words, he earned about -- he had W-2 earnings of about $74,000 and his share of the business loss in that year was $14,000. So his net earnings were $60,500.

In 2013, he earned a similar amount, plus his share of the business' profits was $9,000 positive. And so his earnings in 2013 were $82,500. I added the two numbers together. I adjusted for inflation, and I got an estimate of his earnings capacity of $72,833 a year.

I then --

Q Go ahead. I was going to ask you what you did next, but you can go into it.

A I then made estimates of how his earnings would be expected to grow over the remainder of his work life, and I have the three work life choices; 62, 67 and 71.

Q So let me stop you there. For every one of those projections, you looked at 62, 67 and 71 because of the uncertainties?

A Well, no, because what you need to understand is the job of a forensic economist is not to tell the Jury, the trier of fact, what the answer is. The job of a forensic economist is to tell the trier of fact what the answer is if you believe or accept certain assumptions. So if I only do the calculation as Dr. Dwyer did to 71, I'm telling the Jury that they have to believe that Mr. Arcuri was going to work until 71. That isn't necessarily true. He could retire at 62, collect a pension from his pension plan, collect early Social Security. He could retire at 67, collect a pension from his pension plan, plus regular full Social Security. He could retire at 71, collect a pension from his pension plan and at age 70 start to collect his Social Security retirement. They are all possibilities. They are all outcomes that could occur. It's up to the trier of fact to determine which of them is

correct. It's not my job or Dr. Dwyer's as the forensic economist to tell you that.

Q Now, let me just ask you, when you are computing, though, on the income loss, you mentioned before personal consumption?

A Yes.

Q What is that and did you use that in your formulation of an opinion?

A So in a wrongful death case one of the claims for the estate is for the pecuniary loss of financial support, the money that the distributees, the heirs of the person who died has lost, the money that the person who has died was spending on their behalf, which they no longer have because that person is dead and no longer earning an income. So when you do this calculation, the forensic economist is required to deduct from the earnings of the decedent that portion of the money he or she would have earned that he or she would have spent on themselves. That is not an economic loss to Mr. Arcuri's family, the money he would have spent on himself. So that is why you take -- that is why it's called personal consumption.

Q And that reduces the projections for the lost earnings into the future and even for the interim years for past?

A Correct.

Q After doing that and looking at the documents, did you reach an opinion, with a reasonable degree of economic certainty, as to what the potential lost earnings were to the Arcuri Family?

A Right.

Q Did you?

A Yes, I did.

Q Can you tell the Jury what your opinions were.

A The past lost earnings for the Arcuri Family is $716,178 based on Mr. Arcuri earning in 2017 $72,833 a year, which would have grown roughly at 2.74 percent over the past 10 years and deducting between 12 and 18 percent for his personal consumption. When his twins were -- prior to the emancipation of his twins, the data in the standard reference source for personal consumption indicates at the level of income of the Arcuri Family, including Mrs. Arcuri's earnings, was about -- his expenses would have been about 12 percent of his earnings. And then it would have been about 18 percent of his earnings until his youngest child was emancipated. And then, subsequently, it would be 23 percent of his earnings for the rest of his career. If you do those calculations for the past loss until October 31, 2024, you get a total of $716,178.

Q Now, you just said 12 percent is the statistics. Did you base the personal consumption -- I want you to

assume that Dr. Dwyer said it was 10.5 percent. Do you agree with the 10.5 percent?

A The 10.5 percent that she used is correct because she estimated Mr. Arcuri's earnings as like $100,000. And so what happens with personal consumption costs most of the things that are personal consumption, which would be food, your own clothing, your own entertainment expenses, let's say, you know, Mr. and Mrs. Arcuri go to the movies, pays for a movie ticket, those costs are fixed. They are the same price. It doesn't matter whether you earn $70,000 a year or $100,000 a year. You pay the same amount to ride the subway. So as your income level goes up, your personal consumption rate goes down. So I am not disagreeing with Dr. Dwyer's personal consumption rate. But her personal consumption rate is lower than mine because her estimate of his earnings capacity was higher than mine.

Q So what were your -- what was your opinion, to a reasonable degree of certainty, as to what the future economic loss for lost income was to the Arcuri Family?

MR. BURKE: At what age?

MR. VAN ETTEN: I believe all three he is going to give you.

A Yes. So if Mr. Arcuri retired at 62, the future loss of financial support from earnings would be $124,999 for the next 1.64 years until his 62nd birthday.

Q And what about to age 67?

A And to age 67 it would be $542,172 for the 6.64 years to his 67th birthday.

Q And what about to age 71?

A And to age 71 it would be $918,946 for the 10.64 years to his 71st birthday.

Q Which did I forget now? I don't remember what I asked you. Health insurance we discussed and economic loss. We have the pension loss and we have a claim as well for the household services, which we've talked background. Did you reach an opinion, to a reasonable degree of certainty, about both of those potential losses?

A Yes.

Q From which one do you prefer talking about first?

A It doesn't matter.

THE COURT: How about after we take a couple of minutes and then we will come back.

MR. VAN ETTEN: Sure.

THE COURT: We will take a brief break and have you back shortly.

(Whereupon, the Jury exited the courtroom.)

THE COURT: Sir, you are reminded you are still under oath. Please don't discuss your testimony with anyone. You can step down.

THE WITNESS: Thank you, your Honor.

(Whereupon, the witness was excused.)

(Whereupon, a recess was taken.)

(Whereupon, the witness resumed the stand.)

THE COURT: We will bring the Jury in.

COURT OFFICER: Jury entering.

(Whereupon, the Jury entered the courtroom.)

THE COURT: Everyone can be seated. You can continue.

MR. VAN ETTEN: Thank you, your Honor.

Q Let's go to the household services real quick.

A Okay.

Q You made a copy -- you made computations on the household service losses?

A Yes.

Q Were they to a reasonable degree of economic certainty?

A Yes, they are.

Q Could you tell the Jury what you based those opinions on?

A There is a study called the Dollar Value of a Day, which most economists make use of, which contains data about the hours worked by men and women based on their age, education, presence, their employment status, not education. Age, employment status, presence of children in the household. And that study includes both estimates of

hours worked by a man or a woman. It contains estimates for wage rates of these types of jobs, whether it's cooking or cleaning, whether it's yard or maintenance work, et cetera. I relied on all that data. There is an adjustment for work that a person performs solely for their own benefit that is like a personal consumption deduction, which I incorporated. And there's also adjustments in that report that you can make for whether someone is a homeowner or a renter under the generally accepted theory that if you are a homeowner, you are doing more household services than a renter because it's your property. So I made all of that. I adjusted the earnings to New York Metropolitan New York City wage rates. I think I told you before -- the Jury before that in 2020 dollars when the study was performed, it's the value of Mr. Arcuri's household services were about $20 an hour, and that as a full-time employed man, he would be expected to do 13 or 14 hours a week of household services. So his services in 2020 dollars were worth, while he was working, about $14,000 a year. When he is retired, he does about 50 percent more, about $20,000 of household services, because basically he has more time to do that type of work because he is retired. So I did those calculations. I incorporated growth rates for the domestic services types of jobs, 2.61 percent a year. And depending upon when Mr. Arcuri

retires, that changes the household services claim. The past loss of household services through October 31 is $147,221. The future loss of household services from November 1 of 2024 for 13.09 years. Now that is a new statistic. What I did is I assumed that Mr. Arcuri would do household services until he was 72.78 years old, which was, at age 50, his health's life expectancy, the number of years he is expected to have no activity limitations. Okay. The idea basically is as a person gets older, their ability to do household work, those types of tasks, diminishes or may even end. So I did not calculate it for the rest of his life because it's an unreasonable expectation that Mr. Arcuri would have been doing household services up to the actual moment before he died. He would have died. So for the -- if he retires at 62, the future household service claim for 13.09 years is $365,662. If he works until 67, that amount goes down, the future claim goes down to $317,326, and that is because he is working for five more years. And when he is working, he does less household services. And then if he worked until -- if he didn't retire until 71, the future claim for that 13 years would be $273,956.

Q And that was all to a reasonable degree of economic certainty?

A That is all to a reasonable degree of economic

certainty, yes.

Q Did you look at the potential pension loss to the Arcuri Family?

A Yes.

Q Do you have an opinion on what that would be?

A Yes.

Q Again, to a reasonable degree of economic certainty?

A Yes, it is. Correct.

Q What would those losses be?

A So the loss to age 62 -- starting at age 62 for the rest of his life, 16.84 years. So at age 50, Mr. Arcuri's life expectancy was 28.4 years to 78.4. So if he retires at 62, he is expected to live another 16 years. The Arcuri business' pension plan pays 70 percent of your average highest three-year earnings, which for Mr. Arcuri would have been a little under 100-grand. So his pension at age 62 would have been almost $69,000 a year. However, personal consumption would consume 30 percent of that. So 70 percent of $70,000 leaves roughly $50,000 for 16.4 years, so you get a loss of financial support from the pension from 62 to 78 of $782,108. If Mr. Arcuri worked until 67, his pension would go up because his final average earnings would have been $112,000. He would still get 70 percent of 112, which is just under $79,000. Let's use

80. It's a simpler number. Again, 30 percent of it goes to personal consumption, so there is a $56,000 loss for 11.4 years, which totals to $621,169. And at page 71, doing a comparable calculation, based on a final average salary of $125,000 and a pension of $87,981 reduced by 30 percent for personal consumption, the pension benefit loss would be $447,797. The future pension loss for that 7.4 year period.

What you need to understand here is this, in lots of pension plans, the longer you work, the higher percentage of your final earnings you receive. And, therefore, your pension benefit can go up enough to almost compensate for the shorter period of time you're getting it. But in this plan it's always 70 percent. So the longer Mr. Arcuri works, the smaller the pension benefit loss is because there is a larger loss of earnings lost. The lost earnings was higher because he worked longer. The pension benefit loss is lower because it's still the same percentage, 70 percent. Okay. And that is why that goes down. It's a little bit similar to conceptually the household services claim. That goes down because the longer he works, the longer it takes to get to the period he is doing more household services.

Q So the pension plan then, as you have that from the pension documents, the most is 70 percent?

A Yes.

Q And --

A It's always 70 percent.

Q And is that one of the reasons you disagree with Dr. Dwyer's opinions on what the pension plan loss is worth?

A Well, yes, because the contribution to the pension plan from the business did not go to Mr. Arcuri. And it did not directly benefit its family. It funded the pension plan. And what the Arcuri Family lost because of his death is the financial support they would have derived from the pension that he received when he retired, not the contributions to the plan along the way. That was not part of Mr. Arcuri's income at the time he died. It was money the business contributed to the pension plan, and he did not get paid it as he got paid earnings. And he did not receive it as income, which he did as one of the two shareholders, one of the two owners of the business, a Subchapter S corporation.

Q Did you come to a total of what your projections might be for the family of Mr. Arcuri?

A Yes.

Q What are your totals?

A At age 62, the total economic loss is $2,258,918. If he works five more years to age 67, the total economic

loss of the estate is $2,522,004. And if he works all the way to 71, the total economic loss of the estate is $2,694,423.

Q That was all to a reasonable degree of economic certainty?

A Yes, it is.

MR. VAN ETTEN: Thank you very much.

THE COURT: Why don't counsel step to the side for a minute.

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

THE COURT: Mr. Stonberg.

MR. STONBERG: No questions, your Honor.

THE COURT: Thank you.

THE COURT: You can inquire, Mr. Burke.

MR. BURKE: Thank you.

CROSS-EXAMINATION

BY MR. BURKE:

Q Good afternoon. My name is Ron Burke and I represent the Arcuri Family, and I have some questions for you.

A Okay.

Q So approximately how many years have you been working in this field?

A 27, 28 years.

Q You enjoy this field?

A Yes.

Q You enjoy the work that you do as a forensic economist?

A Yes.

Q Fair to say that you have enjoyed it throughout your 50s and your 60s, and it's likely that you are 70 years or older, correct?

A It is likely and, in fact, it is true.

Q Could you tell us how old you are?

A 75.

Q And you are still able to work full time?

A Yes.

Q You are still able to enjoy it?

A Yes.

Q There's nothing surprising about a man in your field working over the age of 70, correct?

A I can't really answer that question, but I assume that's true.

Q And I take it you reside in Manhattan. You are on 56th Street and right by Second Avenue?

A That's correct.

Q You have occasion to notice people commuting to work in the subways?

A Not usually because I work at home, so I don't

watch what people are doing.

Q You would agree that there are a lot of people like you and I in the same age bracket who are still working and still enjoying it?

A I don't know how to answer that question. I assume that is true, yes.

Q So you are equally open to the possibility that a man could decide that he wanted to work to the age of 71 and other men they choose to retire 67, 65 or less?

A That is correct. I acknowledged that testimony on my direct testimony.

Q And it's a personal decision?

A Yes, it is.

Q Are you familiar with any of the testimony in this case, including the depositions?

A No, I'm not.

Q I want you to assume that there's been testimony that Mr. Arcuri enjoyed his work. He worked with his father. Even up to the time of his death the father was 79. You know that, right?

A No, I'm not aware of that.

Q I want to tell you that Arcuri and Sons, which is basically run by Mr. Arcuri, who we are here about, and his father, that was it, just the two of them and anyone else who came along as a helper. They were the work force.

A Okay.

Q And that since Mr. Arcuri's father was still working at the age of 79, and Mr. Arcuri had a son who wanted to join the business with his father, would you agree that it's probably likely that Mr. Arcuri would work to the age of 71 since he had no plans on retirement?

A I can't answer that question.

Q Okay. And for some strange reason the pension plan is based upon a work life expectancy of 71. You saw that, right?

A That's not an accurate description of what it says.

Q The calculations are based on an assumption that he will retire from work at the age of 71?

A That is not true.

Q Do you have that pension plan in front of you?

A I have the document with me, yes.

Q Could you pull that out?

THE COURT: Plaintiffs'?

MR. BURKE: Yes, I would like to give him the one in evidence.

THE COURT: I need the record to reflect.

MR. BURKE: Exhibit 88.

COURT OFFICER: Sharing with the witness Plaintiffs' Evidence Exhibit 88.

Q Do you have that in front of you?

A I do.

Q Did you review that document in preparation for testifying here today?

A (No response.)

Q Are you looking at that document for the first time?

A I have seen some parts of the document, but not everything.

Q So you didn't get the full package?

A Apparently not.

Q So when being this experienced, as you indicated with actuarial experience, when you got an incomplete package, did you call up Mr. Van Etten and say, hey, I got less than the full package of the Defined Benefit Plan?

A It was my understanding that I had received the whole document, so I didn't make that request.

Q And are you looking at these pages now for the first time?

A Again, as I said a moment ago, some of these pages I have seen before and looked at before. Is there a particular page you would like me to look at?

Q Yes, I would like you to look at -- I think it's the third to last page. And at the top it's entitled, Exhibit 1X.

A Yes.

Q Summary of Actuarial Assumptions and Methods.

A Yes.

Q Could you go down to the left-hand side of that page where it says, weighted assumed retirement age. Do you see that?

A Yes, I do.

Q What is written next to it?

A Age 71.

Q I would like to refer you to another page. This is Exhibit Roman Numeral VI, Summary of Benefits, and it's probably four or five pages --

A I have it.

Q Okay. Now, do you see that figure with a projected monthly benefit of $6,064?

A Yes.

Q And down on the bottom of the page it says, Frank Arcuri is receiving his required minimum benefit in the form of an annual annuity of $28,356 for a 19-year period certain with no life contingencies increasing 4.99 percent annually. Do you see that?

A I do.

Q I want to ask you some questions about this Table. Now, if we look at Exhibit Defendant's D for ID, do we see anywhere in here the math that you used to subtract for

personal consumption?

A On that particular page, no.

Q Was there any reason why you didn't reveal what you were going to testify was a higher rate or percentage rate for a deduction due to personal consumption?

A The support --

Q Just yes or no, did you indicate it anywhere on the board?

A Excuse me?

Q Did you indicate it anywhere on the Table?

A No, it is not on that Table.

Q You are aware of Debra Dwyer's percentage for personal consumption subtraction, correct?

A Generally speaking, yes.

Q Would you agree that you subtract a lot more for personal consumption than she does?

A Is that a yes or no question?

Q Yes, it is.

A Yes, I do.

Q And looking at these numbers, we don't see a table where you laid out what each of the categories of losses would look like stretched out over the course of time between 2014 and the years at which he would retire, correct?

A Those tables exist and were provided to counsel,

and I believe he provided them to you.

Q Well, the only table I have is Exhibit D. Are you telling us that you gave defense counsel more tables than that?

A Yes.

Q Okay.

A All of the backup calculations provided to defense counsel.

Q With regard to your Table, do you indicate the growth rate factors you're using?

A I'm not sure --

Q Do you indicate the growth rate?

A On that Table?

Q Yes.

A No.

Q And, according to your analysis, the total economic loss, both past and future, you come up with a figure of approximately $2.7 million if Mr. Arcuri would have retired at the age of 71, correct?

A Yes.

Q Would you agree you came up with a figure that was approximately 50 percent of what Debra Dwyer projected?

A That's correct.

Q So you say the total economic losses in all these categories is roughly $2,700,000 and Debra Dwyer said

somewhere between $5.3 million and $5.4 million, correct?

A Correct.

Q When you were projecting the earnings, did you take into account any growth rate percentage?

A Yes.

Q And what percentage did you apply?

A 2.74 percent.

Q Now, Debra Dwyer came here and told this Jury that she was applying a 3 percent growth rate based on looking back a period of 20 years. Did you do something similar?

A I did.

Q And was your projection based on 10 years look-back?

A No.

Q How many years back did you look?

A 15 or 20. 15, I think.

Q And, of course, there was some talk in the courtroom about the impact of the pandemic.

A On what?

Q On wages, on inflation.

A Yes, that's correct, although it's transitory -- that impact has been transitory and Dr. Dwyer has been using a 3 percent growth rate for at least 10 years. So even though there were some transitory effects in 2021 and 2022, it didn't change her -- it hasn't changed her

long-term growth rate.

Q Her growth rate of 3 percent versus yours of roughly 2.7?

A 2.75, yes.

Q Would you agree there was a substantial monetary difference when we're making projections going out 15, 20 years?

A No.

Q You have an interesting point that you made on your direct, which is when you were looking at the category for future income, help me along here, the earnings -- just one moment. Here it is. Okay. The pension benefits, this is based upon what pension benefits would have been received had Mr. Arcuri retired at the age of 62, you said approximately $782,000?

A Yes.

Q And if he worked to the age of 67, right?

A Yes.

Q He makes -- there's less. It goes down $621,000.

A Correct.

Q And if somebody worked to age 71, they are getting even less, correct?

A Correct.

Q What was the life expectancy factors that you took into account for Mr. Arcuri?

A 78. His life expectancy was 78.4, roughly the same as Dr. Dwyer.

Q And what did you use as a -- did you rely on any Work Life Expectancy Tables?

A Well, I consulted them and that is why, as I testified on direct, that it seems to be more reasonable that Mr. Arcuri would have retired in his 60s because his work life expectancy was to approximately age 65.

Q But can we agree in a individual to individual, you know I'm not going to make my decision upon when I retire based upon what a million other men do. I make the decision based on circumstances in my life. That's reasonable, right?

A I'm sure that is what you do. We all do that.

Q Okay.

A But the point is that we don't know what Mr. Arcuri would do and these statistics are a guide.

Q I guess what I was trying to impress upon you before is you didn't have the benefit of sitting in this courtroom and hearing Mrs. Arcuri describe how happy her husband was at a job where he got to work with his father and he could look forward to continue to work with his son, who at the time of his death was 18 years old and showing an interest. So would you agree that someone in that situation it's more likely that they are not going to

retire at 62 given his father's age, the interest of his son, and the fact that Mr. Arcuri enjoyed doing what he was doing?

A I can't answer that question.

Q Okay. If you can't, I'll move on.

Now, you come to a figure of $447,797 on the loss of pension benefits if he were to retire at the age of 71. How did you arrive at that calculation?

A I used the formula in the pension plan, which is 70 percent of his final -- his highest three-year average earnings, which I estimated to be $125,000. I multiplied that by 70 percent, and I got $87,981 as the pension, which is about $7,000 a month. And then I ran that pension with no growth because there is no cost of living in this pension plan.

Q Wait. Are you sure about that because we were just reading from the pension plan which showed that he was getting a percentage increase in an annuity from the pension of approximately 5 percent?

A Yeah, but that's not what that says. What it says is that Frank Arcuri took his pension benefit in the form of a 19 or 20-year annuity with a 5 percent inflation kicker as opposed to being entitled to collect it for the rest of his life. He took it as an annuity certain. That doesn't mean the pension plan has a cost of living

provision, and there is no cost of living provision referenced anywhere in the pension document.

Q But yet you would only apply a 2.75 growth rate factor on the loss of income, correct?

A You are combining two different things.

Q Okay. And in your example before about what you feel is double counting, let me ask you this, if I am earning $100,000 a year and I pay health insurance of $20,000 a year, would you agree with me that my earnings are still $100,000, the $20,000 is a cost?

A No, that's not the way this worked.

Q Okay. So I also want you to assume that if I am earning 100 and I decide to allocate $40,000 for a pension contribution, would you agree with me I'm still earning $100,000, I just chose where to put my money?

A I mean, there is no dispute about that. I am not questioning that Mr. Arcuri had earned -- got paid a salary from his business. He did get paid.

Q And you know, from looking at the tax returns, that there were years in which he received both W-2 income paid to an employee, correct?

A Yes.

Q And then he would, I imagine, get, I don't know, 1099 or some other tax document for any business income from the Arcuri and Sons operations that were a

distribution of profits, correct?

A Is that a yes or no question?

Q I am just asking you yes or no.

A There was a distribution of profits because it's a Subchapter S corporation. Some years -- one year there was a profit and one year there was a loss. In both cases, the profit or loss is part of his income.

Q Can we agree that in 2012 his earnings were -- and feel free to look at a document. This is not a memory quiz. His W-2 earnings were 91,500 and change?

THE COURT: Are we looking at a document that is in evidence?

MR. BURKE: Yes, 2012 is in evidence.

THE COURT: Plaintiffs'?

MR. BURKE: It's like 100-something.

MR. VAN ETTEN: 109.

COURT OFFICER: Sharing with the witness Plaintiffs' Evidence Exhibit 109.

Q And looking at that we see his W-2 earnings of $91,592 in 2012?

A That is the figure that appears in box one of the W-2. His actual earnings were $74,600.

Q I am getting there. You are going ahead of my question. In that same year, he had a, what was it, a $14,000 business loss in the company, is that correct?

A That's correct, but that has nothing to do with the W-2.

Q He had reported earnings of $103,000 in 2013, and that would be a combination of both W-2 income of 93,000 and change?

A It's not part -- that doesn't appear to be part of this exhibit.

Q I am sorry. We are now moving to Exhibit 83, which is the 2013 tax return.

COURT OFFICER: Sharing with the witness Plaintiffs' Evidence Exhibit 85.

Q So just confirm with me --

A I don't think this is the right exhibit.

Q Is that 2013?

A Yeah, but it's the subchapter corporation.

Q Good. Hang on to that. The other one is the individual return for 2013, which would be Exhibit 83.

COURT OFFICER: Sharing with the witness Plaintiffs' Evidence Exhibit 83.

A What is the question?

Q I just wanted to confirm in 2013, in addition to the $93,000 on his W-2, he also received income roughly $9,700 from the business in a K-1 tax form?

A The $9,700 is correct. That was his share of the business' profits.

Q So the total of the W-2 income in 2013 and the $9,700 on the K-1 from the business, that brought him over $103,000, correct?

A That's not correct. That is not correct. Because form -- statement 3 to the tax return --

Q I just asked you yes or no. You are saying that's not correct?

A That's correct, it's not correct. That is not what he actually earned in that year.

Q You wouldn't disagree, would you, that from January 1, 2014 until the time of his death on June 20, 2014, there were earnings of $46,600?

A Well, again, I don't believe that to be correct.

Q You don't believe that either?

A No. I don't have the document in front of me, but I don't believe that to be correct.

MR. BURKE: Could we show him the tax return for 2014.

THE COURT: Plaintiffs'?

MR. VAN ETTEN: 86.

THE COURT: Mr. Burke, what number?

MR. BURKE: The number for 2014, the individual and then the company.

MR. VAN ETTEN: Sorry, the individual is 84. 86 is the company.

MR. BURKE: So Exhibit 84 and 86.

COURT OFFICER: Sharing with the witness Plaintiffs' Evidence Exhibit 84.

A You can ask the question again.

Q So would you agree that the 2014 tax return before you shows a W-2 income from January 1 until his death on January 20, 2014 in the sum of $46,636?

A There are two W-2s that total to that amount, yes.

Q Just give us Richard Arcuri's W-2 earnings.

A That is both of them are W-2s issued to Richard Arcuri. $36,400 for earnings, which was subject to federal, state and FICA, Medicare taxes, and $10,236, which was subject to no taxes, which was the self-employment health insurance -- the health insurance he was paid by the business paid for him and his family.

Q We are looking at W-2 income.

A You would have to talk --

Q Give us the W-2 income as reflected on the tax document for 2014.

A $36,400 of one W-2 and a second W-2 for $10,236.

Q And who were those W-2s issued to?

A To Mr. Arcuri.

Q Okay. They weren't -- you are not claiming that part of that W-2 income is from his wife Susanne, are you?

A No, she got a separate W-2 from the business.

Q So adding up the two W-2s issued to Richard Arcuri for a period of time January of 2014 till when he passed in June of 2014, can we agree that they add up to $46,636?

A Your arithmetic --

Q I am asking you yes or no.

A Your arithmetic is correct.

Q So the answer to my question is yes, correct?

A No. Because one is earnings and one is health insurance.

Q I am asking for a yes or a no without filibustering.

THE COURT: Please ask a question.

Q And can we agree that on the 2014 K-1 Mr. Arcuri reflected additional income of $7,204?

A No.

Q How much does it reflect that he received on the K-1 in 2014?

A Minus $7,204.

Q Can we agree that Richard Arcuri, from the time of 2012 to 2014, showed growth in his annual income?

A I don't know. I would have to look at the figures more closely. It doesn't appear to be. It seems --

Q You don't recognize that he increased his income?

A He made $60,000 one year. He made $80,000 the next year. He made the equivalent of $60,000 the third

year.

Q And you are saying that because you are deducting from his earnings either pension contributions or health insurance premiums?

A That's correct.

Q So what you are doing is instead of coming in here and giving us a straightforward pitch, you want to depress Mr. Arcuri's earnings so that you can claim that this Jury should only compensate the Arcuri Family at a rate of 50 percent; isn't that true, yes or no?

A No, that is not true.

Q And you were talking about household services that you can get somebody to come into your house and cook, clean or shop and they are only going to get $15 an hour, is that right?

A Ten years ago. That is what the data says.

Q How much do they get today?

A Today, 20, 22, something like that.

Q How many people in Manhattan are willing to come into your apartment at that rate?

MR. VAN ETTEN: Objection.

THE COURT: Sustained.

Q You don't agree with Debra Dwyer or actually call her Dr. Dwyer, she relied on federal government's databases, true?

A I don't understand the question.

Q In giving her opinions on aspects of the Table of Losses, she indicated that she relied on the Bureau of Labor Statistics, correct? That is a government.

A I didn't hear her testimony or read it, but I am sure she did, yes.

THE COURT: Counsel, step to the side for a minute.

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

Q So can we agree, Dr. Freifelder, that Mr. Arcuri could have chosen to work just as long as you have indicated that you're happily working to?

A It's a possibility, yes.

MR. BURKE: Thank you.

THE COURT: Mr. Van Etten?

MR. VAN ETTEN: No thanks.

THE COURT: Mr. Stonberg?

MR. STONBERG: No questions.

THE COURT: Thank you for your time, sir. You can step down.

THE WITNESS: Thank you, your Honor.

THE COURT: You are welcome.

(Whereupon, the witness was excused.)

THE COURT: Ladies and gentlemen of the Jury,

that concludes our session for today. Good night. Please don't discuss your testimony amongst yourselves or anyone else. Don't do any independent research. Get home safely. I will see everyone tomorrow morning. Please report to wherever the court officer tells you to at 10 a.m. We will see everyone then.

(Whereupon, the Jury exited the courtroom.)

THE COURT: We are off the record.

(Whereupon, the trial was adjourned to October 18, 2024 at 10:00.)

* * *

I hereby certify the above and foregoing to be a true and accurate record of my stenographic notes.

JENNIFER A. SCHMIDT, CSR

BY MR. BURKE: [1] 1873/9
BY MR. VAN ETTEN: [4] 1847/2 1870/23 1879/6 1885/8
COURT OFFICER: [22] 1802/5 1815/18 1829/7 1829/21 1834/19 1840/21 1841/6 1841/8 1841/15 1842/6 1855/5 1870/16 1875/7 1879/9 1884/18 1902/4 1914/5 1923/24 1933/17 1934/10 1934/18 1936/2
MR. BURKE: [58] 1802/13 1803/10 1803/25 1818/3 1818/8 1819/1 1819/12 1821/3 1821/12 1821/21 1822/6 1822/12 1822/14 1823/14 1824/2 1824/6 1824/10 1826/24 1827/13 1827/17 1828/12 1828/16 1828/21 1829/4 1829/14 1830/8 1830/11 1841/7 1841/13 1845/16 1846/22 1854/3 1862/19 1862/21 1863/16 1870/15 1873/7 1875/5 1878/23 1880/13 1882/15 1883/17 1893/20 1894/1 1895/5 1895/10 1895/13 1895/22 1896/20 1907/20 1920/16 1923/20 1923/23 1933/13 1935/17 1935/22 1936/1 1939/15
MR. LOMINO: [1] 1803/2
MR. STONBERG: [10] 1803/6 1827/8 1829/20 1869/5 1869/24 1873/5 1882/17 1883/20 1920/13 1939/19
MR. VAN ETTEN: [55] 1803/4 1817/25 1818/9 1819/4 1820/2 1820/5 1820/15 1821/6 1822/4 1822/13 1825/14 1826/3 1826/9 1827/2 1827/23 1829/18 1844/4 1846/25 1853/25 1862/22 1868/2 1868/5 1868/8 1869/16 1869/22 1870/1 1870/14 1870/21 1875/4 1875/6 1878/24 1879/2 1879/4 1880/15 1882/14 1883/19 1884/3 1884/9 1884/13 1884/22 1892/25 1895/14 1895/16 1896/4 1901/25 1902/2 1912/21 1913/18 1914/9 1920/7 1933/16 1935/20 1935/24 1938/21 1939/17
MS. MASIN: [1] 1802/25
THE COURT CLERK: [5] 1802/14 1803/16 1803/22 1869/2 1885/3
THE COURT: [110] 1802/7 1802/10 1803/8 1803/11 1803/24 1809/17 1818/1 1818/5 1819/11 1819/16 1819/19 1820/4 1821/5 1821/20 1821/23 1822/10 1823/3 1823/10 1823/23 1824/4 1824/7 1826/1 1826/5 1827/6 1827/10 1827/14 1827/18 1828/6 1828/15 1828/17 1828/22 1828/25 1829/5 1829/9 1829/16 1834/17 1844/6 1845/18 1846/24 1854/1 1862/20 1863/18 1867/23 1867/25 1868/3 1868/6 1868/10 1868/15 1868/17 1868/21 1869/4 1869/15 1869/19 1869/23 1869/25 1870/3 1870/13 1870/18 1873/4 1873/6 1875/3 1879/1 1879/3 1880/14 1882/16 1882/18 1883/18 1883/21 1883/24 1884/2 1884/8 1884/11 1884/20 1893/2 1893/4 1893/21 1894/2 1895/15 1895/17 1896/2 1896/5 1896/22 1901/18 1901/22 1902/1 1902/5 1913/16 1913/19 1913/22 1914/4 1914/7 1920/8 1920/12 1920/14 1920/15 1923/19 1923/22 1933/11 1933/14 1935/19 1935/21 1937/12 1938/22 1939/7 1939/16 1939/18 1939/20 1939/23 1939/25 1940/8
THE WITNESS: [13] 1803/18 1803/23 1809/19 1819/22 1842/7 1868/20 1875/9 1885/5 1901/16 1901/19 1902/7 1913/25 1939/22

$

$1 [1] 1846/9
$1 million [1] 1846/9
$1,019,180 [1] 1844/13
$1,247,366 [1] 1835/20
$1,291,141 [1] 1843/19
$1,464,051 [2] 1838/11 1845/24
$1,834,223 [1] 1845/22
$1.2 [1] 1835/19
$1.2 million [1] 1835/19
$1.3 [1] 1834/7
$1.3 million [1] 1834/7
$1.8 [1] 1834/7
$1.8 million [1] 1834/7
$10,000 [5] 1876/14 1882/11 1882/12 1889/6 1900/14
$10,236 [2] 1936/12 1936/20
$10,300 [1] 1840/1
$100,000 [6] 1849/11 1912/4 1912/11 1932/8 1932/10 1932/15
$103,000 [12] 1831/23 1832/9 1851/12 1851/20 1854/12 1854/15 1856/25 1877/13 1879/18 1879/24 1934/3 1935/3
$103,500 [1] 1831/15
$106,000 [1] 1832/10
$106,662 [1] 1902/9
$109,000 [1] 1836/14
$109,522 [3] 1832/7 1832/11 1836/10
$11,000 [1] 1883/7
$110,000 [3] 1900/24 1901/1 1901/1
$112,000 [1] 1917/24
$12,000 [2] 1842/18 1882/10
$122,789 [1] 1905/7
$124,999 [1] 1912/24
$125,000 [2] 1918/5 1931/11
$14,000 [5] 1850/21 1879/22 1908/19 1915/19 1933/25
$142,778 [1] 1837/10
$147,221 [1] 1916/3
$15 [2] 1899/4 1938/14
$15,000 [1] 1882/10
$150,000 [1] 1837/5
$16 [1] 1899/4
$16,127 [1] 1905/7
$177,937 [2] 1905/2 1905/5
$190,000 [1] 1905/1
$190,321 [1] 1903/6
$195,000 [2] 1883/9 1903/7
$195,878 [2] 1840/8 1858/12
$2,258,918 [1] 1919/24
$2,374,250 [1] 1838/12
$2,522,004 [1] 1920/1
$2,694,423 [1] 1920/3
$2,700,000 [1] 1927/25
$2,800 [1] 1810/16
$2.4 [1] 1846/8
$2.4 million [1] 1846/8
$2.7 [1] 1927/18
$2.7 million [1] 1927/18
$20 [3] 1817/12 1898/24 1915/16
$20,000 [15] 1857/16 1858/7 1875/12 1875/14 1875/23 1876/2 1876/9 1881/5 1882/9 1883/2 1883/3 1883/8 1915/21 1932/9 1932/10
$20,717 [4] 1856/5 1856/7 1856/13 1856/16
$200,000 [1] 1876/6
$21 [3] 1898/24 1899/6 1899/7
$21,000 [1] 1875/24
$23,000 [2] 1881/16 1881/17
$24 [1] 1899/6
$24,996 [1] 1842/13
$27,867 [1] 1846/15
$273,956 [1] 1916/22
$28 [1] 1817/11
$28,356 [1] 1925/19
$3,088,575 [1] 1833/24
$3,491,097 [1] 1846/12
$3,838,300 [1] 1837/25
$317,326 [1] 1916/18
$36,400 [2] 1936/11 1936/20
$365,662 [1] 1916/16
$4,000 [1] 1888/20
$40,000 [1] 1932/13
$447,797 [2] 1918/7 1931/6
$45,000 [7] 1834/24 1835/5 1835/17 1836/10 1836/13 1836/14 1873/17
$46,600 [1] 1935/12
$46,636 [2] 1936/7 1937/3
$5,000 [3] 1810/17 1856/17 1856/22
$5,353,187 [1] 1846/17
$5.3 [1] 1928/1
$5.3 million [1] 1928/1
$5.4 [1] 1928/1
$5.4 million [1] 1928/1
$50,000 [1] 1917/20
$500,000 [1] 1866/4
$52,707 [2] 1831/24 1832/5
$542,172 [1] 1913/2
$56,000 [1] 1918/2
$6,064 [1] 1925/15
$60,000 [2] 1937/24 1937/25
$60,500 [2] 1908/17 1908/20
$600,000 [1] 1866/10
$621,000 [1] 1929/19
$621,169 [1] 1918/3
$69,000 [1] 1917/18
$7,000 [1] 1931/13
$7,204 [2] 1937/14 1937/18
$70,000 [3] 1908/11 1912/10 1917/20
$700,000 [1] 1872/3
$71,275 [1] 1905/3
$716,178 [2] 1911/10 1911/23
$72,000 [1] 1880/6
$72,800 [4] 1854/22 1855/20 1856/22 1880/6
$72,833 [2] 1908/25 1911/10
$74,000 [1] 1908/18
$74,600 [2] 1880/4 1933/22
$75,000 [1] 1849/8
$77,547 [1] 1853/21
$77,800 [2] 1856/22 1857/7
$78,000 [5] 1851/19 1851/20 1851/21 1879/23 1879/24
$782,000 [1] 1929/15
$782,108 [1] 1917/22
$79,000 [1] 1917/25
$8,000 [2] 1881/21 1882/10
$8,874 [1] 1839/20
$80,000 [1] 1937/24
$82,500 [1] 1908/23
$83,662 [2] 1903/3 1904/25
$87,981 [2] 1918/5 1931/12
$88,000 [1] 1857/10
$9,000 [4] 1831/14 1840/7 1883/6 1908/22
$9,229 [1] 1839/25
$9,700 [3] 1934/23 1934/24 1935/2
$9,900 [1] 1857/11
$91,000 [2] 1882/25 1883/2
$91,592 [4] 1879/16 1879/22 1879/25 1933/20
$918,946 [1] 1913/5
$93,000 [2] 1831/13 1934/22
$98,000 [2] 1840/10 1846/8

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'13 [1] 1892/7
'13 and [1] 1892/7
'14 [1] 1892/7
'14 income [1] 1892/7

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----------X [2] 1800/2 1800/11

-against [1] 1800/7

0

004464/16 [2] 1800/5 1802/14

1

1.2 percent [1] 1812/21
1.64 [2] 1905/6 1912/25
10 [7] 1813/21 1882/9 1898/25 1899/2 1911/12 1928/12 1928/23
10 a.m [1] 1940/6
10-year [1] 1833/1
10.5 percent [4] 1837/19 1912/1 1912/2 1912/3
10.64 [1] 1913/5
10.7 percent [1] 1837/19
100 [3] 1907/8 1907/8 1932/13
100-grand [1] 1917/17
100-something [1] 1933/15
10007 [1] 1800/17
10018 [1] 1801/7
10022 [1] 1885/6
103 [4] 1857/7 1877/19 1879/18 1879/21
103,000 [1] 1833/23
1040 [1] 1855/19
105 [1] 1900/24
106 [2] 1901/21 1902/23
109 [11] 1802/1 1841/6 1841/7 1841/9 1855/3 1855/7 1879/7 1879/10 1880/16 1933/16 1933/18
1099 [1] 1932/24
10:00 [1] 1940/10
11 [1] 1813/12
11.4 [1] 1918/3
110 [10] 1802/3 1815/17 1815/19 1815/21 1819/2 1829/15 1829/16 1829/22 1857/22 1880/16
112 [1] 1917/25
11720 [1] 1803/21
11747 [1] 1801/4
11795 [1] 1800/20
12 [1] 1911/12
12 percent [2] 1911/18 1911/24
12.5 percent [1] 1837/21
1250 [1] 1800/20
13 [2] 1915/17 1916/21
13.09 [2] 1916/4 1916/16
14 [1] 1915/17
15 [4] 1815/3 1928/16 1928/16 1929/6
150 [3] 1808/21 1818/22 1848/25
16 [5] 1800/5 1802/14 1844/24 1845/6 1917/14
16,2024 [1] 1846/11
16.4 [1] 1917/20
16.84 [1] 1917/12
17 [2] 1800/11 1803/19
18 [3] 1855/11 1930/23 1940/10
18 percent [2] 1911/12 1911/19
19 [1] 1931/22
19-year [1] 1925/19
1959 [2] 1904/14 1904/15
1980s [1] 1865/3
1996 [1] 1805/16
1997 [1] 1887/22
1X [1] 1924/25

2

2.3 [1] 1832/24
2.61 percent [1] 1915/25
2.7 [1] 1929/3
2.74 percent [2] 1911/11 1928/7
2.75 [2] 1929/4 1932/3
2.8 percent [1] 1832/24
20 [24] 1800/1 1808/2 1813/1 1813/21 1813/23 1813/23 1813/25 1814/2 1814/12 1815/4 1830/24 1834/4 1834/5 1838/1 1843/9 1878/21 1881/9 1888/9 1928/10 1928/16 1929/6 1935/11 1936/7 1938/18
20-year [4] 1814/23 1877/24 1878/4 1931/22
2012 [26] 1809/15 1809/20 1809/20 1841/3 1849/21 1849/23 1850/19 1851/13 1851/15 1851/20 1852/5 1853/9 1853/21 1877/7 1877/8 1879/13 1879/16 1879/22 1880/4 1892/7 1908/10 1908/16 1933/8 1933/13 1933/20 1937/20
2013 [31] 1831/11 1832/9 1849/8 1849/10 1849/18 1850/17 1851/12 1851/13 1851/20 1852/2 1854/20 1855/8 1855/19 1875/2 1875/11 1877/8 1877/12 1877/20 1879/13 1880/6 1881/5 1908/10 1908/14 1908/21 1908/23 1934/3 1934/9 1934/14 1934/17 1934/21 1935/1
2014 [38] 1809/20 1809/21 1812/20 1817/11 1830/17 1830/17 1831/9 1831/23 1832/3 1832/6 1832/10 1832/14 1832/23 1839/12 1841/3 1841/18 1842/3 1842/20 1843/5 1877/15 1877/20 1898/24 1899/7 1902/10 1902/18 1926/23 1935/11 1935/12 1935/18 1935/22 1936/5 1936/7 1936/19 1937/2 1937/3 1937/13 1937/17 1937/20
2015 [11] 1832/7 1832/10 1832/13 1836/9 1836/24 1837/10 1841/20 1842/13 1873/18 1881/8 1881/19
2017 [5] 1810/11 1810/25 1811/15 1832/23 1911/10
2018 [5] 1832/22 1849/7 1851/25 1852/2 1859/2
2019 [1] 1851/25
2020 [5] 1830/22 1852/8 1852/13 1915/14 1915/18
2021 [3] 1852/8 1852/13 1928/24
2022 [3] 1810/25 1811/16 1928/25
2023 [10] 1810/8 1814/22 1824/22 1839/12 1839/19 1842/22 1843/5 1902/10 1902/12 1902/18
2024 [13] 1800/11 1814/23 1817/11 1832/22 1843/1 1844/10 1844/13 1844/24 1845/6 1902/12 1911/23 1916/4 1940/10
2025 [1] 1833/1
2035 [2] 1832/14 1833/1
2044 [4] 1830/17 1830/18 1832/14 1838/12
20s [1] 1861/13
21 [4] 1837/14 1837/21 1842/19 1849/7
22 [3] 1881/9 1881/14 1938/18
225 [1] 1801/3
23 [3] 1817/5 1817/6 1842/11
23 percent [1] 1911/21
2302 [1] 1801/6
24 [1] 1898/20
25 [3] 1815/4 1898/20 1899/10
25 percent [3] 1888/9 1888/9 1899/9
250 [1] 1800/17
27 [2] 1887/23 1920/25
2700 [1] 1800/17
28 [1] 1920/25
28.4 [1] 1917/13
2:05 [1] 1868/19
2:10 to [1] 1868/12
2s [7] 1854/21 1900/2 1900/3 1936/8 1936/10 1936/21 1937/1

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3 percent [29] 1814/7 1814/8 1832/8 1832/11 1832/19 1832/23 1833/2 1833/4 1833/22 1835/8 1835/8 1835/15 1835/18 1843/2 1843/3 1843/5 1843/6 1843/7 1857/4 1857/8 1866/10 1874/11 1874/21 1878/20 1880/2 1882/6 1928/9 1928/23 1929/2
3.2 percent [2] 1814/1 1814/10
30 [3] 1813/1 1830/23 1899/10
30 percent [8] 1877/9 1879/13 1879/19 1879/24 1880/8 1917/19 1918/1 1918/6
30.6 [1] 1830/24
300 [1] 1885/5
31 [5] 1838/7 1844/9 1844/25 1911/23 1916/2
3:00 [1] 1860/12

4

4 percent [10] 1815/2 1815/4 1839/22 1840/2 1840/4 1840/6 1876/10 1882/6 1902/12 1902/15
4.5 percent [1] 1815/2
4.99 percent [1] 1925/20
40-year-old [3] 1891/8 1891/9 1891/13
401 [1] 1898/6
430 [1] 1801/3
49 [3] 1831/1 1833/13 1846/18
49-year-old [1] 1831/7
4D [1] 1885/6

5

5 percent [3] 1835/15 1931/19 1931/22
50 [3] 1898/16 1916/7 1917/12
50 percent [3] 1915/20 1927/22 1938/10
50-year-old [1] 1904/19
505 [1] 1801/6
50s [1] 1921/7
5500 [4] 1833/10 1841/18 1841/20 1874/18
5500s [1] 1874/8
56th [1] 1921/21
56th Street [1] 1885/6
5:00 [2] 1860/10 1860/13
5:30 in [1] 1860/10

6

6 percent [2] 1835/14 1853/3
6.64 [2] 1905/4 1913/2
60s [4] 1898/17 1904/21 1921/7 1930/7
611625 [1] 1859/2
62 [28] 1864/12 1865/21 1865/25 1866/13 1867/21 1903/17 1903/18 1903/19 1903/22 1903/25 1904/4 1904/9 1904/23 1905/5 1905/7 1909/6 1909/8 1909/18 1912/23 1916/15 1917/11 1917/11 1917/14 1917/18 1917/22 1919/24 1929/14 1931/1
62nd [1] 1912/25
64 [2] 1904/21 1904/22
65 [9] 1840/15 1840/15 1840/16 1891/10 1891/13 1904/21 1904/22 1922/9 1930/8
65th [2] 1903/4 1903/10
67 [20] 1833/8 1864/1 1866/3 1867/21 1903/17 1904/11 1904/16 1904/17 1904/23 1905/3 1909/6 1909/8 1909/20 1913/1 1913/2 1916/17 1917/23 1919/25 1922/9 1929/17
67th [2] 1905/4 1913/3

7

7 percent [2] 1874/18 1874/23
7.4 [1] 1918/8
7.6 [1] 1836/25
7.6 percent [3] 1836/24 1837/3 1837/13
7.67 [1] 1903/4
70 [3] 1909/22 1921/7

7

70... [1] 1921/17
70 percent [10] 1904/7 1917/15 1917/20 1917/25 1918/14 1918/19 1918/25 1919/3 1931/10 1931/12
700,000-plus [1] 1873/11
70s [1] 1906/10
71 [44] 1832/17 1833/6 1833/12 1833/14 1833/17 1833/21 1840/14 1865/25 1866/2 1866/16 1866/22 1867/1 1867/12 1867/15 1867/20 1897/2 1898/17 1903/2 1903/13 1905/12 1905/12 1905/17 1906/1 1906/1 1907/14 1908/4 1909/6 1909/8 1909/15 1909/17 1909/21 1913/4 1913/5 1916/21 1918/3 1920/2 1922/8 1923/6 1923/9 1923/14 1925/9 1927/19 1929/21 1931/7
71st [1] 1913/6
72.78 [1] 1916/6
75 [2] 1888/8 1921/11
75 percent [1] 1904/7
78 [2] 1917/22 1930/1
78.4 [2] 1917/13 1930/1
79 [4] 1833/13 1863/10 1922/20 1923/3
7:00 [2] 1860/12 1860/14
7:30 [1] 1860/14

8

8.4 percent [1] 1878/16
80 [6] 1843/24 1844/2 1844/3 1862/23 1863/4 1918/1
80 percent [1] 1888/8
80-point-something [1] 1843/22
80-year-old [2] 1862/24 1863/4
80.5 [5] 1830/21 1840/14 1843/23 1844/14 1846/12
81 [1] 1855/2
83 [9] 1841/5 1841/9 1855/6 1855/8 1875/4 1875/8 1934/8 1934/17 1934/19
84 [6] 1841/5 1841/9 1855/6 1935/24 1936/1 1936/3
85 [2] 1855/6 1934/11
86 [4] 1855/6 1935/20 1935/25 1936/1
87 [4] 1841/14 1841/16 1841/17 1855/6
88 [6] 1834/16 1834/17 1834/20 1855/6 1923/23 1923/25
89 [5] 1840/20 1840/22 1840/23 1855/3 1855/6

9

9 percent [1] 1878/20
9/11 [1] 1813/12
90 [1] 1831/6
91 [6] 1841/14 1841/16 1841/20 1855/3 1855/6 1879/18
91,500 [1] 1933/10
93,000 [1] 1934/4
95 percent [1] 1875/23

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a.m [1] 1940/6
ability [2] 1860/25 1916/10
able [9] 1811/2 1814/4 1821/15 1834/13 1839/16 1851/24 1894/18 1921/12 1921/14
about [97] 1808/1 1808/21 1808/24 1815/14 1816/15 1817/11 1820/10 1823/12 1824/3 1825/15 1831/15 1832/10 1832/24 1833/2 1833/10 1833/19 1834/4 1834/21 1835/18 1837/18 1840/1 1842/23 1847/8 1848/12 1848/20 1850/5 1852/2 1853/7 1853/7 1855/10 1855/25 1856/12 1859/22 1859/23 1860/8 1863/14 1864/8 1864/22 1865/1 1866/3 1866/4 1866/10 1867/17 1867/23 1871/1 1875/11 1876/14 1876/15 1876/17 1877/6 1878/1 1880/1 1880/10 1881/14 1881/16 1883/1 1886/7 1888/4 1888/8 1889/6 1889/9 1891/17 1891/24 1892/1 1892/16 1892/19 1892/22 1894/15 1899/4 1901/8 1902/1 1908/10 1908/17 1908/17 1908/18 1911/17 1911/18 1911/19 1913/1 1913/4 1913/12 1913/14 1913/16 1914/22 1915/16 1915/19 1915/20 1915/21 1921/16 1922/23 1925/23 1928/18 1931/13 1931/16 1932/6 1932/16 1938/12
above [2] 1812/17 1940/12
absolutely [2] 1829/19 1890/18
absurd [1] 1822/16
academic [2] 1886/22 1887/2
accept [2] 1829/10 1909/14
accepted [4] 1813/15 1898/21 1898/25 1915/9
according [5] 1813/25 1833/9 1836/25 1874/17 1927/16
accordingly [1] 1867/21
account [10] 1810/7 1816/9 1835/4 1851/15 1873/11 1877/22 1878/8 1898/9 1928/4 1929/25
accounted [2] 1878/13 1900/20
accounting [2] 1858/16 1900/6
accrual [1] 1835/19
accrued [4] 1871/15 1871/18 1871/21 1907/3
accruing [1] 1874/16
accumulated [1] 1873/20
accurate [5] 1858/15 1867/12 1906/12 1923/11 1940/12
achieved [1] 1891/19
acknowledged [2] 1906/8 1922/10
activities [8] 1816/20 1816/23 1816/25 1842/10 1848/20 1859/24 1860/9 1860/25
activity [1] 1916/8
actual [14] 1832/4 1839/10 1843/3 1843/4 1867/8 1881/17 1882/3 1882/4 1902/9 1902/18 1903/19 1908/16 1916/14 1933/22
actually [17] 1842/4 1843/6 1853/4 1855/11 1857/7 1861/5 1865/3 1871/24 1876/13 1881/3 1890/2 1890/12 1897/9 1903/24 1908/10 1935/9 1938/23
actuarial [9] 1848/5 1886/11 1887/25 1891/24 1893/19 1894/12 1906/18 1924/13 1925/2
actuarially [1] 1871/12
actuaries [7] 1874/3 1889/11 1893/23 1897/22 1898/7 1906/17 1907/5
actuary [16] 1848/3 1865/13 1866/20 1867/7 1873/25 1889/10 1889/17 1890/10 1890/16 1891/7 1891/16 1892/11 1894/9 1905/15 1905/16 1905/18
add [4] 1836/10 1839/1 1846/6 1937/3
added [3] 1839/15 1908/11 1908/23
adding [2] 1836/7 1937/1
addition [2] 1891/16 1934/21
additional [4] 1831/14 1851/4 1872/21 1937/14
address [6] 1803/17 1803/19 1871/14 1885/4 1893/18 1894/12
addressed [3] 1893/23 1894/5 1894/9
addresses [1] 1823/6
adjourned [1] 1940/9
adjusted [5] 1838/24 1853/2 1875/11 1908/24 1915/12
adjustment [1] 1915/4
adjustments [1] 1915/7
Administration [1] 1804/15
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admitted [2] 1805/20 1822/20
advance [1] 1889/19
adverse [1] 1888/17
advocate [1] 1848/9
affiliated [1] 1807/1
afford [1] 1881/23
afraid [1] 1852/18
after [19] 1803/13 1815/5 1816/10 1821/14 1845/8 1868/4 1868/6 1869/19 1878/8 1878/10 1884/25 1886/14 1887/2 1887/13 1887/14 1892/3 1904/14 1911/1 1913/16
aftermath [1] 1878/15
afternoon [3] 1885/11 1885/12 1920/19
afterwards [1] 1863/19
again [19] 1810/19 1835/10 1840/9 1844/7 1847/5 1850/15 1857/20 1861/9 1867/14 1867/20 1870/24 1878/11 1878/17 1900/1 1917/7 1918/1 1924/20 1935/13 1936/4
against [5] 1800/7 1802/18 1824/15 1824/16 1864/18
age [93] 1800/5 1830/18 1830/21 1831/1 1832/16 1833/6 1833/7 1833/12 1833/13 1833/14 1833/15 1833/17 1833/17 1833/21 1837/14 1837/21 1840/13 1840/14 1840/15 1840/15 1840/16 1844/14 1846/12 1846/18 1862/23 1863/20 1863/21 1864/1 1864/4 1865/21 1865/22 1865/24 1866/13 1866/16 1866/22 1866/22 1867/6 1867/8 1867/12 1891/9 1892/21 1897/2 1903/13 1903/19 1903/23 1904/1 1904/1 1904/4 1904/11 1904/13 1904/15 1904/16 1905/3 1905/7 1905/16 1905/20 1905/22 1906/1 1906/1 1907/12 1907/14 1907/18 1908/3 1909/22 1912/20 1913/1 1913/2 1913/4 1913/5 1914/22 1914/24 1916/7 1917/11 1917/11 1917/12 1917/18 1919/24 1919/25 1921/17 1922/3 1922/8 1923/3 1923/6 1923/14 1925/5 1925/9 1927/19 1929/14 1929/17 1929/21 1930/8 1931/1 1931/7
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Agency [1] 1837/1
ages [2] 1864/2 1865/1
Aging [1] 1808/8
ago [13] 1810/9 1823/12 1847/8 1859/1 1859/20 1882/22 1894/15 1899/1 1899/3 1900/3 1902/19 1924/20 1938/16
agree [26] 1827/2 1828/19 1857/6 1865/20 1866/3 1867/5 1867/11 1893/15 1896/13 1912/2 1922/2 1923/5 1926/15 1927/21 1929/5 1930/9 1930/24 1932/9 1932/14 1933/8 1936/5 1937/3 1937/13 1937/19 1938/23 1939/11
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agreed [1] 1814/7
agreement [1] 1827/10
ahead [5] 1893/14 1896/23 1906/21 1909/2 1933/23
ALBA [4] 1800/19 1800/21 1802/25 1803/3

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algorithm [2] 1827/24 1828/2
alive [3] 1863/10 1883/4 1899/23
all [51] 1810/2 1810/6 1810/7 1810/13 1814/7 1815/25 1816/23 1818/11 1822/17 1822/17 1824/12 1825/19 1828/25 1829/25 1830/25 1832/13 1836/4 1839/5 1842/9 1852/2 1852/17 1853/6 1855/1 1855/3 1860/18 1860/19 1861/9 1863/15 1864/22 1867/15 1869/12 1870/19 1873/15 1889/12 1890/4 1891/20 1893/18 1902/17 1907/8 1909/23 1909/24 1912/21 1915/4 1915/11 1916/23 1916/25 1920/1 1920/4 1927/7 1927/24 1930/14
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allow [4] 1862/18 1889/22 1890/8 1896/22
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allowing [2] 1820/23 1826/1
allows [1] 1865/14
almost [4] 1858/25 1888/10 1917/18 1918/12
along [6] 1805/17 1806/5 1907/10 1919/13 1922/25 1929/11
alongside [1] 1817/19
already [4] 1812/3 1858/8 1873/1 1895/15
also [36] 1804/24 1805/9 1810/2 1811/13 1812/4 1812/11 1813/19 1816/18 1817/9 1822/24 1846/13 1846/14 1848/14 1849/13 1850/17 1853/5 1855/25 1858/10 1860/7 1860/18 1862/17 1869/16 1881/17 1886/12 1887/11 1897/12 1897/14 1897/16 1901/2 1904/1 1904/18 1906/25 1908/14 1915/7 1932/12 1934/22
although [2] 1857/17 1928/21
always [10] 1821/18 1821/20 1821/22 1821/23 1821/24 1826/18 1828/6 1886/1 1918/14 1919/3
am [78] 1806/25 1807/1 1807/1 1807/5 1807/6 1807/7 1808/14 1811/3 1812/9 1813/22 1814/11 1822/10 1822/24 1823/10 1827/15 1828/9 1828/17 1829/3 1829/11 1832/14 1832/25 1832/25 1835/9 1835/9 1836/7 1836/7 1840/14 1842/23 1842/24 1842/25 1843/4 1844/25 1846/3 1847/20 1848/10 1851/12 1852/3 1852/4 1854/25 1862/9 1862/10 1862/11 1862/17 1865/4 1865/23 1866/23 1867/2 1869/12 1869/16 1871/16 1874/5 1876/11 1877/1 1877/1 1877/1 1877/2 1879/23 1880/15 1880/16 1881/14 1882/1 1882/3 1883/9 1885/14 1892/13 1895/18 1896/22 1905/15 1912/13 1932/7 1932/12 1932/16 1933/3 1933/23 1934/8 1937/5 1937/10 1939/5
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amended [2] 1810/21 1810/25
amongst [1] 1940/2
amount [30] 1813/7 1816/5 1816/24 1834/1 1835/3 1836/23 1838/19 1838/25 1857/7 1858/8 1872/2 1872/4 1872/6 1872/9 1872/18 1872/20 1873/15 1875/15 1891/4 1891/11 1898/2 1902/13 1902/14 1905/25 1908/9 1908/11 1908/21 1912/11 1916/17 1936/8
amounts [5] 1866/14 1871/14 1871/17 1897/10 1904/6
anal [1] 1823/10
analyses [5] 1885/16 1887/4 1887/24 1887/24 1889/18
analysis [12] 1809/4 1812/2 1815/5 1815/25 1867/8 1877/1 1885/20 1886/2 1887/17 1904/18 1908/13 1927/16
analyst [1] 1805/10
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analyze [2] 1905/18 1905/19
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