ORAL DEPOSITION OF AVNER HAYA; 2010 Depo. Trans. LEXIS 9227

United States District Court for the District of New Jersey, Camden Vicinage

CIVIL ACTION NO, 07-1614(RMB)

January 5, 2010

Reporter
2010 Depo. Trans. LEXIS 9227 *

Notice: The following is an excerpt and does not represent the full text of this document.

CLIFFORD J. LEVINE, Plaintiff, vs. VOORHEES BOARD OF EDUCATION, and JOHN DOES 1-10 (fictitious individuals and entities), Defendants.

Expert Name: Dr. HAYA, Ph.D.

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Counsel

[*1] LAW OFFICES OF WILLIAM B. HILDEBRAND, LLC BY: WILLIAM B. HILDEBRAND, ESQUIRE, CHERRY HILL, NEW JERSEY, ATTORNEYS FOR PLAINTIFF.

Proceedings

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Transcript in the above matter taken at the law office of Cooper Levenson, 1415 Route 70 East, Cherry Hill, New Jersey, commencing at 10:00 a.m.

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[1]calculation.

[2]And this is a -- one of those times

[3]when you're trying to create doubt. That the report

[4]and, again, you give it to any actuary and tell him

[5]reproduce those numbers and I want to see any

[6] **[*2]** actuary that cannot reproduce those numbers used in

[7]the report.

[8]So lack of disclosure is a false

[9]statement, is an erroneous statement and is a

[10]misleading statement.

[11]Q. You consider your report an actuarial

[12]report?

[13]A. I consider my report as -- you can call

[14]it an actuarial report. Yeah, it's an actuarial, I

[15]did it as an actuarial, yes.

[16]Q. I'm going to skip down to the second

[17]paragraph from the bottom of the first page

[18]commentary on Haya report regarding Clifford Levine

[19]and the last sentence of the second paragraph from

[20]the bottom. Miss Kucsma writes: Dr. Haya's report

[21]as written fails to conform to or meet the standards

[22]expected of damages --

[23]A. Where are you reading?

[24]Q. Here. Dr. Haya's report as written --

[25]A. Yeah.

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[1]Q. -- fails to conform to or meet the

[2]standards expected of damages experts such as those

[3]promulgated by the National Association of Forensic

[4]Economics and, consequently, the report should be

[5]dismissed outright.

[6]Are you familiar with the National

[7]Association of Forensic Economics?

[8]A. No.

[9] **[*3]** Q. Are you familiar with any standards

[10]promulgated for the computation of damages in an

employment discrimination case?

A. I am familiar with what the Society of

Actuaries has, a full disclosure in any report and

there is a full disclosure and this is downright a

lie to say that there isn't a full disclosure in

here. Alie, l-i-e, to say that there is not a full

disclosure here.

Q. I want to now turn to page two, if I

could, of the commentary.

A. I would like to ask a question.

Q. Sure.

A. Am I like in a court or do I sit here

immune? Or somebody is going to come to me and say,

why you are lying, I'll sue you?

Q. Well, I -- I'm not your attorney so I

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can't give you advice along that line.

I can tell you that I am of the

opinion, it is my opinion as an attorney that a

person who testifies under oath is immune from any

lawsuit for what they testify to. The only sanction

that they can have against them is to be prosecuted

for perjury or for assisting in perjury, which is to

knowingly lie under oath.

But as far as testifying as to whether

[*4] somebody could sue you for what you say about them,

no, it's my opinion that you cannot be sued in

court. I don't know if Mr. Hildebrand shares that

opinion.

It's called, in my opinion, the

[15]testimonial privilege and it attaches to all

[16]witnesses who testify under oath in either a

[17]judicial or quasi-judicial proceeding.

[18]A. I apologize publicly for saying a lie,

[19]l-i-e. I meant untrue statement. Untrue statement.

[20]In my opinion.

[21]Q. Turning to page two, the third

[22]paragraph: We are especially concerned about this

[23]issue, Miss Kucsma writes, due to the fact that the

[24]author of the Haya report utilizes the, quote, 2009

[25]Applicable Mortality Table, dot, dot, dot, bracket,
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[1]and, bracket, segmented applicable interest rates,

[2]dot, dot, dot, for private pension plans, dot, dot,

[3]dot, end quote, to calculate the loss of pension

[4]benefits, period.

[5]At best, this represents a

[6]misapplication of mortality figures and interest

[7]rates that are used to ascertain whether or not

[8]minimum funding targets have been reached by private

[9]plan sponsors, not, in bold, to value economic

[10]damages, **[*5]** period.

[11]Do you have a response to that comment?

[12]A. Yes. The table that I used is accepted

[13]by courts for divorce purposes. So the table that I

[14]use is a recognized table used in the industry,

[15]required to be used in the industry and it's used

[16]applicable to millions and millions of workers.

[17]It's used by all actuaries, enrolled actuaries who

[18]engage in pension and it's a recognized table,

[19]Now, I am not specifically familiar

[20]with what she's saying in here and I have no comment

[21]on that. But the table that I used is a reasonable

[22]table, it's a table developed by the U.S. government

[23]and it's a table that's recognized.

[24]Q. Okay. I want to turn to page three, if

[25]I could. In the second paragraph, page three, from
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[1]the top, Miss Kucsma writes: In reports we prepare

[2]on behalf of plaintiffs, we typically use a one to

[3]six-year time period for employment-related

[4]litigation, period. This period of loss is provided

[5]to allow the plaintiff time to find alternative

[6]employment that would replace the alleged loss,

[7]period. Additionally, the author of the Haya report

[8]makes no consideration **[*6]** for the fact that Mr. Levine

[9]may receive additional promotions, secure employment

[10]in another district, or switch careers, period.

[11]Do you have a response to that?

[12]A. They may have typically, whatever they

[13]want to illustrate, this is not applicable to this

[14]case. This is immaterial to the two scenarios I've

[15]given you and the two scenarios -- this, what her

[16]assumption one to six what the rate is has nothing

[17]to do with the two scenarios. She's out the subject

[18]and she's out of line in looking at this report.

[19]In other words, the report give her two

[20]specific scenarios. What she does generally --

[21]first all, I don't know if what she does --

[22]typically is what she does is right or wrong, but

[23]what does this have to do with the report? This is

[24]immaterial. This is throwing it in to mislead the

[25]reader.

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[1]Oh, I apologize. In my opinion and my

[2]experience, this is throwing in, in what I believe

[3]is to mislead the reader.

[4]Q. You said you had an opportunity to

[5]glance over Miss Kucsma's report?

[6]A. Correct.

[7]Q. I take it, you mean glance as opposed

[8]to have an **[*7]** opportunity to thoroughly study Miss

[9]Kucsma's report?

[10]A. That is correct.

[11]Q. In your glancing over Miss Kucsma's

[12]report, did you find any item that she commented on

[13]about your report to have any merit?

[14]A. The only item I would think that I

[15]should comment on is that she's saying that there is

[16]a contribution of five percent. The contribution, of

[17]five percent for the pension is very small amount

[18]and it can be readily show -- taken in the report

[19]because the report gives you the present value of

[20]the loss, and take five percent of that, so $ 20,000

[21]out of the million.

[22]But I would say that she's omitting in

[23]her report without -- by, I don't know what's the

[24]purpose of that, she's omitting that case. On the

[25]other hand, also life insurance connected with it.

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[1]There are other things that are connected with that

[2]five percent thing, I would think that's a wash.

[3]And I do admit that my Exhibit 3 should have added

[4]five percent contribution was not considered because

[5]it was a wash.

[6]But if it's considered whatever you

[7]want to consider part of it, it's immaterial to **[*8]** the

[8]figures when we are talking about two million and

[9]you subtract from it 50,000, that's immaterial.

[10]Q. Besides that, the fact that she noted

[11]there was no five percent contribution; is that

[12]correct?

[13]A. That's correct.

[14]Q. And that's not noted in your report?

[15]A. That she should also note that there is

[16]a life insurance that is gotten offsetting that.

[17]That wasn't noted in her report.

[18]Q. Where did you get the fact that there

[19]is a life insurance component to it as well?

[20]A. My recollection, that's the way the

[21]pension plan works. I probably have it, if I didn't

[22]see it in here, I know that pension plans probably

[23]when I was looking on the Internet or anything Like

[24]that, I had -- I got that notion and when I was

[25]working on the other case that I told you about, I

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[1]was, it's the same, teachers, same pension. I do

[2]know that. And I guess this is a, kind of is a wash

[3]and I should have mentioned in my report that this

[4]is a wash.

[5]Q. And that's not mentioned in your

[6]report?

[7]A. That's not mentioned in my report.

[8]Q. Is anything else besides **[*9]** what you've

[9]just identified after your glance, again, it's just

[10]a glance, not a thorough study of Miss Kucsma's

[11]report, that you felt had any merit with regards to

[12]her commentary on your report?

[13]A. I don't think so. There is no --

[14]nothing that has merit and I noted her comment about

[15]the salary for the teacher that should be increased

[16]by 1.2 and I was surprised that she raised that and

[17]I said, how could somebody with her knowledge come

[18]up with that statement? This is a -- a fourth

[19]grader wouldn't accept it This is just to throw --

[20]is it, in my opinion, just to throw some doubts,

[21]tactics, I don't know, but this is very -- most

[22]unreasonable, I mean it's outrageously unreasonable.

[23]Q. And could you point directly to where

[24]you're talking about in your report?

[25]A. No, I can't point out where in the
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[1]report. Which is the point she raised.

[2]I have no other comments on the report.

[3]Q. Dr. Haya, just so I'm clear, you were

[4]asked by Mr. Hildebrand to create an actuarial

[5]report based on two scenarios; is that correct?

[6]A. It depends what you call an actuarial

[7] **[*10]** report. I was asked to create a report showing the

[8]losses, the present value of the amount of lost

[9]earnings based on those two scenarios. Lost

[10]earnings and then the present value of pension loss

[11]as a result of that.

[12]I was not asked to do the social

[13]security loss, which is that's another loss that

[14]should be added to these and somebody else should

[15]take care of it. I mean, when you get less

[16]earnings, you get less social security. That's

[17]another thing that should be added to this report, I

[18]did not value that.

[19]As I mentioned, I did not value any of

[20]other damages. I valued only the present values.

[21]You can call that whatever you want, actuarial or

[22]whatever you want to call it, but that's what I was

[23]asked and that's what I'm providing, present value

[24]of lost wages. That's present value of lost

[25]earnings. As a result of those wages not taking

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[1]social security into account.

[2]Q. And you did that based on two

[3]scenarios? Yes?

[4]A Correct, two scenarios.

[5]Q. And those two scenarios were as

[6]directed by Mr. Hildebrand?

[7]A. Those two scenarios were given to me

[8] **[*11]** when I was asked to do the calculation, told me to

[9]please give me the result based on these two

[10]scenarios, what were your -- what is your opinion on

[11]these two scenarios of the losses.

[12]Q. And you have not expressed an opinion

[13]as to how reasonable those scenarios are?

[14]A. I have no idea how reasonable those

[15]scenarios are.

[16]MR. DONIO: Okay. I have no further

[17]questions.

[18]MR. HILDEBRAND: I have a couple of

[19]questions.

[20](EXAMINATION OF DR. HAYA BY MR. HILDEBRAND:)

[21]Q. Dr. Haya, one of the assumptions you

[22]used in your report, and I don't know whether it's

[23]an assumption or specification, but I think it's an

[24]assumption, is that Mr. Levine would retire at age

[25]60.

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[1]Do you recall that testimony?

[2]A. Yeah. I'm assuming in my scenario that

[3]he would retire at age 60.

[4]Q. If you assumed a -- and that's the

[5]earliest that Mr. Levine could retire without a

[6]reduction to the amount of his pension; is that

[7]correct?

[8]A. Based on my recollection, I believe

[9]that's correct.

[10]Q. If you assumed that he waited until age

[11]65 or age 70 to retire, **[*12]** what general effect, if any,

[12]would that have on the figures contained in this.

[13]report? Would that increase them, would that

[14]decrease them or would the figures stay the same?

[15]A. Of course, the amount of the pension

[16]would increase. But on the other hand, the present

[17]value of it is based on age at retirement so we may

[18]have -- I would say if he retires at a later age --

[19]first of all, he's getting the salaries till the day

[20]he's retiring so you have to take that into account

[21]and the pension would -- I don't know, I have no

[22]opinion on that because I have to do the calculation

[23]to see.

[24]You have one thing that increases it,

[25]which is the pension, and the other thing that
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[1]decreases it, which is he's getting older in age, so

[2]his longevity is smaller. Shorter.

[3]Q. All right. Can you -- I'd like to

[4]reference Haya Exhibit 3, if you would. And the

[5]second page. What I'd like you to do is explain

[6]what the numbers on the -- what the four dollar

[7]values on this page represent.

[8]The first dollar value I see is

[9]$ 810,240, what does that represent?

[10]A. This is brought up from **[*13]** Exhibit I-a and

[11]it's a combination, of both the present value of lost

[12]wages plus the present value of lost pension. The

[13]value of pension. And the combination of both is

[14]810 on September 2000 -- discounted to September

[15]2005 or if you want to discount it to July 2010,

[16]it's one million something.

[17]And the other one is the same thing

[18]except based on scenario two. So it's a combination

[19]of both the present value of lost wage differential

[20]between the two positions, plus the present value of

[21]the pension and it's -- I tried to break it down in

[22]Exhibit I-b very clearly between that tenure that

[23]Mr. Donio was asking me about what would the effect

[24]be and thereafter the ten years.

[25]I broke it down there so as to
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[1]minimum -- all in capitals -- lump sum under current

[2]IRS regulations.

[3]A. Correct.

[4]Q. What does that mean?

[5]A. It means the Internal Revenue in order

[6]to avoid any distortions came out with they do

[7]studies every year and they change it every year.

[8]Actually on the interest rate they change every

[9]month. They do the studies based on the economy.

[10]They have **[*14]** their own economists and they do that and

[11]they use it as well as the PBGC, they come with the

[12]rates that you are required to use.

[13]You cannot deviate from that for

[14]anything. Any work that you do for the IRS, for any

[15]pension that existed, their private pension that's

[16]in this country qualified by the IRS you cannot

[17]deviate from that. They all have to comply with it,

[18]all the private industry.

[19]And the PBGC which guarantees pension

[20]for millions and millions of workers also uses these

[21]rates and these are dictated rates in order to avoid

[22]any distortion from somebody that would create

[23]unreasonable rates.

[24]So this is the most reasonable, that

[25]the IRS feel that they are fair, they are compatible
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[1]with the current economy for projection for years to
[2]come. And they have segmented rates. So they feel
[3]that in the coming five years is different, the next
[4]15 years is going to be different, next 20 years is
[5]going to be different and they do require us to use
[6]different rates for this period because they are
[7]economists, that's the way they analyze the economy
[8]and that's the way they **[*15]** come with it.
[9]And that's what I use in order to avoid
[10]any distortion or any argument from anyone why did
[11]you use five percent, not six percent.
[12]Q. Well --
[13]A. They publish -- and I apologize, they
[14]publish that in Northeast, I believe it's -- well,
[15]it's different notices but they do publish that for
[16]everyone to see and their required use.
[17]Q. Now, this IRS, these rates, they are
[18]available on the Internet, they are published there?
[19]A. Yes, they are published and they are
[20]available on the Internet for anyone to see.
[21]Q. And they are based on data from private
[22]pension plans?
[23]A. No, they are based on data from -- data
[24]on economy data and they should be applied to
[25]private pension plans, all private pension plans
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[1]which covers tens of millions of, not only
[2]pensioners but people that are expecting pensions.
[3]Like if you have a pension plan in your office, your
[4]office has to comply with that.

[5]Q. Was there any guide that you relied

[6]upon or used that directed you to this publication

[7]to use for the pension differential for Mr. Levine

[8]in making **[*16]** your calculations? What directed you to

[9]this IRS publication?

[10]A. My knowledge, my best estimate to use

[11]for Mr. Levine, I thought of using this to avoid any

[12]possible argument. And these are the most

[13]reasonable rates that are available and it's used by

[14]not only by all actuaries that are familiar with

[15]pension plan, but it's very applicable to this case

[16]because we are talking in here about salary

[17]projection and pension. And it's exactly applicable

[18]to this case.

[19]Q. Does it make any difference that

[20]Mr. Levine's pension if he ultimately receives one

[21]will be from a public pension plan?

[22]A. No, it doesn't make a difference

[23]because he's a pensioner and it's based on mortality

[24]table and interest. So what difference does it

[25]make? The value of is based same as any other
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[1]pension. It doesn't matter if it comes from public

[2]or -- the pension or comes from any association

[3]or -- it doesn't matter. This is the value of that

[4]pension.

[5]If you're promised a certain pension to

[6]receive for your life as long as you live, you have

[7]to use mortality, you have to use interest to

[8] **[*17]** evaluate that and it doesn't matter if you're

[9]receiving that pension from any organization and the

[10]only difference maybe if that goes bankrupt.

[11]In the private pension plan, the PBGC

[12]takes over and pay you a pension. Whereas, if the

[13]public pension plan goes bankrupt, I suppose nobody

[14]is going to pay him so…

[15]Q. What did you base -- you had written I

[16]think in your first assumption that the mor -- the

[17]life expectancy was based on the United States Life

[18]Tables 1991?

[19]A. Correct

[20]Q. What was the life expectancy for

[21]Mr. Levine?

[22]A. It was -- I don't remember it exactly

[23]but it was much more than to age 60. And there is

[24]no -- any layman can, there's no need to, I probably

[25]didn't write it down, but it's obviously to past age
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[1]And the whole idea is to come to

[2]something that's reasonable. So that you don't

[3]distort the facts by using those numbers. And

[4]that's what they come up with. So six percent even

[5]she's agreeing that it's reasonable. I'm not going

[6]to dwell on that.

[7]Q. Well, if you used a lower discount

[8]rate --

[9]A. Well, again you have **[*18]** to give --

[10]Q. -- what impact would that have on your

[11]figures; would that increase them?

[12]A. Then you have to lower the salary scale

[13]because they're already related. You can't just

[14]change one assumption without looking at the other

[15]assumption. So I think that the differential of one

[16]or two percent you should always keep it.

[17]If you want to use four percent, then

[18]in that case you have to use salary scale of about

[19]six percent because they -- I mean, it's -- it's --

[20]we're not doing a mathematical calculation, we are

[21]doing something --

[22]Q. Right.

[23]A. -- a reasonable calculation.

[24]Q. Okay. But suppose if I gave you as

[25]part of the specifications that I want you to use a
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[1]lower discount rate, that I want you to use four

[2]percent rather than six percent.

[3]A. And keep the salary scale the same?

[4]Q. And keep the salary scale the same.

[5]A. Of course, the lower the interest rate,

[6]the higher is the amount.

[7]Q. So your numbers would increase?

[8]A. Number would increase if you use a

[9]lower discount rate but give the -- keep the salary

[10]scale **[*19]** the same.

[11]Q. Okay. Now, does the fact that I can't

[12]go out and invest money and get a six percent return

[13]a safe investment these days, does that effect or

[14]influence your opinion that a six percent discount

[15]rate is appropriate?

[16]A. Well, six percent is based on bond

[17]rates and the way the IRS is coming with it. So we

[18]are talking here about investment, it's realistic

[19]things that I compare the 24-month bond rates and so

[20]on. I don't go into details of how they do their

[21]calculation. But it's based on actual bond rates

[22]and -- whether corporate bond rates and so on, so

[23]they do their calculation. And you can see that six

[24]percent is very reasonable.

[25]MR. HILDEBRAND: All right. I have no
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[1]further questions.

[2]THE WITNESS: The lower the interest

[3]rate the higher is the amount.

[4]MR. HILDEBRAND: Thank you.

[5]THE WITNESS: If you are not showing

[6]any other thing.

[7]MR. HILDEBRAND: Right.

[8](EXAMINATION OF DR. HAYA BY MR. DONIO:)

[9]Q. Just if I could follow up on that, but

[10]it would not be reasonable to assume that with a

[11]lower interest rate you would see **[*20]** salary increases

[12]remain the same?

[13]A. I agree with you.

[14]Q. Now, Doctor, just also very briefly,

[15]I'm going to ask just for an opportunity to review

[16]your report -- your file, if I could. Is that

[17]possible?

[18]A. Go ahead.

[19](Direction) MR. HILDEBRAND: I'm going to object

[20]and I'm not going to permit that. We've -- you gave

[21]me an expert disclosure request, we have produced

[22]everything that you're entitled to. I haven't

[23]looked through his file. I don't think it's

[24]appropriate for you to just rummage through his file

[25]at this point.

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[1]MR. DONIO: Let's see if it's here.

[2]Just a second.

[3]BY MR DONIO:

[4]Q. In Haya-4, Dr. Haya, you write in your

[5]letter dated November 2nd. number four: Data

[6]considered as shown in my report, Exhibits II and

[7]III, and is also in my file which I'll bring with me

[8]at the deposition.

[9]Is that correct?

[10]A. I wrote that.

[11]Q. Was the anticipation that if I needed

[12]to see any of the data, you would have your file

[13]here?

[14]A. I have my file here if Mr. Hildebrand

[15]allows you to, that's fine. I mean, I have -- I

[16]gave **[*21]** you everything in there that is now disclosed.

[17]MR. DONIO: Are you still going to

[18]object to me looking through the report?

[19]MR. HILDEBRAND: Absolutely. I'm not

[20]objecting to you looking at the report --

[21]MR. DONIO: I meant to the file.

[22]MR. HILDEBRAND: -- or anything we have

[23]produced. I'm objecting to your rummaging through

[24]his file. I haven't been produced with a copy of

[25]your expert's file. And I don't think it's
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[1]A. Oh, several times, but the last time

[2]was probably two, three years ago.

[3]Q. Do you recall what kind of case that

[4]was? Do you know what kind of case that was?

[5]A. I don't recall, but I believe it may

[6]have been lost wages due to an accident.

[7]Q. You said you've had your deposition

[8]taken several times?

[9]A. Yes.

[10]Q. Have you ever testified at atrial?

[11]A. Yes.

[12]Q. How many times has that occurred?

[13]A. Probably ten, 12 times in my lifetime.

[14]Q. Do you remember any of those cases? Do

[15]you remember any of those cases where you testified

[16]at trial?

[17]A. Well, I can't give you names, but I

[18]remember **[*22]** that I was in Wilmington in the federal

[19]court there. I was in New Jersey several times, I

[20]was in Pennsylvania and I don't -- I don't remember

[21]names of cases.

[22]Q. Okay. You said you were in Wilmington

[23]in the federal court, did you ever testify in the

[24]Delaware state courts?

[25]A. I don't believe so. I don't know the
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[1]difference between the two because I remember when I

[2]testified there and they qualified me. said now you

[3]can say you are qualified in the federal court.

[4]Q. Have you ever testified in a federal

[5]court in New Jersey?

[6]A. I testified in courts in New Jersey. I

[7]don't know what's federal or what's not federal. I

[8]testified in courts in New Jersey and in

[9]Pennsylvania, but I really don't know the

[10]differences between the courts.

[11]Q. You said you had your deposition taken

[12]several times. Can you estimate for me how many

[13]times you've had your deposition taken in the last

[14]ten years?

[15]A. Probably, last ten years, probably

[16]three times. It happens once every two, three

[17]years. But 99 percent of my cases do not result in

[18]deposition or court,

[19] **[*23]** Q. I'm going to give you another

[20]direction. If I ask you a question and you don't

[21]know the answer, letting us know that you don't know

[22]the answer is perfectly acceptable. We don't want

[23]you to' guess. If you can estimate for us, that's

[24]acceptable as well, just let us know that you're

[25]estimating.

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[1]Do you understand that?

[2]A. Correct.

[3]Q. How much of your work is made up of

[4]rendering opinions for parties in lawsuits?

[5]A. Well, let's put it this way, probably

[6]two percent of my work or three percent. I don't

[7]know, between two and five percent.

[8]Q. Is that an estimate?

[9]A. That is an estimate. Let me just think

[10]for a minute. It's probably around two percent.

[11]Q. What is it that you do besides

[12]rendering opinions for parties?

[13]A. I work everyday in pension, projection

[14]of salaries, projection of earnings, projection of

[15]pension, evaluating pension, certifying for the

[16]government, certifying for anybody that needs

[17]actuary certification. I'm allowed by -- I'm an

[18]enrolled actuary, which means pension, pension work

[19]cannot be done without certification **[*24]** of an enrolled

[20]actuary. And that's what I am.

[21]Q. Have you ever worked for a public

[22]school district?

[23]A. No.

[24]Q. Have you ever worked for a public

[25]entity? And let me tell you what I mean by that, I
Page 13

[1]mean municipality, a county government or a state

[2]government.

[3]A. Well, I don't know what you call work.

[4]I was an expert witness for the City of

[5]Philadelphia. I was -- I worked on their pension

[6]plans for a long number of years.

[7]So if you consider that as a federal --

[8]as a public work, that's public work, but I did work

[9]on their pension plan when I was with Peat Marwick.

[10]I was the chief actuary for Peat Marwick and they

[11]were my clients for several years,

[12]I did appear there. I did, not only I

[13]testified in court on one of the occasions but I did

[14]go to their meetings and I did present actuarial

[15]report.

[16]Q. Who employs you right now, who do you

[17]work for?

[18]A. For the last, since I think '80 or '81,

[19]I'm on my own.

[20]Q. And prior to that, who did you work

[21]for?

[22]A. I worked with Peat Marwick as chief

[23]actuary of their central **[*25]** actuarial department and

[24]then with Coopers Lybrant as an actuary there.

[25]Q. When you were -- where were you located

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[1]Q. What was that?

[2]A. I have a bachelor of science from the

[3]University of Tel Aviv in Israel, in economics.

[4]Q. Any other higher education degree?

[5]A. Do you consider actuarial exams as an

[6]educational degree? These are professional exams

[7]that you have to lake a series often exams before

[8]you can become a member of or fellow of the Society

[9]of Actuaries and it takes about ten years to pass

[10]them or eight years to pass them. Do you consider

[11]that a higher education, I don't know.

[12]Q. Do you consider that higher education?

[13]A. I do because it's -- everybody that

[14]takes them it's after col lege.

[15]Q. And --

[16]A. Almost every body.

[17]Q. Where did you take those exams?

[18]A. In the United States and Canada.

[19]Q. Who administers those exams?

[20]A. The Society of Actuaries.

[21]Q. What is an actuary?

[22]A. An actuary is a person who is trained

[23]to work with financial tables, mortality tables, to

[24]do projections of mortality, **[*26]** earning, deaths. All

[25]kind of economic projections or projections related

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[1]to financial matters.

[2]I'm saying projections, it's

[3]calculations, determinations of reserves,

[4]determination of risk management and things like

[5]that. Determination of premiums.

[6]The state requires an actuary to

[7]certify to the reserves of the insurance companies

[8]and to the statement of insurance companies and they

[9]have to be a member of the Society of Actuaries.

[10]I shouldn't say member, I should say

[11]fellow. Okay, never mind, that's fine.

[12]Q. After your name on the second page of

[13]Haya-1, you have doctor of economics; is that

[14]correct?

[15]A. That's correct.

[16]Q. You have FSA after that; is that

[17]correct?

[18]A. Yes.

[19]Q. What does that stand for?

[20]A. That's fellow of the Society of

[21]Actuaries. They have two levels, you become first

[22]an associate and then you pass several other exams

[23]and you become a fellow.

[24]Q. And what is EA after that?

[25]A. That's enrolled actuary. That's

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[1]recognized by the IRS and the PBGC as somebody that

[2]can certify to pension **[*27]** matters.

[3]Q. Now you said it's recognized by the IRS

[4]and another organization?

[5]A. PBGC. Well, recognized by the IRS for

[6]pension matters. Forget the other one.

[7]When I say authorized, I am the only,

[8]one authorized, in other words, an accountant cannot

[9]do it, it has to be an enrolled actuary.

[10]Q. Have you ever taught -- have you ever

[11]taught in any school or institution?

[12]A. No, but at Peat Marwick I taught the

[13]employees there and we conducted regular classes

[14]once every month for continuing education.

[15]Q. Did you teach anyplace else besides

[16]Peat Marwick?

[17]A. No, I didn't teach.

[18]Q. Do you belong to any professional

[19]organizations?

[20]A. Society of Actuaries. I was a charter

[21]member of the American Academy, which is an umbrella

[22]organization, but I didn't pay my dues for the last

[23]few years so, but I'm -- I can reinstate my

[24]membership anytime I choose but the Society of

[25]Actuaries is the society that's recognized.
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[1]Q. Are you paid for your services? Are

[2]you paid for your services? How are you paid?

[3]A. Am I paid for my services? **[*28]**

[4]Q. Yes.

[5]Were you --

[6]A. Yes.

[7]Q. -- paid for your services in this case?

[8]A. Sure, I'm paid for my services.

[9]Q. How are you paid?

[10]A. By billing them.

[11]Q. No. Is it by hourly or by, you know, a

[12]set fee?

[13]A. It depends. Some cases hourly, some

[14]cases on a flat fee basis.

[15]Q. And how were you paid in this case?

[16]A. I took it on a flat fee basis to do the

[17]report, but any additional work is on an hourly

[18]basis.

[19]Q. And you're being paid for your time

[20]here today?

[21]A. I'm being paid for my time in here

[22]today, same thing as I was paid when I did my other

[23]deposition.

[24]Q. And your hourly rate is what?

[25]A. 375. Including travel time.
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[1]that he's going to stay there and be a teacher or

[2]stay there be assistant principal or stay there be X

[3]amount of years, this and that.

[4]The scenario is explained in there and

[5]I'm telling you exactly what I did. So your

[6]question is immaterial to my calculation because it

[7]would not change the scenario.

[8]Q. And the scenarios, the three scenarios

[9]are --

[10] **[*29]** A. Two scenarios, I apologize.

[11]Q. Strike that.

[12]The two scenarios are assuming he had

[13]been renewed and he remained as assistant principal

[14]until his retirement and that's at age 60; is that

[15]correct?

[16]A. Correct.

[17]Q. And then assuming the same facts, that

[18]is, he remained as assistant principal except that

[19]after ten years he was promoted to principal and

[20]remained in this position to retirement.

[21]That's the other scenario --

[22]A. Correct.

[23]Q. -- that you calculated?

[24]A. Correct.

[25]Q. Where did you get the ten years from,
Page 75

[1]that he was promoted for scenario number two?

[2]A. You are asking about scenario two, why

[3]did I use scenario two?

[4]Q. No. Why did you use ten years in

[5]scenario two?

[6]A. Oh, I guess I was -- in Mr.

[7]Hildebrand's letter, which I'm sure you have a copy

[8]of, he asked me to do my evaluation and to use two

[9]scenarios for my calculation. One scenario is

[10]explained in here. The another scenario is that

[11]where the ten years comes from.

[12]So these are the two scenarios that 1

[13]was asked to express my opinion on **[*30]** what are the

[14]values for them, what are the value of his lost

[15]wages and lost pension.

[16]Q. Promotion after ten years as assistant

[17]principal would then be an assumption on your part

[18]for that scenario?

[19]A. That scenario assumes, yes, that after

[20]ten years you would be promoted from assistant

[21]principal to principal.

[22]Q. But the ten years, the actual number

[23]ten years came from Mr, Hildebrand. he asked you for

[24]that?

[25]A. These two scenarios I was asked to

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[1]evaluate based on these two scenarios.

[2]Q. Did you make a determination or express

[3]an opinion as to whether promotion after ten years

[4]was a reasonable assumption?

[5]A. I am surprised at your question because

[6]I'm telling you, these are the two -- the two

[7]scenarios. Now, what difference does it make what

[8]you are telling me now on my scenario?

[9]Q. Well, as far as coming up with a

[10]number, did you think it was reasonable to assume

[11]that Mr. Levine would be promoted after ten years as

[12]assistant principal?

[13]A. I am not expressing an opinion whether

[14]these scenarios are reasonable or not. I'm telling

[15] **[*31]** you these are the two scenarios that I did my

[16]calculations on.

[17]Now, you want to argument whether these

[18]assumptions are reasonable or not, don't argue with

[19]me. I am telling you this is the two scenarios,

[20]period. Now, any other information you give me is

[21]immaterial to my calculation and don't change my

[22]figure one iota.

[23]Q. So it would not change your opinion at

[24]all if you were told that it's unreasonable to

[25]assume that Mr. Levine would be promoted after ten
Page 77

[1]years as assistant principal?

[2]A. Then it would be scenario three,

[3]Mr. Levine is unreasonable to be promoted to -- I

[4]would have scenario three the way you're saying,

[5]unreasonable to be promoted and you tell me if in.

[6]scenario three you want he will ever be promoted or

[7]never, that's scenario three. Now you are giving me

[8]a scenario three which has nothing to do with my

[9]report.

[10]Q. You then write: The board has an

[11]established practice of promoting its assistant

[12]principals to principals.

[13]Do you see?

[14]A. I'm sorry, say that again.

[15]Q. Yes.

[16]After you have the number one and the

[17] **[*32]** number two listing your scenarios, right?

[18]A. Yeah.

[19]Q. Then you write: The board has an

[20]established practice of promoting its assistant

[21]principals to principals.

[22]A. That is from Mr. Hildebrand and that is

[23]part of the information that I received, yes.

[24]Q. Did you investigate whether that was a

[25]reasonable assumption?

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[1]would assume that's it. November 5, wait a minute.

[2]MR. HILDEBRAND: November 3.

[3]THE WITNESS: November 3 and November

[4]A. that's -- I would assume that's, yeah. He's

[5]asking about publications, yes.

[6]BY MR. DONIO:

[7]Q. I want to direct your attention now to

[8]Haya-3.

[9]A. Yes.

[10]Q. I think you testified earlier, and

[11]correct me if I'm wrong, that Haya-3 coupled with

[12]your CV, which was --

[13]MR. HILDEBRAND: Haya-1.

[14]BY MR. DONIO:

[15]Q. -- Haya-1, contains your entire report?

[16]A. That's correct.

[17]Q. Did you make certain assumptions in

[18]coming to an opinion -- strike that.

[19]Do you express an opinion in your

[20]report in this matter?

[21]A. All the report is my opinion.

[22]Q. All the report is **[*33]** your opinion?

[23]A. In other words, all the results in the

[24]report are based on my opinion what I believe are

[25]reasonable, yes.

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[1]Q. And what level of certainty do you have

[2]of your opinion?

[3]A. As an expert, hundred percent

[4]certainty, in other words, in my opinion. Nothing

[5]guarantees that what you project will come out. But

[6]this is the best of my knowledge to have to do my

[7]estimate.

[8]Q. Do you know --

[9]A. In a fair way, I would emphasize that,

[10]Q. Do you know whether an opinion has to

[11]be expressed with a certainty level of certainty to

[12]be admissible in court?

[13]A. Well, if you want to assign to a

[14]certain level of certainty, then I'm hundred percent

[15]certain of my results otherwise I wouldn't have

[16]signed on them.

[17]Q. And your signature is at the bottom of

[18]the first page of Haya-3; is that correct?

[19]A. That's my signature.

[20]Q. Okay. Do you review your report before

[21]you sign it?

[22]A. I do the report, yes.

[23]Q. Do you actually do the typing as well?

[24]A. No, I don't. Okay, I review my report.

[25]Q. You review.

Page **[*34]** 48

[1]And before you sign it and release it,

[2]do you make sure that it's accurate?

[3]A. That's correct.

[4]Q. Do you make sure that it's complete?

[5]A. I make sure that it's accurate and

[6]complete but god knows that we are all human beings

[7]and if there is any errors, it's subject to

[8]correction. But the report is accurate and

[9]complete. Show me one human being here that doesn't

[10]make sometimes an error. There may be typos in it,

[11]too.

[12]Q. Do you review it for typos?

[13]A. I think this is not really a question

[14]that's probably not relevant to it. I mean, it's

[15]not appropriate question, but I do read it. In

[16]other words, if there is any typos, I would correct

[17]it. But if I miss one, I miss one. And not the

[18]figures, the figures are all correct because I have

[19]to check the figures and the figures there are all

[20]correct. And if ever it happens that I made a

[21]mistake in my calculation, errors and omissions are

[22]corrected. So far there was no errors or correction

[23]on this one.

[24]Q. Turning to the First page of Haya-3,

[25]the very first page, your letter.

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[1]A. Okay. **[*35]**

[2]Q. The second to the last paragraph, you

[3]write: The assumptions used in valuation are

[4]summarized in the attached Exhibit 3.

[5]Do you see that?

[6]A. Yes.

[7]Q. Are there any assumptions that are not

[8]summarized in the attached Exhibit 3 that were used

[9]for this report?

[10]A. To the best of my knowledge, the

[11]Exhibit 3 is complete and anyone can produce the

[12]figures.

[13]Now, if there is something missing

[14]there, it's possible. It's possible. But I, to the

[15]best of my knowledge, there shouldn't be anything

[16]missing but it's possible that something is missing.

[17]But I don't think any material thing is missing and

[18]I don't think -- I think Exhibit 3 is complete by

[19]itself to do the report This is what I believe at

[20]this point.

[21]Q. You then write: It is noted that

[22]different assumptions may result in amounts that are

[23]higher or lower than those shown.

[24]A. Correct.

[25]Q. After that, you write: However, the
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[1]A. Correct.

[2]Q. And what is the date of that letter?

[3]What is the date of that letter?

[4]A. October 27th.

[5]Q. Do you recall **[*36]** receiving this letter?

[6]A. I remember receiving it, yeah.

[7]Q. Mr. Hildebrand in his letter to you as

[8]part of Haya-4 asked for data or other information

[9]considered by the witness in forming his opinion.

[10]Did you see that?

[11]A. Yes.

[12]Q. Have you supplied that to Mr.

[13]Hildebrand?

[14]A. What do you mean by that? Any

[15]information related that he gave me I used.

[16]Q. Did you use --

[17]A. In other words, if I use, let's say,

[18]IRS notice to give me interest rate and so on,

[19]should I have supplied that one to him?

[20]Q. Well, that's -- I guess my

[21]understanding is what did you understand -- my

[22]question to you is, what did you understand that

[23]question to ask you?

[24]A. To ask me every single data that I use

[25]for my report for my analysis to submit to him which

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[1]is the data I received from him on that case which 1

[2]summarized in Exhibit 2. That doesn't mean that I

[3]go to my CCH book and send him my CCH book and it

[4]doesn't mean that I send him the statistical

[5]abstract of the United States which I go and

[6]consult. It doesn't mean that. That's my

[7]understanding. **[*37]**

[8]My understanding, in other words, these

[9]are my expertise, how do I get, let's say, determine

[10]the interest rate and things like, these are my own

[11]expertise. These are I use them on other cases and

[12]that doesn't mean that I go and supply that.

[13]It would be impossible to operate if I

[14]gave every single piece of information that I used

[15]for my own expertise in order to do the calculation,

[16]but I can supply you with the data that was

[17]important for me for my calculation that any other

[18]actuary can reproduce.

[19]In other words, this report that I gave

[20]you and volunteering that information, this report,

[21]any actuary does not need to talk to me or to

[22]anybody else, can reproduce every single figure

[23]there, And if there is someone that cannot

[24]reproduce every single figure there without

[25]consuming me or anybody else based on that report

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[1]then I would say that's not an actuary.

[2]Q. Do you have an understanding as to what

[3]the term data means?

[4]A. It's information related to that

[5]specific case. Date of birth, date of hire, salary

[6]for that individual. That's the data.

[7] **[*38]** Q. So all the information specific to this

[8]case, would you consider that to be the data that

[9]you were required to --

[10]A. All the information specific to this

[11]case, yes, but not my knowledge, what is in my head

[12]or if I refer to IRS notices and things like that,

[13]that doesn't mean that's my…

[14]Q. Now, who provided you, based on that

[15]definition of data, who provided you with the data

[16]in this matter?

[17]A. It's Mr. Hildebrand, he was my sole

[18]contact to get the information that I feel I need to

[19]do my calculation.

[20]Q. And what was that information, is that

[21]all contained in your report?

[22]A. That is Exhibit 2 of my report, it's

[23]summarized in there and that's all I needed for my

[24]report.

[25]Q. Did you -- how did you get this

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[1]information from Mr. Hildebrand; did you do so by

[2]talking to him?

[3]A. No, I think I always asked for the --

[4]he sent me the information and if I needed anything.

[5]else, I may have called him once or twice, but I

[6]usually I -- I don't recall but I got everything I

[7]needed.

[8]For information, let's take an example,

[9]the pension **[*39]** that -- how to calculate the pension, I

[10]may have gone to the Internet to find out the

[11]pension but that doesn't mean that I have to print

[12]that and supply to him. Or it may be one of the

[13]information, that he gave me and he must have given

[14]me some information on pension that I used.

[15]That is, I took, let's put it this way,

[16]every information that I needed for my calculation I

got. There was no information that I needed, asked

for that I didn't get.

Q. Did you review any depositions before

you prepared your report?

A. Deposition, no.

Q. Any deposition transcript or anything

like that?

A. I don't believe I did.

Q. Did you review any interrogatories or

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