SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU: TRIAL TERM PART 9

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RAYMOND E. KURZ and SUSANNA KURZ,

Plaintiffs, Index No. 011604/10

-against-

ST. FRANCIS HOSPITAL, ROSLYN, NEW YORK, CARDIOTHORACIC SURGERY, P.C., HAROLD A. FERNANDEZ, M.D., THE INTERVENTIONAL HEART GROUP, PLLC, ANTONIO P. MADRID, M.D., JOSEPH MINADEO, M.D., MANHASSET OPTHALMOLOGY, P.C., ROBERT BRODERICK, M.D., and LAURA SCHOENBERG, M.D.,

Defendants.

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February 24, 2015
Mineola, New York

B E F O R E:

HON. ARTHUR M. DIAMOND,

Justice, and a Jury.

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

LAW OFFICES OF MICHAEL A. HASKEL
By: MICHAEL A. HASKEL, ESQ.
For Plaintiffs

BOWER LAW P.C.
By: PETER R. BOWER, ESQ.
For Defendant St. Francis Hospital

LAW OFFICES OF CHARLES E. KUTNER, LLP
By: CHARLES E. KUTNER, ESQ.
For Defendants Cardiothoracic Surgery
and Harold Fernandez, M.D.

GABRIELE - MARANO
By: LORI A. MARANO, ESQ.
For Defendants Interventional Heart Group,
A. Madrid M.D. and J. Minadeo, M.D.

FUREY, FUREY, LEVERAGE, MANZIONE, WILLIAMS & DARLING
By: STUART J. MANZIONE, ESQ.
For Defendants Manhasset Opthalmology, P.C.
and Robert Broderick, M.D.

KELLY, RODE & KELY, LLP
By: GEORGE J. WILSON, ESQ.
For Defendant Laura Schoenberg, M.D.

LISA M. PORTEUS
OFFICIAL COURT REPORTER

THE COURT: We're going to replace a juror.

THE CLERK: Patrice Christian, number one.

THE COURT: The first alternate will move into --

THE CLERK: Alternate number one, Patrice Christian, will be juror number four.

MR. MANZIONE: But she's actually sitting in the first seat, isn't she?

THE CLERK: Patrice Christian, alternate number one, now regular number four.

(There was a pause in the proceedings.)

THE COURT OFFICER: Jury entering.

(The jury entered the courtroom.)

THE CLERK: Everyone please have a seat in the courtroom. Part 9 in back in session. Good morning, your Honor. Thank you.

THE COURT: Good morning, George. Thank you.

THE CLERK: Please be seated in the courtroom.

THE COURT: So, good morning and welcome back. So we lost just, in terms of his jury service, one of the jurors who became ill and couldn't continue. That happened during the week. So just so that you know, the process is that you don't move down from alternates by one spot, we -- George puts the alternate names in the -- what is that thing called?

THE CLERK: Barrel.

THE COURT: In a barrel, and you're selected in the presence of the attorneys. So there's no way of predicting who becomes the next juror if one of the regular jurors now can't sit going forward. So that's the process. So it's strictly random, putting your cards in the barrel. So, okay.

MR. WILSON: Judge, can we approach?

THE COURT: Yes.

(The attorneys approached the bench and held a discussion with the Court off the record.)

THE COURT: So we have to just fix the seating for a second. Off the record.

(A discussion was held off the record.)

THE COURT: Okay. Mr. Haskel. So next witness, please.

MR. HASKEL: Dr. Harold Bialsky.

THE CLERK: Step up this way, please, to the witness stand. Right up there. If you could stand in front of the chair. Remain standing, please, raise your right hand.

H A R O L D B I A L S K Y, called as a witness on behalf of the plaintiff, having been duly sworn, was examined and testified as follows:

THE CLERK: Lower your hand. Have a seat. Can you tell us your name, your occupation and where you

work.

THE WITNESS: Sure. My full name is Harold Bialsky. My last name the spelled B-I-A-L-S-K-Y. My address is 344 Grove Street, Number 51, Jersey City, New Jersey, 17302. I am a life care planner and vocational expert.

THE COURT: Mr. Haskel.

MR. HASKEL: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. HASKEL:

Q Dr. Bialsky, what is your educational background? .

A Prior to my current career I was a practicing chiropractor in the state of New Jersey for 14 years.

Year 12 of my career I returned to school and attended New York University. I attained a master's degree in the field of rehabilitation counseling. Rehabilitation counseling is the degree that focuses on working with people with disabilities, helping them to determine their strengths, difficulties, helping them to determine what type of occupation they might be able to engage in with their disability.

After graduating from New York University I overlapped for a period of time as a chiropractor and also as a vocational rehabilitation counselor working in a facility in New Jersey.

In the middle of 1997 I discontinued my career as a chiropractor and went on to work full time in the field of vocational rehabilitation.

In 1998 I moved to Phoenix, Arizona. I resided in Phoenix, Arizona for ten years. The first fifteen months of the time that I lived in Arizona I worked for the state of Arizona, an agency called Rehabilitation Services Administration.

Every state in the country has a vocational rehabilitation agency, meaning that someone with a disability can access these services to assist them trying to determine what type of work they may be able to do and offering them the services to help them gain that type of occupation.

In the time that I worked for RSA in Arizona I was a specialist in the field of traumatic brain injury. I was one of four counselors that specialized in that area. So people would come to me, people who sustained a traumatic brain injuries, and I would help to plan and authorize services for them with regard to rehabilitation and helping them to determine if they were capable of seeking some type of gainful employment, and then the services that they would need to go out into the community and work.

After that brief period of time, about fifteen months, I went to work for St. Joseph's hospital and medical center in Phoenix, Arizona. I worked in an outpatient neuro

rehab unit. Outpatient neuro rehab focused on people with some type of brain injury, acquired brain injury like a traumatic brain injury, strokes, infectious disease, things of that nature.

It was a multidisciplinary team, with neuropsychologists, physical occupational, speech therapists and I was the vocational specialist. So my responsibility was, again, to help people who had sustained a brain injury return to some type of gainful employment, if at all.

I then left St. Joseph's Hospital Medical Center, and a group of us who had worked together at the hospital outpatient neuro rehab unit formed our own team, and we had a community based team doing the same type of work. It was the same group of professionals; neuropsychology, speech, physical, occupational therapists, and I was the vocational specialist. Again we specialized in working with people with traumatic brain injuries as well as other disability populations.

I lived in the Phoenix area for ten years, and in 2007 I returned to the northeast and I commenced doing the time of work that I'm doing now on a full-time basis. So I provide two services within the parameters of my career. One is life care planning, the other one is vocational assessment.

A life care plan, in very brief terms, is a report, a document that outlines an individual's needs as a result of

their disability, and a vocational assessment is a determination as to an individual's ability to work and sustain gainful employment; in plain English, can they work, do they have some type of earning capacity.

In addition to all that I've just spoken about, I have two certifications. I'm a certified rehabilitation counselor and a certified life care planner. Certified rehabilitation counselor is the certification for the people who specialize in the field of vocational rehabilitation.

To attain that certification I had to meet the specifications to sit for the examination. Much of that was as a result of my education at New York University. I sat for that certification and passed that test on the first attempt. To maintain that certification I am required to submit every five years one -- evidence of continuing one hundred hours of continuing education. So continuing education means I have to attend seminars, conferences, thing of that nature, to maintain the certification. My certification is current as we speak. Or as I speak, rather.

The second certification is the certified life planner. While I was attending New York University I was flying around the country attending conferences and seminars that were put on by the University of Florida. I logged in excess of 140 hours in the field of life care planning, sat for that certification examination. And, again, to maintain

that certification I'm required to submit evidence of 80 continuing education hours over a five year period. And, again, I am current with that certification, as well.

Q Are you a member of any professional associations?

A I am.

Q What are they?

A I am a member of the International Association of Rehabilitation Professionals, the International Academy of Life Care Planners, the National Rehabilitation Association, National Rehabilitation Counseling Association, the Brain Injury Association of New York, the Brain Injury Association of New Jersey, the North American Brain Injury Society, and the American Association on Health and Disability.

Q Have you made any presentations?

A I have done numerous presentations over the course of my career, yes.

Q And have you authored any publications?

A Yes. One book chapter that I assisted in co-authoring while I was working at the hospital in Phoenix. There was a group that coordinating in authoring a chapter in a book related to neurological rehabilitation.

Q What is a life care plan?

A I'm sorry?

Q What is a life care plan?

A A life care plan is essentially a document that

outlines an individual's needs through their lifetime as a result of their disability.

Q And what is the purpose of preparing a life care plan?

A Essentially the same response. To indicate what that person's needs are through their lifetime as a result of the disability. It takes into account any and all aspects of their life. It ranges from their medical needs to issues that impact their quality of life. It is not strictly related to medical issues, it is related to their disability and how it impacts them from -- everything from the medical aspect of their disability to include their quality of life.

Q And how do you normally go about preparing such a document?

A First I receive records that I review, just to have an overview of the condition that the individual is experiencing, the disability that they have. I perform an in-person interview with that individual in their home. It's important for me to see the home and the living environment to see if there's anything about the life care plan that I should incorporate as a result of the living environment.

I then synthesize all of that data, rely on research, publications in the field of life care planning in all types of medical and rehabilitation fields to support the inclusion of some of the services that I have in the life care

plan, and synthesize all of that into the report.

Q Did you prepare a life care plan with respect to Ray Kurz?

A I did.

Q And is the life care plan prepared through a certain age?

A Through his life expectancy.

Q And what is life expectancy?

A Life expectancy is essentially the data that indicates how long an individual is going to live from the point in time -- from my perspective from the point in time that I meet them to statistically when they would expire naturally.

So the data that I use for that is the government data for life expectancy, the federal government data. So it's referred to as the United States Life Tables National Vital Statistics Report.

Q And based on your review of that table, can you tell me what Ray Kurz's life expectancy is?

A His life expectancy from the time that I met him, okay, in 2013 at age 64, would have been to 82 years of age.

Q And what did you review in this particular case in connection with the lifetime plan for Ray Kurz?

A The records that were sent to me that I reviewed were records from St. Francis Hospital, the discharge summary

from St. Francis Hospital dated 1/8/09, neuroophthalmic consultation by Dr. Howard Pomerantz dated 1/13/09, a low vision evaluation by Dr. Benjamin Freed dated 4/5/09, an initial independent medical exam by Dr. Howard Pomerantz dated 4/1/13, the overall records of Dr. Pomerantz, and the records of the North Shore Long Island Jewish Health System.

Q Did you also -- I think you testified you had a discussion with Ray and Sue Kurz?

A Yes, I met with them in their home on July 2nd of 2013.

Q Approximately how long did that discussion last?

A My interviews last generally a few hours, a couple of hours.

Q And after receiving this information, reviewing it and having the discussion, did you prepare a life care plan based upon those records and that conversation?

A Yes.

Q I want you to assume the following:

One, that Ray Kurz has vision of counting fingers in one eye and 20/200 in the other.

I want you to assume that Ray Kurz testified on direct examination that he provides some assistance to his wife in connection with closings, gathers information, may have discussions but doesn't actually close, and that sometimes he talks to perspective buyers or sellers of houses.

I also want you to assume that he can't perform the following activities: Driving, walking outside with difficulty, he has difficulty recognizing items on the floor, he has difficulty recognizing colors and dressing himself, he has difficulty reading a computer screen without an aid, that he really can't do any significant housework, he can't read books or newspapers, can't do backyard work and he can't engage in activities that one would expect to be able to engage in with the type of vision that he has.

Based on that -- those assumptions, what services would you recommend, in your expert opinion to a reasonable degree of life planning certainty?

MR. BOWER: Objection.

MR. KUTNER: Objection.

MR. WILSON: Objection, your Honor.

THE COURT: What services? I'm not sure I understand the question.

Q Well, in order for Ray Kurz to compensate for the assumptions that I made, the conditions, his physical conditions, would certain services assist him in addressing those problems?

MR. BOWER: Objection.

MR. KUTNER: Objection. May we approach, your Honor?

THE COURT: Yes.

(The attorneys approached the bench and held a discussion with the Court off the record.)

THE COURT: I sustain it as to the form.

Q Dr. Bialsky, I'd like you to look at your life care plan that you prepared. Can you tell us what assumptions you made in preparing the life care plan by reviewing your plan.

A The assumptions were made based on my interview of Mr. Kurz and his wife and their detailed description to me of the things that Mr. Kurz is unable to do independently, and then the things that his wife will primarily do for him on a regular basis.

So in my report I have a section referred to as the current status, meaning the things that I was able to obtain from Mr. Kurz in my interview. So Mr. Kurz reported to me that he's really --

MR. KUTNER: Objection, your Honor. Self-serving hearsay. Just what did he find.

THE COURT: First of all, I think we have to put the report into evidence, I think; correct?

MR. BOWER: No.

MR. KUTNER: No.

MS. MARANO: No.

THE COURT: Okay. So then let's get to the recommendations and then we can backtrack from there if we have to.

MR. HASKEL: Thank you, your Honor.

Q What were your recommendations with respect to services that should be provided for Mr. Kurz to compensate for his vision loss?

A Okay. So as a result of his vision loss he's no longer independent with many activities that he would obviously be able to do if he had his vision. So I have included in the life care plan a companion, literally a companion, home health aide, an outside source to come into the home to assist him with various activities throughout the course of his day.

So let me just introduce you to a concept referred to or known as instrumental activities of daily living. Instrumental activities of daily living, things such as cooking, food shopping, managing your home, all of the activities that you would do to -- administratively throughout the home. Laundry; all of those issues.

In addition, as a result of Mr. Kurz's vision loss, he obviously is incapable of driving. So I've included 20 to 24 hours per week of an attendant to come into the home to assist with all of those activities.

Let me just backtrack just for a second. The life care plan is developed strictly in the context of what's in the best interests of the individual, the disabled individual. So, understandably, Mrs. Kurz performs all of these activities

to assist her husband currently. But the issue is, A, there's a value associated to those various services and, B, and most significantly, there's no guarantee that she's going to be able to provide these services the way she does for the remainder of her lifetime, whether it be illness and any other things that may prevent her from assisting Mr. Kurz. So I included 20 to 24 hours a week to provide the services for him.

There's a cost ranging, depending upon the agency that you would contract with, of 13 to $22 an hour. That results in a cost of $13,520 on the low end to $27,456 on the high end. And over the course of the nineteen years, from the time I met him to his life expectancy, that total cost has a range of $256,880 on the low end to $521,664 on the high end.

From there I've incorporated what's referred to as assistive technology, devices that would assist Mr. Kurz as a result of his low vision. The first item is a desk top video monitor. Essentially this is a device that has a platform, there's a camera, the camera then projects whatever item, paper, newspaper, whatever it is, that you want to read, book, projects it on to a monitor screen in very big, bold font, makes it easier to read.

So that item is replaced every five years. The cost is $3,195. And over the nineteen years of his life expectancy the total cost would be $12,141.

The next piece of assistive technology is what's referred to as a hand-held video monitor. So this is instead of something stationary on the desk, this is something that you can take with you when you're out in the community. So it's a hand-held device, similar concept. You can change the contrast in this device, you can actually freeze frame something that you're reading. So, for example, if you're at a restaurant and to read a menu, Mr. Kurz would be able to see the menu on his own. That's replaced every five years at a cost of $545. Over nineteen years that's $2,071.

The next item is a large print keyboard with screen magnification software. So this is the computer keyboard, much bigger, larger, the keys are much bigger, larger in terms of being able to see them. Screen magnification software is literally software that on the computer magnifies the font, makes everything bigger, easier to read.

The next item is a hand-held -- I'm sorry, I have to give you the costs on the previous item. The combination of the keyboard and the magnification software being replaced every five years is $474. Over 19 year period that's $1,801.20.

The next item is a hand-held talking GPS, just as -- literally, just as the title suggests, a GPS that talks to you. The it literally tells you where you are, what streets you're coming to, what landmarks you're approaching. Just

makes being out in the community that much safer for someone with vision loss. That's replaced every five years at a cost of $499. Over nineteen years the total cost is $1,896.

And the final item is audible books, a subscription for audible books. That's once a month, $15 a month. Over 19 years, $3,420.

The next item is literally to see a neuroophthalmologist, meaning the physician that specializes in the type of eye condition that Mr. Kurz deals with. And that office visit would be one time every one to two years at a cost of 2 to $300. Over the course of the nineteen engineers that would be $1,900 to 5,700.

The total cost of the entire life care plan, the low range, $280,109.40, to the high range of $548,693.40. That's the entirety of the life care plan.

Q Did you bring a life care plan with you?

A I did. It's right here.

MR. HASKEL: I'd like to have it marked.

THE COURT: Mark it, please.

(Life care plan was marked as Plaintiffs' Exhibit 13 for identification.)

Q The life care plan has been marked 13 for identification. This was prepared based upon the interview that you had with Mr. and Mrs. Kurz, your review of medical records, your expertise and your experience as a life care

planner; is that correct?

A Correct.

Q And this is something that you customarily do?

A This is my full time career, yes.

Q And have you ever been qualified as an expert in other cases?

A Many an occasion, yes.

Q As a matter of fact, you once testified for me on a case -- prior case, right, once in --

A One other occasion for you, yes, Mr. Haskel.

MR. HASKEL: Your Honor, I would ask that exhibit 13 be moved into evidence.

MR. BOWER: Objection.

MR. KUTNER: Objection.

MS. MARANO: Objection.

MR. MANZIONE: Objection.

MR. WILSON: Objection.

THE COURT: So what we'll do is -- we don't need it now, so we'll argue it outside the presence of the jury so as to knot to take up time. So I'm going to hold my ruling in abeyance and have an opportunity to look at it at the break.

Q Dr. Bialsky, are you being compensated for your time here today?

A I am.

MR. HASKEL: I have no further questions.

THE COURT: I have a question.

When you talked about the hours, you talked about the life -- activities of daily living aid, and then you talked about driving aid.

THE WITNESS: Correct.

THE COURT: Okay. So when you gave the total of the hours and the cost, was that for both of them?

THE WITNESS: It's the combination, 20 to 24 hours per week. That includes all of the activities I mentioned.

THE COURT: I wasn't clear about that. Thank you.

MR. HASKEL: Thank you, your Honor.

THE COURT: Mr. Bower?

MR. BOWER: I have no questions your Honor.

THE COURT: Mr. Kutner?

MR. KUTNER: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. KUTNER:

Q Good morning Mr. Bialsky.

A Good morning.

Q Now, with regard to your credentials that you described to this jury, much of your professional activities have concerned traumatic brain injury; correct?

A Traumatic brain injury and other disability populations, yes.

Q But you actually -- it's fair to say you really had a significant focus in your career on traumatic brain injury; correct?

A Correct.

Q And we can agree that traumatic brain injury has nothing to do with this case; correct?

A That's incorrect.

Q Is this a patient with any cognitive impairment that you're aware of?

MR. HASKEL: Objection. This is a not a neurologist or type of expert that we're going to get traumatic brain injury. He's a life care planner. And I don't know where this line is going but I want to cut it off.

MR. KUTNER: I just asked this witness if this case involved traumatic brain injury. And he says that it does.

THE COURT: His direct exam didn't mention any traumatic brain injury with regard to Mr. Kurz, except for his qualifications. So I don't think there's anything to cross him on with regards to traumatic brain injury in Mr. Kurz because he didn't testify to that.

MR. KUTNER: Okay. Let move on.

Q You started out as a chiropractor; correct?
A Correct.
Q Were you licensed as a chiropractor in New York State?
A In New Jersey.
Q In New Jersey. And you practiced chiropractic, which involves manipulation of the bones and the spine; correct?
A Correct. Spinal manipulation, yes.
Q And then you became involved in doing life care planning. Now, in doing these life care plans do you primarily develop these plans for injured people who are bringing lawsuits, or is it in any context?
A It's primarily litigation support. Both in the plaintiff and defense arena.
Q And would it be fair to say that the majority of the life care plans that you prepare in litigation support are for plaintiffs, people bringing lawsuits who have suffered injuries?
A Yes, because they are the injured individual.
Q You told us that you went to the Kurzes' home to interview Mr. and Mrs. Kurz; correct?
A Correct.
Q When was that?
A July 2nd of 2013.

Q What was the date of Mr. Kurz's injury?

A I have a month and year of December 2008.

Q So Mr. Kurz -- and by injury I mean visual impairment. You're not aware of notify other injury; correct?

A I only have prepared the life care plan with regard to the visual impairment.

Q So Mr. Kurz, by the time you saw him, had been visually impaired for five years; correct?

A Correct.

Q Do you recall where his home is, where you went to visit him?

A Jericho, New York.

Q You found that to be an accessible home? He didn't have any problem moving around in the house, did he?

A I wouldn't entirely agree with that.

Q Okay. Did you find it to be a nice home?

A It was a very comfortable home, yes.

Q Very comfortable home. And did you notice whether when you went to interview Mr. Kurz, whether there was a companion other than his wife in the home?

A No, there was nobody else.

Q So in the five years since he sustained the initial injury, the impaired vision, he has not hired a companion; correct?

A Correct.

Q Mrs. Kurz performs all of those companion related tasks to assist him with his activities of daily living; correct?

A That is the very point, yes.

Q Okay. Now, they have a dog?

A I don't recall a pet. I'd have to go through my interview information. I don't recall.

Q Did Mr. Kurz ever describe walking a dog?

A I don't recall in the moment. I'd have to go through the interview information.

Q Did Mr. Kurz have a computer?

A Yes.

Q The computer assists him with reading; correct?

A I would not describe it as that, no.

Q If I told you he testified here in court that he has such a device to assist him with reading, would that be the first time you ever heard that?

A Well, I only know what I know when I did my interview at the time. So he had a computer and he had some zoom text software on the computer.

Q He did have it?

A Yes.

Q That's what I'm asking.

By the way, did you read his deposition testimony?

A A portion of it.

Q Is there a reason you did not want to read the whole thing? Just yes or no.

A Actually, I have to rephrase the response. I read a portion of his trial testimony.

Q That's what -- okay. His testimony is not complete yet.

Did you also read his deposition testimony?

A I did not.

Q Would it surprise you to know that he testified on at least two occasions?

A Well, if that's what you're telling me, then that's the case.

Q Did you ask the lawyers, is there anything in that deposition testimony that might be useful to me where he describes his activities of daily living?

A I did not.

Q You talked about a hand-held device; correct?

A Correct.

Q You're not aware of any financial impairment that would have prevented Mr. Kurz in 2015 from purchasing such a device, are you? In other words, if he wanted to he could have bought it; right?

A I'm not -- I mean --

Q You understand the question?

A I really don't understand the question.

Q Sure. Let me clarify.

Some of the devices to assist Mr. Kurz in his activities of daily living were described by you to the jury; correct?

A The assistive technology; correct.

Q The assistive technology.

When you visited the home in 2015, five years after Mr. Kurz sustained his initial injury, how much of the assisted technology that you recommend he have did you see in the house?

A Other than the computer software and the keyboard, there was none of the -- any of the other equipment, no.

Q So is it fair to assume there was nothing preventing Mr. Kurz from purchasing those devices over the years; correct?

A I don't know that anybody ever analyzed him to make the recommendation and give him the opportunity to purchase it. That's what I am charged with.

Q Right. But that's the answer to a different question. And I was going to ask you that next.

But as far as you know, back on July 2nd, 2013 there was certainly nothing that would have prevented Mr. Kurz from purchasing any of the assistive technology that you've described to this jury if he wanted it; isn't that correct? Yes or no? If you can't and it yes or no just to me you can't

answer it yes or no.

A I cannot answer that yes or no.

Q Did you say to Mr. Kurz, gee, you know, there's a hand-held device, did you ever think of getting one of those?

A No. And that would be unprofessional and inappropriate for me to do so, because that would constitute a dual relationship, which is something that I don't engage in.

Q You don't sell those devices do you?

A Of course not, no.

Q But you've recommended them in a report, didn't you?

A Yes.

Q If you recommended them in a report, you are, in fact, telling the patient there is a device that might assist you; correct?

MR. HASKEL: Objection, your Honor. The report doesn't go to the patient.

THE COURT: The report doesn't go to the patient?

MR. HASKEL: The report could go to --

THE COURT: You recommended it in your report; correct?

THE WITNESS: Correct.

Q The Kurzes are sitting in the back row. That's Mr. Kurz. Do you remember him?

A Yes.

Q So he has now heard you testimony that a device that you think would assist him with his activities of daily living could be purchased. We agree?

A Correct.

Q So your ethics haven't been violated; we agree?

A But that wasn't what you asked me earlier.

Q You said, I don't make the recommendations to the client when I'm there because that might be considered unethical. Is that a fair and accurate statement I just made?

A That is fair and accurate.

Q Okay.

A Each patient -- excuse me, client -- that I work with, individual, signs a professional disclosure form that I go over with them and they are fully -- they are in full understanding that there is no client-counselor relationship. I am not there to provide them services. I am only there to analyze the scenario and develop my life care plan.

Q But clearly one of the things you were doing -- and I'm not suggesting for a minute that you would profit from this, but one of the things that you are doing is making recommendations concerning assistive devices that you as a professional feel would assist Mr. Kurz?

A Correct. And I hope he would implement in the life care plan --

Q You just heard Mr. Haskel stand up and say it

doesn't go to Mr. Kurz, so for all you know -- yes or no -- he has never even seen the life care plan, correct, for all you know?

A For the purposes of the litigation, he should not be seeing the life care plan.

Q But if it's a device that would assist him it would have been a nice thing if somebody told him about it, would you agree? Even if it wasn't you?

A He would have benefited, absolutely.

Q Did you ever mention to his lawyer, you know, I was at Mr. Kurz' home and there are certain devices that might assist him that he didn't have, you might want to tell him about. Do you ever do that, just yes or no?

A It's not a simple yes or no question, counselor.

Q Okay. Let's move on.

A And again --

Q Let's move on. If you can't answer it yes or no, that's okay.

Now, did you ask Mr. Kurz back on July 2nd, 2013 whether he purchases audio books?

A I don't recall.

Q Do you know if he has any interest in listening to audio books?

A I don't have any specific recollection.

Q All right. But you're telling this jury that that

would be a pretty -- in other words, if he said to you, I have no interest in audio books, I couldn't care less about audio books, you wouldn't necessarily put that in your report, right, because it would be irrelevant?

A But if he specifically stated that he was not interested in the audio books at $15 a month, we would remove that from the life care plan, yes.

Q Well, do you have any recollection of specifically asking him, do you use audio books or do you have any desire to use audio books? Did you ask such a question?

A I don't have any specific recollection.

Q But you didn't put that in there just to boost the value of the plan; correct? You had a reason to do it; am I correct?

A Sure. It went back to the issue that I explained earlier of --

Q Just yes or no.

A -- consideration of quality of life. So having access to the ability to listen to a book. And, quite frankly, I didn't really boost anything at $15 a month, counselor.

Q That's what I'm saying. You weren't doing it to boost a report, you thought that he would benefit from it, but you never asked him whether he had any interest in it; correct?

A I didn't ask him about anything that's in the life care plan, because that would be collusionary.

Q Okay.

A I developed the report based on my own professional expertise, and these are my opinions and my opinion alone.

Q Has Mr. Kurz's condition with regard to his vision stabilized, as far as you know?

A That is a medical condition and I would -- it's beyond my scope of practice to answer the question.

Q I agree with you a hundred percent with regard to that answer.

Yet you told the jury he needs to be seen periodically by a specialist called a neuroophthalmologist; correct?

A Correct.

Q You know what a neuroophthalmologist is; correct?

A Correct.

Q But you don't know what a neuroophthalmologist would do to benefit Mr. Kurz, if anything, because that's beyond the scope of your professional expertise; correct?

A That's incorrect.

Q Okay. So you put that in your report. You're not a physician, you don't know whether his condition is stabilized, you don't necessarily know what the doctor would do, but he would benefit from it; am I correct? Just yes or no.

A It is not a simple yes or no answer.
Q Okay.
A I'm more than happy to explain why I included --
Q You will have an opportunity, you just won't get it from me. Okay?
A Well --
Q All right. So, let's talk a minute about some of the records that you reviewed in preparing your report.
A Sure.
Q First of all, you didn't get those records from Mr. Kurz; right?
A That would be correct.
Q You got them from Mr. Haskel?
A Correct.
Q So the records that you reviewed were selected for your review by Mr. Kurz's lawyer; correct?
A I suppose that's correct, yes.
Q I mean, it wasn't some stranger, you got the records from Mr. Haskel; what do you want me to look at? Okay.
You mentioned a number of doctors; correct?
A Correct.
Q There are other doctors that he may have seen, but because you did not receive those records you don't necessarily know who those doctors are; is that correct?
A Correct.

Q You know, for example, that after he was discharged Dr. Pomerantz is not the only ophthalmologist that examined him; correct?

A I can only speak to the records that I have. So whatever --

Q That's what I want to know. Because you didn't select the records?

A Whatever the professions are of those individuals, those are contained within my records.

Q So I don't necessarily need to know what your assumptions are for, because for this jury we're more interested in your conclusions. We can agree you're not here to say in any way, shape or form what the cause of Mr. Kurz's vision impairment is; correct.

A That is absolutely correct, yes.

Q You're only here to say what he would benefit from in terms of his future; correct?

A As a result of the vision loss; correct.

Q We talked about assistive devices, we talked about the companion. At what point in time would your best estimate be that he would need that companion?

A Tomorrow.

Q Tomorrow. Okay. So he needs a companion tomorrow?

A He needs somebody that's --

Q I'm talking about the paid companion to replace Mrs.

Kurz. And I should have clarified that.

A Right.

Q So at what point from today's date can you tell this jury Mr. Kurz will need the paid companion? You don't know, do you?

A The life care planning was written and developed back in 2013. So I obviously thought it was necessary then.

Q We're talking about two different things. I'm not talking about the activities that Mrs. Kurz provides, and obviously does a very good job.

A Right.

Q You said he will always need a companion. There's no argument about that. You also said that there is a value to the cost of that companion. We agree?

A Correct.

Q And I want to know at what point can Mr. and Mrs. Kurz reasonably anticipate, based on your review of this case, when they will have to start paying someone to serve as a companion. You don't know; correct?

MR. HASKEL: Your Honor, at this point I'm going to object. This is gone over many, many times, and the witness explained why he testified the way he did.

THE COURT: Well, I'll let you answer it. Overruled.

A I apologize. So one more time for the question,

then.

Q Sure. Right now -- start again. Right now Mrs. Kurz is performing the activities of a companion that you described in your report; correct?

A Correct.

Q At some point you said, we don't know when, they may actually have to start paying someone to do what Mrs. Kurz is presently doing; correct?

A I never said that.

Q Well, you said -- did you not tell this we don't know when Mrs. Kurz will no longer be able to do that; correct?

A I did not say that.

Q Did you tell the jury that at some point somebody may actually have to lay out money to perform the activities that Mrs. Kurz performs for her husband?

A That was not my testimony.

Q So you don't know whether there will ever be anyone who gets paid to serve as a companion to Mr. Kurz; is that a fair statement, yes?

A I obviously can't look into the future and tell you when that precise service will be implemented.

MR. KUTNER: Okay. I didn't think you could. No further questions. Thank you very much, sir.

THE COURT: Ms. Marano?

MS. MARANO: No questions, your Honor.

THE COURT: Mr. Manzione?

MR. MANZIONE: Thank you, your Honor.

CROSS-EXAMINATION.

BY MR. MANZIONE:

Q Sir, just following up with Mr. Kutner's question regarding what you discussed with the patient as to what instruments might benefit him, exactly who is the client here in your mind? Is it Mr. Kurz or Mr. Haskel?

A Mr. Kurz.

Q But you told Mr. Kutner that it's -- would not be appropriate for you to tell Mr. Kurz what might be beneficial to him?

A Correct.

Q Mr. Kurz --

A That would be professionally unethical.

Q Even though you put it in a report that has now been served on all the defendants in this case, and he's the client, he's the one you've been hired to benefit; correct?

A Mr. Kurz is the individual who I developed a life care plan for, and the life care plan is developed in his best interests, yes.

Q And it's in his best interests only if he knows what's in it; correct?

A Yes.

Q Okay. But you're not telling him what's in it, that's not your job?

A It is not. And, once again, I can only emphasize that it constitutes an ethical violation for me to engage in what's referred to as a dual relationship. Where I've been retained as an expert on the one hand and then to turn around and commence delivering services is professionally unethical.

Q Were you retained by Mr. Kurz as an expert?

A No.

Q You were retained by Mr. Haskel?

A Correct.

Q Is Mr. Kurz paying you for your time in court and preparing this life care plan; yes or no?

A My invoice went to Mr. Haskel.

Q Okay. How much was that invoice for, by the way?

A $2,500 for my time.

Q And would you agree with me that, as you told Mr. Kutner, you are not sought out by individual patients, you are primarily sought out by lawyers who are in the middle of litigation; correct?

A Correct.

Q And you're compensated for that time from lawsuits, such as this; correct?

A Correct.

Q That's how you earn your living?

A Correct.

Q Now, you indicated that you have his life expectancy from the tables down as 82 years old; correct?

A Correct.

Q Okay. And that's something you just look up where that's the average life expectancy for a person who is now 65 years old?

A It was.

Q Or was that based on 2015?

A Based on 2013, yes.

Q Okay. You reviewed medical records, correct, you said?

A The records that I spoke of earlier that are contained within the report; correct.

Q And how do you define a disability?

A Disability is defined as -- well, there's the impairment, the injury, and then how the injury impacts the individual is the disability.

Q Do you factor in other medical conditions that the individual has when you determined what their capabilities are and what they would need to do?

A Every case is assessed on an individual basis. So it would be very dependent on the individual and their history. So I'm not sure I understand the question, counselor.

Q Well, when you reviewed these medical records you indicated that you do that to assess the disability of the patient; correct?

A Correct. To have an understanding of the impairment, the medical condition, and then ultimately how it impacts them on a daily basis.

Q So my question to you is: With Mr. Kurz, did you also look at any other medical conditions that he has that might impact his ability to do certain things?

A No.

Q Would it be important for you to assess that before coming into court here and saying what he can and cannot do because of his vision loss?

A The vision loss is independent and isolated unto itself. I don't see any relevance to any other health condition than his vision loss.

Q You indicated in your report that he can no longer do snow plowing, he can no longer do maintenance work around his house, grass cutting, cutting bushes, things of that nature; correct?

A Correct.

Q Would somebody whose had a heart attack, who's 65 years old, whose had quadruple bypass, would you agree that there may be limitations on their ability to do certain activities such as that aside from vision loss?

A You are asking me to render a medical opinion and it is beyond my area of expertise. That would be between Mr. Kurz and his heart physician.

Q Is having a bad heart a disability? Does that limit people in what they can or cannot do?

MR. HASKEL: Objection. This patient, Mr. Kurz, had quadruple bypass. The effect of that would not be this witness' area of expertise, and whether he had a bad heart after the quadruple bypass is a whole other ball game, your Honor. So I object.

THE COURT: Your question was does he have a bad -- give me the question again.

MR. MANZIONE: I don't know how I asked it, Judge. Maybe we have it read back?

(The requested portion was read back by the reporter.)

THE COURT: So you're talk about for Mr. Kurz?

MR. MANZIONE: Yes.

THE COURT: Can you answer that?

THE WITNESS: No, because the life care plan is developed based on the vision loss. There's no other consideration -- there's no service or assistive technology or physician that's been included in the life care plan that has anything to do outside of his vision loss. It's 100 percent directly related to the vision

loss.

Q So you're not including physical chores outside that he would do in that companion that you've listed in your report?

A Correct.

Q Okay. Now, getting back to the life expectancy, do you take into account with the life expectancy the medical condition of the patient?

A No. Once again, that is a medical question. There's nothing contained within the record to suggest that his medical condition would shorten his life expectancy.

Q Are you aware of any studies that show that somebody whose had a heart attack and quadruple bypass, their life expectancy is shorter than somebody who did not have it?

MR. HASKEL: Note my objection, your Honor.

THE COURT: Overruled.

You can answer it yes or no, if you know.

A It is a very individualized condition, and it would require the testimony of a medical doctor with regard to his life expectancy as a result of his heart condition, and that is beyond my area of expertise.

Q So your basing it solely on a statistic that you took out of the book, that life expect table?

A Not a book, a federal government document.

Q It's a book, isn't it? I'm sorry if I didn't use

the exact term. But it's a book; correct?

A It's an article posted by the federal government.

Q That's where you got that number from; correct?

A Yes. Yes.

MR. MANZIONE: Thank you. Thank you.

THE COURT: Mr. Wilson?

MR. WILSON: Thank you, your Honor.

CROSS-EXAMINATION.

BY MR. WILSON:

Q Good morning, Mr. Bialsky. My name is George Wilson. I have a few questions for you.

You've come to a conclusion in this case that the total lifetime costs, right, is the way you phrased it, the total lifetime costs on the low end is $280,000; correct?

A 280,109, yes.

Q I'll round it off to $280,000, is that okay with you?

A Sure.

Q And out of that $280,000 the overwhelming majority of it is for this home care attendant; correct?

A The companion, yes.

Q And so far to this day would you agree that there have been no out of pocket costs with respect to home care attendant companion?

A Well, I can only speak to the point up until I

interviewed the Kurz family.

Q Right.

A So I can't speak to the issue beyond the interview. But up until the point of my interview --

Q So as of July of 2015 there was zero cost; is that fair to say?

A Correct.

Q As of today, if there has been no testimony that there's any out of pocket costs, would you agree that there's no costs up to February 24 of 2015?

A If that is the testimony.

Q And that would mean that that number that you have put, the number that you have indicated includes payment for the years of 2015 and 2014; correct?

A That's accurate, yes.

Q And that number, by the way, is on the low end, so if I compare the low end to the low end it was approximately $257,000; correct?

A $256,880.

Q All right, again, I'm doing a little bit of a rounding out?

A Yes.

Q I'll say 257?

A Correct.

Q So out of the approximately $280,000 that you say is

the total life care package, the total costs, out of that $280,000, 257 of it is for this home care attendant; correct?

A For the companion, yes.

Q And you're not aware that as we sit here today, you're not aware that there's one single dollar that's been in connection with this; correct?

A I'm not aware of any money being spent in that regard to date.

Q You've never seen any kind of receipt or any kind of proof of payment or anything of that nature reflecting that there has been $1 spent out of his lifetime care costs?

A Correct.

Q Now, if you subtract the 256,880 from the 280,109, I'm going to round it off again, you'll get something in the area of $23,000; correct?

A Assuming your math to be correct, yes.

Q Now, you sat down with Raymond Kurz on July 2nd of 2013? That's the exact date that you met with him?

A Correct.

Q And at that time you met him at his home in Jericho; correct?

A Correct.

Q And at that time you explained to him that you were there to gather some information and to ask some questions, and you actually sat with Mr. Kurz and Mrs. Kurz to ask some

questions; is that correct?

A Correct.

Q And you informed them that you needed this information to prepare a report and perhaps to testify at a later date at trial?

A Correct.

Q And one of the things that you did was something called a vocational analysis; is that correct?

A Correct.

Q And you were aware at the time that you did your interview and the questions, that you knew he was a retired police officer; is that correct?

A Correct.

Q In fact, he had been a police officer for approximately 32 years; is that correct?

A Correct.

Q And you also were aware that after he had retired he went into the real estate business and was a real estate agent; is that correct?

A Correct.

Q And you're also aware that as part of that he had a real estate license; correct?

A Correct.

Q Now, have you done any research or have you come to learn that he still maintains that real estate license?

A I'm not aware as I sit here today.
Q Would it surprise you that he still has a real estate license?
A No.
Q Is there any fee associated with maintaining a real estate license?
A I'm sure there is.
Q And so you're aware that when you interviewed him in 2015 that there had been a period of time when he was gathering an income from the real estate work that he was doing; correct?
A Correct.
Q And that was in 2006 and 2007 and 2008 that he had worked and gained an income; is that correct?
A Correct.
Q Do you know how many hours he worked in 2006?
A I do not know.
Q Do you know how many hours he worked in 2007?
A I do not know.
Q Do you know how many hours he worked in 2008?
A I do not know.
Q So your analysis basically keyed in on the hospitalization from December of 2008 on; correct?
A My vocational opinion.
Q Right?

A Correct.

Q Do you know how many hours Mr. Kurz worked in, say, 2010?

A No.

Q Do you know how many hours he worked in 2011?

A No.

Q Do you know how many hours he worked in 2013 up until the point where you interviewed him in July of 2013?

A No, because he told me he was no longer engaged in the field of being a real estate agent.

Q All right. He told you that he is wasn't doing any work at all in the real estate agency; is that correct?

A He told me that he was no longer engaged in work is as a real estate agent.

Q Did he tell you that he wasn't working at all in real estate?

A He told me that he was no longer personally engaged in working as a real estate agent.

Q Did you ask him what that meant, I'm not engaged in real estate? Did you ask him, what do you mean by engaged?

A He was no longer personally involved in showing houses and taking listings, and so forth.

Q So he told you that he was not involved in any respect in the real estate business; is that what you're saying?

MR. HASKEL:

A That's not what I'm saying.

Q Then tell us, what are you saying? He was not involved. What are you saying?

A He personally, he for himself.

Q Right.

A He as an individual, working as a real estate agent, performing all of the usual and customary activities of a real estate agent. He was no longer engaged in those activities for himself individually.

Q Did you ask him, are you still engaged in showing houses?

A He told me that he was no longer able to maintain his real estate business.

Q Did you ask him if he was able to show a house and take information from the buyers?

A He told me that he was no longer able to perform the usual and customary activities, such as managing the paperwork, inspecting he the homes prior to them being listed.

Q And he didn't tell you that he sits in open houses by himself and takes bids and offers on houses; isn't that correct?

A He did not tell me that at the time, no.

MR. WILSON: That's all I have.

THE COURT: Any redirect?

MR. HASKEL: Just briefly.

REDIRECT EXAMINATION

BY R. HASKEL:

Q Dr. Bialsky, does getting paid for services play a role in your opinion regarding a life care -- regarding a companion whether there's actual payment?

A Yes.

Q And how does that factor into your opinion?

A In this instance, Mrs. Kurz went from being -- well, obviously she remains his wife, but she went to being specifically related to performing activities that were associated with the fact that her husband had a significant vision loss. So she would have to drive him anywhere he wanted to go. She would read the newspaper to him. She would read the bills to him. She would do anything and everything for him to assist him with the fact that he had lost his vision.

So these are activities that constitute out of the usual and customary, okay, for husband and wife. She is now his set of eyes. There's a value to the level of service that she develops to him as a result of that on a daily basis. That is how I come to the conclusion that there's, A, a value to the level of service that she has delivered and will continue to deliver, and at some point if the family so desires bring somebody else in to do the very same thing.

Q Do you know what opportunity cost is, the alternatives for use of time?

MR. BOWER: Objection.

MR. KUTNER: Objection.

MS. MARANO: Objection.

MR. WILSON: Objection.

THE COURT: You can answer it yes or no.

A I do not.

Q In the course of your planning are there alternatives to use of time such as leisure as opposed to working?

A Sure.

Q And with respect to Mrs. Kurz, was there an opportunity cost in doing what she's doing with her husband?

MR. BOWER: Objection.

MR. KUTNER: Objection.

MS. MARANO: Objection.

MR. WILSON: Objection.

THE COURT: As to the form of that question, I have to sustain it.

Q If Mrs. Kurz was not doing all these -- performing all these services for her husband, would, to the best of your knowledge, could she have done something else?

MR. BOWER: Objection.

MR. KUTNER: Objection.

MS. MARANO: Objection.

THE COURT: No, you can answer. Overruled.

A Of course. Her time was occupied in delivering these services and continues to be occupied delivering these services. And if she wasn't she could be doing something else.

Q And the -- you had mentioned before that it would be unethical for you to make recommendations to the -- to Raymond Kurz and his wife. Why is that?

MR. KUTNER: Objection. He explained it, your Honor, twice.

THE COURT: Well, it was asked a million times. If it's the same as direct I don't want you to repeat it. I sustain the objection to the same exact question.

THE WITNESS: I've answered the question.

Q Now, you mentioned that, small item, video books?

A I'm sorry?

Q You mentioned that -- video books, that there was --

A Audio.

Q I'm sorry, audio books. Audio books.

Why would you put that in a plan? Is that something that's -- you have to ask the person directly about whether they would be interested in books, or would a college graduate be expected to at least spend some of his time listening --

MR. BOWER: Objection.

MR. KUTNER: Objection.

MS. MARANO: Objection.

THE COURT: I'm going to object to the form, but the beginning question I thought was okay, which is: Why did you put that in?

A It's a quality of life issue. Okay? Obviously we're surrounding by books. Mr. Kurz doesn't have the ability to read, whether it's -- whatever form the books are. Audio books is a very common form of recreational activity for people with low vision.

Q And, by the way, you were asked about the low end. There's a high end also, is there not, or upper end?

A Correct.

Q And what is that?

A $548,693.40.

Q Why a range, Dr. Bialsky?

A The range is primarily due to the fact that I've listed the companion care at 20 to 24 hours per week. So again, can't be a hundred percent certain as to how much. But I used my knowledge in this area to list that range, 20 to 24 hours. And then it's also dependent upon the agency that's contracted with. Because the hourly rate for those services ranges from $13 an hour to $22 an hour, depending upon the agency.

Q And that's why it goes from the 280 to the mid five

hundreds; correct?

A Right, because, as noted, the majority of this life care plan is this companion service. So that takes into effect the low end of 20 hours at $13 and hour to the high end of 24 hours at $22 an hour.

MR. HASKEL: I have nothing else.

THE COURT: Anything else?

MR. KUTNER: I can do it in three questions.

RECROSS EXAMINATION

BY MR. KUTNER:

Q How many hours a week is Mrs. Kurz serving or performing the duties of companion right now? Do you know; yes or no?

A I don't have a detailed accounting.

Q Second question. This is a foundational question. Are you married?

A I am not.

Q Okay. Would you agree, though, that Mrs. Kurz, the spouse of Mr. Kurz, is doing exactly what you would expect of somebody's wife under the circumstances?

A I would not agree.

MR. HASKEL: Objection.

THE COURT: Yes.

Q Ever hear of in sickness and in health, for better or worse? That's what I mean.

THE COURT: Sustained. Sustained.

MR. KUTNER: Nothing further, your Honor.

MR. WILSON: Just one line.

RECROSS EXAMINATION

BY MR. WILSON:

Q So we'll go to the high end. We already established through the low end that if you took the 280 rounded off and took out the home care of 257, that you're in the ball park of 123,000 as the total of the lifetime cost plan; correct?

A Correct.

Q If you went to the high end, the high end was 548; correct?

A Correct.

Q If you back out the home care costs, they were 521; correct?

A Correct.

Q So the total, then, if you backed out the home care costs would be 27,000; correct?

A Assuming your math is correct, yes.

Q So there's -- so far to date there's been no payment made for home health care companion; correct?

THE COURT: That's been asked and answered four time.

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

THE COURT: Thank you. You can step down.

Come on up.

(The attorneys approached the bench and held a discussion with the Court off the record.)

THE COURT: So we have one more witness scheduled for today, that's going to be at 2:00. So I'm going to let you go now and we'll reconvene at 2.

Don't discuss the case. Keep an open mind. If anybody tries to talk to you about the case you'll let us know when you come back. Have a good lunch. We'll see you at 2.

(A recess was taken.)

THE COURT: Mr. Bower you want to be heard on the application that goes to the report?

MR. BOWER: The basis of my objection, your Honor, is that it's the equivalent of an independent medical exam report that wouldn't come into evidence because it contains all sorts of self-serving hearsay information from Mr. Kurz himself.

THE COURT: What about the section A, which is pages 8, 9, 10?

MR. BOWER: Yes, your Honor. The witness has already testified about everything that's in his report, and he was questioned on direct exam by Mr. Haskel, he was cross-examined on the numbers, so the jurors have it all. And to try to parse out what is permissible from

what's not permissible would be impossible to do.

THE COURT: Well, the part -- B is -- section A is the list of the items in kind of a spread sheet format with the numbers there.

MR. BOWER: The jurors have it already. It's under oath.

THE COURT: Right. But when you have, you know, eight or ten of these items with the cost per unit, the cost per year, the number of years at total cost, isn't it fair to think that this kind of a exhibit would be helpful to the jury in their deliberations as opposed to having them expected to remember it? I treat this as a chart that's made in preparation of the litigation, number one, for him to testify to, but as well to be as an aid to the jury so that we wouldn't have to believe or think this they would be actually able to remember this. You see what I'm talking about, the pages --

MR. BOWER: You're talking about pages 8, 9 and 10?

THE COURT: Exactly.

MR. BOWER: Just the charts themselves with no -- none of the --

THE COURT: No narrative.

MR. MANZIONE: No footnotes, nothing. They shouldn't be in there.

MR. WILSON: I would agree that if the Court is to allow 8, 9 and 10, I would agree to allow it into evidence if you would redact the footnotes at the bottom of the page and each line where it says purpose.

MR. BOWER: Purpose.

MR. WILSON: Informational purposes. I believe that he probably could have put this on a plaque board before the jury, these numbers. But all the other commentary I would ask be redacted.

MR. BOWER: I agree.

MR. KUTNER: Judge, we've all done this before. Ordinarily the plaintiff's attorney has the posters made up of the -- so I have no objection to the table, but you can't put in footnotes, any explanations.

THE COURT: The tables to me are -- would be helpful to the jurors.

MR. HASKEL: I could blow them up.

THE COURT: You don't have to do that. We can redact it.

MR. HASKEL: Your Honor, under the circumstances, I don't have a problem. I didn't really understand the objection to the assumptions and I really don't understand Mr. Bower's objection based on the hearsay issue. Mr. Kurz was present in court, Mrs. Kurz was present. They have -- they've been -- Mr. Kurz was

cross-examined on some of these very points. I don't understand that at all. These are assumptions he used. So the objection I think was improperly made when he was on the stand, and this report basically gives the assumptions that I think shouldn't have been objected to in the very beginning.

THE COURT: Well, he did testify to -- the witness was able to testify to the same.

MR. HASKEL: To the conclusion. I think it's a no-harm-no-foul sort of thing. So it's just the chart. I don't have a problem with that.

THE COURT: So the economist at 2?

MR. HASKEL: 2.

THE COURT: Did he generate a report.

MR. HASKEL: Yes, it's been exchanged. We have some charts and so forth.

THE COURT: All right. We're done.

Off the record.

(A discussion was held off the record.)

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

THE COURT OFFICER: Jury entering.

(The jury returned to the courtroom.)

THE CLERK: Please have a seat, everyone. Thank you. Please be seated. Court is reconvened. Good afternoon, your Honor.

THE COURT: Good afternoon, George. Thank you. Next witness, please.

MR. HASKEL: Your Honor, I would like to call Kristin Kucsma to the stand, please.

THE CLERK: Just stand right in front of that chair, please.

THE COURT:

THE WITNESS: Sure.

THE CLERK: Raise your right hand.

K R I S T I N K U C S M A, called as a witness on behalf of the plaintiff, having been duly sworn, was examined and testified as follows:

THE CLERK: You can lower your hand, have a seat. And can you tell us your name, your occupation and where you work.

THE WITNESS: Sure. My name is Kristin Kucsma, K-U-C-S-M-A. And I am the managing director and senior economist at the Sobel Tinari Economics Group.

THE COURT: Good afternoon.

THE WITNESS: Good afternoon, your Honor.

MR. HASKEL: Thank you, your Honor.

DIRECT EXAMINATION

BY MR. HASKEL:

Q What is your profession?

A I'm currently the senior economist and managing director of the Sobel Tinari Economics Group, and what that means is that most of my work involves using the methods, tools and techniques of economics for specific purpose, and that is evaluating economic losses in litigated matters.

Q And can you explain your educational background, please?

A Sure. I have a bachelor of arts degree in economics that I received from Seton Hall University, where I was graduated with highest honors. I have master of arts degree in economics that I received from Rutgers University, and I am also technically ABD, which literally stands for all but dissertation. And what that means is that over and above the requirements for a master of arts degree in economics I completed all of my course work and I passed all of my qualifying examinations in pursuit of a PhD. What I have not done yet is complete the dissertation.

Q When did you join Sobel Tinari Economics Group?

A I joined the group on January 2nd, 2008.

Q Prior to your employment with Tinari what did you

do?

A Before I joined the Sobel Tinari Economics Group I was fortunate enough to enjoy what I like to call my first career, which was as a college professor. I was a member of the full time faculty at Seton Hall and Drew universities, and I was also an adjunct professor at both Rutgers University and St. Peter's College. I taught primarily in the department of economics at both the graduate and undergraduate level, and I also on occasion taught statistics and finance.

Q Are you a member of any professional associations?

A I am. I am a member of the National Association of Forensic Economics. I'm also a member of the Eastern Economics Association, and I am still sitting on a panel for the Office of Attorney Ethics in the state of New Jersey.

Q And have you published any articles in the field of economics?

A I have. The one that is probably most relevant for today's discussion is an article that appeared in the Journal of Forensic Economics. That's considered to be the top tier journal in our field and, very specifically, that is an article that discusses the economic methods used to evaluate damages in wrongful death and personal injury matters.

Q And what percentage of your work is for plaintiffs and what for defendants?

A I would estimate that approximately 30 percent of

the work I do is on behalf of defendants, which means about 70 percent of the work I do is on behalf of plaintiffs.

Q Have you ever testified as an expert in economics?

A Yes, I have, many times.

Q Have you been recognized in both federal and state courts as an expert in economics?

A Yes, I have.

Q Do you regularly perform the type of economic loss evaluation that you did for the plaintiff in this case?

A Yes, I do.

MR. HASKEL: Your Honor, plaintiff offers --

MR. KUTNER: Objection, your Honor.

THE COURT: It's not necessary to offer her as an expert.

MR. HASKEL: All right.

Q What information did you review in reaching your appraisal for economic loss to plaintiff?

A In this case I reviewed a variety of legal documents that included the bill of particulars, the complaint, the plaintiff's deposition transcript. I also reviewed various Schedule C's from the plaintiff's tax returns.

In addition to that, I also reviewed a report that was issued by Dr. Harold Bialsky, a report that had two parts, a vocational opinion that talked about the plaintiff's employability and also a life care plan that outlined the

future medical needs of the plaintiff.

Q And how were those materials obtained?

A Those materials were provided to me by your office.

Q And have your expenses for your time in preparing the report been paid?

A Yes, my firm has been paid in full.

Q And you're being paid to come to court today?

A Yes. I'm a salaried employee so I'm paid regardless of where I am. So the firm is certainly paid for my time.

Q How do you go about preparing an economic loss analysis for someone like the plaintiff?

A The first think I do is review whatever documents have been provided to me by either plaintiffs' or defense counsel. And once I've done that, if I feel that I need some additional information I would request it, and once I have the information that I need I then determine what I call the appropriate theory of economic damages. And what that means is that it's my job as the economist to determine the appropriate elements of economic analysis.

In this case after I reviewed the information I described before, the Schedule C's, the plaintiff's deposition transcript, the complaint, Dr. Bialsky's report, I determined that there were two elements of economic loss or elements of economic analysis.

Number one, I determined that I was going to

calculate the loss of earnings, the additional earnings that Mr. Kurz would have received for a number of years if he hasn't been injured and he had continued work as an independent real estate broker agent.

The second element of economic loss that I calculated was the value of the future medical costs that Dr. Bialsky stated Mr. Kurz was going to require over his remaining life expectancy as a result of his impairment.

Q And did you prepare charts to assist the jury in understanding your analysis?

A Yes, I did.

MR. HASKEL: At this time, your Honor, may I approach the witness and hand the charts, which are in roll form, to the stenographer to have them marked.

THE COURT: Mark them for identification, please.

(Charts were marked as Plaintiffs' Exhibits 14 through 20 for identification.)

MR. BOWER: Can we see these before they're put up in front of the jury?

MR. HASKEL: Sure.

MR. KUTNER: Can we come up for one minute?

THE COURT: Sure.

(The attorneys approached the bench and held a discussion with the Court off the record.)

THE COURT: So they're going to have to be marked into evidence before she testifies from them. Lisa's going to have to mark them, anyway.

So just let me -- for the record, Mr. Bower, any objection?

MR. BOWER: No, your Honor.

THE COURT: Mr. Kutner?

MR. KUTNER: No objection, your Honor.

THE COURT: Ms. Marano.

MS. MARANO: No objection.

MR. WILSON: No objection.

MR. MANZIONE: No, your Honor.

(Plaintiffs' Exhibits 14 through 10, previously marked for identification, were received and marked into evidence.)

THE COURT: Off the record.

(A discussion was held off the record.)

Q Let's take a look at 14 in evidence. Can you just describe this particular chart for us.

A Sure. What you see on the bottom of the chart is what I described earlier, and those are the components of analysis or the elements of economic loss that I calculated. You'll see 1 and 2 refers to the lost earnings, the lost earnings in past years, the lost earnings in future years.

And what that simply means is that I calculated how

much additional money Mr. Kurz would have earned had he not been injured in December of 2008, and I started by calculating how much he would have earned from the time of injury through the present time. That's what I mean when I talk about adjusted earnings in past years.

And then I had to determine going forward how many years into the future, starting today, Mr. Kurz would have worked had he not been injured in December of 2008, and I had to determine on average how much he would have earned in each of those future years. And I'll talk about that in just a little while.

Number 3 you see refers to the second general element of economic loss, and that is the cost of lifetime care. In other words, the different types of care that Dr. Bialsky said Mr. Kurz is going to need over his remaining life expectancy.

Now what you'll see at the top of the chart there is some basic information that was either provided to me by plaintiffs' counsel or was obtained by me through research. And this was basic information that I needed to calculate both the lost earnings as well as the cost of lifetime care.

For example, it was important for me to have information about Mr. Kurz's date of birth, the date on which he was impaired. And that information was important because some of the research that I had to do involved answering two

key questions: Number one, if Mr. Kurz hadn't been injured in December of 2008 how many more years would he have worked; two, five, ten, twenty?

And in order for me to form an opinion about how many years into the future Mr. Kurz would have worked, I needed to do some research, research that is based on U.S. government data, data that looks at the actual experience of the U.S. population and looks at people according to three general characteristics; their level of education, their gender and their age. So I needed to know Mr. Kurz's level of education and I also needed to know how old he was at the time of impairment so that I could do the appropriate research to determine what I call the statistical retirement age.

And you'll see, based on my research, based on the experience of 59, 60 year old men in the United States with a bachelor's degree, I was able to determine that if Mr. Kurz had not been injured in December of 2008 he would have permanently stepped out of the labor force on or around April 20th, 2017 when he was about 67.76 years of age. And this research, in fact, was consistent with information provided to me by Mr. Kurz in his deposition testimony in which he stated that it was his intention to work until he was about 69 or 70 years of age as a real estate broker agent.

In addition to that, you'll see that I also had to do some research to determine two other statistics. One is

called the work life expectancy and one is the life expectancy. The work life expectancy was very important for me for purposes of calculating the lost earnings in past and future years. The work life expectancy represents a downward adjustment that I'm going to make each year to my calculations of earnings. It's a downward adjustment that I have to make each year because I have to take into account the real possibility that even if Mr. Kurz had not been injured or impaired in December of 2008 he still might not have worked continuously every year from 2009 through 2017. In fact, more likely than not Mr. Kurz might have missed some work here and there between 2009 and 2017. He might have become ill, he might have become injured, his wife might have become injured and he would have had to care for her.

But in any event, based on my research I determined that on average males who are about 59, 60 years of age with a bachelor's degree will spend about 21.7 percent of the time out of the work force, a couple of days here, a couple of weeks there, because of injury, illness, and so on. So I did needed to take that into account by adjusting Mr. Kurz's earnings down by 21.7 percent in each year through the year 2017.

And lastly -- I'll talk a little more about this later, but I also needed to determine, do a bit of research into Mr. Kurz's statistical life expectancy. That was

important for me because I ultimately needed to determine the cost of the future medical care. And in order for me to do that I had to determine, among other things, how many years into the future Mr. Kurz is likely going to need the various components of care that Dr. Bialsky outlined in his life care plan.

The general answer to that question is that Mr. Kurz is going to need that care through his statistical life expectancy. My research regarding the statistical life expectancy was based again on U.S. government data, very specifically reports that are issued by the Centers for Disease Control called the National Vital Statistics Reports.

Q Turning now to what I hope is 15. It is 15. And I think the suggestion of using another clip was prudent. So let me just do that.

MR. MANZIONE: That's why I'm here, Mike.

Q Turning to 15 in evidence. This is Mr. Kurz's earnings history?

A Yes, it is.

Q Okay. Could you explain how you prepared this chart for Mr. Kurz.

A Sure. In order for me to calculate the lost earnings in past years and talk about the lost earnings in future years, there were three general opinions I needed to form. He the first I've already mentioned, and that is I

needed to form an opinion about how many years into the future Mr. Kurz would have worked had he not been impaired in December of 2008. Based on my research, I determined that Mr. Kurz would have worked through 2017.

The second general opinion I needed to form was an opinion about how much on average Mr. Kurz would have earned in each year going forward, 2009, `10, all the way through the year 2017.

In order for me to form an opinion about how much on average Mr. Kurz would have earned each year, I considered two general sources of information. The first source of information I considered was information that was presented on the Schedule C's that Mr. Kurz filed each year with his tax returns. And, very specifically, I was able to review those Schedule C's and derive information about what we call Mr. Kurz's gross receipts or revenue that he received each year from Century 21. I also was able to review information about the expenses that Mr. Kurz recorded on his tax return each year on the Schedule C's. And then based on the difference between the gross receipts and revenues and the expenses, I was able to calculate what we call the net income or the net profit reported by Mr. Kurz in each of those years.

And that's what you see presented in the top table there. You see the information regarding Mr. Kurz's revenue, expenses and net profit for each of the years 2005, 6, 7 and

8. Again, information that was derived from the Schedule C's that he filed with his tax returns in each of those years. So that was the first set of information I considered.

One of the things I took into account was the fact that in late 2007 or early 2008 the office in which Mr. Kurz was working changed. He was still working for Century 21 but the old office had been purchased by Coldwell Bankers and he technically entered into a new employment arrangement that was with a new office even though it was still Century 21.

Now, in addition to considering how much Mr. Kurz, in fact, earned and reported on his tax returns in each of these years, I also reviewed benchmark statistical data published by the U.S. Department of Labor, the Bureau of Labor Statistics, and very specifically I reviewed earnings information for both real estate agents and brokers. And I wanted to review that to see if the information that was reported by Mr. Kurz on his tax returns was in line with those benchmark statistics. And based on my review of those statistics I was able to determine that his gross receipts and revenues were in line with earnings of real estate agents and brokers very specifically in this metropolitan statistical area, meaning the Long Island/New York area.

Once I had reviewed the benchmark statistical data and also Mr. Kurz's history of his own earnings, I ultimately formed an opinion that if Mr. Kurz had not been injured in

December of 2008 and he had continued his employment as a real estate agent/broker through 2017, he would have earned on average $34,623 each year. And I based that opinion on the average of what Mr. Kurz had earned in the year 2007 and the year 2008.

And I chose those two years very specifically because they were the best representation of the current employment and the current Century 21 office in which Mr. Kurz was employed at the time of his injury.

Now, if we turn to the next slide, you'll see there is one other opinion that I needed to form before I could calculate the lost earnings in past years.

Q 16.

A Perfect.

I had to form an opinion also about how much on average Mr. Kurz's earnings would have increased in each year from 2009 through 2017. And that's what you see. Those are the figures you see on the bottom of that chart.

In order for me to form an opinion about how much on average Mr. Kurz's earnings would have increased each year, I once again considered benchmark statistical data published by the U.S. Department of Labor. I looked very specifically at something called occupational employment statistics. And I looked at three general categories. I looked at the actual wages, so I looked at how much people, in fact, had earned in

various occupations in the years 2009, `10, `11, `12, and `13.

And, very specifically, I looked at three occupational categories. I looked at the general category of salespeople and I looked at how much on average they had earned year over year. I also looked at the wages for real estate agents and I also looked at the wages for real estate brokers. And based on my review of that data I was able to determine that the average yearly increase in wages among salespeople in the years 2010, `11, `12 and `13 was as you see presented on the chart.

So, again, based on U.S. Department of Labor data I was able to determine that wages had, in fact, increased on average 1.8 percent in the year 2010, 1.9 percent in the year 2011, 1.2 percent in the year 2012, and .2 percent in the year 2013. The data for 2014 is not yet available, and clearly 2015 is not yet complete. So in order for me to form an opinion about how much Mr. Kurz's earnings would have increased in the years 2014 and `15 I simply took an average of how much wages had increased each year from the years 2010 through 2013.

Now, I formed my three opinions on average how much would Mr. Kurz have earned each year, 34,623, how much would his earnings have increased each year on average -- we see them presented on the chart up there -- and how far into the future had he worked had he not been injured through the year

2017.

The final research I needed to do before I could actually calculate the loss of earnings in past years was I needed to make sure that I made all of the appropriate adjustments to Mr. Kurz's earnings. And I already talked about the first adjustment, the work life adjustment.

If I had used the figure of $34,623 and simply increased that each year and added those numbers up, I would have been assuming that Mr. Kurz would have worked 40 hours a week 52 weeks out of every year from 2009 through 2017. That simply is not a reasonable assumption from me as an economist to make. In fact, my research showed the opposite.

When I mentioned earlier -- when I looked at actual data published by the U.S. Government, 59 or 60 year old males with a bachelor's degree I saw that, in fact, they typically did not work 100 percent of every year until retirement but they did miss work now and then. That's the first downward adjustment I made to the figure of $34,623, and I make this adjustment in each year, a downward adjustment of 21.7 percent.

Now, I also had to take into account the possibility that not only might Mr. Kurz have missed work because he got injured or ill or he wanted to care for his wife, he also might have become unemployed in any given year. And if he had become unemployed he also would have missed work and not

earned money. So I needed to make a second downward adjustment to take into account the possibility of work missed due to unemployment.

In order for me to determine the appropriate downward adjustment for unemployment I had to consider two pieces of information. First of all, I looked back at what the unemployment rate had actually been for males of Mr. Kurz's age over the last roughly nine years. And the reason I looked back over the past nine years is because I'm ultimately calculating lost earnings for about a nine-year period, from 2008 through 2017. So I used as my starting point -- I looked back at what the unemployment rate had actually been for men in the United States over the past nine years.

But I also had to take into account a second fact, and that is that even if Mr. Kurz had become unemployed he would not necessarily have been without full pay. And that is because he might have applied for and received unemployment benefits.

So based on my review of those two sources I determined the appropriate adjustment in each year, another downward adjustment, was a downward adjustment of 2.6 percent.

And if we flip to the next chart you'll see where I pull everything together and actually calculate the lost earnings in past years.

Q 17?

A Perfect.

Here you'll see I've calculated the lost earnings in past years. In other words, this is where I have calculated how much additional earnings Mr. Kurz would have received if he had not been injured in December of 2008 and if he had been able to maintain his employment as a real estate agent/broker through the present time.

So you'll see if you look at column 2, or column 1, I should say, that my calculation of earnings in past years begins January 1st, 2009 and they extend through the first quarter of 2015, which represents roughly the current time.

In column 3 you will see my calculation of what we call gross earnings. So I had determined that if Mr. Kurz had not been injured in 2008 he would have earned $34,623 in the year 2009. That was based on an average of his earnings in the years 2007 and 8.

I then increased those earnings in each year based on information that I derived through the U.S. Department of Labor. So, for example, when I had reviewed the actual wages of salespeople in the United States I was able to determine that their wages had, in fact, increased by 1.8 percent in 2010. So in column 3 I increased the figure of $34,623 by 1.8 percent to determine how much on average Mr. Kurz would have earned in the year 2010, and so on.

Now, you will see, though, that for purposes of

calculating the economic loss in this case I do not add up the numbers in column 3. In fact, it's the numbers in column 4 that I used to ultimately determine the lost earnings in past years. And you will see that the figures in column 4 are all lower than the figures in column 3, and that's because the figures in column 4 reflect those two downward adjustments.

The figures in column 4 take into account the likelihood that Mr. Kurz would not have worked 40 hours a week, 52 weeks out of every year, but more likely than not would have missed some work here and there. And based on my analysis, then, I was able to determine that had Mr. Kurz not been injured in December of 2008, had he maintained his employment as a real estate agent/broker through the present time, he would have earned an additional $171,423 over that period.

Q 18.

A Great.

Now, you'll see I rounded out my analysis of the lost earnings by also considering the lost earnings in future years; in other words, by evaluating what Mr. Kurz's earnings would have been like from today's date through his statistical date of retirement. And in order for me to offer an opinion about what Mr. Kurz's earnings would have been like in future years, I once again had to form several opinions.

Number one, I had to determine how many future

years, starting from today's date, Mr. Kurz would have worked had he not been injured. Well, I know that he would have worked through his statistical date of retirement, April 20th, 2017. Or alternatively, as you see on the bottom of the chart there, I determined that if Mr. Kurz had not been injured he would have worked another 2.05 years from today's date going forward.

I also needed to form an opinion about how much on average Mr. Kurz would have earned each year going forward, starting today. You saw on the preceding chart that if Mr. Kurz had worked from 2009 through 2015, taking into account the increasing wages each year, he would have earned $37,373 on average in the year 2015, which you see on the top of that slide.

Once again, though, I had to make that downward adjustment. I certainly could not assume even for the next 2.05 years that Mr. Kurz would have necessarily worked full time, continuously. I made the downward adjustment for work life and downward adjustment for the possibility of unemployment, which means that Mr. Kurz would most likely have earned $28,501 each year for the next 2.05 years.

And, lastly, I needed to form an opinion about how much on average Mr. Kurz's earnings would have increased each year through 2017.

Not quite yet.

Q 19.

A Perfect. Okay. This is the second element of economic damages. Once I had calculated the lost earnings in past years and determined the appropriate elements of lost earnings in future years, I then moved on to review Dr. Bialsky's life care plan. In Dr. Bialsky's life care plan he provided me with three important pieces of information:

Number one, Dr. Bialsky gave me an itemized list of all of the different types of care that in his opinion Mr. Kurz is going to need over his remaining life expectancy.

Number two, Dr. Bialsky also provided me with information about the frequency that Mr. Kurz was going to require this care, daily, weekly, monthly, and so on.

And, third and finally, Dr. Bialsky also provided me with information about how much each individual component of care would have cost Mr. Kurz had he gotten that care in the year 2013.

Those were the three different pieces of information provided to me by Dr. Bialsky in list life care plan.

It was then up to me to determine two things.

Number one, to determine what Mr. Kurz's statistical life expectancy is as of what we call the date of implementation. In this case you see that I have assumed that Mr. Kurz's life care plan would be implemented on April 1st of this year. I assumed he would start getting the care outlined

in Dr. Bialsky's plan on April 1st of this year.

Based on that implementation date and based on my review of the National Vital Statistics Reports I was able to determine that as of April 1st, 2015 Mr. Kurz's statistical life expectancy is 83.31 years. In other words, he is expected to require all of the components of care outlined in Dr. Bialsky's life care plan through November 6, 2032, or for another 17.6 years into the future.

Now, the second thing I needed to determine, though, based on the information provided in Dr. Bialsky's life care plan, was this. I know how much it would have cost Mr. Kurz if he had gone out and gotten all of the care that Dr. Bialsky said he needs in the year 2013. So in other words, if Mr. Kurz had gone out and hired a paid companion, purchased some of the equipment, visited a neuroophthalmologist in the year 2013, I know how much he would have had to pay for each of those categories of care. That information was given to me by Dr. Bialsky.

What I needed to do, though, was determine two things. Number one, how much it would cost Mr. Kurz to obtain this care today, in the year 2015, and then I needed to determine how much the cost of each component of care is going to increase each year from 2015 through Mr. Kurz's statistical life expectancy, or through the year 2032.

You'll see on the bottom of this chart a table that

is called annual increases. And you'll see three columns, but the second two, short term and long-term yearly increase. The figures that you see in column 2 -- and I'll tell you where they came in from just a moment, but the figures you see in column 2 represent the figures that I used to take the costs in Dr. Bialsky's plan, how much it would cost to visit the neuroophthalmologist in 2013 and figure out how much that visit would cost today. So those figures in column 2 I used to determine how much it would cost Mr. Kurz to get the care he needs today in 2015.

The figures in column 3, then, represent my opinion about how much on average the cost of each category of care is going to increase each year from 2015 through 2032.

Now, where did I get these figures from? The figures that I've used to determine the annual increases in the cost of care were based on several sources. Number one, I considered information published by the U.S. Government. Very specifically, I looked at something called the consumer price index. The U.S. Government calculates something called a consumer price index, and a consumer price index is used to measure how much on average prices have increased each year.

So, for example, I could look back at the general consumer price index ten years ago and I could use that to determine how much on average the cost of living for the average American has gone up each year over the past ten

years. The U.S. Department of Labor calculates a variety of different consumer price indexes, though. One is a general one, but they also have consumer price indexes for a variety of different types of items, like physician services.

So I was able to review the consumer price index data published by the U.S. Government and I was able to look back over the last five years and also back over the last fifteen and twenty years to determine how much on average the cost of a visit to a physician, like a neuroophthalmologist, has increased each year in recent years and also increased over the last fifteen and twenty years. And that's what I used as my basis for determining how much on average the cost of these visits would have increased from 2013 through the present, and also how much on average the cost of those visits will increase over a longer period of time, Mr. Kurz's remaining life expectancy.

Now, I also reviewed -- you'll see the third item there, wages. In addition to reviewing consumer price index data published by the U.S. Department of Labor, I also considered two other sources. I also considered information published by the U.S. Department of Labor about how much, in fact, wages have increased in the past, and I also considered a report that's published each year by the annual report of the board of trustees of the Social Security Administration.

The reason I looked at the annual report of the

board of trustees of the Social Security Administration is because that report includes data about projections of future wage increases. And the reason I needed to review that data was because one of the categories of care that Dr. Bialsky said Mr. Kurz is going to need over his remaining life expectancy is the care of a paid companion. And in order to know on average how much the cost of a paid companion will increase over time, I needed to review on average how much wages have increased and are expected to increase over time.

Flip to the next page.

Q Should be 20.

A Indeed, we're done.

Q Should I check?

A Thank you.

And you'll see here my opinions regarding the number of future years that Mr. Kurz is going to require each element of care outlined in Dr. Bialsky's life care plan.

You'll also see in column 2, you'll see the yearly value. In column 2 I have calculated how much it would cost Mr. Kurz to get the care that he needs in the year 2015. So, in other words, Mr. Kurz would need $21,066 to cover the cost of a paid companion in the year 2015. He would need $671 to cover the cost of a desktop video monitor in the year 2015, and so on, all the way down to the bottom. He would need $177 to cover the costs of visits to the neuroophthalmologist

for -- or in, I should say, the year 2015.

If you look at the last column you'll see, based on Mr. Kurz's statistical life expectancy, I have determined that he will require these various components of care for 17.6 future years.

And if you look at the third column, I have determined on average how much the cost of each category of care is going to increase on average starting in the year 2016 and continuing through the year 2032, or continuing through Mr. Kurz's statistical life expectancy.

Q Did you do a final calculation to a reasonable degree of economic certainty as to the total losses adjusted appropriately for the time between the time of the original report and now?

A Yes, I did.

Q And what are your findings?

A I calculated the total value of past earnings, so what Mr. Kurz would have earned from January 1st, 2009 through the present time, at $171,423.

I also calculated the total value of future earnings, what Mr. Kurz would have earned from today's date through April of 2017, at $59,066.

And, lastly, I calculated the total value of the lifetime care, in other words the total amount of money that Mr. Kurz would need to cover the cost of care outlined in Dr.

Bialsky's life care plan through Mr. Kurz's statistical life expectancy at $533,131.

And based on those three elements of economic loss I calculated the total value of economic loss to Mr. Kurz at $763,620.

Q And you adjusted that because some of those losses have already occurred, you're doing that as of today?

A There were two difference in my calculations. When I conducted my analysis in October of 2013 I had calculated the total value of economic loss at $825,921.

The reason my figures have changed today are for two primary reasons. For one thing, some of the years that had been in the future originally, like the year 2014, were now in the past. I needed to make that adjustment.

But of greatest significance, when I first prepared my report in October of 2013 I had assumed that the life care plan would begin in November of 2013. Now, of course, I know that didn't happen, and I have now determined that Mr. Kurz will begin the treatment he needs in April of 2015, provided he's able to do so.

Q You offer your opinions to a reasonable degree of economic certainty?

A Yes, I do.

MR. HASKEL: I have no further questions, your Honor.

THE COURT: Mr. Bower?

MR. BOWER: I have no questions, your Honor.

THE COURT: Mr. Kutner?

MR. KUTNER: Thank you, your Honor.

CROSS-EXAMINATION

BY MR. KUTNER:

Q The life care plan -- you had time to review the life care plan?

A Yes, I did.

Q And you've been referring to the author of the life care plan as doctor; is that correct?

A That's correct, yes.

Q You know that he is clearly entitled to be called a doctor, but he's not a doctor of life care planning, you're aware of that?

A He is not a medical doctor, that is correct.

Q He was a chiropractor, he earned a degree as a chiropractor, which allows him to call himself a doctor of chiropractic. He does not have a PhD in the field of life care planning?

A Not to my knowledge; that is correct.

Q And you, of course, do not have a PhD -- we're going to talk about that for a moment -- in economics?

A Darn close, but I do not have one; that is correct.

Q Darn close, and that's what "all but dissertation"

means?

A Indeed.

Q The other economists where you work, Professor Tinari has a PhD. Are there are a number of PhDs?

A We have four economists. Two do have PhDs and two do not.

Q Of course, in your field of economics that would be the highest and most prestigious degree that one could obtain; correct?

A I suppose that is true, yes.

Q Sure. The current head of the federal reserve, Dr. Yellen, she has a PhD?

A She does. I've met her and she does have a PhD. That's correct.

Q The past chairmen of the federal reserve board, they have PhDs, and we could go on and on. But that would be the highest degree that you could obtain in this field; correct?

A That is the highest terminal degree; that is correct.

Q Now, you know that lawyers such as myself have the opportunity to obtain transcripts of prior testimony on witnesses such as you; correct?

A Yes, you do.

Q And you had the opportunity to testify before, and you know that a lawyer such as myself can ask you questions

about your credentials; is that right?

A Yes.

Q Do you consider yourself a well-rehearsed witness?

A I don't know that I would describe myself that way. I certainly am a former college professor, which means I do have a good amount of experience discussing and educating groups of people about economics, yes.

Q Taken any courses in public speaking?

A No.

Q So this is all, you would -- be fair to say natural talent on your part?

A Well, perhaps natural talent but also, as I said, on years and years of lecturing to 18 and 19 year olds at 8:00 in the morning.

Q So -- I know from having read prior transcripts, you're married, you have a family, and you don't live on Long Island; correct?

A I actually am not married, I do have two dogs, and I live in New Jersey.

Q All right. Okay. Well, let me ask you. So you've been "all but dissertation" for twenty years?

A Yes.

Q Okay. Ordinarily one would ask a question, if your PhD was important enough, you haven't finished that dissertation in twenty years; is that correct? Yes or no?

You haven't finished your dissertation?

A That is correct, I have not finished my dissertation, yes.

Q You engaged in this particular business. Did you find it or did it find you? I mean, did somebody recruit you, or one day you decided that testifying in court on economic damages would be something you'd be interested in doing?

A I had decided to take a break from academics and I had reached out to Dr. Tinari just to talk with him. He actually had been a professor at Seton Hall University when I was both a student and a faculty member there. I reached out to him to discuss some career opportunities. He mentioned that he was looking for an economist, asked me if I would be interested, and I accepted the position.

Q And Dr. Tinari has a web site in which he advertises the services of Tinari to provide experts such as yourself to come to court; correct?

A Well, we have do have a web site for the Sobel Tinari Economics Group. That is correct, yes.

Q Now, one of the things that you have learned over your years, for example, testifying as a witness, is don't look at me but make as much eye contact with the jury as possible; correct?

A Again, I wouldn't say I learned that. Again, going all the way back to my teaching years, it is very, very

important to engage the group to whom you're speaking and also to gauge them, to make sure that they're following and understanding what you're saying. That's something I did when I taught and also something I do when I testify.

Q And when you testified here today, you told us that it would be this year that Mr. Kurz would start to receive -- I guess you referred to it as treatment that's referred to in the life care plan?

A The life care plan itself is always a future document. It's a list of the care that a person needs and will obtain or should obtain in the future.

Q Ms. Kucsma, let's do this. I'm going to ask you some questions and I'm going to ask that you answer them yes or not. If you can't lease tell me that you can't do that; okay?

A Sure.

Q Did you tell this jury about a half an hour ago that he would start to receive the treatment that's referred to in the life care plan in 2015?

A That's what I assumed, yes. Is the implementation date.

Q The implementation date for treatment; correct?

A For all of the categories of care provided in the life care plan, yes. I may have used the term treatment once, but on other occasions I talked about the categories of care.

Q Do you remember that about fifteen seconds ago I asked if you could answer my questions yes or no? Could we try and do that? Okay?

A If I can, I will be happy to.

Q If you can't answer it yes or no, tell me. I didn't ask you to explain to the jury about your use of the word treatment, did I?

A I suppose you didn't. But I wanted to make sure it was clear to the jury.

Q So you're not here as advocate for Mr. Kurz, are you?

A No.

Q You're here to give an objective analysis of his economic loss; correct?

A Yes.

Q Okay. Now, from 2008 to 2015 do you know of any reason why Mr. Kurz did not get any of the treatment that you referred to?

MR. HASKEL: Objection.

THE COURT: Sustained in that form.

Q Do you know why Mr. Kurz did not avail himself of any of the assistive devices referred to in the life care plan?

MR. HASKEL: Same question. I think it's objectionable, your Honor.

Q Just yes or no?

THE COURT: It's not really what her area is. So dash --

MR. KUTNER: I'm asking from anything the witness had read in this case, and she's read the testimony. I asked her if she's read the testimony of Mr. Kurz. I'm just asking if she knows if she's heard anything about why he hasn't availed himself --

THE COURT: Okay.

Yes or no; do you know?

A I actually -- I can't answer that question, only because it presupposes he hasn't gotten any of these things. I don't know if he has gotten them, I don't know if he hasn't gotten them why he hasn't gotten them. That's not relevant for my analysis of what it would cost to obtain this going forward.

Q Is it fair to say your answer is no?

A Again, I wouldn't agree that my answer to your question was no, because your question is do I know why he didn't get the care in the past, and I don't know that.

Q My question is: Do you know whether he has availed himself of any of the assistive devices that are referred to in the life care plan; yes or no?

A Specifically, I don't recall.

Q What does Mr. Kurz have his bachelor's degree in?

A That I also don't recall.
Q What does Mrs. Kurz -- what is Mrs. Kurz's level of education?
A Mrs. Kurz, I believe, has a couple of years of college.
Q What did Mr. Kurz do before he became involved in the real estate business?
A I know that he had been or -- had been involved in the real estate business since, I believe, 1981. I know he also had been a police officer, as well.
Q When did he retire?
A That I don't recall. I can see if --
Q Let's go on.
When did he cell his first house?
A That I don't know.
Q Is he a licensed broker?
A I know that he was at the time he was deposed.
Q How long has he been a licensed real estate broker?
A Again, I believe that he reported he had begun his career in real estate in or around 1981.
Q So do you know what an associate broker is in New York?
A Not specifically, no.
Q Do you know whether Mr. Kurz is an associate broker?
A That I don't know.

Q Do you know whether Mrs. Kurz is an associate broker?

A I don't know her specific title, no.

Q Do you know whether Mr. and Mrs. Kurz have ever worked selling real estate together?

A There was some discussion of that in Mr. Kurz's deposition transcript, yes.

Q Okay. How many times have they sold real estate together?

A That I don't know.

Q Your testimony here, of course, is based on what you know from materials provided to you by Mr. Haskel, testimony of Mr. Kurz, and I believe the life care plan of -- I want to get his name right -- Dr. Bialsky?

A Yes, that's correct.

Q You didn't look at anything else; correct?

A Other than the Schedule C's and --

Q Again, that's material provided by Mr. Kurz?

A That's correct, yes.

Q Okay. Did you investigate how many active listings Mr. Kurz has had since 2008?

MR. HASKEL: Objection, your Honor. Assumes a fact not in evidence.

THE COURT: That he's had some?

MR. HASKEL: I don't know.

THE COURT: Can we ask her if she knows?

Q Do you know whether Mr. Kurz has had any active listings since 2008?

A I don't know.

Q Do you know if Mrs. Kurz has had active listings since 2008?

A That I don't know.

Q Do you know if Mrs. Kurz has active listings today?

A That I don't know.

Q Do you know if Mr. Kurz is assisting Mrs. Kurz with --

A That specifically I don't know.

Q Do you if Mr. Kurz assists Mrs. Kurz in showing houses?

A Again, specifically I don't know.

Q Can we agree that there are a number of things that you don't know which if you wanted to know you could have found out? Just yes or no.

A If I had needed to know --

Q No, that's not what I asked. I said if you wanted to know --

A What's relevant for me as an objective economist is not what I --

Q I don't want to argue with you. If you wanted to know it you could have found it out?

A If I felt it was necessary I certainly would have asked, yes.

Q So the information you provided to the jury, for example, takes into consideration data provided by, for example, the Bureau of Labor Statistics; correct?

A Yes.

Q Okay. You came to a determination about Mr. Kurz's life expectancy; correct?

A Yes.

Q When you came to that conclusion, that's the statistical conclusion you came to without really knowing anything about his health; correct?

A I'm not a medical doctor, so it would not be appropriate for me to do anything other than rely on the statistical date.

Q If I were to ask you that question again and ask you to answer it yes or no, would it be fair to say your answer would be no, I don't know anything about his health?

A That is correct, I don't know much about his health, I believe.

Q And again without you knowing anything about his health, the point is that life expectancy, those are based on statistics; correct?

A They're based on the average American, in this case the average male, yes, in the United States.

Q And you do you know whether Mr. Kurz represents the average male in the United States? Yes or no?

A That's not something I could answer one way or another.

Q So you know that when he lost his vision he was in the hospital having quadruple bypass an on emergency basis? Did you know that before today?

A I knew that he was --

Q Just yes or no.

A -- seeking treatment for a heart condition. That I knew.

Q Did you know he had had a heart attack on the morning of the day of his surgery? Yes or no?

A That might have been discussed in his deposition transcript. I don't recall.

Q Is there a reason you have a hard time answering questions yes or no?

MR. HASKEL: Objection.

MR. KUTNER: It's a fair question.

MR. HASKEL: I don't think so.

THE COURT: Sustained.

Q What, if anything, do you know about the real estate market on Long Island?

A Specifically --

Q All right. Let's be more specific.

When Mr. Kurz had real estate listings, where were they, what part of the island?

A I did not have a list of his listings.

Q Does the real estate market on the south shore of Long Island, which was devastated by Hurricane Sandy, show increases in home values that are the same as on the north shore of Long Island?

A That I don't know.

Q If a person had listings on the south shore -- well, withdrawn.

What has been the average increase in compensation, not just among real estate brokers, but what has been the average increase in wages among working persons who live on Long Island?

A That I don't recall.

Q Well, do you know if it's gone up in the same percentages that you've suggested to this jury?

A Again, that I don't recall.

Q Would it surprise you to know that it hasn't?

A I would not necessarily agree with that without looking at the data. I did, however, look at earnings data, very specifically for real estate agents and brokers in the New York/Long Island metropolitan statistical area.

Q And now you understand the New York/Long Island area, this is an island that's a hundred miles long; correct?

A At least a hundred miles long; yes, that is correct.
Q If a person had one listings in Southampton or Bridgehampton Long Island that he sold, that would be an enormous commission; correct?
A That's right. But that's why I specifically did not use average earnings data but instead looked at median earnings data, because I wanted to make sure that any outliers like that did not taint or bias my data.
Q Let's talk about the difference between median and average. Okay? If I gave you the numbers 1 through 5, the median there would be 3; correct?
A Not necessarily. I assume you mean there were five numbers.
Q 1 --
A Yes, the median in that example would be 3.
Q Okay. Now, do you know where Mr. Kurz's real estate office was?
A That I don't recall as I sit here today. There was discussion of that.
Q Is the answer to that question no?
A It is I don't recall. I reviewed it in the deposition testimony but --
Q So you once knew it but you don't remember it now?
A That is correct.
Q And you don't know where the majority of his

listings were; is that correct? Yes or no or I don't recall?

A That is correct. Yes.

Q Okay. Do you know if there is anything, of anything you've read, anything you've seen, that prevents Mr. Kurz from engaging in the business of being a real estate broker today?

A Yeah, in fact, I carefully reviewed the employability and vocational opinion of Dr. Bialsky, and he makes it very clear that Mr. Kurz, because of his impairment, is not able to engage in gainful employment as a real estate agent.

Q Was your answer to my question yes?

A Yes.

Q And you say that -- by the way, is that something you would agree with?

A I'm not a vocational expert.

Q That's the answer to a different question.

A No, it's --

Q I just want to know, would you agree with it, yes, no, or I can't answer the question?

A I cannot answer that question.

Q Do you know that Mr. Kurz after 2008 did, in fact, engage in the business of being a real estate broker? Did you know that; yes or no?

MR. HASKEL: I'm going to object to that?

MR. KUTNER: Withdrawn in that form.

Q Did you know that after 2008 Mr. Kurz worked assisting his wife with her listings? Did you know that; yes or no?

A There was some discussion --

Q Just yes or no.

I don't want to sound frustrated. You get to give all of the lectures and narrative answers for Mr. Haskel. But from me, please, just yes or no.

MR. HASKEL: Objection.

THE COURT: Overruled.

A Then I'm afraid I can't answer that question yes or no.

Q So as you sit here today, it's not your testimony to this jury that in the entire United States there are no visually impaired real estate brokers? That's not true, is it?

A I don't know if that's true or not, but that certainly is not an opinion I have offered or will offer as I sit here today.

MR. KUTNER: Good. I didn't think you would.

Nothing further, your Honor. Thank you.

THE COURT: Ms. Marano?

MS. MARANO: Nothing, your Honor.

THE COURT: Mr. Manzione?

MR. MANZIONE: Just real quick.

CROSS-EXAMINATION

BY MR. MANZIONE:

Q Ms. Kucsma, good afternoon.

A Good afternoon.

Q When you determined the number of years that Mr. Kurz would work, you said to age 67; correct?

A Yes, that's correct.

Q And you based that on a statistic of males 59 years old with a bachelor's degree?

A I based it on that, and also Mr. Kurz's testimony in his deposition.

Q Okay. Well, those males that are 59 years old with a bachelor's degree that you used as your basis here, did they -- were they retired from another profession and receiving a pension, as well?

MR. HASKEL: Objection, your Honor.

THE COURT: Well, I don't know if we have any testimony about that with him. So you have to rephrase it.

Q There are some people that are 59 years old that need to work to put food on the table; correct?

A Probably, yes.

Q And there are people who are retired that have another source of income that don't have that same need for additional work; correct?

A Probably, yes.

Q And would you agree with me that if there's that need to work in order to put food on the table, the likelihood is that person will work longer as compared to somebody who has another source of income coming in instead?

A I actually would not agree with that statement, because the data that I rely --

Q Can you answer it yes or no, you don't agree with my statement?

A I would not agree with the statement as you phrased it, absolutely not.

Q Okay. Now you talked about his medical expenses of going to a neuroophthalmologist?

A Yes, that was one example.

Q The number was 4,000 plus; correct?

A For the ophthalmologist, the yearly value was $177 in 2015.

Q And the total you said was what?

A I calculated the total for all of the categories of care at $533,131. I did not calculate for purposes of today -- or I should say I didn't bring it with me -- the full value of the neuroophthalmologist, but in my original report I had calculated the total value of the visits to the neuroophthalmologist at, you're right, $4,437.

Q Now, if Mr. Kurz has medical insurance that figure

would with go out the window; correct?

A I couldn't say. I don't know if it would be covered by his insurance or not.

Q If it was covered by insurance that would be a figure that would no longer be necessary; correct?

A Again, it wouldn't be appropriate for me to determine whether or not it would be appropriate to offset my analysis for any collateral sources of income or benefits.

Q Do you have any idea if Mr. Kurz has any out of pocket expenses due to medical care?

A I don't know, and it's not relevant for my analysis.

Q Well, how could it not be relevant to your analysis, your telling this jury this is how much he's going to have to pay out of pocket, if there's no testimony and no evidence whatsoever that he has out of pocket expenses? That's incorrect; am I right?

A Not at all. The fact that Mr. --

MR. MANZIONE: No further questions, your Honor. It's a yes or no question.

THE COURT: So strike the rest of the answer.

Mr. Wilson?

CROSS-EXAMINATION

BY MR. WILSON:

Q Good afternoon.

A Good afternoon.

Q My name is George Wilson. I have a few questions Ms. Kucsma, is that --

A Yes, thank you.

Q How many hours did Raymond Kurz work in 2010?

A In 2010?

Q Right.

A That I don't know. I know that Mr. Kurz reported he earned no income in 2010, but I don't recall there being any discussion of any hours.

Q So as we sit here today you don't know if he worked a hundred hours, 500 hours, or zero hours; correct?

A He did not work as an independent real estate agent/broker. That I know.

Q So you know that he did not work as an independent real estate agent but you do know that he worked?

A No, I don't know that he worked.

Q So one way or the other you don't know that he worked?

A The information reported to me is that he did not work and he did not receive any income after he was impaired in December 2008.

Q What if the testimony in this case was that he did work, all right, he did work but he did not have any income? Are you in agreement that he is capable of working but just not capable of getting paid for it?

A No, I certainly would not offer that opinion.

Q So if he was working he should get paid for it; correct?

A Again, that's not an opinion I could offer without knowing specifically what he might be doing in what capacity, and so on.

Q I'm going to ask you to assume that he has testified that he has assisted his wife in real estate transactions, in performing open houses, in taking bids, taking phone numbers and showing houses and answering questions for those sales, and that he has done this since the date of December of 2008.

Now, Ms. Kucsma, as we sit here today do you know -- have you asked Mr. Kurz any information with respect to how much work he has put in in that respect?

A That is not a question I asked him specifically, no.

Q Okay. Because I believe you said that you are here as an objective economist, and as an objective economist the fact that he has worked or not is not an important factor to you?

A Number one, he clearly testified in his deposition that he has earned no income since December 2008. Secondly, he testified that many of the key responsibilities of a real estate agent he is incapable of performing. And number three, I had the employability and vocational opinion of Dr. Bialsky, where he clearly states that Mr. Kurz is incapable of any

gainful employment as an independent real estate agent/broker.

Q Now, you weren't here when Mr. Bialsky testified; correct?

A That's correct; I was not.

Q Now, are you aware that Mr. Bialsky testified that he was unaware that he was working?

A I don't know what Dr. Bialsky testified to.

Q So if Dr. Bialsky had some information that was incorrect, that would affect his analysis, wouldn't it?

A That I don't know. I assume you did ask him if that altered his opinion.

Q You also stated that you relied in part on the information provided to you by the plaintiffs' attorney and by Dr. Bialsky; correct?

A Yes, I did.

Q And if the information that was given to you by Dr. Bialsky and by the plaintiffs' attorney was wrong, then your calculations here would be wrong; isn't that correct?

A If there was any information that would alter the opinions of Dr. Bialsky, then it's possible that that would have an effect on my analysis. That is correct.

Q You personally did not interview Mr. Kurz; is that correct?

A That's correct; I did not.

Q These questions regarding his work and his

capability of work and what he's able to do and not able to do, you don't have any personal information with respect to that, you're relying on information that was given to you by other sources?

A That's correct, including Mr. Kurz himself in his deposition testimony. That's correct.

Q You didn't review the trial testimony, did you?

A I reviewed it very briefly, but I did not have a chance to review it all. I was provided with it about five minutes before I came in here, and, as you know, it's quite lengthy. So I apologize.

Q Do you realize that he testified about ten days ago, twelve days ago in this very courtroom?

A I don't know when testified.

Q And you were only given the transcript five minutes before you got on the stand?

A Yes, that's when I reviewed it.

Q Now, part of the calculations that you've made in this case have dealt with pre-2008 -- I should say pre-December 2008 earning capacity; isn't that correct?

A I did review Mr. Kurz's earnings before 2008, that is correct.

Q And your calculations were in part extrapolated from those pre-2008 earnings capacity?

A In part, yes.

Q And so what you did was take the time when Mr. Kurz was healthy prior to December of 2008 and used those numbers to extrapolate into the future; correct?

A I'm not sure that would be correct, and I don't want to sound argumentative, but I think one of the questions I was asked by a previous attorney was whether or not I was aware of the fact that when Mr. Kurz suffered this impairment he was being treated for cardiac issues. So clearly whatever his health conditions may or may not have been prior to 2008 were reflected in my analysis.

Q In fact, his health was impaired by the fact that he had to have a coronary -- quadruple coronary artery bypass surgery; correct?

THE COURT: It's already in the record. She already testified that --

Q So basically, though, my question is: You took a time period before 2008, before he had coronary artery bypass surgery, and said that he would continue to work at the same rate and the same capacity after 2008? Isn't that what you did?

A I actually didn't. That's exactly why I made that downward adjustment each year for the work life expectancy. That specifically takes into account, among other things, the likelihood that Mr. Kurz may have missed work in any given year for injury, surgery, impairment, and so on. That's

precisely why it was very important for me to make that adjustment of over 20 percent downward each year.

Q I agree. You made that adjustment, but that adjustment is something that you would do with healthy people, as well, correct, people who didn't have coronary artery bypass surgery. You would make that same adjustment; right?

A That is an adjustment that I do typically make in my cases, yes.

Q You don't adjust that calculation in any respect for the fact that somebody has coronary artery bypass surgery times four?

A Your question suggests that it would be appropriate for me to make that adjustment, and it's not clear to me that it would be.

Q So it's not appropriate to assume -- it's appropriate to assume that normal people who have typical health problems, who have typical health, would have a downward calculation, because as you get older you get more tired, you have more health issues, and stuff like that. But you wouldn't adjust that at all for somebody who has quadruple coronary artery bypass surgery; is that what telling the jury?

A I'm telling you two things: Number one, your assumption is that the general population of the United States does not have many, many males that have heart disease and have heart conditions, number one.

Number two, your question suggests that it would be appropriate for an economist to offer some sort of medical opinion. In my professional opinion, the statistical life expectancy is based on the population of males in the United States, specifically males about 59, 60 years of age. There is a strong likelihood, in my professional opinion, that many of those males have some sort of heart disease and, therefore, males like Mr. Kurz are reflected in the statistical data I've used.

Q You are using a statistical average of a typical American male, and you are not specifically making any calculations based on Mr. Raymond Kurz individually; correct?

A That is correct, I'm not.

Q You're not taking into account his health, not taking into account his own family situation, his own situation with respect to income from other sources, things that we've talked about, you based that on an individual basis as to Raymond Kurz with respect to your own calculations; isn't that fair to say?

A It's actually completely unfair to say. Again, I have implicitly taken many of those things into account by the fact that I have considered the statistical life expectancy of males in the United States who are 59 and 60 years of age, many of whom probably have similar conditions to those that Mr. Kurz has.

Q You're not saying this is the life expectancy for Mr. Kurz, are you?

A I do not have a life expectancy table for each individual person in the United States; that is correct.

Q Because that would be a medical opinion; correct?

A That is correct.

Q And you're not capable of rendering a medical opinion?

A That's correct, yes.

Q And you can't say today whether he is capable of working or not?

A I'm not a medical or vocational expert. I could not or would not offer that opinion as an economist.

Q And if he is capable of working, as he has testified, that might affect your calculations; isn't that correct?

MR. HASKEL: I object to the assumption that he was working --

THE COURT: In the context of helping his wife.

Q Would that affect your calculations?

A Again, based on all the information provided to me, including a general description of how Mr. Kurz may have been assisting his wife, that would not change my opinions. He's received no income as an independent agent.

Q But he has worked, he just can't get paid for it; is

that what you're telling the jury?

MR. HASKEL: Same objection.

THE COURT: Sustained.

A Again --

THE COURT: No, sustained.

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

THE COURT: You can step down. Thank you.

Come up, please.

(The attorneys approached the bench and held a discussion with the Court off the record.)

THE COURT: So no other witnesses for today. The witness tomorrow is a medical expert of some type; correct?

MR. HASKEL: Yes, your Honor.

THE COURT: So tomorrow we'll have, I think safe to assume, one witness for the day, and then we'll go from there.

So overnight do not discuss the case, don't form any opinion. Keep an open mind. And if anybody tries to talk to you about the case you'll let us know in the morning.

So we'll see you for 10:00. Thank you.

(The jury left the courtroom.)

THE COURT: So we're off the record.

(A discussion was held off the record.)

MR. MANZIONE: I think the testimony of both Dr. Bialsky and this witness, as well as, should be -- a portion of it with regard to medical expenses and future expenses for the neuroophthalmologist should be stricken. They were asked in their bill of particulars if there's any medical costs or expenses. Their initial bill of particulars said we'll supply them in a supplemental bill of particulars. The supplemental bill of particulars contained nothing in regard to damages. For both those witnesses to now come in and start putting in even $4,400 of expenses in something that's not claimed in the bill of particulars, it should be stricken, and I think the jury should be told that, as well.

MR. HASKEL: Seems to me that if the reports were exchanged some time ago there's absolutely no prejudice, no harm. This is future, anyway, to some extent. So I don't think it's the type of application that should be granted for that purpose. I there's been notice, no prejudice. So it's a little late to object to it, anyway.

MR. MANZIONE: Then I think we would be allowed to have Mr. Kurz on the stand testify as to what his pension covers as far as his medical expenses. My understanding is that he's not paying anything out of pocket. There's been no testimony whatsoever that there

are any medical expenses not covered.

THE COURT: I think I want to wait until the ophthalmologist. You have an ophthalmologist testifying?

MR. HASKEL: Yes.

THE COURT: Wait until he finishes his testimony to see if he offers anything about future medical care if that should come up, and then you can make the application again at that point.

MR. MANZIONE: But even if says he'll need future medical care, that's fine. But if he has a retiree medical plan that covers medical care he's not paying anything out of pocket.

THE COURT: We don't have anything in the record about that at all. I've never heard that.

MR. MANZIONE: Exactly.

THE COURT: I've never heard he has full medical care with no out of pocket anything. So it would be possible that maybe I would have to have some kind of a hearing outside the jury to establish that. But it's just -- it's premature.

MR. MANZIONE: You're right, and at the end of the plaintiffs' case if he doesn't submit any out of pocket for medical care he should not be entitled to it. Usually you get a lien, a bill; something. There's no evidence of that whatsoever.

He's got two witnesses now that have testified that he's going to incur future medical expenses, with the likelihood that that's not true. And it should not go to the jury unless there's evidence that it's not covered.

THE COURT: My recollection is that the witness this morning said that the plan is -- I think he said annual checkups, I think. That's all I remember about the specific topic, with the cost of about, I think he said, $200 a visit. Right? So --

MR. MANZIONE: For the next 19 years.

THE COURT: For the next 19 years, right.

MR. MANZIONE: But if his medical plan covers that he's got no out of pocket expense. He'll be given money twice. Got to show evidence of that.

THE COURT: But he hasn't rested yet.

MR. MANZIONE: I agree. I'll wait till the end of his case.

THE COURT: Okay. Off the record.

(A discussion was held off the record.)

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$1,801.20 [1] - 812:21
$1,896 [1] - 813:3
$1,900 [1] - 813:12
$12,141 [1] - 811:25
$13 [2] - 847:23, 848:4
$13,520 [1] - 811:11
$15 [3] - 813:5, 825:6, 825:20
$171,423 [2] - 872:14, 879:19
$177 [2] - 878:24, 898:16
$2,071 [1] - 812:10
$2,500 [1] - 832:16
$200 [1] - 911:10
$21,066 [1] - 878:21
$22 [3] - 811:10, 847:23, 848:5
$23,000 [1] - 839:15
$256,880 [2] - 811:14, 838:19
$257,000 [1] - 838:18
$27,456 [1] - 811:11
$28,501 [1] - 873:21
$280,000 [5] - 837:14, 837:16, 837:19, 838:25, 839:2
$280,109.40 [1] - 813:14
$3,195 [1] - 811:24
$3,420 [1] - 813:6
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