SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: ESSEX COUNTY
DOCKET NO. ESX-L-5833-12

MONICA SMOLYAR, and infant by her Mother and Natural Guardian, SUZANNE SMOLYAR, MONICA SMOLYAR, individually,

Plaintiffs,

-vs-

YVETTE A. BRIDGES, M.D., CHARLES H. BOWERS, M.D., MARK EINSTEIN, M.D., MATTHEW D. HORN, M.D., CHUNPING ZHENG, R.N., LINDA PASCHIK, R.N., SEDAT SURMELI, M.D., ST. BARNABAS MEDICAL CENTER and SUBURBAN OB/GYN SPECIALTY GROUP,

Defendants.

DEPOSITION OF:
KRISTIN K. KUCSMA, M.A.

TRANSCRIPT of the stenographic notes of the proceedings in the above-entitled matter, as taken by and before BARBARA WESTOVER, a Certified Shorthand Reporter and Notary Public of the State of New Jersey, held at the office of SOBEL TINARY ECONOMICS GROUP, 293 Eisenhower Parkway, Livingston, New Jersey, on August 21, 2105, commencing at 3:15 p.m.

Job No. NJ2118164

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

NOVO LAW FIRM, PC
BY: ILYA NOVOFASTROVSKY, ESQ.
299 Broadway
17th Floor
New York, New York 10007
212-233-6686
Attorneys for Plaintiffs,
Monica Smolyar and Suzanne Smolyar

GIBLIN & COMBS LLC
BY: CHRISTINA M. SCARPA, ESQ.
10 Madison Avenue
Morristown, New Jersey 07962
973-829-1500
CSCARPA@GIBLINANDCOMBS.COM
Attorneys for Defendant,
Yvette A. Bridges, M.D.

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

MARSHALL, DENNEHEY, WARNER, COLEMAN & GOGGIN
BY: MICHAEL S. LEVENSON, ESQ.
425 Eagle Rock Avenue
Suite 302
Roseland, New Jersey 07068
973-618-4177
MSLEVENSON@MDWCG.COM
Attorneys for Defendants,
Horn, Einstein, Surmeli, Zheng,
Paschik and St. Barnabas Hospital

RUPRECHT, HART, WEEKS & RICCIARDULLI, LLP
BY: KRISTIN BRUMMER, ESQ.
(Present Via Telephone)
53 Cardinal Drive
Suite 1
Westfield, New Jersey 07090
908-232-4800
Attorneys for Defendant,
Dr. Bowers

INDEX

WITNESS: KRISTIN K. KUCSMA, M.A.		PAGE
EXAMINATION BY MS. SCARPA		6
EXAMINATION BY MR. LEVENSON		44
EXAMINATION BY MS. BRUMMER		47

EXHIBITS

NO.	DESCRIPTION	PAGE
Kucsma-1	C.V.	5
Kucsma-1A	Current C.V.	5
Kucsma-2	Qualification Profile of Kenneth Betz	5
Kucsma-3	Report	5
Kucsma-4	Fact Finding Questionnaire	5
Kucsma-5	Fee Schedule	5
Kucsma-6	Statement of Ethical Principles and Principles of Professional Practice	44

(Exhibits were retained by the reporter.)

KRISTIN K. KUCSMA, M.A., Sobel Tinari Economics Group, 293 Eisenhower Parkway, Livingston, New Jersey, having been duly sworn by the Notary Public, testified as follows:

(Exhibit Kucsma-1, C.V., was received and marked for identification.)

(Exhibit Kucsma-1A, Current C.V., was received and marked for identification.)

(Exhibit Kucsma-2, Qualification Profile of Kenneth Betz, was received and marked for identification.)

(Exhibit Kucsma-3, Report, was received and marked for identification.)

(Exhibit Kucsma-4, Fact Finding Questionnaire, was received and marked for identification.)

(Exhibit Kucsma-5, Fee Schedule, was received and marked for identification.)

MS. SCARPA: Before we start with the deposition I just want to put on the record that we are just getting started at 3:15. The deposition was scheduled for 2:30 start time. I know the court reporter has a fee for a wait time, which I don't believe should be attributed to the defense because we were here waiting for

Page 6

plaintiff's counsel.
MR. NOVOFASTROVSKY: I fully anticipate that you'll have an opportunity to ask all your questions.
MS. SCARPA: No, I'm not concerned about the time to ask the questions. I'm concerned about the fees for the waiting time and for Ms. Kucsma's time for deposition. I don't know when she starts billing for the start time.
MR. NOVOFASTROVSKY: I thought there was like a three-hour block.
MS. SCARPA: I'm just putting that on the record, and we'll work it out if need be.
MR. NOVOFASTROVSKY: Sure. We certainly didn't bicker on this for the other experts, but whatever.
MS. SCARPA: No problem. We can work it out. It's not going to be an issue. I'm sure.
MR. NOVOFASTROVSKY: Great.
EXAMINATION BY MS. SCARPA:
Q. Good afternoon, Ms. Kucsma. I'm sure you know my name is Christina Scarpa. I'm with the firm of Giblin & Combs. We've had an opportunity to meet on several other occasions.
A. We have.

Page 7

Q. I know you've had your deposition taken before.
Do you need me to go through the rules and instructions of a deposition?
A. No, but thank you.
Q. I would remind you if for any reason you don't understand a question I ask you, please let me know, and I'll be happy to rephrase. If you answer the question as phrased, I do have the right to assume that you understood it. Okay?
A. Yes.
Q. Now, I actually have two copies of your C.V. which we've marked as Kucsma-1 and 1A. I'm going to show you 1A which has been given to me by your office as I understand it to be a current copy of your C.V.; is that correct?
A. It is the most up-to-date C.V. available, that is correct.
Q. Are there any changes, corrections, additions, deletions that would make it more current?
A. There would be additional speaking engagements, and the numbers of trials and depositions in which I have testified has increased.
Q. Now, we've marked as a Exhibit Kucsma-3 a copy of your report dated April 6th, 2015.

Page 8

Is that your only report in the case?
A. Yes, it is.
Q. Can you please confirm that's a true and accurate copy of your report?
A. Yes, it is.
Q. Now, as far as your prior work for deposition trials and such, I see on page 7 of your C.V. you indicate that you testified in over 132 trials.
Do you know what the current number is?
A. I have no idea.
Q. And same would hold true for depositions, you don't know the current number?
A. I have no idea.
Q. When did you start doing expert work as an economist?
A. When I joined the Tinari Economics Group in January 2008.
Q. Approximately how many economic reports do you prepare for the purposes of legal actions that are involved in civil trials a year?
A. I would estimate that I prepare and review anywhere from 550 to 650 reports each year.
Q. Now, the report that we've marked in this case, does that contain all your opinions related to

Page 9

the economic aspects of this case?
A. As of April 6th, 2015, yes.
Q. Has there been anything that you reviewed that would change your opinions since that time?
A. The one thing that comes to mind is that there is some new economic data that has been published since April 6th, 2015, specifically the annual report of the board of trustees of the Social Security Administration for 2015 is now available. It was not available when I prepared my report in April, and you will see that referenced on page 8 of our report.
Q. Can I just have -- actually, I don't have another copy in front of me.
MR. NOVOFASTROVSKY: Off the record.
(Off-the-record discussion.)
Q. Do those new -- does that new data change your opinions in any way?
A. It might.
Q. How so?
A. That data is part of what I used to determine the appropriate annual increase in earnings in future years. So to the extent that this data has been updated, it is possible that the annual increase that I applied to earnings in future years would

Page 10

change.
Q. You are referring to the 1.5 percent increase at the top of page 8?
A. No, I'm actually referring to the 3.8 percent figure in the second full paragraph.
Q. You don't know how, if at all, it would change based upon the new data you reviewed?
A. That's correct. I wouldn't expect it to change significantly, but whether it would be slightly higher or lower, I couldn't say as I sit here today.
Q. And if it were changed in either direction, it would, obviously, affect your calculations, correct?
A. All other things held constant, yes, that is correct.
Q. Did you review the economic report of Henry Rinder from Smolin Lupin?
A. Yes.
Q. Did that change your opinions in any way?
A. No.
Q. Now, with respect to your work in litigation matters, what percentage of the reports that you render are on behalf of the plaintiff versus defense?
A. I would estimate that approximately 25 to

Page 11

30 percent of the work we do is on behalf of defendants, which means approximately 70 to 75 percent of the work we do is on behalf of plaintiffs.
Q. Would the same hold true with respect to depositions and trial testimony or --
A. No.
Q. -- or is it slightly different?
A. For whatever reason, defense attorneys, typically, do not call us to testify, so if you looked at my trials and depositions, I testify much more frequently on behalf of plaintiffs than I do on behalf of defendants.
Q. Have you ever worked for the Novo Law Firm before?
MR. NOVOFASTROVSKY: Us.
A. Yes. And I don't recall whether or not we had worked with them prior to this case. We may have on one other case, but I don't recall. We work with thousands of firms.
Q. Do you know how it was that they found you to provide economic services in this case?
A. That I don't recall.
Q. Do you currently advertise your services in any legal forms?
A. We do.

Page 12

Q. What forms are those?
A. We routinely advertise in the New Jersey Law Journal, the New York Law Journal, the Philadelphia Intelligencer. I believe those are all of the publications, but I could be forgetting one or two.
Q. Are you involved in any type of referral programs?
A. No.
Q. Did they bring your fee schedule in?
A. Yes, I believe there's a copy right there.
Q. I'm just going to show you a copy of what we've marked as Kucsma-5 --
Am I saying your name correctly?
A. Yes, thank you.
Q. -- which is a copy of the fee schedule that's been provided to me by your office.
If you can just confirm for me if that's a current and up-to-date fee schedule.
A. I believe this is our current fee schedule, but I cannot be sure. I would have to check. We had some discussion of updating our fee schedule in May of this year. I don't recall, as I sit here today, whether we finalized that or not.

Page 13

Q. Do you know if that would be the fee schedule in effect for this particular case?
A. This is the fee schedule that was in effect when we were retained for this case. Whether or not it would be the fee schedule in effect should this matter proceed to trial, couldn't say.
Q. Now, preparing your report you make various assumptions in order to come up with your calculations, correct?
A. I certainly did need to make some assumptions, yes.
Q. We can agree that if any of your assumptions are incorrect, that can obviously affect your calculations, correct?
A. I probably would not agree with that statement, simply because the reason I need to make some assumptions is because nobody has a crystal ball with respect to the future.
Having said that, it really is not possible to prove most of these assumptions to be correct or incorrect.
Q. Well, hypothetically speaking, if before trial we learn that Monica Smolyar goes into a group home -- you've made assumptions in this case about her lifetime care, and they're predicated on her living at

Page 14

home, correct?
A. I actually technically didn't make those assumptions, but I did base my calculations on future medical costs on the opinions of a life care planner in this case. So I would assume if for whatever reason something in the life care plan were changed, then it would possibly have an effect on my calculations.
Q. What did you review in preparation of your report?
A. I reviewed the vocational report of Edmond Provder, the life care plan of Edmond Provder, the deposition transcript of Alexander Smolyar. I also reviewed the completed fact-finding questionnaire. I've been provided with a variety of legal documents, a copy of the complaint, various deposition transcripts of some doctors and nurses, and it looks as if I had also been provided with some medical reports, patient's progress notes, and things of that nature, none of which had any bearing on my opinions.
Q. Now, you said that you reviewed a fact-finding questionnaire or that one had been submitted to you; is that correct?
A. Yes.

Page 15

Q. Can I see a copy of it? When I saw the one you were flipping through it didn't look like I had a complete copy.
A. Sure.
Q. It appears that the copy I've marked just doesn't have the first page filled out, which is a page entitled "For Counsel," which just has some information relating to the venue and contact information for counsel.
A. Great.
Q. I'm just going to show you what I've marked as Kucsma-4, which is the fact-finding questionnaire that we had been provided with as part of discovery which again doesn't have that first page filled out.
If you'd like to review it to make sure it's the same thing you have, please, by all means, do so.
A. Yes, it appears to be the same document.
Q. Now Kenneth Betz also worked on this economic report as well?
A. Yes.
Q. What is your role versus his role?
A. In this case I am and was the lead economist, which means I was the one who determined

Page 16

the theory of damages, determined the appropriate elements of economic loss. I determined what research needed to be done, what assumptions, if any, we needed to make.
Q. Now, did you or Mr. Betz have any conversations with either Monica Smolyar or her parents?
A. No.
Q. Did either one of you have any conversations with any of Monica's medical providers?
A. No.
Q. Did you have any conversations with any of the other experts in this case -- either you or Mr. Betz have any conversations with the other experts?
A. Yes.
Q. Was it you who had the conversation, Mr. Betz, one or the other, or both?
A. I spoke with Edmond Provder.
Q. When did you speak with Mr. Provder?
A. I have no idea.
Q. What was the reason for the conversation?
A. I wanted to confirm that my use of earnings for females with a Bachelor's degree and a professional degree was consistent with his opinion that absent her impairment Monica would have achieved

Page 17

a four to six-year college degree.
Q. And what did he tell you?
A. He said, "Yes."
Q. Now, when you say "professional degree," what type of degree are you referring to?
A. Degrees that would be obtained through professional schools, business schools, possibly medical schools, law schools.
Q. But you only accounted for a four to six-year degree, that would include college; is that correct?
A. Yes.
Q. Now, who, to your understanding, completed page 2 through 7 of the fact-finding questionnaire?
A. According to the first page of the fact-finding questionnaire, the questionnaire was completed by Susanne Smolyar.
Q. Did you accept all the information provided in the fact-finding questionnaire as true and accurate?
A. I did not rely upon much of the information in the fact-finding questionnaire, but certainly there was some information, like the dates of birth of the parents, the date of birth of Monica,

Page 18

and a few other items, and I did assume that those items were accurate.
Q. Now, on page 5 of the fact-finding questionnaire the question reads, "Does the plaintiff have any residual earning capacity, for example, part-time employment possible at minimum wage," and the answer is, "Yes, possible at minimum wage with a shadow."
Did you take that into consideration in determining lost wages?
A. I did not. I relied upon the vocational opinion of Edmond Provder for my calculation of lost earnings in this case.
Q. Did you see in any of the reports that you reviewed that Monica had at the time of Mr. Provder's report the ability to work at Marshall's folding clothes?
A. I believe we referenced that in our report. Yes, we did note that in paragraph five on page 4 of our report. We noted, "As part of her school program she works at Marshall's where she folds clothes."
Q. Do you have any understanding as to whether or not she derives any income from that?
A. I don't recall whether or not she derived

Page 19

any minimal income from that or not.
Q. So there is no offset with respect to the lost wages for any money that she presently potentially earns or could earn in the future working at minimum wage?
A. I did not calculate any residual or post impairment earning capacity. I'm looking through the vocational report because I recalled seeing reference to the fact that she -- Monica -- is there at Marshall's one to two hours once a week.
Q. Did you in your discussion with Mr. Provder discuss what her capabilities for work in the future were?
A. I believe we did have some general discussion, and Mr. Provder indicated to me that Monica, for all intents and purposes, has no residual earnings capacity, that her time at Marshall's was important for socialization for her.
Q. Aside from the fact-finding questionnaire, do you have any other notes outside of your report?
A. No.
Q. Do you have any other raw data aside from anything we've already discussed?
A. Do I have any other raw data -- I'm not

Page 20

sure I follow your question. Certainly I relied upon statistical data.
Q. Do you have any other raw data with respect to earning capacity of the parents, earning capacity of Monica, or what she has earned in the past as far as wages, anything like that?
A. I was provided with some information about the employment of the parents in the fact-finding questionnaire, and there was, I believe, a discussion of that in Alexander's deposition transcript as well.
Q. But nothing outside of that, no other data that you have that you haven't told me about that you received as part of discovery?
A. No. All the documents I received as part of discovery I've disclosed to you here today.
Q. Now, you assumed an average life expectancy for Monica?
A. I relied upon the statistical life expectancy, that's correct.
Q. Did you consider her parents' statistical life expectancy?
A. For what purpose?
Q. Well, at all. We'll get there in a minute, but did you consider their life expectancy to

Page 21

any extent in preparation of your report?
A. I did not utilize their statistical life expectancy in my analysis.
Q. Now, your calculations for the lifetime medical costs are based upon the assumption that she would stay at home with her parents with a live-in attendant; is that correct?
A. They're based on the opinion of the life care planner contained in Mr. Provder's report.
Q. The life care planner also offered an option of a group home; is that correct?
A. I believe, as I indicated on page 13 of my report, that Mr. Provder did note that Monica may live in a group home, that is correct.
Q. But you did not offer any calculations premised on the assumption that she would go into a group home at some point?
A. That's correct.
As I noted in my report, absent additional information regarding this, I did not include that in my calculation of future medical costs.
Q. We can agree that statistically speaking Monica's parents will die before she does?
A. Statistically speaking that is correct,

Page 22

yes.
Q. So you didn't take into consideration that if she were living at home with her parents with an in-home attendant that her parents would predecease her and she would need to go elsewhere, correct?
A. I'm not sure I follow your question.
Q. Well, if your assumption for your calculation is based on the fact that Monica would be living at home with an in-home attendant for the duration of her lifetime, and that's what your calculations are based upon, you didn't consider that her parents would predecease her and she couldn't -- she could no longer accommodate that?
MR. NOVOFASTROVSKY: Can we stick to economic assumptions, not just speculative assumptions.
MS. SCARPA: Well, she makes assumptions in drawing her conclusions. How can I not ask these questions? She doesn't --
MR. NOVOFASTROVSKY: She disclosed the assumption to you, but you are asking her now what have, could have, should have, like what happens, which family takes her or whatever. I mean, these are things that are well beyond the

Page 23

scope of what an economist can project.
MS. SCARPA: I'm asking her how she came up with her calculations and why she didn't take other assumptions under consideration.
MR. NOVOFASTROVSKY: That's a fair question.
A. I am obviously not the life care planner in this case. I relied upon the life care plan of Edmond Provder.
It is not at all clear to me as the non-life care planner that Monica would not continue to receive home care even after her parents' death.
Q. Now, we can agree that the overlap between the options offered by Mr. Provder in the two options for continued care and treatment are the projected evaluations, the therapies, medical care, and medication, correct?
A. "The overlap," you mean the categories that are contained in each of the options?
Q. In each of them, yes.
A. I believe that is correct, yes.
Q. And it's your understanding, based upon reading Mr. Provder's report, that if she were to go into a group home, that is something that is paid for by the state?

Page 24

A. Again, as I note on page 13 of my report, I believe there was reference to that in Mr. Provder's report, yes.
Q. So I want you to assume for the purposes of my question that Monica in the near future goes into a group home which is paid for by the state. We would essentially be eliminating from your economic plan the home care totaling over $5 million, and the transportation approximately $250,000, correct?
A. I wouldn't agree with that for several reasons.
Number one, I would definitely not agree with removing the transportation component at all. It is not clear to me -- again as the non-life care planner -- that even if Monica lived in a group home she would not require transportation to and from doctors, to and from her family's home, and so on.
Also, in terms of the home care element, what I would do as the economist is, I would replace the cost of home care with the cost of Monica entering a facility.
Q. And you don't know what that cost is, if anything?
A. I do not know what that cost is. What I can tell you as an economist is there is a cost to

Page 25

providing her with facility care. I don't know what it is, though.
Q. And you don't know what services would be provided as part of the facility without a charge?
A. I'm not sure I follow your question.
Q. You don't know what, as part of the overall accommodations that are made by the facility, you don't know what services are provided?
A. That's correct, I did not -- was not provided with information about the cost of the facility or the cost of any services that may be provided through the facility.
Q. Now, in your report you set forth two scenarios regarding Monica's education, and that's the Bachelor and the professional degrees we've discussed before, correct?
A. Yes.
Q. What facts do you base your assumption on that Monica would have earned either a Bachelor degree or a professional degree?
A. I based those calculations on several different sources of information. For one thing, I considered the opinion of Edmond Provder, as we discussed before, in his vocational report he indicated that in his opinion, absent the impairment,

Page 26

Monica would have achieved a four to six-year college degree.

In addition to that, as I mentioned earlier, I had a discussion with Mr. Provder in which he expressed to me that, absent the impairment, Monica would have had the ability to achieve -- attain a Bachelor's degree or a professional degree.

In addition to that, I considered the level of education of Monica's parents, as well as her brother.

Q. Now, you said you spoke to Mr. Provder about her ability to attain those educational levels, correct --

A. Yes.

Q. -- not whether or not she would have attained those educational levels?

A. In Mr. Provder's report and in the discussion I had with him he expressed to me that based on her abilities, as well as the educational attainment of her parents, she likely would receive either a Bachelor's degree -- well, he said a four to six-year degree or a Bachelor's or a professional degree.

Q. Do you know what the statistical likelihood is that Monica would have gone out to

Page 27

obtain a high school degree versus a Bachelor's degree versus a professional degree?

A. What I do know is that the level of education of the parents, particularly the level of education of the mother, is considered to be a leading indicator of the minimum level of education of a child.

Q. What did you base that on?

A. That is based on several economic studies. Also based on a discussion I've had with vocational experts, among others, Edmond Provder.

Q. Any particular studies you can pinpoint?

A. Off the top of my head, no.

Q. Now, when you addressed the earnings for a Bachelor's degree, you used the median earnings, correct?

A. Yes.

Q. And then I'm correct, when you were addressing the earnings for a professional degree, you used the earnings in the 75th percentile?

A. I believe that is correct, yes.

Q. Why didn't you use median earnings for a professional degree?

A. When I discussed this with Mr. Provder, he and I had a discussion about the levels of

Page 28

education of the parents, also the level of education of Monica's brother. We had a discussion about the general environment in which Monica is growing up and would have grown up, and we discussed the fact that Monica likely would have been an above average student, and that, in Mr. Provder's opinion, she could have attained a professional degree, done very, very well in her class, and, therefore, she would have received earnings higher than the average or median earnings.

Q. Do you know what Mr. Provder bases his opinion on that she would likely have done well and, in essence, succeeded in life?

A. You would have to ask him.

As I said, the discussion I had with him certainly involved a discussion of her parents' level of education, her siblings, her brother's level of education, and the general culture in the household about education.

Q. But the -- strike that.

Your calculations are based upon earnings in the 75th percentile for a professional degree, that's based upon your conversation with him?

A. It is, yes.

Q. And when you refer to a "professional

Page 29

degree," what professions are included in the overall assessment of the average wages?

A. As I mentioned to you earlier, we are, typically, talking about degrees from professional schools. Those could be business schools, could be law school. I believe it also could include medical schools as well. It could technically include an architectural school, any graduate level schools that we would consider as professional schools.

Q. So what we're talking about is something that potentially exceeds more than four to six years of education, correct?

A. Possibly. In some cases these degrees can be achieved in fewer than six years. There are many accelerated programs in which you can get Master's degrees, MBAs, for example, in five years.

So certainly some of these programs could extend beyond six years, and some could be completed before six years.

Q. Statistically speaking, do you know today how many individuals graduate from college with a Bachelor's in four years?

A. Off the top of my head, no.

Q. Do you know what the average cost of a four-year Bachelor program is?

Page 30

A. Again, off the top of my head, I don't know.
Q. And I assume you don't know the average cost for attaining a professional degree?
A. Off the top of my head, no.
Q. And you didn't consider any offset for the cost of the education?
A. I did not consider the cost of education, that is correct.
Q. Would it be fair to deduct the cost of the education from the lost wages?
A. In my professional opinion, probably not, no.
Q. Why not?
A. Well, for one thing, it is not at all clear to me what the cost of that education might be.
Q. Do you know where her brother goes?
A. He goes, I believe, to Middleborough College.
Q. Do you know the cost of Middleborough?
A. No.
Q. Is that a private school?
A. As far as I know, I believe it is a private university.
Q. Now, in determining the work life

Page 31

expectancy for Monica, did you consider any other tables other than what you cited?
A. No.
Q. Are you aware of other tables that cite a lower work life expectancy than what you quoted?
A. I'm not sure I follow your question, but certainly there are other work life expectancy tables, for example, for lower levels of education that would probably have a lower work life expectancy.
I know that in Mr. Rinder's report he does make reference to tables for inactive people, and, in his opinion, he feels it's more appropriate to use work life expectancy tables for an inactive person.
Q. Now, with respect to unemployment benefits, you used a constant number of 2.7 percent, correct?
A. When you say "constant," what do you mean?
Q. Meaning that it's not changing annually.
A. Again, I'm not sure I follow your question.
Q. Well, I'll ask you a new one.
Did you take into consideration that there's limited versus partial unemployment benefits?

Page 32

A. Again, I'm not sure I follow your question.
Q. Are you familiar with "limited" as opposed to "partial" unemployment benefits, or is that not a concept you are familiar with?
A. It is a concept I'm familiar with, but I'm not sure how it applies here.
Q. What's, to your understanding, the difference between the two?
A. Your unemployment benefits are in part a function of how much you have paid into unemployment. Of course they're also a function of legislative and other administration statutes as well.
Q. But do you have an understanding of the difference between "limited" and "partial"?
A. I'm not sure I understand how you are using the terms.
Q. Are there circumstances where unemployment benefits would be less than or more than 2.7 percent?
A. Now I definitely don't understand your question because in no place in my report do I suggest at all that unemployment benefits would be 2.7 percent. In fact, if you look at the second full paragraph on page 9, you'll see I explain exactly the

Page 33

opposite. I clearly note that at least in 2015 unemployment benefits in New Jersey are equal to 60 percent of weekly pay or a maximum benefit of $646 per week.
The 2.7 percent has nothing to do with what the unemployment benefits would have been.
Q. Later in that paragraph you talk about the unemployment rate downward from 5.9 to 2.7 percent.
A. Correct.
Q. What is that significant for?
A. The significance of that is that in the preceding paragraph we determined by looking at the historical unemployment rates for women across various ages, on average the annual rate of unemployment had been 5.9 percent for that group.
In order for me to determine, though, the appropriate downward adjustment to make each year to earnings, I need to take into account the fact that while a person may become unemployed, they more likely than not would not lose all of their income. So even though the unemployment rate historically was 5.9 percent each year would not be appropriate for me as an economist to reduce my figures by 5.9 percent each year because that would imply if Monica had become

Page 34

unemployed she would have had no income coming in. Instead, I had to take into account that if she had become unemployed, some of her income would have been replaced through unemployment benefits. So when I consider that fact, I then determine that the appropriate downward adjustment to reflect periods in which she would receive no income would be 2.7 percent.

Q. Now, your tax rate, was that based upon a single percent of wages? Strike that.

MS. SCARPA: Off the record.

(Off-the-record discussion.)

Q. Now, the percentage that you applied to the tax rate was a constant number; is that correct?

A. Yes and no.

What I mean by that is that I did apply the same average tax rate each year; however, if you look at page 7 of our report, the tax rates that I used were calculated based on the changing levels of income that Monica would have experienced over her lifetime. So in other words, what I did not do was take, for example, her starting income of either $36,144 or $53,955, I did not use that figure alone to calculate the tax rates. I took into account the fact that over her lifetime her income would increase, and

Page 35

I took into account what the tax rates would be at those various levels of income, and then I, in effect, used an average and applied that single rate each year over her lifetime.

Q. Wouldn't you have come out with a more accurate number if you applied the taxes -- the tax rate to each individual year?

A. No. Mathematically I would have come out with the same number.

Q. Now, with respect to the taxes, you only considered in the offset federal and state income taxes; is that correct?

A. Yes.

Q. Why didn't you consider Social Security tax?

A. Social Security is not an income tax, it is a payroll tax, it is a tax for which people receive a benefit.

So, technically speaking, there is an employee and there is an employer contribution to Social Security, they aren't the same amount. If I considered a reduction for the amount that an employee would have paid, I would have to add in the equivalent of the fringe benefit that employee would have received in the form of Social Security benefits.

Page 36

Q. Now, with respect to fringe benefits on page 5 of your report in paragraph number eight you refer to your source, in essence, I'll call it "table five."

Do you see where I'm referring to?

A. I do.

Q. And is that where you got the 10.4 percent for the replacement cost for healthcare insurance, life and disability insurance?

A. I calculated both the 10.4 percent and the 4.6 percent based on data presented in that source, yes.

Q. And if that source were to indicate that the estimated average cost of healthcare insurance, coverage life and disability insurance, is 8.3 percent, and the average employer contributions are 3.7 percent for retirement and savings, that would equal 12 percent, not 15 percent; is that correct?

A. I believe technically that mathematically is correct; however, what I would say -- if I read somewhere that someone had done that, I would say that they were completely misinterpreting the data presented in that table.

Q. How so?

A. If one looks at that table, you will see

Page 37

hourly rates, dollar amounts. You will also see percentages. It is not accurate to simply take the percentages presented in that table and add them together. The reason being, the percentages that are contained in that table represent the dollar amount of various benefits divided by the total compensation, where the total compensation in the denominator includes earnings plus fringe benefits.

What I do, and what is technically accurate and appropriate, is I look at the dollar hourly rates. My denominator has wages, plus supplemental pay, plus overtime, that's it. My numerator has the fringe benefits. That's the appropriate way to calculate the adjustment for fringe benefits.

Q. Now, the average employer contribution to retirement and savings, is that the median that employers contribute, or is it based upon all employers, including those which don't contribute to employee retirement savings?

A. This represents the median employer contributions to these plans across employers. What that means is, certainly some of those employers do not contribute anything, in which case there would be zeros entering into the calculation.

Page 38

Q. Do you know, statistically speaking, how many employers do not contribute to retirement and savings plans?
A. Off the top of my head, no.
Q. Now, we can agree that New Jersey statistically is one of the highest wage states?
A. I would not necessarily agree that New Jersey is one of the highest wage states, but certainly New Jersey wage rates are higher in general than the national average, yes.
Q. And you didn't take into consideration that Monica may relocate into a state where wages are generally lower?
A. In this case I did base my calculations on New Jersey wage rates. I did not take into account the possibility that Monica might work elsewhere, for example, as many New Jersey people do work in New York.
If I had taken that into account, my numbers would be even higher.
Q. But you didn't take into consideration that she would work in a state where wages are statistically lower?
A. I did not, no.
I based my calculations on wage rates in

Page 39

New Jersey.
Q. Now, your wage growth percentage is 3.8, correct?
A. In future years, yes.
Q. What do you base that on?
A. That is based on two sources, one, they're both presented in that second full paragraph on page 8.
First, I consider data published by the U.S. Department of Labor. Very specifically I looked back at how much wages had, in fact, increased from 2009 through 2013.
Secondly, I considered data published in the annual report of the board of trustees of the Social Security Administration, and in that report I considered the projections of what wage growth will be going forward.
Q. Now, is it true that the growth rate for 2015 is forecasted to be 1.49 percent?
A. I believe that's correct based on some forecasts, yes.
Q. And some forecasts would say that the growth rate would be 2.7 percent in 2020?
A. That I could not say off the top of my head.

Page 40

Q. Fair enough.
Now your calculations with respect to the lifetime care, they're based upon the figures provided to you by Edmond Provder?
A. That's what I used as my starting point, yes.
Q. Did you do any independent research into the cost of various services, treatment or equipment that he recommends?
A. Of course not. I'm not a life care planner. I'm not a medical doctor. It's not appropriate for me to do so.
Q. Do you agree that if Mr. Provder's figures were inflated, then that would result in your figures being inflated?
A. If for whatever reason I used figures lower than those contained in Mr. Provder's report, all other things held constant, my figures would be lower. And if it were appropriate for me to use higher figures, my numbers would be higher.
Q. And same thing with respect to Mr. Provder's recommendations, you didn't make any of your own independent recommendations?
A. Absolutely not.
Q. You would agree if a jury were to

Page 41

determine that any one of his recommendations were excessive or not necessary, that would, obviously, impact your numbers, true?
A. Certainly, it's ultimately up to the jury to determine how much or how little Monica may need. If they feel she needs less, they could reduce my numbers. If they feel she needs more care, they could increase my numbers.
Q. Does your calculations of the lifetime care cost include any type of personal consumption discount?
A. No.
MR. NOVOFASTROVSKY: One second.
Off the record.
(Off-the-record discussion.)
Q. Did you include any type of personal consumption discount for lost wages?
A. No. And it would be completely inappropriate to do so in this analysis.
Q. Why so?
A. Because Monica will still need clothing, she's still going to need food, she's still going to need a roof over her head, utilities, and so on.
Q. And if she's in a group home which is being paid for by the state, you would then need to

Page 42

apply a personal consumption rate to her lost wages rate then, right, or to the lifetime care costs?
A. It would, in my opinion, not be appropriate to apply what I would call a "traditional personal consumption adjustment," so in that case, no.
Q. What about a non-traditional personal consumption adjustment?
A. If an individual lives in a facility, and if the cost of that facility is included in the life care plan, it may be appropriate to make a slight downward adjustment to account for the fact that some basic needs would be provided by the facility.
Q. Now, you used a discount rate of four percent.
A. I did.
Q. Is there a risk of default in that?
A. Technically speaking, there could be a risk of default, although my discount rate is based on a variety of securities. I started by looking at the yield on high grade municipal bonds, which may carry some small risk of default, but I also considered the yield on other securities that include, for example, U.S. treasury securities, for which there's technically no default risk.
Q. The long-term U.S. treasury obligations

Page 43

which are adjusted each year for inflation have shown interest yields from one to two percent; is that correct?
A. No, I can tell you that is incorrect. I was rather shocked when I read that in your expert's report. As of yesterday I believe the 30-year yield on tips was about point three percent.
Q. Point three?
A. Yes.
Q. And do you agree that the interest rates in the current market are abnormally low?
A. Yes. And we note that in our report, which is exactly why we use a discount rate of four percent as opposed to current spot rates.
Q. How does Obamacare affect your opinions?
A. It does not affect my opinion at all, nor should it.
Q. Why?
A. In what way would it affect my opinion?
Q. The fact that there may be caps on future costs of lifetime care.
MR. NOVOFASTROVSKY: Is that in the plan?
MS. SCARPA: We're going to have to go through motions on stuff on this.
A. My job as an economist is to calculate

Page 44

the total amount of money that is needed to cover the cost of all of the care that in this case Mr. Provder has opined Monica will need over her lifetime.
MS. SCARPA: Thank you.
(Exhibit Kucsma-6, Statement of the Ethical Principles and Principles of Professional Practice, was received and marked for identification.)
Q. I'm going to show you what we've marked as Kucsma-6, which is Statement of the Ethical Principles and Principles of Professional Practice from the National Association of Forensics Economics.
A. That is what it is, yes.
Q. I just want to know if those were guidelines that you followed in your practice.
A. They are.
And we attest to that on the certification page of our report.
MS. SCARPA: That's all.
EXAMINATION BY MR. LEVENSON:
Q. I just have a couple of questions for you. We've met before, but my name is Mike Levenson.
Ms. Kucsma, have you ever worked for the firm of Marshall, Dennehey, Warner, Coleman & Goggin before?

Page 45

A. Yes.
Q. When was the last time that happened, that you can remember?
A. I don't recall.
Q. Would you say it was more than five years ago?
A. I don't believe so, no. No, I believe we've worked with them more recently.
Q. Do you remember which office?
A. No.
Q. Do you know if it was in the State of New Jersey?
A. I believe it was, yes.
Q. Have you ever worked with the law firm of Giblin & Combs before?
A. I don't believe that I have worked with Giblin & Combs. I don't recall whether not our group has at some point worked with Giblin & Combs.
Q. How about Ruprecht, Hart & Weeks?
A. Yes, we have worked with them.
Q. When was the last time that happened?
A. I don't recall when the last time was we worked with them. I believe we worked with them within the last couple of years, but I don't recall specifically when.

Page 46

Q. When was the last time you recall giving deposition testimony when you were retained by a firm that represents a defendant, in any sort of action?
A. I don't recall specifically.
I believe I may have had a deposition for the defense within the last two years.
Q. When was the last time before today that you recall giving deposition testimony when you were retained by an attorney who represents a plaintiff?
A. This morning.
Q. And before this morning, when was the last time before that?
A. I don't recall.
Q. Was it in the last two weeks?
A. It certainly was within the last couple of weeks, yes.
Q. When was the last time that you recall appearing at trial on behalf of a defendant in a case?
A. I believe the last time I testified at trial on behalf of the defense was within the last 12 to 18 months, give or take.
Q. How about on behalf of plaintiff?
A. The last time I testified at trial on behalf of plaintiff was within the last couple of weeks.

Page 47

Q. And you told us before that between 25 to 30 percent of your cases are on behalf of defendants, the other 70 are for plaintiffs, right?
A. Yes.
Q. Do you know how many active cases you currently have right now?
A. I have no idea.
Q. Do you know the number of defense cases that you have open right now?
A. I have no idea.
MR. LEVENSON: That's all I have.
Thank you.
THE WITNESS: Thank you.
EXAMINATION BY MS. BRUMMER:
Q. Hi. My name is Kristen Brummer. I'm sorry I'm not right there personally to meet with you, but I represent Dr. Bowers in this case, and I just have a few questions of you regarding -- a few follow-up regarding Mr. Provder.
You agree that you and Mr. Provder work on a fairly regular basis?
A. I work with about a half dozen vocational and life care planners on a regular basis, and Mr. Provder is one of them, yes.
Q. About how many cases have you worked on

Page 48

with Mr. Provder over the years?
A. I have no idea.
Q. Are you able to estimate that for me in any way?
A. No. I apologize.
Q. Would it be fair to say it's somewhere in the hundreds?
A. I don't think that that would be a fair assessment of the number of cases that I have worked on with Mr. Provder.
Our firm, of course, has been in existence since 1979. I know Ed Provder's business has been in existence for a very long time. I couldn't say how often the two firms have worked together over the decades.
Q. If I have a deposition transcript from you from the year 2011 where you stated you worked with him a few hundred times, would that come across as inaccurate to you?
A. I don't believe that would be accurate. It may have been accurate based on my notion at the time. In 2011 I was not yet managing director, I was not overseeing the day-to-day operations of the firm. I am now, which means I regularly review the reports, so I have a much better sense of the number of reports

Page 49

that come through here.
I don't believe I personally have worked with Mr. Provder. It is entirely possible the two groups, though, have worked on several hundred reports over the years.
Q. And if a jury were to find that many of Mr. Provder's calculations were wrong, would you agree that, as a consequence, it would also have to find that many of your calculations were wrong?
A. I certainly have no opinion on what the jury should do. I assume that if the jury felt it was appropriate to adjust my numbers, for whatever reason, upward or downward, they would be free to do that.
Q. And do you have a message to assist the jury in recalculating numbers if it's found, for instance, that Mr. Provder's calculations for life expectancy or anything like that were somehow less than what was projected in his report, is there a way where they could recalculate the figures in your report?
A. I'm not sure I understand your question, but just to be clear for the record, I did not rely upon Dr. -- or Mr. Provder for the life expectancy. I relied upon the statistical life expectancy tables that are appended to the rules governing the courts of

the State of New Jersey.
MS. BRUMMER: I don't have any other questions, but thank you for your time.
THE WITNESS: Thank you.
(Deposition adjourned at 4:20 p.m.)

CERTIFICATE

I, BARBARA WESTOVER, a Notary Public and Certified Shorthand Reporter of the State of New Jersey, License No. 30X100136200, do hereby certify that prior to the commencement of the examination, KRISTIN K. KUCSMA, M.A. was duly sworn by me to testify to the truth, the whole truth and nothing but the truth.

I DO FURTHER CERTIFY that the foregoing is a true and accurate transcript of the testimony as taken stenographically by and before me at the time, place and on the date hereinbefore set forth.

I DO FURTHER CERTIFY that I am neither a relative nor employee nor attorney nor counsel of any of the parties to this action, and that I am neither a relative nor employee of such attorney or counsel, and that I am not financially interested in the action.

Notary Public of the State of New Jersey
My Commission expires July 30, 2016
Dated: September 1, 2015

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& 2:13 3:3,16 6:23 44:24 45:15,17,18 45:19

0

07068 3:8
07090 3:22
07962 2:16

1

1 3:21 4:10 5:5 7:13 51:25
1.49 39:19
1.5 10:2
10 2:15
10.4 36:7,10
10007 2:7
12 36:18 46:20
13 21:12 24:1
132 8:8
15 36:18
17th 2:6
18 46:21
1979 48:12
1a 4:11 5:7 7:13 7:14

2

2 4:12 5:9 17:14
2.7 31:16 32:20 32:23 33:5,8 34:7 39:23
2008 8:18
2009 39:12
2011 48:17,22
2013 39:12
2015 7:25 9:2,7,9 33:1 39:19 51:25
2016 51:24
2020 39:23
21 1:23
2105 1:23
212-233-6686 2:8
25 10:25 47:1
250,000 24:9
293 1:22 5:2
299 2:5
2:30 5:22

3

3 4:14 5:12 7:24
3.7 36:17
3.8 10:4 39:2
30 11:1 43:6 47:2 51:24
302 3:7
30x100136200 51:5
36,144 34:23
3:15 1:23 5:21

4

4 4:15 5:14 15:12 18:20
4.6 36:11
425 3:6
44 4:5,17
47 4:6
4:20 50:5

5

5 4:10,11,12,14,15 4:16,16 5:17 12:14 18:3 24:8 36:2
5.9 33:8,16,22,24
53 3:20
53,955 34:23
550 8:23
5833-12 1:2

6

6 4:4,17 44:5,10
60 33:2
646 33:3
650 8:23
6th 7:25 9:2,7

7

7 8:7 17:14 34:18
70 11:2 47:3
75 11:2
75th 27:20 28:22

8

8 9:11 10:3 39:8
8.3 36:15

9

9 32:25
908-232-4800 3:23
973-618-4177 3:9
973-829-1500 2:17

a

abilities 26:19
ability 18:16 26:6 26:12
able 48:3
abnormally 43:11
absent 16:25 21:19 25:25 26:5
absolutely 40:24
accelerated 29:15
accept 17:19
accommodate 22:14
accommodations 25:7
account 33:19 34:2,24 35:1 38:15,19 42:11
accounted 17:9
accurate 8:4 17:21 18:2 35:6 37:2,10 48:20,21 51:11
achieve 26:6
achieved 16:25 26:1 29:14
action 46:3 51:16 51:19
actions 8:20
active 47:5
add 35:23 37:3
addition 26:3,8
additional 7:21 21:20
additions 7:20
addressed 27:14
addressing 27:19
adjourned 50:5
adjust 49:12
adjusted 43:1
adjustment 33:18 34:6 37:14 42:5,7,11
administration 9:9 32:13 39:15
advertise 11:23 12:2
affect 10:12 13:13 43:15,16,19
afternoon 6:21
ages 33:15
ago 45:6
agree 13:12,15 21:23 23:13 24:10 24:12 38:5,7 40:13,25 43:10 47:20 49:7
alexander 14:13
alexander's 20:10
amount 35:21,22 37:5 44:1
amounts 37:1
analysis 21:3 41:19
annual 9:8,22,24 33:15 39:14
annually 31:20
answer 7:8 18:7
anticipate 6:2

apologize 48:5
appearing 46:18
appears 15:5,19
appended 49:25
applied 9:25 34:13 35:3,6
applies 32:7
apply 34:16 42:1 42:4
appropriate 9:22 16:1 31:12 33:18 33:23 34:6 37:10 37:14 40:12,19 42:4,10 49:12
approximately 8:19 10:25 11:2 24:9
april 7:25 9:2,7,10
architectural 29:8
aside 19:19,23
asking 22:22 23:2
aspects 9:1
assessment 29:2 48:9
assist 49:14
association 44:12
assume 7:9 14:5 18:1 24:4 30:3 49:11
assumed 20:17
assumption 21:5 21:16 22:8,22 25:18
assumptions 13:8,11,13,17,20 13:24 14:3 16:3 22:16,17,18 23:4
attain 26:6,12
attained 26:16 28:7
attaining 30:4
attainment 26:20
attendant 21:7 22:4,10
attest 44:17
attorney 46:9 51:15,17
attorneys 2:9,19 3:11,24 11:8
attributed 5:24
august 1:23
available 7:17 9:9 9:10
avenue 2:15 3:6
average 20:17 28:5,9 29:2,24 30:3 33:15 34:17 35:3 36:14,16 37:16 38:10
aware 31:4

b

bachelor 25:15,19 29:25
bachelor's 16:23 26:7,21,22 27:1 27:15 29:22
back 39:11
ball 13:17
barbara 1:19 51:3
barnabas 1:11 3:13
base 14:3 25:18 27:8 38:14 39:5
based 10:7 21:5,8 22:9,12 23:22 25:21 26:19 27:9 27:10 28:21,23 34:9,19 36:11 37:18 38:25 39:6 39:20 40:3 42:18 48:21
bases 28:11
basic 42:12
basis 47:21,23
bearing 14:20
behalf 10:23 11:1 11:3,11,11 46:18 46:20,22,24 47:2
believe 5:24 12:4 12:11,21 18:18 19:14 20:9 21:12 23:21 24:2 27:21 29:6 30:18,23 36:19 39:20 43:6 45:7,7,13,16,23 46:5,19 48:20 49:2
benefit 33:3 35:18,24
benefits 31:16,25 32:4,10,19,23 33:2,6 34:4 35:25 36:1 37:6,8,13,15
better 48:25
betz 4:13 5:10 15:20 16:5,14,17
beyond 22:25 29:18
bicker 6:15
billing 6:9
birth 17:25,25
block 6:11
board 9:8 39:14
bonds 42:20
bowers 1:9 3:25 47:17
bridges 1:8 2:20
bring 12:10
broadway 2:5
brother 26:10 28:2 30:17
brother's 28:17
brummer 3:18 4:6 47:14,15 50:2
business 17:7 29:5 48:12

c

c 2:1 3:1
c.v. 4:10,11 5:5,7 7:13,16,17 8:8
calculate 19:6 34:24 37:14 43:25
calculated 34:19 36:10
calculation 18:12 21:21 22:9 37:25
calculations 10:13 13:9,14 14:3,8 21:4,15 22:12 23:3 25:21 28:21 38:14,25 40:2 41:9 49:7,9 49:16
call 11:9 36:3 42:4
capabilities 19:12
capacity 18:5 19:7,17 20:4,5
caps 43:20
cardinal 3:20
care 13:25 14:4,6 14:12 21:9,10 23:7,8,11,12,15 23:16 24:8,14,18 24:20 25:1 40:3 40:10 41:7,10 42:2,10 43:21 44:2 47:23
carry 42:20
case 8:1,25 9:1 11:17,18,21 13:2 13:4,24 14:5 15:24 16:13 18:13 23:8 37:24 38:14 42:5 44:2 46:18 47:17
cases 29:13 47:2 47:5,8,25 48:9
categories 23:18
center 1:11
certainly 6:14 13:10 17:24 20:1 28:16 29:17 31:7 37:23 38:9 41:4 46:15 49:10
certificate 51:1

certification 44:18
certified 1:19 51:4
certify 51:5,10,14
change 9:4,17 10:1,7,9,19
changed 10:11 14:6
changes 7:19
changing 31:20 34:19
charge 25:4
charles 1:9
check 12:23
child 27:7
christina 2:14 6:22
chunping 1:10
circumstances 32:18
cite 31:4
cited 31:2
civil 8:21
class 28:8
clear 23:10 24:14 30:16 49:22
clearly 33:1
clothes 18:17,22
clothing 41:21
coleman 3:3 44:24
college 17:1,10 26:1 29:21 30:19
combs 2:13 6:23 45:15,17,18
come 13:8 35:5,8 48:18 49:1
comes 9:5
coming 34:1
commencement 51:6
commencing 1:23
commission 51:24
compensation 37:6,7
complaint 14:16
complete 15:3
completed 14:14 17:14,18 29:18
completely 36:22 41:18
component 24:13
concept 32:5,6
concerned 6:5,6
conclusions 22:19
confirm 8:3 12:19 16:22
consequence 49:8
consider 20:21,25 22:12 29:9 30:6,8 31:1 34:5 35:14 39:9
consideration 18:9 22:2 23:4 31:24 38:11,21
considered 25:23 26:8 27:5 35:11 35:22 39:13,16 42:21
consistent 16:24
constant 10:14 31:16,18 34:14 40:18
consumption 41:10,17 42:1,5,7
contact 15:8
contain 8:25
contained 21:9 23:19 37:5 40:17
continue 23:11
continued 23:15
contribute 37:18 37:19,24 38:2
contribution 35:20 37:16
contributions 36:16 37:22
conversation 16:16,21 28:23
conversations 16:6,10,12,14
copies 7:12
copy 7:15,25 8:4 9:14 12:11,13,17 14:16 15:1,3,5
correct 7:16,18 10:8,13,15 13:9 13:14,21 14:1,24 17:11 20:20 21:7 21:11,14,18,25 22:6 23:17,21 24:9 25:9,16 26:13 27:16,18,21 29:12 30:9 31:17 33:10 34:14 35:12 36:18,20 39:3,20 43:3
corrections 7:19
correctly 12:15
cost 24:20,20,22 24:24,25 25:10,11 29:24 30:4,7,8,10 30:16,20 36:8,14 40:8 41:10 42:9 44:2
costs 14:4 21:5,22 42:2 43:21
counsel 6:1 15:7 15:9 51:15,18
county 1:1
couple 44:21 45:24 46:15,24
course 32:12 40:10 48:11
court 1:1 5:23
courts 49:25
cover 44:1
coverage 36:15
crystal 13:17
cscarpa 2:18
culture 28:18
current 4:11 5:7 7:15,20 8:10,13 12:20,21 43:11,14
currently 11:23 47:6

d

d 1:9
damages 16:1
data 9:6,17,21,23 10:7 19:23,25 20:2,3,13 36:11 36:22 39:9,13
date 7:17 12:20 17:25 51:13
dated 7:25 51:25
dates 17:24
day 48:23,23
death 23:12
decades 48:15
deduct 30:10
default 42:16,18 42:21,24
defendant 2:19 3:24 46:3,18
defendants 1:13 3:11 11:2,12 47:2
defense 5:25 10:24 11:8 46:6 46:20 47:8
definitely 24:12 32:21
degree 16:23,24 17:1,4,5,10 25:19 25:20 26:2,7,7,21 26:22,23 27:1,1,2 27:15,19,23 28:7 28:22 29:1 30:4
degrees 17:6 25:15 29:4,13,16

deletions 7:20
dennehey 3:3 44:24
denominator 37:7,11
department 39:10
deposition 1:6 5:20,22 6:8 7:1,4 8:7 14:13,17 20:10 46:2,5,8 48:16 50:5
depositions 7:22 8:12 11:5,10
derived 18:25
derives 18:24
description 4:9
determine 9:22 33:17 34:5 41:1,5
determined 15:25 16:1,2 33:13
determining 18:10 30:25
die 21:24
difference 32:9 32:15
different 11:7 25:22
direction 10:12
director 48:22
disability 36:9,15
disclosed 20:16 22:21
discount 41:11,17 42:13,18 43:13
discovery 15:14 20:14,16
discuss 19:12
discussed 19:24 25:15,24 27:24 28:4
discussion 9:16 12:23 19:11,15 20:10 26:4,18 27:10,25 28:2,15 28:16 34:12 41:15
divided 37:6
division 1:1
docket 1:2
doctor 40:11
doctors 14:17 24:17
document 15:19
documents 14:16 20:15
doing 8:15
dollar 37:1,5,10
downward 33:8 33:18 34:6 42:11 49:13
dozen 47:22
dr 3:25 47:17 49:23
drawing 22:19
drive 3:20
duly 5:3 51:7
duration 22:11

e

e 2:1,1 3:1,1
eagle 3:6
earlier 26:4 29:3
earn 19:4
earned 20:5 25:19
earning 18:5 19:7 20:4,4
earnings 9:22,25 16:23 18:13 19:17 27:14,15,19,20,22 28:9,10,21 33:19 37:8
earns 19:4
economic 8:19 9:1,6 10:16 11:21 15:21 16:2 22:16 24:7 27:9
economics 1:21 5:1 8:17 44:12
economist 8:16 15:25 23:1 24:19 24:25 33:24 43:25
ed 48:12
edmond 14:12,12 16:18 18:12 23:9 25:23 27:11 40:4
education 25:14 26:9 27:4,5,6 28:1,1,17,18,19 29:12 30:7,8,11 30:16 31:8
educational 26:12,16,19
effect 13:2,4,5 14:7 35:2
eight 36:2
einstein 1:9 3:12
eisenhower 1:22 5:2
either 10:11 16:6 16:9,13 25:19 26:21 34:22
element 24:18
elements 16:2
eliminating 24:7
employee 35:20 35:22,24 37:20 51:15,17
employer 35:20 36:16 37:16,21
employers 37:18 37:19,22,23 38:2
employment 18:6 20:8
engagements 7:22
entering 24:20 37:25
entirely 49:3
entitled 1:18 15:7
environment 28:3
equal 33:2 36:18
equipment 40:8
equivalent 35:23
esq 2:4,14 3:5,18
essence 28:13 36:3
essentially 24:7
essex 1:1
estimate 8:22 10:25 48:3
estimated 36:14
esx 1:2
ethical 4:17 44:6 44:10
evaluations 23:16
exactly 32:25 43:13
examination 4:4 4:5,6 6:20 44:20 47:14 51:6
example 18:5 29:16 31:8 34:22 38:17 42:22
exceeds 29:11
excessive 41:2
exhibit 5:5,7,9,12 5:14,17 7:24 44:5
exhibits 4:8,21
existence 48:12 48:13
expect 10:8
expectancy 20:18 20:20,22,25 21:3 31:1,5,7,9,13 49:17,23,24
experienced 34:20
expert 8:15
expert's 43:5
experts 6:15 16:13,14 27:11
expires 51:24
explain 32:25
expressed 26:5 26:18

extend 29:18
extent 9:23 21:1

f

facility 24:21 25:1 25:4,7,11,12 42:8 42:9,12
fact 4:15 5:14 14:14,23 15:12 17:14,17,20,23 18:3 19:9,19 20:9 22:9 28:4 32:24 33:19 34:5,24 39:11 42:11 43:20
facts 25:18
fair 23:5 30:10 40:1 48:6,8
fairly 47:21
familiar 32:3,5,6
family 22:24
family's 24:17
far 8:6 20:6 30:23
federal 35:11
fee 4:16 5:17,23 12:10,17,20,21,23 13:1,3,5
feel 41:6,7
feels 31:12
fees 6:7
felt 49:11
females 16:23
fewer 29:14
figure 10:5 34:23
figures 33:24 40:3,14,15,16,18 40:20 49:19
filled 15:6,15
finalized 12:25
financially 51:18
find 49:6,8
finding 4:15 5:14 14:14,23 15:12 17:14,17,20,23 18:3 19:19 20:9
firm 2:3 6:22 11:14 44:24 45:14 46:2 48:11,23
firms 11:19 48:14
first 15:6,14 17:16 39:9
five 18:19 29:16 36:4 45:5
flipping 15:2
floor 2:6
folding 18:17
folds 18:21
follow 20:1 22:7 25:5 31:6,21 32:1 47:19
followed 44:15
follows 5:4
food 41:22
forecasted 39:19
forecasts 39:21 39:22
foregoing 51:10
forensics 44:12
forgetting 12:5
form 35:25
forms 11:24 12:1
forth 25:13 51:13
forward 39:17
found 11:20 49:15
four 17:1,9 26:1 26:21 29:11,22,25 42:13 43:13
free 49:13
frequently 11:11
fringe 35:24 36:1 37:8,13,14
front 9:14
full 10:5 32:24 39:7
fully 6:2
function 32:11,12
further 51:10,14
future 9:23,25 13:18 14:3 19:4 19:13 21:21 24:5 39:4 43:20

g

general 19:14 28:3,18 38:9
generally 38:13
getting 5:21
giblin 2:13 6:23 45:15,17,18
giblinandcombs.... 2:18
give 46:21
given 7:14
giving 46:1,8
go 7:3 21:16 22:5 23:23 43:23
goes 13:23 24:5 30:17,18
goggin 3:4 44:24
going 6:18 7:13 12:13 15:11 39:17 41:22,22 43:23 44:9
good 6:21
governing 49:25
grade 42:20
graduate 29:8,21
great 6:19 15:10
group 1:12,21 5:1 8:17 13:23 21:11 21:14,17 23:24 24:6,15 33:16 41:24 45:17
groups 49:4
growing 28:3
grown 28:4
growth 39:2,16 39:18,23
guardian 1:5
guidelines 44:15
gyn 1:12

h

h 1:9
half 47:22
happened 45:2 45:21
happens 22:24
happy 7:8
hart 3:16 45:19
head 27:13 29:23 30:1,5 38:4 39:25 41:23
healthcare 36:8 36:14
held 1:21 10:14 40:18
henry 10:17
hereinbefore 51:13
hi 47:15
high 27:1 42:20
higher 10:10 28:9 38:9,20 40:20,20
highest 38:6,8
historical 33:14
historically 33:22
hold 8:12 11:4
home 13:24 14:1 21:6,11,14,17 22:3,4,10,10 23:12,24 24:6,8 24:15,17,18,20 41:24
horn 1:10 3:12
hospital 3:13
hour 6:11
hourly 37:1,11
hours 19:10
household 28:18
hundred 48:18 49:4
hundreds 48:7
hypothetically 13:22

i

idea 8:11,14 16:20 47:7,10 48:2
identification 5:6 5:8,11,13,16,18 44:8
ilya 2:4
impact 41:3
impairment 16:25 19:7 25:25 26:5
imply 33:25
important 19:18
inaccurate 48:19
inactive 31:11,13
inappropriate 41:19
include 17:10 21:21 29:6,7 41:10,16 42:22
included 29:1 42:9
includes 37:8
including 37:19
income 18:24 19:1 33:21 34:1,3 34:7,20,22,25 35:2,11,16
incorrect 13:13 13:21 43:4
increase 9:22,24 10:3 34:25 41:8
increased 7:23 39:11
independent 40:7 40:23
index 4:1
indicate 8:8 36:13
indicated 19:15 21:12 25:25
indicator 27:6
individual 35:7 42:8
individually 1:5
individuals 29:21
infant 1:4
inflated 40:14,15
inflation 43:1
information 15:8 15:9 17:19,23,24 20:7 21:20 25:10 25:22
instance 49:16
instructions 7:4
insurance 36:9,9 36:14,15
intelligencer 12:4
intents 19:16
interest 43:2,10
interested 51:18
involved 8:21 12:7 28:16
issue 6:18
items 18:1,2

j

january 8:18
jersey 1:1,20,22 2:16 3:8,22 5:2 12:2 33:2 38:5,8 38:9,15,17 39:1 45:12 50:1 51:5 51:23
job 1:25 43:25
joined 8:17
journal 12:3,3
july 51:24
jury 40:25 41:4 49:6,11,11,15

k

k 1:7 4:3 5:1 51:7
kenneth 4:12 5:10 15:20
know 5:23 6:8,22 7:1,8 8:10,13 10:6 11:20 13:1 24:22,24 25:1,3,6 25:8 26:24 27:3 28:11 29:20,24 30:2,3,17,20,23 31:10 38:1 44:14 45:11 47:5,8 48:12
kristen 47:15
kristin 1:7 3:18 4:3 5:1 51:7
kucsma 1:7 4:3 4:10,11,12,14,15 4:16,17 5:1,5,7,9 5:12,14,17 6:21 7:13,24 12:14 15:12 44:5,10,23 51:7
kucsma's 6:8

l

l 1:2
labor 39:10
law 1:1 2:3 11:13 12:3,3 17:8 29:6 45:14
lead 15:24
leading 27:5
learn 13:23
legal 8:20 11:24 14:16
legislative 32:12
level 26:9 27:3,4 27:6 28:1,16,17 29:8
levels 26:12,16 27:25 31:8 34:19 35:2
levenson 3:5 4:5 44:20,22 47:11
license 51:5
life 14:4,6,12 20:17,19,22,25 21:2,8,10 23:7,8 23:11 24:14 28:13 30:25 31:5,7,9,13 36:9,15 40:10 42:9 47:23 49:16 49:23,24
lifetime 13:25 21:4 22:11 34:21 34:25 35:4 40:3 41:9 42:2 43:21 44:3
likelihood 26:25
limited 31:25 32:3,15
linda 1:10
litigation 10:22
little 41:5
live 21:6,14
lived 24:15
lives 42:8
living 13:25 22:3 22:10
livingston 1:22 5:2
llc 2:13
llp 3:17
long 42:25 48:13
longer 22:14
look 15:2 32:24 34:18 37:10
looked 11:9 39:10
looking 19:7 33:13 42:19
looks 14:18 36:25
lose 33:21
loss 16:2
lost 18:10,12 19:3 30:11 41:17 42:1
low 43:11
lower 10:10 31:5 31:8,9 38:13,23 40:17,19
lupin 10:17

m

m 2:14
m.a. 1:7 4:3 5:1 51:7

m.d. 1:8,9,9,10,11 2:20
madison 2:15
managing 48:22
mark 1:9
marked 5:6,8,10 5:13,15,18 7:13 7:24 8:24 12:14 15:5,12 44:7,9
market 43:11
marshall 3:3 44:24
marshall's 18:16 18:21 19:10,17
master's 29:16
mathematically 35:8 36:19
matter 1:18 13:6
matters 10:22
matthew 1:9
maximum 33:3
mbas 29:16
mdwcg.com 3:10
mean 22:25 23:18 31:19 34:16
meaning 31:20
means 11:2 15:17 15:25 37:23 48:24
median 27:15,22 28:9 37:17,21
medical 1:11 14:4 14:19 16:10 17:8 21:5,21 23:16 29:6 40:11
medication 23:17
meet 6:23 47:16
mentioned 26:3 29:3
message 49:14
met 44:22
michael 3:5
middleborough 30:18,20
mike 44:22
million 24:8
mind 9:5
minimal 19:1
minimum 18:6,7 19:5 27:6
minute 20:25
misinterpreting 36:22
money 19:3 44:1
monica 1:4,5 2:10 13:23 16:6,25 17:25 18:15 19:9 19:16 20:5,18 21:13 22:9 23:11 24:5,15,20 25:19 26:1,5,25 28:3,5 31:1 33:25 34:20 38:12,16 41:5,21 44:3
monica's 16:10 21:24 25:14 26:9 28:2
months 46:21
morning 46:10,11
morristown 2:16
mother 1:4 27:5
motions 43:24
mslevenson 3:10
municipal 42:20

n

n 2:1 3:1
name 6:22 12:15 44:22 47:15
national 38:10 44:12
natural 1:4
nature 14:20
near 24:5
necessarily 38:7
necessary 41:2
need 6:13 7:3 13:10,16 22:5 33:19 41:5,21,22 41:23,25 44:3
needed 16:3,3 44:1
needs 41:6,7 42:12
neither 51:14,17
new 1:1,20,22 2:7 2:7,16 3:8,22 5:2 9:6,17,17 10:7 12:2,3 31:23 33:2 38:5,7,9,15,17,17 39:1 45:11 50:1 51:4,23
nj2118164 1:25
non 23:11 24:14 42:6
notary 1:20 5:3 51:3,23
note 18:19 21:13 24:1 33:1 43:12
noted 18:20 21:19
notes 1:17 14:19 19:20
notion 48:21
novo 2:3 11:13
novofastrovsky 2:4 6:2,10,14,19 9:15 11:15 22:15 22:21 23:5 41:13 43:22
number 8:10,13 24:12 31:16 34:14 35:6,9 36:2 47:8 48:9,25
numbers 7:22 38:20 40:20 41:3 41:7,8 49:12,15
numerator 37:13
nurses 14:17

o

ob 1:12
obamacare 43:15
obligations 42:25
obtain 27:1
obtained 17:6
obviously 10:12 13:13 23:7 41:2
occasions 6:24
offer 21:15
offered 21:10 23:14
office 1:21 7:15 12:18 45:9
offset 19:2 30:6 35:11
okay 7:10
once 19:10
open 47:9
operations 48:23
opined 44:3
opinion 16:24 18:12 21:8 25:23 25:25 28:6,12 30:12 31:12 42:3 43:16,19 49:10
opinions 8:25 9:4 9:18 10:19 14:4 14:21 43:15
opportunity 6:3 6:23
opposed 32:4 43:14
opposite 33:1
option 21:11
options 23:14,15 23:19
order 13:8 33:17
outside 19:20 20:12
overall 25:7 29:1
overlap 23:13,18
overseeing 48:23
overtime 37:12

p

p 2:1,1 3:1,1
p.m. 1:23 50:5

page 4:3,9 8:7 9:11 10:3 15:6,7 15:14 17:14,16 18:3,20 21:12 24:1 32:25 34:18 36:2 39:8 44:18
paid 23:24 24:6 32:11 35:23 41:25
paragraph 10:5 18:19 32:25 33:7 33:13 36:2 39:7
parents 16:7 17:25 20:4,8,21 21:6,24 22:3,4,13 23:12 26:9,20 27:4 28:1,16
parkway 1:22 5:2
part 9:21 15:13 18:6,20 20:14,15 25:4,6 32:10
partial 31:25 32:4 32:15
particular 13:2 27:12
particularly 27:4
parties 51:16
paschik 1:10 3:13
patient's 14:19
pay 33:3 37:12
payroll 35:17
pc 2:3
people 31:11 35:17 38:17
percent 10:2,5 11:1,2 31:16 32:20,24 33:3,5,9 33:16,23,24 34:8 34:10 36:8,10,11 36:16,17,18,18 39:19,23 42:14 43:2,7,14 47:2
percentage 10:22 34:13 39:2
percentages 37:2 37:3,4
percentile 27:20 28:22
periods 34:6
person 31:14 33:20
personal 41:10,16 42:1,5,6
personally 47:16 49:2
philadelphia 12:4
phrased 7:9
pinpoint 27:12
place 32:22 51:13
plaintiff 10:23 18:4 46:9,22,24
plaintiff's 6:1
plaintiffs 1:6 2:9 11:3,11 47:3
plan 14:6,12 23:8 24:8 42:10 43:22
planner 14:4 21:9 21:10 23:7,11 24:15 40:11
planners 47:23
plans 37:22 38:3
please 7:7 8:3 15:17
plus 37:8,11,12
point 21:17 40:5 43:7,8 45:18
possibility 38:16
possible 9:24 13:20 18:6,7 49:3
possibly 14:7 17:7 29:13
post 19:6
potentially 19:4 29:11
practice 4:19 44:7,11,15
preceding 33:13
predecease 22:5 22:13
predicated 13:25
premised 21:16
preparation 14:9 21:1
prepare 8:20,22
prepared 9:10
preparing 13:7
present 3:19
presented 36:11 36:23 37:3 39:7
presently 19:3
principles 4:17,18 44:6,6,11,11
prior 8:6 11:17 51:6
private 30:22,24
probably 13:15 30:12 31:9
problem 6:17
proceed 13:6
proceedings 1:18
professional 4:18 16:24 17:4,7 25:15,20 26:7,22 27:2,19,23 28:7 28:22,25 29:4,9 30:4,12 44:7,11
professions 29:1
profile 4:12 5:9
program 18:21 29:25
programs 12:8 29:15,17
progress 14:19
project 23:1
projected 23:16 49:18
projections 39:16
provder 14:12,12 16:18,19 18:12 19:12,15 21:13 23:9,14 25:23 26:4,11 27:11,24 28:11 40:4 44:2 47:19,20,24 48:1 48:10 49:3,23
provder's 18:16 21:9 23:23 24:2 26:17 28:6 40:13 40:17,22 48:12 49:7,16
prove 13:20
provide 11:21
provided 12:18 14:15,18 15:13 17:20 20:7 25:4,8 25:10,12 40:3 42:12
providers 16:10
providing 25:1
public 1:20 5:3 51:3,23
publications 12:5
published 9:7 39:9,13
purpose 20:23
purposes 8:20 19:16 24:4
put 5:20
putting 6:12

q

qualification 4:12 5:9
question 7:7,9 18:4 20:1 22:7 23:6 24:5 25:5 31:6,22 32:2,22 49:21
questionnaire 4:15 5:15 14:15 14:23 15:13 17:15 17:17,17,20,23 18:4 19:20 20:9
questions 6:4,6 22:20 44:21 47:18 50:3
quoted 31:5

r

r 2:1 3:1
r.n. 1:10,10
rate 33:8,15,22 34:9,14,17 35:3,7 39:18,23 42:1,2 42:13,18 43:13
rates 33:14 34:18 34:24 35:1 37:1 37:11 38:9,15,25 43:10,14
raw 19:23,25 20:3
read 36:20 43:5
reading 23:23
reads 18:4
really 13:19
reason 7:6 11:8 13:16 14:6 16:21 37:4 40:16 49:12
reasons 24:11
recalculate 49:19
recalculating 49:15
recall 11:16,18,22 12:24 18:25 45:4 45:17,22,24 46:1 46:4,8,13,17
recalled 19:8
receive 23:12 26:20 34:7 35:17
received 5:5,8,10 5:12,15,18 20:14 20:15 28:9 35:25 44:7
recommendations 40:22,23 41:1
recommends 40:9
record 5:20 6:13 9:15,16 34:11,12 41:14,15 49:22
reduce 33:24 41:6
reduction 35:22
refer 28:25 36:3
reference 19:8 24:2 31:11
referenced 9:11 18:18
referral 12:7
referring 10:2,4 17:5 36:5
reflect 34:6
regarding 21:20 25:14 47:18,19
regular 47:21,23
regularly 48:24
related 8:25
relating 15:8
relative 51:15,17
relied 18:11 20:1 20:19 23:8 49:24
relocate 38:12
rely 17:22 49:22
remember 45:3,9
remind 7:6
removing 24:13
render 10:23
rephrase 7:8
replace 24:19
replaced 34:4
replacement 36:8
report 4:14 5:12 7:25 8:1,4,24 9:8 9:10,12 10:16 13:7 14:10,11 15:21 18:16,19,20 19:8,21 21:1,9,13 21:19 23:23 24:1 24:3 25:13,24 26:17 31:10 32:22 34:18 36:2 39:14 39:15 40:17 43:6 43:12 44:18 49:18 49:20
reporter 1:20 4:21 5:23 51:4
reports 8:19,23 10:22 14:19 18:14 48:24,25 49:4
represent 37:5 47:17
represents 37:21 46:3,9
require 24:16
research 16:2 40:7
residual 18:5 19:6,16
respect 10:21 11:4 13:18 19:2 20:4 31:15 35:10 36:1 40:2,21
result 40:14
retained 4:21 13:4 46:2,9
retirement 36:17 37:17,20 38:2
review 8:23 10:16 14:9 15:16 48:24
reviewed 9:3 10:7 14:11,14,22 18:15
ricciardulli 3:16
right 7:9 12:11 42:2 47:3,6,9,16
rinder 10:17
rinder's 31:10
risk 42:16,18,21 42:24
rock 3:6
role 15:23,23
roof 41:23
roseland 3:8
routinely 12:2
rules 7:3 49:25
ruprecht 3:16 45:19

s

s 2:1 3:1,5
savings 36:17 37:17,20 38:3
saw 15:1
saying 12:15
scarpa 2:14 4:4 5:19 6:5,12,17,20 6:22 22:18 23:2 34:11 43:23 44:4 44:19
scenarios 25:14
schedule 4:16 5:17 12:10,17,20 12:22,24 13:2,3,5
scheduled 5:22
school 18:21 27:1 29:6,8 30:22
schools 17:7,7,8,8 29:5,5,7,8,9
scope 23:1
second 10:5 32:24 39:7 41:13
secondly 39:13
securities 42:19 42:22,23
security 9:9 35:14,16,21,25 39:15
sedat 1:11
see 8:7 9:11 15:1 18:14 32:25 36:5 36:25 37:1
seeing 19:8
sense 48:25
september 51:25
services 11:21,23 25:3,8,11 40:8
set 25:13 51:13
shadow 18:8
shocked 43:5
shorthand 1:19 51:4
show 7:14 12:13 15:11 44:9
shown 43:1
siblings 28:17
signature 51:21

significance 33:12
significant 33:11
significantly 10:9
simply 13:16 37:2
single 34:10 35:3
sit 10:10 12:25
six 17:1,10 26:1 26:22 29:11,14,18 29:19
slight 42:10
slightly 10:9 11:7
small 42:21
smolin 10:17
smolyar 1:4,5,5 2:10,10 13:23 14:13 16:6 17:18
sobel 1:21 5:1
social 9:8 35:14 35:16,21,25 39:15
socialization 19:18
sorry 47:16
sort 46:3
source 36:3,12,13
sources 25:22 39:6
speak 16:19
speaking 7:21 13:22 21:23,25 29:20 35:19 38:1 42:17
specialty 1:12
specifically 9:7 39:10 45:25 46:4
speculative 22:16
spoke 16:18 26:11
spot 43:14
st 1:11 3:13
start 5:19,22 6:9 8:15
started 5:21 42:19
starting 34:22 40:5
starts 6:9
state 1:20 23:25 24:6 35:11 38:12 38:22 41:25 45:11 50:1 51:4,23
stated 48:17
statement 4:17 13:16 44:5,10
states 38:6,8
statistical 20:2 20:19,21 21:2 26:24 49:24
statistically 21:23,25 29:20 38:1,6,23
statutes 32:13
stay 21:6
stenographic 1:17
stenographically 51:12
stick 22:15
strike 28:20 34:10
student 28:6
studies 27:10,12
stuff 43:24
submitted 14:24
suburban 1:12
succeeded 28:13
suggest 32:22
suite 3:7,21
superior 1:1
supplemental 37:12
sure 6:14,18,21 12:22 15:4,16 20:1 22:7 25:5 31:6,21 32:1,7,16 49:21
surmeli 1:11 3:12
susanne 17:18
suzanne 1:5 2:10
sworn 5:3 51:7

t

table 36:3,23,25 37:3,5
tables 31:2,4,7,11 31:13 49:24
take 18:9 22:2 23:3 31:24 33:19 34:2,22 37:2 38:11,15,21 46:21
taken 1:18 7:1 38:19 51:12
takes 22:24
talk 33:7
talking 29:4,10
tax 34:9,14,17,18 34:24 35:1,6,15 35:16,17,17
taxes 35:6,10,12
technically 14:2 29:7 35:19 36:19 37:9 42:17,24
telephone 3:19
tell 17:2 24:25 43:4
term 42:25
terms 24:18 32:17
testified 5:3 7:23 8:8 46:19,23
testify 11:9,10 51:8
testimony 11:5 46:2,8 51:11
thank 7:5 12:16 44:4 47:12,13 50:3,4
theory 16:1
therapies 23:16
thing 9:5 15:17 25:22 30:15 40:21
things 10:14 14:19 22:25 40:18
think 48:8
thought 6:10
thousands 11:19
three 6:11 43:7,8
time 5:22,24 6:6,7 6:8,9 9:4 18:6,15 19:17 45:2,21,22 46:1,7,12,17,19 46:23 48:13,22 50:3 51:12
times 48:18
tinari 5:1 8:17
tinary 1:21
tips 43:7
today 10:10 12:25 20:16 29:20 46:7
told 20:13 47:1
top 10:3 27:13 29:23 30:1,5 38:4 39:24
total 37:6,7 44:1
totaling 24:8
traditional 42:4,6
transcript 1:17 14:13 20:11 48:16 51:11
transcripts 14:17
transportation 24:9,13,16
treasury 42:23,25
treatment 23:15 40:8
trial 11:5 13:6,23 46:18,20,23
trials 7:22 8:7,9 8:21 11:10
true 8:3,12 11:4 17:20 39:18 41:3 51:11
trustees 9:8 39:14
truth 51:8,8,9
two 7:12 12:6 19:10 23:14 25:13 32:9 39:6 43:2

46:6,14 48:14 49:3
type 12:7 17:5 41:10,16
typically 11:9 29:4

u

u.s. 39:10 42:23 42:25
ultimately 41:4
understand 7:7 7:15 32:16,21 49:21
understanding 17:13 18:23 23:22 32:8,14
understood 7:10
unemployed 33:20 34:1,3
unemployment 31:15,25 32:4,10 32:11,19,23 33:2 33:6,8,14,15,22 34:4
university 30:24
updated 9:24
updating 12:23
upward 49:13
use 16:22 27:22 31:13 34:23 40:19 43:13
utilities 41:23
utilize 21:2

v

variety 14:15 42:19
various 13:8 14:16 33:14 35:2 37:6 40:8
venue 15:8
versus 10:23 15:23 27:1,2 31:25
vocational 14:11 18:11 19:8 25:24 27:11 47:22
vs 1:7

w

wage 18:6,7 19:5 38:6,8,9,15,25 39:2,16
wages 18:10 19:3 20:6 29:2 30:11 34:10 37:11 38:12 38:22 39:11 41:17 42:1
wait 5:23
waiting 5:25 6:7
want 5:20 24:4 44:14
wanted 16:22
warner 3:3 44:24
way 9:18 10:19 37:14 43:19 48:4 49:18
we've 6:23 7:13 7:24 8:24 12:14 19:24 25:15 44:9 44:22 45:8
week 19:10 33:4
weekly 33:3
weeks 3:16 45:19 46:14,16,25
westfield 3:22
westover 1:19 51:3
witness 4:3 47:13 50:4
women 33:14
words 34:21
work 6:13,17 8:6 8:15 10:21 11:1,3 11:18 18:16 19:12 30:25 31:5,7,9,13 38:16,17,22 47:20 47:22
worked 11:13,17 15:20 44:23 45:8 45:14,16,18,20,23 45:23 47:25 48:9 48:14,17 49:2,4
working 19:4
works 18:21
wrong 49:7,9

y

year 8:21,23 12:24 17:1,10 26:1,22 29:25 33:18,23,25 34:17 35:3,7 43:1,6 48:17
years 9:23,25 29:11,14,16,18,19 29:22 39:4 45:5 45:24 46:6 48:1 49:5
yesterday 43:6
yield 42:20,22 43:6
yields 43:2
york 2:7,7 12:3 38:18
yvette 1:8 2:20

z

zeros 37:25
zheng 1:10 3:12

New Jersey Rules Governing Civil Practice

Part IV, Rule 4:14

Depositions Upon Oral Examination

4:14-5. Submission to Witness; Changes; Signing

If the officer at the taking of the deposition is a certified shorthand reporter, the witness shall not sign the deposition. If the officer is not a certified shorthand reporter, then unless reading and signing of the deposition are waived by stipulation of the parties, the officer shall request the deponent to appear at a stated time for the purpose of reading and signing it. At that time or at such later time as the officer and witness agree upon, the deposition shall be submitted to the witness for examination and shall be read to or by the witness, and any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness. If the witness fails to appear at the time stated or if the deposition is not signed by the witness, the officer shall sign it and state on the record the fact of the witness' failure or

refusal to sign, together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed, unless on a motion to suppress under R. 4:16-4(d) the court holds that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THE ABOVE RULES ARE CURRENT AS OF SEPTEMBER 1, 2014. PLEASE REFER TO THE APPLICABLE STATE RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.