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SUPERIOR COURT OF NEW JERSEY

LAW DIVISION - MIDDLESEX COUNTY

DOCKET NO. MID-L-9484-10

LAWRENCE E. FISCHER and TRUDY

FISCHER,

Plaintiffs,

vs .

SANFORD FINEMAN, M, D . ,

Defendant.

DEPOSITION

OF

KRISTIN KUCSMA

Transcript of the stenographic notes of

the proceedings in the above titled matter as taken

by and before SHARI CATHEY, CCR, RPR, a Certified

Court Reporter and Notary Public of the State of New

Jersey, at the offices of TINARI ECONOMICS GROUP,

293 Eisenhower Parkway, Livingston, New Jersey, on

Thursday, February 20, 2014, commencing at 2:46

p.m., pursuant to Notice.

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APPEARANCES:

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KRISTIN KUCSMA

By: Mr. Smith 4

EXHIBITS

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KRISTIN K U C S M A, 293 Eisenhower Parkway, Livingston, New Jersey 07039, is sworn.

DIRECT EXAMINATION BY MR. SMITH:

Q. Good afternoon. Ms. Kucsma.

A. Good afternoon.

Q. I just introduced myself a moment ago. My name is Mike Smith. I represent Dr. Fineman in this matter. My understanding is you've been identified by the plaintiff as an expert witness in this case; is that right?

A. Yes.

Q. I've been provided a report dated December 31 St, 2012, that was co-authored by you and Mr. Tenari. Is that the report that you've co-authored in this case?

A. Yes.

Q. Do you have a copy of it in front of

you?
A. I do,
Q Would you take a look at my copy and
confirm we are looking at the same report?
A. Sure. Thank you, and yes, we are.
Q. Very good. Am I correct you've been
deposed on numerous occasions before?

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A. Yes.
Q. Can I just forgo the normal
instructions for depositions?
A. Yes.
Q. I'll just remind you, if you don't
you understand one of my questions, let me know.
I'll rephrase the question, and also, as you're
doing, keep your responses verbal mid allow me to
complete my question before you give your response,
and I'll allow you to finish your response before I
ask the next question, okay?
A. Sure.
Q. Now, you have your report in front of
you, would you turn to page 3 of the report?
A. Yes.

Q. All right. I wanted to ask you about life expectancy. Your assumptions in this report is that Mr. Fischer has a life expectancy of 20.8 years, and that's from the date of the impairment; is that correct?

A. Yes.

Q. Let me show, and you have a source for that list?

A. I do.

Q. Tell me if this is what you looked

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at, i f that is your source?

A. It should be, yes, yes.

MR. SMITH: Can I have this marked as Kucsma*l?

(Exhibit Kucsma-1 is received and marked for Identification by the Reporter.)

Q. Ms. Kucsma, you were referring to a table in this document, I believe it's Table !, correct me if I'm wrong?

A. I believe that is correct, yes. That's correct.

Q. What is that table labeled at the

top?
A. This table is labeled Life Table for the Total Population in the United States, 2006.
Q. And then I believe if you looked down the column on the far left, there is a list of ages, and if you go to 62 to 63, that would be the applicable column for Mr. Fischer; is that right?
A. Yes.
Q. If you go across it, that's where you – all the way to the right, that's where you get your 20.8 years?
A. Correct.
Q. If you turn to Table 4 in this

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document, what is Table 4 called?
A. Table 4 is the Life Table for the White Population, United States, 2006,
Q. Is it white males?
A. No, this is the white population.
Q. May I see it?
A. Sure.
Q. I'm sorry. I meant to refer you to Table 5.

A. No problem.
Q. Can you tell me what that table is called?
A. Yes. This is called Life Table for White Males, United States, 2006.
Q. Would it be appropriate to refer to that table to determine Mr. Fischer's life expectancy?
A. No.
MR. LUSTBADER: When you say "that table," you referred the witness to two different tables. You mean the second table you're talking about?
MR. SMITH: 1 mean Table 5. 1 mistakenly referred the witness to Table 4. We're talking about Table 5, which I'll have the witness

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describe the table again,
A. Table 5 is the Life table for White Males, United States, 2006, and no, it would not be appropriate for me to rely upon this table for this matter.
Q. Why is that?

A. Two reasons, number one, the rules governing the courts of the State of New Jersey make reference to use of a unisex life expectancy table, rather than gender-specific. Again, according to the court rules of the State of New Jersey, the appropriate table is one that is not gender-specific.

Secondly, it is our standard practice not to rely upon data that is race or ethnicity-based because race and ethnicity typically is self-reported, and as a result, we don't consider the race-based statistics to be appropriate.

Q. Okay. Now, could you describe for me in broad terms what the categories are in your report of economic loss?

A. Sure. In this report of economic loss, you consider two general categories of economic loss. Number one, we consider the loss of earnings, and number two, we consider the loss of

household services.

Q. I believe you break down loss of earning into two, loss of past earnings and loss of

future earnings; is that correct?

A. That's correct, yes. And to be very technical, we also do calculate loss of household services in past and future years as well.

Q. Now, one of the things you need to do in order to come up with a lost earnings calculation is determine Mr. Fischer's work life expectancy; is that right?

A. Yes.

Q. What is work life expectancy?

A. Work life expectancy represents the number of years that an individual would be expected to work,

Q. And how did you determine Mr. Fischer's work life expectancy?

A. We determined Mr. Fischer's work life expectancy very specifically by referring to tables that are contained in the article referenced in paragraph 3 on page 3 of our report. Specifically, we referred to s study conducted by Skoog, S-k-o-o-g; Cietka, C-i-e-t-k-a, and Krueger, K-r-u-e-g-e-r. That study is based on data, U.S.

government data, that reflects the actual experience of the U.S. population with respect to work life expectancy.

Q. Is that a source you referred to when calculating economic loss and when determining work life expectancy?

A. It is a source that we regularly use, yes.

Q. Now, on page 3 of your report, you refer to males of plaintiffs age, slash, education, slash, labor force activity. Arc those the three components of – strike that question. What variables, if any, go into calculating work life expectancy?

A. The three general categories that are reflected in the work life expectancy are the plaintiffs gender, his level of education and his age at the time of impairment.

Q. There's a reference to labor force activity on page 3, could you explain what that references in the middle paragraph on page 3 of your report?

A. Labor force activity refers to whether a plaintiff, number one, was employed at nr

around the time he was injured, and also, number

two, whether the but-for scenario is a scenario in which the individual is expected to be employed or not.

Q. I'm sorry. I didn't understand the last of what you said about the but-for scenario. Can you try to explain that for the record?

A. Sure. What we do in this cases like this is consider what we consider the but-for scenario, which simply means for purposes of calculating earnings, we consider what the individual's earning would have been but for the impairment.

In this case, of course, I have calculated earnings based on the assumption that but for the impairment, Mr. Fischer would have obtained employment, returned to employment on July 1st, 2010. So that's what 1 mean when I talk about the but-for employment status or labor force status of the plaintiff.

Q. Does labor force activities, does that refer to whether or not the individual is in

the labor force?

A. Yes.

Q. So am I correct that individuals are in the labor force if they were either employed or

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unemployed?

A Correct.

Q And would somebody be—well, how would somebody be out of the labor force?

A The difference between a person who is unemployed and a person who is out of the labor force really lies in whether or not they are ready, willing and able to work. So a person who is unemployed, who really does not have a job, but he or she is ready, willing and able to work or actively seeking work or available to work, they're still considered part of the available pool of labor in the labor force. They are simply considered to be unemployed.

A person who is unemployed without a job but who also is for whatever reason not ready, willing and able to work, that person would not be considered part of the labor force, and they would

be considered to be out of the labor force as oppose to unemployed.

Q. I believe that the government definition, and you correct me if I'm wrong, is similar, if not exactly what you just said. So then out of the labor force is someone who has not actively looked for work in the past four weeks, and

who is not available for work?

A Generally speaking, yes. That's really the reason the distinction is made, is the government wants to attempt to determine whether somebody should be counted as part of the available pool of labor for this country or not.

Q Is whether or not someone is in the labor force relevant to calculating work life expectancy?

A As I mentioned before, the two things that we want to consider are, number one, whether somebody was employed or not at or around the time of their impairment; but secondly, we also need to consider but-for labor force status. What we are assuming about that person's labor force status but

for the impairment.

Q. Did you make an assumption?

A. Yes. In this case we certainly assumed but for the impairment, Mr. Fischer would have returned to the labor force. Specifically, he would have obtained employment in or around July 1st, 2010.

Q. Was he in the labor force at the time of the alleged incident?

A. I don't believe he was employed at or

the time of the incident, no.

Q. Was he unemployed, or was he nut of the labor force?

At don't believe that I formed an opinion one way or another. I don't know that I had enough information to do that. He probably technically was at least temporarily out of the workforce at that time, simply because, of course, he was going to be undergoing a procedure.

Q. You said age is one of the variables that goes into calculating work life expectancy?

A. Yes, age at the time of the

impairment, correct.

Q. Would that also be labor force status at the time of the impairment?

A. No. As I indicated before, there really would be two things that would be of interest to me, labor force status at or around the time of impairment, and also but-for labor force status.

Q. Can you refer to the bottom of page 3 in your report, it says after his recovery, Mr. Fischer was working as a consultant with Kenneth L. Mink for approximately three months. After the consulting assignment concluded, Mr. Fischer took some time off, and then began looking for

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alternative employment. It is during this time that Mr. Fischer became sick and suspended his job search. Did I read that correctly?

A. Yes, yon did.

Q. So at the date of the impairment, am I correct that the status of Mr. Fischer's job search was that it was suspended?

A. As I indicated earlier, yes. Probably at or around the time of his impairment,

since he was seeking some sort of medical treatment, he probably was not actively seeking work in that immediate moment.

Q. Would I be correct at that moment that he was not in the labor force?

A. Probably, yes.

Q. You said for calculating work life expectancy, you referred to Skoog; is that right?

A. Yes.

Q. Can you tell me if this is the source you referred to?

A. Let's see. This is the source.

MR. SMITH: Can I have that marked?

(Exhibit Kucsma-2 is received and marked for Identification by the Reporter.)

Q Ms. Kucsma, in the Skoog source, can you refer, please, to page 186?

A. Sure.

Q. Can you tell me what that table is?

A. That is Table 7, and this table is for Characteristics for Initially Active Men with Some College, No Degree.

Q. Is this table applicable to this case?

A. This is certainly one table that would provide me with some information about Mr. Fischer's work life expectancy, yes.

Q. You just ran your finger along the table towards the bottom of the page. I believe you were looking for a number?

A. I was looking for the work life expectancy that would correspond with Mr. Fischer. Specifically, I was looking at the work life expectancy that corresponds to an age in between 62 and 63 years of age.

Q. There is a value for 63 years of age on that table; is that correct?

A. There is, yes.

Q. His actual work life expectancy is actually -- strike that. His actual age on the day of impairment

was 62.95 years?

A Yes.

Q Did you plug that year into a formula

to get 5.61 year of work life expectancy?

A. Not technically. We did extrapolate between the age of 62 and 63.

Q. For 63 years, what's the work life expectancy on that table?

A. For 63 years, the work life expectancy is 5.53 years.

Q So I mean, would it be fair to say that that table is using the same formula with the same extrapolation method that you used to get to the 5.61 years work life expectancy?

A Yes. I do need to correct one thing for the record. We didn't actually extrapolate, we interpolated, I apologize. And the only difference is interpolation means we're looking at a figure between two points. That's what we did here. We wanted to interpolate the work life expectancy between the age of 62, which gave me a work life expectancy of 5.95 years, and work life expectancy and at 63, which gives me a life expectancy of 5.53 years. Then we used this process of interpolation to determine between those two numbers what the

appropriate work life expectancy would be for Mr. Fischer.

Q. I think I asked this already. What is that table labeled?

A. Characteristics for Initially Active Men with Some College, No Degree.

Q. So some college, did you read Mr. Fischer's deposition transcript?

A. Yes.

Q. I believe he testified that he went to college, but he didn't graduate, right?

A. I believe that was his testimony, yes.

Q. Some college would be applicable?

A. Yes.

Q. This table is for initially active individuals; is that right?

A. Yes, it is.

Q. And that means active in the labor force?

A. Yes.

Q. I believe you testified earlier that Mr. Fischer was not in the labor force at the time of his impairment?

A. That's correct.

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Q. So would you turn to page 194 of that?

A. Sure.

Q. And what table is that?

A. Table 15.

Q. What is it labeled or titled?

A. The title is Characteristics for Initially Inactive Men with Some College, No Degree

Q. Is that table applicable to this case?

A. In my professional opinion, no, and the reason that I relied upon Table 7 is because of the fact that Mr. Fischer's intention was to return to the labor force. So in other words his intention was to be ready, willing and able to work to become part of the available supply of labor again, and it was my understanding that once he had the surgery and after a brief recovery period, he would have been able to return to the workforce. Again, my but-for scenario was that but for the impairment, he would have been part of the available supply of

labor and part of the labor force.

Q. Now, when 1 was looking at the table, I noticed that work life expectancy for people who are not in the labor force is less than for people

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who are in the labor force, is that generally true?

A. All other things held constant, generally yes, meaning age, gender, level of education and so on constant.

Q. Is there a reason for?

A. Is there what?

Q. Why a work life expectancy is lower for people who are outside the labor force?

A. There could be many reasons for that. One reason might be that an individual who is initially inactive has been inactive for a long period of time. That might be an indication that that person will likely not be willing to join the labor force going forward, Mr. Fischer here, of course, had been a member of the labor force. He had removed himself for the labor force for a brief period of time because of his own medical conditions and also the

medical condition of his wife.

Q. I know you told me that the table on page 94, is not application to this case. However, I'm asking you to assume for the purposes of this question, if we assume that it was applicable because Mr. Fischer was outside the labor force, are you able to tell me -- strike that question.

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Axe you able to tell me what would the work life expectancy be for a hypothetical person 62.95 years of age, male, with some college and initially outside of the labor force by looking at that table?

A. Based on Table 15, the work life expectancy for groups – for a male, with some college, no degree, who is initially inactive is 2.33 years. Did I say a 62-year-old male? And the work life expectancy for a 63-year-old male who was initially inactive with some college, no degree, would be 2.05 years. Then again, these are median figures.

Q. He would be closer to 2.05 years than 2.33 years, right?

A. Probably, yes, because he was obviously closer to age 63 than age 62, yes.

Q. Turning to page 4 of your report, you have at the top of the page, you discuss earning history. Can you tell me what you referred to to get that information?

A. Yes, I relied upon information provided in personal income tax returns, and also W-2 wages and tax statements.

Q. How many years that did that

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information go back?

A. I examined information for the years 2004,'05,'06,'07 and'08.

Q. Did yon request information for prior to 2004?

A. No.

Q. If you had it would it have been useful to you?

A. Probably not.

Q. Why is that?

A. Generally, when we are attempting to measure a person's earning base or their earning

capacity, we typically consider information within the most recent three to five years. When you start going back further than that, a couple of issues come up. One of which is that wages have increased over that time period.

I'm sure that all of us sitting at this table were probably making a lot less ten years ago than we are making today. Going back and looking a how much we were earning ten years ago, whether w> relied on that number or we included it in an average, it would probably not be an accurate representation of our earning ability is today.

Q. What are pre-impairment earnings?

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A. Pre-impairment earnings, that's the term we use so to speak for our estimate of what Mr. Fischer would have earned but-for the impairment. So when we talk about pre-impairment, we are not talking about a time period, but rather we're talking about if we went back to before he was impaired and determined what he was able to earn, what would that capacity have been.

Q. How did you make that determination?

A. You'll see in paragraph 6, that we established Mr. Fischer's pre-impairment earnings at $45,118, based on what he had earned in last full year o f employment.

Q. Why did you use the last full year of employment?

A. In this case we used his last full year of employment because we examined what he had been earning Kenneth L. Mink, and we noticed that through his employment with Kenneth L. Mink, his earnings had been steadily increasing each year. It started at $15,972, which did not represent a full year's worth of earnings, but then in the year 2006, he earned $45,040, and in the following year, 2007, he earned slightly more, $45,118. So in my opinion, the best estimate of what his earning capacity would

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have been going forward, was S45,1 18 with increases in (hose rates going forward.

Q Do you know how Mr. Fischer was compensated by Kenneth L. Mink?

MR. LUSTBADER: Could you be a little more specific?

Q Did he get a salary, was he paid by commission?

A That I don't recall. I certainly relied upon information that were contained in both tax returns and W-2s. I don't believe that 1 have a breakdown of that compensation now. I will be happy to look.

I don't believe 1 have any detailed breakdown of the compensation, no.

Q I mean, does that have any relevance whether someone is paid by salary or paid by commission as to how you calculate pre-impairment earnings?

A It might. It might not. I couldn't say without having a hotter understanding of what that compensation structure, should it exist, might have been.

Q Paragraph 7, you discuss fringe benefits. What are fringe benefits?

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A Fringe benefits, in general, refer to additional sources of compensation that a person gets, but that they don't necessarily receive as

part of their regular pay. For example, one type of fringe benefit might be some sort of non-monitary fringe benefit that a person receives, like life insurance, health insurance, whether he is provided with those insurance policies, even though they don't have to pay for them or they're paying a portion of them.

The second general type of fringe benefit consists of monetary fringe benefits like employer matches to a 401K plan, where an individual is getting extra dollars to so speak over and above his regular pay. In that example, those extra dollars would be deposited into some sort of retirement plan, pension plans, annuities, stock options. Those are all additional examples of fringe benefits that a person might receive.

Q. And you value the plaintiffs potential fringe benefits at 4.4 percent of gross earnings; is that correct?

A. Yes.

Q. And how did – where did you get the 4.4 percent figure from?

A The 4.4 percent is based on data provided by the U.S. Department of Labor. Very specifically, the U.S. Department of Labor conducted a survey of the employer cost of employee benefits. So they conduct a survey to see what money employers are devoting to towards the provision of fringe benefits. In this case specifically, I included only the value of the employer contribution to retirement and savings plans.

Q You referred to Table 5; is that right?

A. Yes.

Q. What is Table 5, from what source?

A. Table 5,1 believe, is the table that provides data again for the employer cost of employee compensation for private industry occupations.

Q. With a private industry, is that just anything that's not in the government, or is it something else?

A Yes, it's anything that's not the government, correct.

Q. Is there any demographic breakdown in terms of what level an employee is within a business

or what specific type of industry, or anything of

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that nature?

A. I believe there is some data that can be considered for different occupations or industries, I believe. They're rather broad groups. I believe there is data available for different industries. I don't believe the data is broken down according to experience or rank, for example, within a particular company.

Q. Typically, would you expect higher-salaried individuals to receive more fringe benefits?

A. Not necessarily, and the reason I say that is that the table here that I've considered is examining – what I've done is examined the value of the fringe benefits as a percentage of a person's wage. It's a difficult question to answer. While a more highly compensated person might get, for example, additional fringe benefits than a lower-compensated person didn't get, it could end up actually with the more highly-compensated person receiving lower fringe benefits as a percent

of their overall compensation. So it's not necessarily true that a person that receives more fringe benefits, so to speak, quote-unquote, would be receiving a larger proportion of his salary with

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fringe benefits, if that makes any sense.

Q. No, I got you. Turn to page 6 of your report, Adjusted Earnings in Past Years. In the middle of that page you discuss unemployment adjustment factors, can you explain what that is?

A. Sure. One of the things that I wanted to take into account in my analysts was the fact that Mr. Fischer might have become unemployed. t assumed that he would have relumed to work on July 1st, 2010. I also estimated that he had 5.61 years work life left. He would have worked 5.61 years from July 1st, 2010, but 1 needed take into account the fact that he might have become unemployed at some point during that 5.61-year period.

When 1 make an adjustment for unemployment, I have to take into account two things. Number one, 1 have to take into account the

likelihood that he would have become unemployed, arid that would represent, of course, a period of time where he would not have earned income, so I need to make an adjustment down to take that into account. But at the same lime, I also have to consider a second factor, and that is that if he became unemployed, he would not have lost one

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hundred percent of his income. He would have applied for unemployment benefits, and some of his lost income would have been replaced through that unemployment insurance. So I combined those two factors, number one, the likelihood he would have become unemployed, and number two, how much of that income would have been replaced through his unemployment benefits, and when I considered those factors, I determined the appropriate downward adjustment to his earnings was 2.1 percent

Q. Now, before you factored in the fact – strike that.

Before you made the assumption that if Mr, Fischer became unemployed that he would apply for and receive unemployment, 1 believe you were

working with the unemployment rate of 5.3 percent; is that right?

A. Yes.

Q. How do you gel that percent?

A. Because 1 was projecting earnings over a five- to six-year period. What I did was 1 looked back over the last five to six years at what the unemployment rate historically has been on average for males. I simply relied upon data provided by the Bureau of Labor Statistics, and

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you'll see very specifically noted, I examined what the unemployment rate had been on average lor males, from 2006 through 2011.

Q. Okay. Now, 2006 through 2011, that's six years, right?

A. Correct,

Q. I believe you just said you used that period of time because you were projecting six years into the future?

A. Correct, we were specifically calculating lost earnings over a 5,61-year period.

Q. Round it out off to six?

A. Correct.
Q. And did you just use the six years, the six prior years that were available at the time you authored your report?
A. Yes.
Q. So if you were to make the same calculation today, would it be appropriate to consider 2012 and 2013, If it's available and go back six years?
A. Yes. If I were to update this report, that is one of the things that 1 would update.
Q. If you did that, 5.3 percent would go

Page 31

up, right?
A. I couldn't say for sure without looking at the data.
Q. What is your source, what data did you look at?
A. The U.S. Department of Labor, Bureau of Labor Statistics, and specifically, we looked at the national unemployment rate, and we examined the national unemployment based on gender and age.

Q. I was looking at that today. I wasn't sure if I've got the right table that you referred to, so I'm going to show it to you and see if I was looking at the right thing?

A. I believe this is the table that we considered when we estimated the unemployment rale. 1 believe that is at least one source for the data we used.

Q. Thank you. I'll make a circle, and I'll ask some questions about what I circled. You see on the second page of this document 1 made an oval. Are those the unemployment rates that you would have used to come up with the 5.3 percent?

A. No, I don't believe so, and I do apologize that we don't have a move specific source in our report, but we do consider in addition to the

gender, and you have the women's figures here. We certainly wouldn't use the women's figures. But in addition to considering the gender, we do also consider unemployment rate according to age. The Bureau of Labor Statistics does provide unemployment rates for different age brackets, and we actually

incorporate both of those sets of data into our analysis, both the gender and we also examine how the unemployment rate changes over a person's lifetime as they age. That I don't believe is reflected in this table. These unemployment rates here, I believe, if you can see, are across all ages.

Q. I understand what you're saying.

Okay, now, if you were only instead of – strike that.

If instead of projecting six years into the future, you were only projecting two years into the future, meaning you were projecting for a work life expectancy for two years, would you use two years of unemployment data instead of six years?

A. Well, I might have misspoken earlier.

I just want to be clear on something. We were projecting earnings for a total of 5.61 years, not necessarily 5.61 years into the future. So to

answer you question, if I had a work life expectancy of two years, whether they were past, future or split between past and future, yes, then I would

look back over two years. Since I'm considering here a life expectancy or a work life expectancy, some of which was in the past, some of which would have been in the future of about six years, it would most appropriate for me to examine a six-year period in the past.

Q You're projecting from the date of the impairment, not into the future?

A Correct.

Q If you were to project two years from the date of impairment, would it be appropriate to go back two years?

A If we were only calculating earnings for two years, then, yes, we would look back only two years.

Q Can you just describe the mathematics, how you got 5.3 percent to 2.1 percent at the bottom of page 6?

MR. LUSTBADER: You want the mathematics, you're not asking her to write out formulas and identify calculations, I assume?

MR. SMITH: No, I'm not.

Q. But you make a - you refer to an income replacement of 60 percent; is that right?

A. Yes.

Q. And that's based on unemployment compensation of 60 percent of weekly pay in New Jersey?

A. Yes.

Q. Does that just simply represent a 60-percent reduction, 5.3 percent to 2.1 percent?

A. It is. Or to answer your original question, I just took 5.3 percent, multiplied by 0.4, which as you just indicated takes into account the 60-percent reduction, and that's how I rely upon 2.1 percent.

Q. Understood. Thank you. And then you assumed the combined federal and state tax rate of fifteen percent; is that right?

A. That's correct, yes.

Q. How did you arrive at that?

A. That was based largely on a review of two sources. Number one, the income tax returns of the plaintiff, but we also have the tax rale schedule provided by the IRS at the federal level, and the State of New Jersey at the state level,

25 Q. Are you making an assumption with

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1 regard to whether he's filing his taxes jointly with
2 his spouse?
3 A I believe that we considered the
4 filing status that he had on his personal tax
5 returns, yes.
6 Q. So in arriving at this
7 fifteen percent combined rate, you determined what
8 tax bracket Mr, Fischer fell into based on your
9 pre-impairment earning of $45,118?
10 A. That's correct.
11 Q. And then how did you determine the
12 state component of the tax rate?
13 A. Again, there we relied upon
14 information provided in the tax rate schedule
15 published by the State of New Jersey.
16 Q. Was there any rounding involved to
17 get that?
18 A. There might have been. I don't
19 recall. It wouldn't have been anything significant
20 though.
21 Q. Turning to page 8 of the report,

there was a paragraph, Adjusted Earning into the Future Years, could you please describe how you calculated adjusted earnings in future years?

A. Sure. The adjusted earnings in

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future years just refers to the fact that we are calculating what Mr. Fischer would have earned in future years, and in this case since our report was written in late 2012, we assumed that the future began on April 1st, 2013, and we calculated how much Mr. Fischer would likely have earned through his work life or through early 2015. The "adjusted" term refers to fact we did include adjustments for the likelihood he would have become unemployed, the taxes that he would have paid, the fringe benefits that he would have received. That would cover job maintenance or job-related expenses that he would have incurred.

Q. Why is the starting date April 1 st, 2013?

A. Generally, when we prepare a report in any given month, we use the first day of the next quarter as the starting point for the futures.

Sometimes an attorney will say, I know this isn't going to trial for another year or two, and we'll use that date. But generally, we want allow for enough time for deposition testimony and so on before a trial might reasonably be expected to take place.

Q. You use a biyearly increase of

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2.3 percent for future years, is that true?

A. Yes.

Q. What was the rate you applied to calculate 2.3?

A If you look at the table on the top of page 8, you'll see that past years we didn't apply any annual increase. We actually kept his earnings constant from 2010 through 2013,

Q. I believe you used two different discount rates in this report?

A. Yes, I did.

Q. One for earning and one for services?

A. Yes.

Q. What did you use for earnings?

A. Two-point-zero percent.

Q. What was your discount rate for services?

A. Three-point-two-five percent.

Q. Why did you use two different discount rates?

A. The discount rate is an interest rate, mid as an interest rate, it is a function of the duration of time over which someone would be holding and investing money. Generally speaking, long-term interest rates are greater than short-term

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interest rates, which means any lump sum of money an individual might invest today, he could expect in general to get a higher rate of return if he could invest that money for a seventeen-year period, as you compared to what he could expect to receive on that lump-sum investment over a two-year period.

Q. Now, when you determined the discount rate for the lost earnings, arc there any particular statistics you turn to to make that?

A. There are two general things we consider. One is we do consider historical data on the rate of return on high-grade municipal bonds,

and we look back over the last, five, ten and twenty years to see what the returns on those municipal bonds had been in the past. But we also, of course, consider current financial and economic conditions, which means that we do consider current interest rates and current interest environment, returns on U.S. Treasury beads, returns on CD, savings accounts and so on to make sure that we are accurately capturing the current interest rate environment.

(At this point in the proceeding, a brief recess is taken.)

Q. Am I correct that the two components of your discount rate calculations are historical

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yields and current financial market conditions?

A. Correct, yeah.

Q. And how do you assess the current financial market?

A. As 1 mentioned before. I assess the current financial market by just examining the interest rate environment in general, examining trends in other interest rates like U.S. Treasury Rates, CD rates, the prime rate, just to get a

general sense of what the trend is in interest rates, and what the current interest rate environment is.

Q. Have you ever use a two-percent discount rate in other reports that you prepared?

A. Probably. I couldn't say for sure. Again, the discount rate really is a function of two things. If s a function, number one, of the date on which I prepared my report. So for example, if I had prepared this report five years ago, there is a good chance I might have used different discount rates because obviously, the current interest rate environment would have been different at that time, as well the past historical yields. Secondly, though, it also depends upon as I indicated already, the duration of losses. So

certainly 1 could prepare three different reports today and use different discount rates in each one of them because I was examining different periods of loss in those reports. I probably used 2.0 percent in another report and in another time, but I couldn't say for sure sitting here today.

Q. Turning to page 10 of your report, household services, what was your source for calculating the loss of household services.

A. Sources I relied upon were, number one, something we call the dollar value of a day. 1 also considered information provided in the American Time Use Survey. That data is reflected in the dollar value of the day. Those were the sources that I used to estimate the number of hours that Mr. Fischer devoted to the provision of household services.

I then also considered wage-rate data, again, provided in the dollar value of the day, and also provided by the U.S. Department of Labor, Bureau of Labor Statistics, to determine the appropriate market wage rate for the household services in any given year.

Q. So you assumed that Mr. Fischer would have provided 14.07 hours per week for household

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services?

A. Yes.

Q. And that comes from the dollar value

of the day?

A. Yes.

Q. If I wanted to look at what the dollar value of the day is, where could 1 find it?

A. You might have to buy it. I don't know if it's publicly available. I suspect you might have to purchase it, and it's published on a yearly basis.

Q. Is it something that is sold on the internet?

A. Yes, you certainly order it by way of the internet.

Q. Did you or anyone from your employer interview Mr. Fischer prior to preparing this report?

A. I don't believe so. I certainly did not, no.

Q. Have you ever, when preparing other reports, interviewed the plaintiff to determine how much household services they provided?

A. We have on occasion, but it isn't something that we regularly do, no.

Q. On those occasions when you've done it, would you have the plaintiff fill out a questionnaire?

A. That's actually what I'm looking at in my file here. Generally, we do have plaintiffs fill out fact-finding questionnaires. There are questions in that questionnaire about the household services performed by a plaintiff, and also in this case, of course, we have a deposition transcript of Mr. Fischer as well, so it wasn't necessary for us to interview him.

Q. Do you usually have a plaintiff fill out a fact-finding questionnaire?

A. Typically, not always, but it is something that we typically do provide to plaintiffs counsel, and more often than not, it is a document that is returned to us. Sometimes there is information provided in other sources like deposition transcripts or vocational reports, and we're able to get the information we need from those reports, so we don't need to rely on a fact-finding questionnaire.

Q. Typically, when you're contacted by an attorney to review a case, I'm assuming that you

25 agreed to review the case, there would come a time

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1 when that attorney would send you materials to
2 review, is that how it works?
3 A. Yes.
4 Q. If you were to send an attorney a
5 fact-finding questionnaire, when would that happen
6 in the process?
7 A. The fact-finding questionnaire is
8 typically sent out in the early stage of the process
9 when we get call from an attorney. That generates
10 what we call an inquiry. It's usually at that point
11 in time where we will send documents to an attorney
12 that will include our fee schedule and also the
13 fact-finding questionnaire.
14 Q. So would you do that before reviewing
15 the material that the attorney might send you?
16 A. It really depends. The reason 1 say
17 it depends is because many times attorneys will
18 simply send us a letter, send us a packet of
19 documents, and that would be the first point of
20 contact. Certainly, in that case there is a chance
21 to review the document before sending out of the

fact-finding questionnaire. We also might determine we don't necessarily need a fact-finding questionnaire based upon a review of those documents. If on the other

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hand, the first point of contact is a phone call or brief e-mail, then more often than not, we'll respond to that by sending out, among other things, our fact-finding questionnaire. In that case it would have been sent out before we received any documents.

Q Do you recall what the first point of contact was in this case?

A. I don't recall specifically. It looks as if the first point of contact was a letter from Mr. Lustbader.

Q. Is that letter dated?

A. Yes, a letter dated November 9th, 2012.

Q. Do you know if you forwarded Mr. Lustbader the fact-finding questionnaire?

A. I would expect we did not because in his letter dated November 9th, 2012, he stated, "he"

meaning Mr. Lustbader, states, Enclosed is your completed questionnaire with documents and tax returns from 2004, '05, '06, '07, '08, and '09.

Q. Do you have that questionnaire?

A. 1 do, yes.

Q. Can I take a look at it?

A. Sure.

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MR. SMITH: Off the record.

(At this point in the proceeding, a brief recess is taken.)

Q Do you have a preference between using the dollar value of the day to determine household services or relying on the questionnaire filled out by the plaintiff?

A What we generally consider is information obtained in both, the fact-finding questionnaire as well as the statistics provided through the dollar value of the day.

Q. Do you consider one more reliable than the other?

A. No. As I indicated we generally take both into account. In this case 1 don't believe

there was a large difference between the number of hours reported by Mr. Fischer and those reported in the dollar value of the day. In cases in which there is a large difference, then we sometimes will have a conversation with plaintiff to try to determine why there is such a large difference.

Q. So here you use the report in the dollar value of the day, right?

A. Yes.

Q. If this matter goes trial, do you

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intend to testify as the cost?

A. Yes.

Q. Can I assume that you wouid be relying on the figure from the dollar value of the day on page 10 of your report to determine the amount of household services of Mr. Fischer would have provided per week?

A. It is safe to assume that 1 would do two things. One is that I would use that figure only as it's updated. There is new information available. I don't believe the number of hours have changed significantly. But number two, 1 certainly

consider any new information provided to me. So I haven't been provided new information yet, but if for whatever reason I was, and that warranted some follow-up conversation, then I may or may not use the dollar value of the day data. Based on any information 1 have right now, I would expect to use the dollar value of the day data updated.

MR. SMITH: Can 1 have this marked?

(Exhibit K.ucsma-3 is received and marked for Identification by the Reporter.)

Q. If I understand your answer correctly, the only difference at trial would be you would consider an updated version of the dollar

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value of the day. updated figures?

A. Yes, and any new information.

Q. So this fact-finding questionnaire, which I've just had marked as Kucsma-3, that would not constitute new information, right?

A. That's correct.

Q. On page 11 of your report, right below the first table at the top of the page, there is a statement, we estimate a range of loss of

plaintiffs ability to perform household services at between 40 percent and 60 percent throughout his lifetime. Can you tell me how you – why you're estimating between 40 percent and 60 percent?

A. Yes. The 40 percent and 60 percent figures are really provided for illustrative purposes, and when 1 testify at trial, I explain this to the jury. I'm not a medical doctor. I'm not vocational expert, and I'm not the trier of fact, so it really would not be appropriate for me to have an opinion about specifically what the diminution in a person's ability to perform household services may or not be.

In this particular case, I've selected 40 and 60 percent really for illustrative purposes so that I can show the jury how they could calculate

the appropriate loss of household services based on what reduction in Mr. Fischer's, if any, ability they found.

Q Have you made a determination or are you assuming that the diminution is somewhere between 40 percent and 60 percent?

A No.
Q So if the trier of fact determined that it was 20 percent, is there some – is there some number in your report that they could apply the 20 percent to come up with the appropriate economic loss?
A. Yes. If you look at page 14 of our report, you'll see that if for example the trier of fact felt that a 20-percent loss was more appropriate, they could simply take the figure in past years of $33,859 and multiply by 0.2, and they could also take the figure in future years of $156,430, and multiple by 0.2.
Q. And then add those two?
A. Correct, for the full loss in that example of household services based on the 20-percent reduction in Mr. Fischer's ability.
Q. Similarly, if for some reason, the trier of fact determines an 80-percent number, they

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would multiply those numbers by 0.8, and add them together?
A. That is correct.

Q. It's a fairly simple calculation that the jury can make if necessary?

A Yes.

Q. On the last page of your report, you provided a range between rounding out $257,000 to roughly $295,000, right?

A Yes.

Q. Again, you're leave the diminution of the ability to perform household services to the trier of the fact?

A Yes.

Q. So you're not going to at the time of trial tell the jury that in your opinion, the economic loss is between S257,000 and $295,000?

A What I will tell them is that I have estimated economic losses at between roughly $257,000 and $295,000. What I do make very clear to the jury when 1 testify is the fact what I have provided them with respect to household services is a framework that they could use to determine the appropriate value of the loss of household services.

Q. I'm going to turn to your background.

You've been a retained on behalf of plaintiffs in the past, correct?

A. Yes.

0 Have you ever been retained on behalf of the defendant?

A. Yes.

Q. Can you give me a break down how often you're retained on behalf of the plaintiff versus defendant?

A. Sure. About 30 percent of the work I do, maybe a little bit more, but about 30 percent of the work I do is on behalf of defendants, which means approximately 70 percent of work I do is on behalf of plaintiffs.

Q. How long have you been doing expert work?

A. A little over six years. 1 joined the Tinari Economics Group on January 2nd, 2008.

Q. Has that 70-30 breakdown roughly been consistent since you've been doing expert work?

A. It’s fairly consistent. There was a number of years in between, between '08 and now, where I did slightly more defense, maybe 35 percent of the work I did was defense and about 65 was

plaintiff.

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Q Can you approximate for me how many cases you review per year?

MR. LUSTBADER: By that you mean how many reports does she write per year because she could be looking at a case that someone in the office is working on and touch it for five minutes. You can ask the question any way you want. I wanted to make it a little clearer because I assume you don't mean if she just consults with a colleagues and gives advise, that's her working on a case.

Q I'm referring to you've asked by an attorney to review a case or Mr. Tinari or someone else from the group is asked, and you've been assigned to help out on the case?

A I would estimate that I review anywhere from 25 to 45 cases in any given month.

Q Is there any other – strike that. What percentage of your income is derived in expert work?

A My earned income is all provided to me by way of salary through my work with Tinari

Economics Group.

Q Do you do any work other than expert work through the Tinari Group?

MR. LUSTBADER: You mean does she

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have another job?

Q Is that your specialty here, that all you do is prepare economic loss reports and testify in litigated matters?

A Most of what I do as an economist with the Tinari Economics Group does involve calculating damage for purposes of litigation. A small percent of the work that 1 do does involve non-litigated, other more traditional economic research projects.

Q Can you approximate what percent is research?

A I would estimate that it fluctuates, five and at most ten percent.

Q Do you charge a retainer fee when you review a case?

A. We do, yes.

Q. What is that?

A. The current retainer fee is, in general, $3,000. Sometimes it may be a bit more in a more complex case, sometimes a little less, for example, if it is for example just a life-care plan. In genera) for an appraisal of economic loss, we ask for a $3,000 retainer.

Q. And then do you have an hourly fee

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reviewing materials?

A. Yes.

Q. What is that?

A. My current hourly rate is S345 for the review of materials and the preparation of a report.

Q. Then you have a separate fee for giving depositions?

A. Yes. Any in-person consultation or deposition testimony requires an hourly rate for me of $370.

Q. How about for trial testimony, do you have a separate fee for that?

A. For trial testimony, my fee is $600 for an administrative fee, plus $2,900 for a half

day trial appearance.

Q. That would be either the morning or the afternoon?

A. Yes.

Q. Have you ever reviewed a case other than this case for Mr. Lustbader or his firm?

A. I don't recall sitting here today.

Q. I may have asked you this. Can you tell me about how many times you've given deposition testimony?

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MR. LUSTBADER: Over what time period, per week, per month, per year?

Q I would say ever, how many times have you ever been deposed, approximately?

A I would estimate that to date I've deposed approximately one hundred times.

Q This year, do you know how many times you've been deposed in 2014?

A That I don't know.

Q Do you know the most recent time you were deposed?

A 1 don't recall.

Q Is this your first deposition this year?

A No, I don't believe so.

Q How about trial testimony, can you approximate how many times you've given trial testimony?

MR. LUSTBADER: Again, what time period?

MR. SMITH: Ever.

A 1 would estimate I've testified at trial about one hundred times as well.

Q What states have you appeared in giving trial testimony?

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A I've testified in both Federal and State Court, and I've testified in the states of New York, New Jersey, Pennsylvania, Connecticut, Virginia. I also have testified for the Financial Industrial Regulatory Authority in Florida and Puerto Rico. I believe those were all of the states in which I've testified, although it's possible I'm forgetting one.

Q. When was last time you testified in

court?

A. That's easy, yesterday.

Q. Where was that?

A. Monmouth County, New Jersey.

Q. What kind of case was that just generally, a personal injury?

A. That was a wrongful death matter.

Q. Do you testify on behalf of the plaintiff or the defendant?

A. Yesterday I testified on behalf of the plaintiff.

Q. Do you advertise your services?

A. We do as a firm, yes.

Q. To your knowledge have you ever been disqualified by the Court from authoring an expert opinion?

A. No.

Q. I just want to go over a few things on your CV.

A. Sure.

Q That was attached to your report of December 31, 2012. The CV I have is dated June 7.

2012, is that a current CV?

A. No.

Q. What would need to be done to bring it up to date?

A. The new additions to my CV include additional speaking engagements, CLEs in the courts and so on. I believe my new CV would also include one additional paper that I've written. It hasn't been published yet but a paper that I've written. And I believe my CV also would include an updated figure on the last, page 5, with respect to the number of times that I've testified in trial, arbitration, mediation or deposition.

Q. Under professional activities on your CV, it says that you are a member of the District Ethics Committee, Office of Attorney Ethics of the Supreme Court of New Jersey; is that right?

A. Yes.

Q. You still are?

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A. I am.

Q. Could you describe what that entails?

A. Basically, 1 am one of the public

members of the Attorney Ethics Committee. What that means is that when people file grievances against attorneys In the state of New Jersey, it is my job to participate in the process of evaluating those grievances, and if those grievances result in a hearing, I am one of three people that sit on the panel that ultimately makes a decision regarding a hearing or a grievance that's been filed against an attorney.

Q. You said you're a public member?

A. Yes.

Q. Docs that mean non-attorney?

A. Yes.

Q. Are the other two attorneys on the panel?

A. Yes.

Q. How did you become a member?

A. 1 don't know. Somebody nominated me back in the summer of 2010, I was asked if 1 would be interested in serving. I said yes. I was then officially that appointed to the committee in September of 2010.

Q. I believe you said you taught some CLEs; is that right?

A Yes.

Q. What CLEs have you taught?

A. I have taught CLEs that have focused on how to calculate economic damages for matters involving personal injury. I have also taught CLEs involving how to calculate economic damages involving wrongful death, and I have also taught CLEs in which I discussed calculating commercial damages or lost profits.

Q. With regard to CLEs on calculating damages in personal injury, would that have a discussion of how to determine the appropriate discount rate?

A. I don't know that 1 generally have a discussion specifically about what the appropriate discount rate would be, but certainly one of the things I do discuss in those CLEs is the discount rate in general, really explaining to attorneys what a discount rate is for, what it represents.

Q Do you know who that OLE was authored through, for example, New Jersey ICLE?

A. I don't recall, but actually I have

taught several CLEs, and I know that they have been

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organized by several different groups. 1 believe one may have been organized by GANN, perhaps.

Q. Were there any written materials that you used for CLEs involving how to calculate economic damages in personal injury cases?

A. For some of them, yes; for others, no.

Q. Are those things that you retained, the written materials?

A. Certainly, we maintain electronic copies of any PowerPoint presentations, for example, that we used, I know that in at least ones of these CLEs, there was such a PowerPoint presentation.

MR. SMITH: I'm go make a request for the documents.

MR. LUSTBADER: Send me a letter.

MR. SMITH: I think I'm about wrapped up. I'm going to take a minute and check everything.

(At this point in the proceeding, a brief recess is taken.)

MR. SMITH: That's all I have. Thank you very much.

(Whereupon the deposition is then concluded at 4:31 p.m.)