UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
----------X
AILTON BASTOS,

PLAINTIFF,

-against-

Case No:
14-CV-04078

WHITEHOUSE CONDOMINIUM, VINTAGE REAL ESTATE SERVICES, P.C., and DSENY ENGINEERING SERVICES, P.C.,

DEFENDANT.
----------X
DSENY ENGINEERING SERVICES, P.C.

THIRD-PARTY PLAINTIFF,

-against-

BRASAL PRESERVATION GROUP CORP.,

THIRD-PARTY DEFENDANT.
----------X
WHITE HOUSE CONDOMINIUM and VINTAGE REAL ESTATE SERVICES, P.C.,

SECOND/THIRD-PARTY PLAINTIFFS,

-against-

BRASAL PRESERVATION GROUP CORP. d/b/a BPG CONSTRUCTION CORP.

SECOND/THIRD-PARTY DEFENDANT.
----------X

DATE: September 8, 2015

TIME: 1:21 P.M.

(DEPOSITION of KRISTIN KUCSMA.)

DATE: September 8, 2015

TIME: 1:21 P.M.

DEPOSITION of a Non-Party Witness, KRISTIN KUCSMA, taken by the Respective Parties, pursuant to a Subpoena and to the Federal Rules of Civil Procedure, held at the offices of Sobel Tinari Economics Group, 293 Eisenhower Parkway, Livingston, New Jersey 07039, before Rosanne LeBoeuf, a Notary Public of the State of New Jersey.

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F E D E R A L S T I P U L A T I O N S

IT IS HEREBY STIPULATED AND AGREED by and between the counsel for the respective parties herein that the sealing, filing and certification of the within deposition be waived; that the original of the deposition may be signed and sworn to by the witness before anyone authorized to administer an oath, with the same effect as if signed before a Judge of the Court; that an unsigned copy of the deposition may be used with the same force and effect as if signed by the witness, 30 days after service of the original & 1 copy of same upon counsel for the witness.

IT IS FURTHER STIPULATED AND AGREED that all objections except as to form, are reserved to the time of trial.

* * * *

K. KUCSMA

K R I S T I N K U C S M A, called as a witness, having been first duly sworn by a Notary Public of the State of New York, was examined and testified as follows:

EXAMINATION BY

MR. MEZZACAPPA:

Q Please state your name for the record.

A Kristin Kucsma.

Q What is your business address?

A 293 Eisenhower Parkway, Livingston, New Jersey 07039.

Q. Good afternoon.

A. Good afternoon.

Q. My name is Michael Mezzacappa and I represent the defendants, Whitehouse Condominium and Vintage Real Estate in a lawsuit brought by Mr. Bastos. I'm going to ask you a series of questions this afternoon.

I think you know the drill. I think you testified before, so I don't think there's any reason for me to do all the usual rules, but keep everything verbal, no

nods of the head and things like that, okay?

A. Yes.

Q. We're sitting in an office and the name is Sobel Tenari; is that correct?

A. Yes.

Q. What is Sobel?

A. That name refers to the parent company that currently owns Sobel and Company, which is a CPA firm.

Q. And they're upstairs?

A. Some of them are downstairs with us and the rest of them are upstairs.

Q. Only because I read it on the thing when I came in. I was looking.

So, the CPA company is an accounting firm by the name of Sobel?

A. Sobel and Company, correct.

Q. And they're your parent corporation?

A. Yes.

Q. For what period of time have they been your parent corporation?

A. They acquired us, a wholly owned subsidiary, effective January 1, 2013.

K. KUCSMA

Q. Before that time, what was the name of this business?

A. The Tinari Economics Group.

Q. Is that Dr. Frank Tenari?

A. Yes, he founded that company.

Q. He used to be a professor of economics at one of the universities here in New Jersey, correct?

A. That is correct.

Q. Is he retired now?

A. He is still technically on our staff. He works in a consulting capacity for us.

Q. He doesn't come into the office every day, correct?

A. That would be correct.

Q. Is he in California?

A. He, I believe, is presently back in the state of New Jersey. He was away in Russia.

Q. Other than vacation or trips, was he in California for an extended period of time, for the last five years?

A. No.

K. KUCSMA

Q. Are you an employee? Who's your employer?

A. I am an employee of the Sobel Tinari economics group technically an employee of Sobel and Company.

Q. Did you ever work for Sobel and company other than the Sobel Tinari Group?

A. No.

Q. For what period of time have you worked for the subsidiary corporation?

A. I joined the Tinari Economics Group January 2, 2008 and then I obviously worked for the Sobel Tinari Economics Group since the Sobel came to fruition in January of 2013.

Q. Was Frank Tinari paid money when he sold his economic group to the parent corporation?

A. I don't know specifically what the details are of the arrangement that he made with Sobel and Company. I believe he sold to the company, but in terms of what type of payment or compensation I couldn't say.

Q. Are you a partner in the company

or are you W-2 or something else?

A. I'm a W-2 employee.

Q. Is it fair to say that a larger percentage of your income is derived from this job?

A. All of my earned income presently is derived through my employment with the Sobel Tinari Economics Group.

Q. You're no longer teaching for pay?

A. Not at present, no.

Q. When's the last time you did that?

A. The last time I taught was in 2006 for Drew University.

MR. CHURBUCK: For which university?

THE WITNESS: Drew University.

Q. Here in New Jersey?

A. Yes.

Q. What did you teach there?

A. Economics.

Q. You don't have a Ph.D, correct?

A. That's correct.

Q. When did you first start your dissertation that was not finished?

A. I began my dissertation while I was in graduate school. I could not tell you specifically when I started working on it. It was probably sometime in or around 1993.

Q. Have you ever attempted to finish the dissertation in order to obtain the degree of Ph.D?

A. I'm not formally enrolled in any graduate program right now. However, I have continued to work on my dissertation sporadically throughout the years.

Q. Do you have a specific date that you're going to submit it to any university?

A. No.

Q. Where did you obtain your master's degree from?

A. Rutgers University in New Brunswick, New Jersey.

Q. What discipline?

A. Economics.

Q. How about your undergraduate degree?

A. I received my undergraduate degree

from Seton Hall University, also the field of economics.

Q. Have you ever met Mr. Bastos?

A. No.

Q. Have you ever worked with Dr. Carfi, Joseph Carfi?

A. I have worked on cases in which he has authored letters or opinions. I have never spoken with or met him though.

Q. Did you review his report before coming up with your economic analysis?

A. Yes.

Q. Is that the first time you ever reviewed one of his reports to incorporate numbers he gave into an economic analysis?

A. No. As I indicated a moment ago, I believe I have reviewed reports or opinions of his in other matters.

Q. Did you ever meet Dr. Robert Schuster?

A. No.

Q. Did you read his report in this case?

A. Yes.

Q. Did you ever work with him before this case?

A. My answer would be the same. I have worked on other matters in which he authored reports. I have not met him though.

Q. Can you estimate for me the number of other cases you've worked with him prior to the Bastos case?

A. I have no ideas.

Q. Can you estimate for me the number of cases you worked with Dr. Carfi on prior to the Bastos case?

A. I also have no idea.

Q. When you say you have no idea, is it is less than ten, each expert?

A. It's probably not less than ten, but beyond that I could not say. We work with a large number of experts.

Q. Did you ever speak to Dr. Carfi on the telephone about this case?

A. No.

Q. Did you ever speak to Dr. Schuster about this case on the telephone?

K. KUCSMA

A. No.

Q. Do you receive any noncash compensation at this job?

A. No.

Q. No trips to Disneyland or anything like that?

A. No.

Q. You only get a W-2, not a 1099, not a K-1, correct?

A. That is correct.

Q. How were you paid for your work on this case? Do you bill Mr. Sitinas, hourly for your work on this case or some other method?

A. Our firm billed Mr. Sitinas it is a rate that is technically a flat rate based on amount of work that goes into preparing the report.

Q. How much have you billed to date?

A. Not including today's deposition, I believe we have billed $4,600.

Q. Are you looking at any paperwork to give that answer?

A. I am looking at invoices in my

file.

Q. Let's talk about your file. What else does your file contain other than these invoices you just referenced?

A. My file also contains the documents that were provided to me that I reviewed and/or relied upon. Those documents include W-2 wage and tax statements and also tax return they, also include Dr. Carfi's letters or reports they also include Dr. Schuster's report. I also have a copy of the complaint, I have a copy of the unofficial transcript for the plaintiff from the art institute of New York City. I have a completed fact finding questionnaire and then I have copies of some of the data upon which I relied.

Q. Is that basically everything that's in your file?

A. It is indeed.

MR. MEZZACAPPA: We'll mark that and if you could provide a copy of that for us in the mail with your transcript that would be great?

K. KUCSMA

Q. Let's mark the outside of the green folder as Exhibit A. Is that fine with you?

A. Sure.

(Whereupon, the aforementioned document was marked as Defendants' Exhibit A for identification as of this date by the Reporter.)

Q. Ms. Kucsma, can you tell me the greatest rate of pay on any W-2s in your file for Mr. Bastos? You could figure out the rate of pay or you could just tell me $140 a week, however.

A. Based on my review of the W-2 wage and tax statements for 2012, it looks as if Mr. Bastos earned $8,423 in that year and in the year 2013 accord to $2,756.

Q. Other than looking at your report, can you look at the actual file which is Exhibit A?

A. Sure.

Q. Tell me what W-2s you have from what job and what is the rate of pay there or the amount that's reflected on the W-2?

For example, if there's one for the entire year of 2012 tell me if it encompasses and what the amount what the job he is at. If there's just half a year or part-time you can tell me that, too.

A. For 2013, I have a single W-2 from Brick City Bar and Grill LLC, and that is as I mentioned earlier in the amount of $2,756.

Q. Let me interrupt you. Was that an entire year or does it demonstrate what months does it give you an idea?

A. W-2 typically does not include the months or terms during which somebody works.

Q. Okay.

A. The 2012 or for the year 2012, I have two W-2s, I have one in the amount of $4,515.65 from Urban Outfitters, I think, and I have another in the amount of $3,907.36 from Lifetouch National School Studios.

Q. Are those all the W-2s that you were given?

A. Yes.

Q. You mentioned his tax returns, did

he file tax returns that you have in any particular year in the last five years?

A. I have a tax return for 2012.

Q. What is the greatest amount of income he claimed in that year on that tax return for any jobs he had?

A. For 2012, it looks as if he reported $8,423 in wages and salaries, and I believe that is the only tax return I reviewed.

Q. So to your knowledge as you sit here now, the greatest amount of income Mr. Bastos earned in any of the years you were able to evaluate is $8,423, correct?

A. Based on my review of W-2s for 2012 and 2013, that would be correct.

Q. You don't have any basis to estimate any other number based on any year based on the documents you were given, correct?

A. I'm not sure I follow your question.

MR. MEZZACAPPA: I'll withdraw and rephrase it.

K. KUCSMA

Q. As you sit here now, other than $8,423 from the year 2012, are you aware of a greater amount of income he ever earned in his lifetime prior to injury?

A. I did not review any documentation other than for 2012 and 2013, so I would not be aware of any other income he may have earned.

Q. Did you read his deposition, the two-day deposition that we took in this case?

A. No.

Q. Were you sent it?

A. I don't believe so no.

Q. Did you speak to anyone about your testimony before -- not coming here, but before arriving at work today since we're at your office?

A. No.

Q. Did you review any documents other than what's in that green folder, which is marked Exhibit A and your report?

A. Other than publicly available documents sourced in my report and other

economics documents that I routinely review, no.

Q. Did you specifically review any publicly available documents in order to testify here today?

A. No, not specifically, but I routinely review things like interest rate data and other economic data that's published, and I routinely review that on a weekly or biweekly basis.

Q. Are you familiar with any studies that demonstrate a shortened life expectancy of a paraplegic?

A. I'm not specifically aware of such studies.

Q. In the report that we got from you, I believe you redacted just a few things and one was the date of birth of the plaintiff, Mr. Bastos. The copy that we have had a redaction, and I believe that was on page 3. "Born 1988, son Jordon born 2009;" do you see that?

MR. CHURBUCK: That redaction is necessary to comply with the court.

K. KUCSMA

That redaction was made by my office.

MR. MEZZACAPPA: I'll withdraw the question.

Q. Calculating that the plaintiff was born in 1988, did you use the same life expectancy for Mr. Bastos in calculating for anyone born in 1988, male?

A. I relied upon the national vital statistics report very specifically, the most recently published national vital statistics report to determine Mr. Bastos' statistical life expectancy.

Q. Did you check with any physician whether they were an expert in this case or not as to what the life expectancy of a paraplegic is?

A. I did not reach out to any physicians, no.

Q. Do you know the medical condition of the plaintiff other than what you read that's contained in your file?

A. Any information I reviewed about the plaintiff's medical condition would have been information contained in the reports of

either Dr. Carfi and/or Dr. Schuster.

Q. Is it fair to say you never reviewed the original hospitalization records for Mr. Bastos?

A. That would be correct.

Q. Is it fair to say you never reviewed the rehabilitation records from the Kessler Institute?

A. That would be correct.

Q. Is it fair to say you didn't review any treating doctors' records for anyone that treated Mr. Bastos as a result of this incident prior to coming up with your report?

A. That will be correct.

Q. You're not a physician, correct?

A. I am not a physician, that is correct.

Q. Does your firm have any marketing materials they publish or put out on the Web?

A. We do we, have a web site.

Q. In addition to a web site, do they do any mailings or do they do any

discussions at Bar Association meetings anything of that nature?

A. I do teach fairly frequently meaning I teach CLEs, continuing legal education courses. We also advertise in a few publications that include New Jersey and New York law journals.

Q. Is your picture in any of those advertisements?

A. I believe it is.

Q. Is it fair to say that you testify 95 percent of the time for plaintiffs out of the times you testify?

A. About 30 percent of the work I do is on behalf of defendants, but I would estimate probably about 5 percent of the time I testify either at trial or deposition is on behalf of defendants. So, the answer to your question would be yes, I do testify in court or deposition about 95 percent of the time on behalf of the plaintiffs.

MR. MEZZACAPPA: Move to strike that which is nonresponsive about how many times you might be retained.

K. KUCSMA

Q. I was just asking you about testimonial history. So, at a Deposition like this or in court, would you agree that 95 percent of the time it's for plaintiffs?

A. I would agree that that sounds approximately right, yes.

Q. Did you ever speak to the plaintiff on the telephone?

A. No.

Q. The questionnaire that you mentioned before, is that a standard questionnaire that you send out to the plaintiffs' attorneys to be filled out in case on which you're retained?

A. It is fairly standard, yes. We have several different questionnaires, depending on the type of case.

Q. Which one did you use in this case?

A. In this case we sent out and received back a questionnaire for the personal injury of an adult.

Q. How many such forms has your office generated? In other words, would you

have personal injury for child, for adult? What other questionnaires do you generate?

A. I could not tell you how many off the top of my head, but we do have at least one questionnaire for wrongful death matters. I believe we may have more than one we have one for at least, one for employment-related matters. We are in the process of finalizing one for wrongful incarceration matters, and there may be one or two others that I'm forgetting as I sit here today.

Q. Can you tell me how many questions are on the preprint form that was sent in this case for Mr. Bastos?

A. Off the top of my head, I could not tell you.

Q. Feel free to look at what's contained in your file?

A. However, there are ten questions on page one, there are 12 questions or entries on page two; there are 11 questions, I believe, on page three; there are approximately a half-dozen questions or

items on page four; there are again approximately half-dozen, give or take, questions or items on page five; there are 11 questions or items on page six; there are six questions or items on page seven; there are three questions on page eight one of which has some subquestions. There are two general questions with subparts on page nine; there are four questions and some more subparts on page ten; and there are six items listed on page 11.

Q. May I see that?

A. Sure.

Q. Was this sent to Mr. Sitinas or was it sent directly to Mr. Bastos?

A. I don't recall as I sit here today whether we sent it to Mr. Sitinas or whether he downloaded it from our Web site. He is the one that provided to Mr. Bastos, not us.

Q. Do you know if Mr. Sitinas provided it to Mr. Bastos?

A. You would probably -- if I may have it back --

Q. Sure.

K. KUCSMA

A. -- have to ask him very specifically whether he sent it to Mr. Bastos or how he communicated with Mr. Bastos about it, that I don't know.

Q. You mean I have to ask Mr. Sitinas about that, when you say specifically?

A. Yes. He's the only one that could technically answer that question.

Q. You realize I can't because I can't depose him he's my adversary. I'd like to, I'm not going to ask him to take an oath.

So you don't know as you sit here whether this questionnaire which you sent to the plaintiff's lawyer was ever actually sent to the plaintiff correct?

A. I couldn't say.

Q. Do you know who prepared the responses to these little preprinted boxes and they're checked; do you know who did that?

A. If you go back to the first page you should see down towards the bottom the name of the person who completed the

questionnaire or at least filled in the information, I should say, and signature and it looks as if the information was written into or typed into the questionnaire by Mr. Sitinas.

Q. So, you don't know if Mr. Bastos ever saw this form at all, correct?

A. I could not say.

Q. There are a lot of questions, would you agree there's a lot of questions that are unanswered on this preprinted questionnaire?

A. Probably you now have it front of you so I can't say for sure, but I would agree that there are at least some questions that do not have answers with them. It may be that in some cases the questions are not relevant, but certainly there are some that don't have corresponding answers.

Q. Did you prepare any of these questions or is this a template in the system before this case was referred to your office?

A. This questionnaire was not

customized for a particular case, it's a general questionnaire.

Q. Do you know whose signature that is on the bottom of page one?

A. I am not a handwriting expert but it appears as if it may be the signature of Mr. Sitinas.

Q. Is it your intention when you send a form like this to an attorney for a plaintiff for the attorney to fill it out versus the client, the ultimate plaintiff in the case?

A. It is not at all uncommon for attorneys to complete forms on behalf of their plaintiffs.

Q. That doesn't really answer my question. Is it your intention for the plaintiff's attorney to fill out, versus, say, Mr. Bastos? not what's common or uncommon, is it your intention?

A. I'm not sure I follow your question, I don't have any intention so to speak in terms of specifically who completes the questionnaire.

Q. After getting a form like that back do you ever independently check the veracity of the information that's contained in it?

A. Sometimes I will look at other independent documents for some of the information that is listed or provided in the fact-finding questionnaire, yes.

Q. Did you do that here?

A. I don't recall as I sit here today some of this information may have been provided in the complaint or Dr. Schuster's report that I don't recall.

Q. Did you ever read Dr. Schuster's deposition that we did?

A. No.

Q. Did you ever read Dr. Carfi's deposition?

A. No.

Q. Did you every independently verify the information contained in either one of those reports upon which you relied to prepare your report?

A. Did I as an economic expert

K. KUCSMA

attempt to verify the opinion of another expert.

Q. No, that's not what I asked you.

MR. MEZZACAPPA: Let me have my question read back.

(Whereupon, the referred-to question was read back by the reporter.)

A. I do think that you're asking me whether or not I verified the opinions of the other experts in this matter, the medical expert and vocational expert --

Q. I'm not asking that. Let me be clear with my question. For example, Dr. Schuster comes up with certain numbers and so does Dr. Carfi, so did you check on the sources or where those numbers came from with regard to Mr. Bastos?

A. I'm really not trying to be difficult but their numbers are their opinions and it is not standard practice for me as an economist to verify the opinions, particularly of medical doctors. So I did not attempt to quote, verify, any of the

numbers contained in Dr. Carfi's report.

Q. So, if Dr. Carfi says, for example, and I'm not quoting I'm just giving you an example, if Dr. Carfi says Mr. Bastos needs X number of pills of oxycodone for life and he gives a value for that, then you just take that as gospel when you make your report and you don't look at the plaintiff's testimony in this case to see if he's actually taking medicine and don't look at his actual medical records to see if he was prescribed that?

A. There are multiple questions contained in that question. I'm not a medical expert so number one I do not form any opinions on what medications someone may or may not need. Furthermore, it isn't clear to me that what a plaintiff may or may not currently be taking is an indicator of what he may need to take going forward, but those are questions that you have to ask Dr. Carfi. I certainly do rely upon the opinions for medical doctors and/or life care planners with respect to the lifetime

care that an injured plaintiff may need.

Q. Wouldn't it be more accurate to rely on the actual people who treated Mr. Bastos and actually prescribed him X or Y or Z medications rather than just Dr. Carfi who never treated him and just comes up with his opinions about what the plaintiff will need?

A. First of all, it isn't clear to me that Dr. Carfi didn't speak to some of those people when he formed his opinion, but having said that, as I indicated a moment ago, it's not clear to me at all that what a person may have taken in the past with respect to medications, for example, or what he may currently be taking is any indication of what he may need on an ongoing basis over the remainder of his lifetime.

Q. Let me ask you to answer the same question with the following assumption, and I promise you the assumption is correct.

MR. CHURBUCK: Move to strike that.

Q. Dr. Carfi has already testified

that he did not speak to any of the doctors, whoever treated this plaintiff, and he did not verify what medications he might need for the rest of his life based on the treating doctors, can you answer the question now?

A. Again --

MR. CHURBUCK: Just note my objection to the form. You can answer over my objection.

A. All I can say really is what I said before and that is number one, as an economist it would not be appropriate for me to have any opinion about the current or future medical needs of an injured plaintiff, but secondly, I have worked on a number of cases in the past where individuals have been in need of various therapies, medications and surgeries. They had not yet gotten them to date simply because they couldn't afford them and that was not an indication that they didn't need those things but rather an indication that they simply could not afford them so it

isn't clear to me that what a patient may be receiving right now in terms of treatment is in any shape or form a good indication of what their needs may be, maybe ongoing in the future. You would have to ask a medical expert or life care planner.

MR. MEZZACAPPA: I'm going to move to strike those portions of your answer that are unresponsive.

Q. We're just talking about Mr. Bastos now, not anyone else. My question to you is if the information in Carfi and Schuster's reports is incorrect or is exaggerated, would you agree that your economic report is going to be incorrect or exaggerated based on their opinions?

MR. CHURBUCK: Just note my objection to form.

A. The only thing I could agree with is that it certainly, if for whatever reason, Dr. Carfi or Dr. Schuster amended their opinions, then there is a possibility that my calculation of economic loss would change.

Q. But as their reports stand now, you're standing by the numbers you have in your report because they were based, and they relied upon Schuster's and Carfi's estimates, correct?

A. My calculations of economic loss certainly did or are based on, among other things, the opinions of Dr. Carfi and Dr. Schuster, that's correct.

Q. If neither Schuster nor Carfi gave you numbers that took into account the decreased life expectancy statistically of paraplegics, then your report didn't address that at all, correct?

A. My report is based on the statistical life expectancy table sourced in my report, that is correct, I did not make adjustments to those tables.

Q. Those tables do not deal with paraplegic lifetime expectancy, do they?

A. They do technically because they're based on the actual population of males in the United States, at least some of whom are paraplegics, so paraplegics are

implicitly reflected in the data upon which I relied.

Q. There are tables that specifically deal with life expectancy on paraplegics and quadriplegics, and you didn't consult with those at all correct?

A. As I mentioned, when you first asked me about that today, I don't recall specifically whether there are such tables.

Q. If I read your report now cover to cover again, am I going to find anything in there that reflects your referencing those charts that exist?

MR. CHURBUCK: Objection.

Q. For paraplegics' and quadriplegics' decreased life expectancy?

A. You will not find any reference to any life expectancy other than those for males referenced in the national vital statistics reports.

Q. Are you a life care planner?

A. No, I am not.

Q. Do you have any certifications other than your degrees, master's and

bachelor's and your studies prior to your dissertation?

A. No, I do not.

Q. Would you agree that the plaintiff as a paraplegic has a significant disability?

MR. CHURBUCK: Just note my objection.

A. I would not agree with that statement only because as an economic expert first of all, it's not clear to me what you mean by disability, but of greater significance, I'm not a vocational expert. It wouldn't be appropriate for me to have an opinion about somebody's quote, disability or functionality.

Q. What is the greatest number of weeks in any given year that Mr. Bastos worked before the injury?

A. I couldn't say.

Q. Now, there's a ratio on page four, paragraph five of your report that you utilized to do some of your calculations, correct?

A. Yes, there is. There are two ratios, actually, although since you did bring this up the first ratio noted on page four, paragraph five, should read 88.6 percent, not 88.16 percent. I apologize for that typo.

Q. I saw that but I was going to leave you alone on that. It's not to me statistically significant in the big picture of your report. Thank you for correcting that on the record.

This work life to retirement ratio that you use assumes that the plaintiff will live to the statistical life of an uninjured person, does it not?

A. Yes.

Q. But we know by the time you get the case, that we're dealing with an injured person, right?

A. We do know that, however, that is holy irrelevant for any calculation of lost earnings because the calculation of lost earnings is a calculation based on what the plaintiff, in this case, Mr. Bastos' earning

capacity would have been but for his injury So for calculating his pre-injury earnings, what is most relevant is his pre-injury, for lack of better phrase, unimpaired life expectancy.

MR. MEZZACAPPA: Let me have the answer read back.

(Whereupon, the referred-to answer was read back by the reporter.)

Q. Bastos never earned prior to this injury more than approximately $8,000 we went over that, correct, that you know about?

A. Based on my review of his 2012 and 2013 W-2s, that is correct.

Q. I mean some people running a paper route make more than that, correct?

A. That I couldn't say.

Q. I did. I'm just saying that this is not a lot of money for a 26-year-old to ever have earned in his lifetime, would you agree with that?

A. I wouldn't necessarily agree with that and what I mean by that is, it is not

unusual for us to see individuals in their early 20s not earn a lot of money yet because they were not on a career path.

Q. Would you agree it's also not unusual to see someone that earns that little money up to the age of 26, and then you have another year where he earned $4,000, to continue to earn low amounts of money in the future, correct? There's plenty of people that just never earn a lot of money?

A. One of the reasons that I rely upon median earning and average earnings, figures in my calculations, is certainly because there are individuals that may earn above-average earnings and there may be individuals that receive less than or lower-than-average earnings.

Q. He never reaching an average earning before his injury, correct?

A. He was 26 years old though, so again to me it's not unusual to see individuals in their early 20s receive relatively low levels of earnings.

Q. That doesn't answer my question. Did he ever attain average earnings for a 26-year-old prior to his injury?

A. What he had not yet earned are earnings that were consistent with the average earnings of some individuals in some occupations, that certainly is correct.

Q. If we took all the occupations in the world that were available to a 26-year-old, in the entire United States, forget the world, in the United States because he lived in other states other than New Jersey, and he was working on the day of the accident in New York, correct?

A. Yes.

Q. If we take all the jobs available for 25-, 26-, 27-year-olds, he never made it to the average earning capacity of a person his age prior to this accident did he?

A. I'm not sure I can answer that question as I sit here today only because the only information I have is about what he earned each year in the year 2012 and 2013. I don't believe I have documentation of

what, for example, his hourly rate of pay may have been so I couldn't say one way or another whether any of his earnings were greater than, less than or equal to average earning statistics.

Q. You're not saying $8,000 could be the average for a 26-year-old, are you?

A. What I'm saying is that without having more information about the hourly wage rate he might have received, I couldn't say one way or the other whether his earnings were consistent with, greater than, less than or equal to average statistical data.

Q. Looking at his W-2s or any information you have, his tax records, did he ever receive fringe benefits on any jobs for which you have documentation?

A. I don't believe so and I believe we note on page five of our report, paragraph 10, we do note that at the time of injury, plaintiff was receiving no fringe benefits from his employer.

Q. To your knowledge, based on what

you had been given, he never received fringe benefits at any jobs he held prior to date of loss, correct?

A. Not to my knowledge, no.

Q. Did he ever receive overtime pay at any jobs prior to date of loss?

A. That I couldn't say.

Q. Did you ever learn through the questionnaire or anything that you were given that Mr. Bastos regularly smoked marijuana prior to the date of the incident?

A. I don't believe that there was any reference to that in the documents that I reviewed.

Q. Did your questionnaire ask such a question?

A. I don't believe so, no.

Q. If you had that information, would that potentially impact your numbers that you calculated?

A. No.

Q. Why?

A. For a variety of reasons, but most significantly, my calculation of economic

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loss is based on the vocational opinion of Dr. Schuster.

Q. You never read his deposition, correct?

MR. CHURBUCK: Asked and answered.

A. Dr. Schuster's deposition?

Q. Yes.

A. That is correct.

Q. Did you ever do an economic report similar to this for another paraplegic in your years of working at Sobel Tinari?

A. I believe I had worked on other cases involving paraplegics, yes.

Q. In those cases did anyone similar to Dr. Schuster actually decrease the future earning capacity of that paraplegic by as much as 50 percent, which is what Schuster did here?

A. That I don't recall specifically, but I believe on at least one or two other cases involving paraplegics, there was vocational opinion that the injured plaintiff was wholly incapable of working, and therefore technically had a 100 percent

reduction in ability to work.

Q. You didn't form your own opinion here about the ability of Mr. Bastos to be employed in his current condition, correct?

A. That is correct, I did not.

Q. In paragraph nine of your report, let me ask you this before I go there, you didn't really follow the numbers or estimates that Schuster came up with at all did you?

A. Oh, yes, I did.

Q. Look at paragraph 10, you say that at the time of the injury, plaintiff received no fringe benefits from his employer; however, you assume that he will be eligible to receive health insurance or participate in employer-funded retirement savings plan through his employment had he not been injured, correct, is that your conclusion?

A. Yes.

Q. You've heard of Obamacare, right?

A. Yes.

Q. It's law now, right?

A. It so to speak is the law.

Q. We might not agree with it, but we're stuck with it until an act of Congress or another president does something with it -- I don't even know what could be done with it, but right, it's the law?

A. The problem with it is that unfortunately the political rhetoric has resulted in many people thinking Obamacare means that everybody will be covered for everything all the time, free of charge, and sadly that's not in fact what Obamacare means.

Q. I'm not asking you what Obamacare means. I'm just asking you if you heard about it and if it's the law, and you agree you've heard about it and you agree it's the law, right?

A. I do agree I've heard about it I think the answer to your second question though is really not one I, as a nonlegal expert, can answer only because it's my very limited understanding that Obamacare is being challenged in many courts it has not

necessarily been decided upon in many courts. So I really couldn't offer my sort of opinion about whether it's quote, law, how long it might be law and so on.

Q. Did you consider it when you wrote this report?

A. I suppose I did consider it, yes.

Q. Did you factor in any costs or factor out any costs because of the law?

A. I definitely do not follow that question.

Q. Other than just considering it, did you change the way you calculate this report because the law of Obamacare exists now and might not have when you did any other reports prior to that law?

MR. CHURBUCK: Objection to form.

A. What specifically are you talking about in my report because there are some things contained in my report that are completely irrelevant with respect to the discussion with Obamacare, but are you talking about any specific part of my report?

Q. No. I'm talking about your report in general, did you change the way you calculate numbers in such a report from when Obamacare didn't exist to now when it does as the law?

A. I did not quote, change the way I do things as a result of Obamacare, because it would be wholly inappropriate for me as an economic expert to do so.

Q. When you say fringe benefits in paragraph 10, how do you itemize fringe benefits, what do you mean by fringe benefits?

A. We describe them in the second full paragraph. We note that fringe benefits consist of health insurance coverage, life and disability insurance and also employer contributions to retirement and savings plans.

Q. Did you come up with numbers for these things?

A. I did.

Q. Did you consider when you came up with numbers or values for this chart, did

you consider Obamacare as the law?

A. It does or I should say these figures do reflect Obamacare. If you look at the source that I relied upon, you'll see the source that I relied upon was a document entitled, "Employer Cost for Employee Compensation Through the End of 2014."

Q. But the employer cost is not what we're dealing with when we calculate damages. When we have to calculate damages in this litigation, we're not interested in any employer. We're interested in what it costs Mr. Bastos to go out and get insurance, correct?

A. In fact, it is the employer cost that is most relevant when we are calculating economic damages.

Q. But we have to pay as defendants if a jury says so what it would cost not an employer who is unknown, but what it would cost Mr. Bastos to go out and secure medical health insurance, correct?

A. Technically speaking, when you value health insurance for the purposes of

calculating economic loss what is most relevant is the cost to the plaintiff minus any employee costs that he might have incurred anyway through his employment. In other words, what's most relevant is the employer portion of those premiums or the portion of those premiums that the employer might have paid through Mr. Bastos' employment.

Q. You're aware that he was injured on the job here, correct?

A. Yes.

Q. You're aware that currently he's covered by Workers' Compensation, correct?

A. I believe that is correct, which is why we do not include any loss of health insurance in past years.

Q. But you include it for the future, right?

A. Yes.

Q. If he stays on comp, if there was no lawsuit, we know there's a lawsuit, but if there was no lawsuit he would stay on comp the rest of his life and not have to

pay out of his own pocket for that, correct?

A. That I don't know, but what I do know is if there were no lawsuit I would not have been asked to prepare an appraisal of economic loss.

Q. Fair enough. Does Mr. Bastos stay on comp regardless of this lawsuit, do you know?

A. That I could not say.

Q. Now, am I correct that as part of what you do here as part of this itemization of these numbers these fringe benefits you're considering that he might have a pension or a 401(k) or some kind of a retirement plan correct?

A. Yes.

Q. Isn't it true that some people just don't opt into those things?

A. I suppose that's true, yes.

Q. You're giving him, Mr. Bastos, the greatest potential opting in of all of these plans. He might be employed by am employer that doesn't offer these plans, correct?

A. Your second question is correct,

but in terms of your first question, I wouldn't agree with that at all. The statistics that I relied upon are statistics that determine the average employer cost for employee compensation in some of these cases. The employer cost was zero so if there are employers that did not quote, pay into these, that's already reflected in my data.

Q. Did he ever hold a job that offered him a 401(k) plan?

A. I believe I technically answered that before. The answer is as I stated in my report at the time of his injury, Mr. Bastos was receiving no fringe benefits, and as I answered earlier today, I have not reviewed anything to indicate that he received any fringe benefits in the past.

Q. Are fringe benefits typically offered to part-time employees?

A. Sometimes, yes.

Q. Not sometimes, are they typically?

A. Many part-time employees are provided with fringe benefits, yes.

Q. Do you know if any of the employers who employed Mr. Bastos offered any fringe benefits to Mr. Bastos? Did they have a 401(k) plan, did they offer him health insurance, do you know?

A. That I couldn't say.

Q. Do you know if he opted in or chose not to do that?

A. What I do know is what I stated in my report, he was not receiving fringe benefits at the time of his injury.

Q. But you are calculating that he would be getting them in the future, had he continued to work and this accident not had happened, correct?

A. Yes.

Q. Despite the fact that there was no earning history of him ever having fringe benefits, whatsoever?

A. I certainly did assume going forward that he would have begun to receive fringe benefits through his employment, yes.

Q. What would the cost for Mr. Bastos to get health insurance be in New York or

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New Jersey?

MR. CHURBUCK: Could you read that back, please.

(Whereupon, the referred-to question was read back by the reporter.)

A. For himself or for himself and his son?

Q. Well, we're not going to ignore that he has a son. Let me ask you this. Did he have any health insurance before this accident for himself and his son?

A. I think I answered this many times, as I indicated in my report the plaintiff was not receiving any fringe benefits at the time of his injury.

Q. So now you're projecting that he will need health insurance and that he will have to buy the health insurance and cover himself and his son; is that what you're doing?

A. No. What I've done is assumed that had he not been injured and he had obtained full-time employment in the future,

that's as part of his compensation he would have received fringe benefits including health insurance.

Q. Did you calculate that he would get it covering his son because a family plan obviously costs more than an individual plan; did you do that?

A. I did not specifically do that in this case. As I mentioned earlier, the employer cost of employee compensation upon which I rely are average figures, those would include single plans as well as family plans.

Q. Did you ever meet his son?

A. No.

Q. Did you ever meet the son's mother?

A. No.

Q. Do you know that he lives primarily with the son's mother?

A. That I didn't know.

Q. Do you know if the son is covered under the mother's health plan?

A. That I don't know.

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Q. Table five. Let's look at table five, which is --

A. We don't have table numbers in our report. I don't know which table you're referring to.

MR. MEZZACAPPA: Off the record.

(Whereupon, an off-the-record discussion was held.)

MR. MEZZACAPPA: Withdrawn.

Q. Did Dr. Schuster tell you pre-injury that this plaintiff would only work in private industry?

MR. CHURBUCK: Just note my objection to form. She testified she never spoke to Dr. Schuster.

Q. Did Dr. Schuster's report indicate that this plaintiff would only work in private industry?

A. I don't believe so, as I noted in paragraph nine on page five of my report, Dr. Schuster stated if Mr. Bastos had not been injured, an earning potential of approximately $55,770.25 per annum could be expected with an unimpaired work life

congruent with his similarly educated peers.

Q. If I hire an expert and my expert issues a number of what he feels, he or she feels Mr. Bastos could earn, would you recalculate these numbers?

A. Would you pay me.

Q. I'm paying you already. I appreciate your humor, I do, I think you're very funny; no, you're my adversary I have to pay you today, isn't that enough anyway, would you.

A. I would most likely not recalculate my figures based on your expert report unless I was specifically asked to do so.

Q. What if I had a better expert?

A. I think that's up to the jury or trier of fact to decide who has the best expert.

Q. If you're on the stand at trial and the plaintiff's expert, Dr. Schuster, testifies and he gives you certain numbers and you calculate your numbers based on that, like you told us you did, and if my

expert gives you different numbers, are you willing to sit there and calculate for the jury what those numbers would yield?

A. As I indicated a moment ago, I suppose if I were asked to recalculate my numbers based on some other assumptions, I probably could do so.

Q. Thank you. Now, you calculated a percentage for what healthcare would cost at 10.2 percent, correct?

A. Yes.

Q. Are you saying that regardless of what he made, let's say he get a job with Citibank as a clerk moving mail in the mailroom, does he pay 10.2 percent of his salary for that medical care, and does the executive upstairs making a hundred thousand dollars pay 10.2 percent or is there a difference?

A. The 10.2 percent that we're discussing is not what Mr. Bastos would pay, but rather it is what his employer would pay for health coverage for him.

Q. But why should the defendants

here, if there's a liability finding by a jury and they have to calculate figures, why should we be charged with 10.2 percent of all his future salaries for medical care, if that's not what he has to pay, because we have to make him whole and compensate him, but we can't make him better than whole and if he doesn't pay 10.2 percent for health insurance, how does it make sense to use that number to calculate for Mr. Bastos?

A. Again, as I answered earlier today, the appropriate measure of the loss of health insurance is the employer cost, but having said that if I look at Exhibit 1 and I look at what Mr. Bastos would have earned in the year 2015, had he not been injured --

Q. I'm sorry, before you finish I didn't mean to interrupt you; what table were you on?

A. Exhibit 1.

Q. Okay, go ahead?

A. If we look at 2015, based on the statistical data cited in my report and also

the opinion of Dr. Schuster, I estimated that Mr. Bastos would have earned roughly $40,000 in the year 2015. Ten percent of $40,000 would be approximately $4,000, that is based on my research and my knowledge, actually less than the annual premium would be for a single plan for Mr. Bastos with respect to health insurance.

Q. But getting at your first condition, so you have a man making $40,000 when the greatest he ever made was $8,000 in any prior year prior to the date of his injury; is that correct?

A. I do have a plaintiff that didn't make a lot of money in his early 20s who would begin a career path where he's earning about $40,000 in 2015, that is correct.

Q. That's at age 27 according to Exhibit 1, correct?

A. Correct.

Q. So he went from $8,000 in 2012 or 2013, whatever the year it was that he made the $8,000. Now you have him earning $40,000 and in the -- you have him earning

that steadily through age 32, and then you bump him up to 58,911, correct?

A. Not technically, if you look at column five, you will actually see his earnings progressing each year.

Q. Fine, my mistake, thank you. The gross earnings, just so I'm clear, you have 50 percent in 2015 of 40,000 being 20,000. Where did you come up with the 50 percent?

A. If you look on pages seven and five, you'll see that we do assume that Mr. Bastos would have begun the employment described in Dr. Schuster's report on July 1, 2015.

Q. So, you assume that and you put these numbers in and if those numbers are wrong, if Schuster is wrong, then these numbers are wrong in Exhibit 1, right?

A. As I indicated earlier today, if for some reason Dr. Schuster changed his opinion then it is possible that my calculations would also change.

Q. Aside from Dr. Schuster's opinion, you seem like a bright woman, you've been on

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earth for a while, I'm not going to ask your age. What is the likelihood if the jury were here right now, what is the likelihood that a man who earned $8,000 in 2012 or 2013, before he was injured, is going to then earn $40,000 the next year; what is the statistical likelihood of that?

MR. CHURBUCK: Just not my objection to form.

A. I'm not sure I follow your question.

Q. Forget about the charts for minute. Just be a human being. I'm sitting here and I'm telling you that somebody that earned $4,000 in one year, $8,000 in another year. What's the likelihood, what's the statistical probability of a person with that earning history turning around the next year and earning $40,000; how often does that happen?

MR. MEZZACAPPA: Objection to form?

A. I don't know, I can't answer that questions specifically but what I certainly

could say as an economic expert which is the capacity in which I have appeared here today, the earnings that Dr. Schuster has referenced in his report are right in line with statistical data for males of Mr. Bastos' level of education and his age.

Q. What about males that smoke pot as much as Mr. Bastos does?

MR. CHURBUCK: Objection to form.

A. The statistical data is again based on the actual population of males. I would assume that some, if not many of them, smoke marijuana.

Q. But do these statistical data really account for that? Do they account for people who decide to use drugs, do they do that?

A. As I mentioned a moment ago, the statistical data is based on the actual experience of the population, a population that I'm quite sure includes people who use a wide variety of drugs and, of course, also includes people that don't.

Q. But when the statisticians go out

and they send a survey, how likely do you think it is that people are checking any box or admitting they're doing this, like smoking marijuana. How much people are putting that on a questionnaire and sending it back into the statisticians that take this information?

A. That's actually, completely irrelevant, the point is that the statistical data is based on the experience of people in the actual population, whether they check a box off or not. Indicating that they spoke marijuana, for example, doesn't change the fact that certainly some males in the population do smoke marijuana, and therefore, they are reflected in the data upon which I rely on.

Q. Don't you think what's really completely irrelevant is the statistics about the average wage earner, which so far exceeds what Mr. Bastos ever earned prior to his injury?

A. Not at all because you're assuming that again in the actual population there

are no males who simply didn't earn a lot of money in their early 20s, and again the data is based on the actual population of males in the United States, many of whom did not get on their career path until perhaps their early to mid-20s.

Q. And some of them never get on their career path, and they stay home with mom a dad for a long time, right?

A. Could be and some get on the career path and they take off and earn much more than the average, that's correct.

Q. But you've given him every benefit of doing all those things that the average person his age should be doing, correct, and the average person of his age should be earning correct?

A. I don't know that I'd say I've given him any benefit, if I wanted to give him any sort of so-called benefit, there are much higher numbers that I could have used. I used the median or the average figures in this case because of the fact that there is always a possibility that an individual may

do very, very well and there is a possibility that they may not do very well.

The most appropriate measure to use is to use the median earnings. Now greater significance in this case, the median earnings are consistent with Dr. Schuster's vocational opinion about Mr. Bostos' earnings capacity.

Q. You're aware that Dr. Schuster's opinion just took the earning capacity of this particular person and cut it in half, right? He just took 50 percent and lopped it off; are you aware of that, the figures that he comes up with?

MR. CHURBUCK: Note my objection to form.

A. What Dr. Schuster did, I believe, at least based on my review of his report is indicate that Mr. Bastos will have an additional approximate 50 percent loss in lifetime work force participation.

Q. What he meant by that is 50 percent loss in future economic ability to earn a living, he just cut the salary in

half, that's what he did. We can call it whatever we want, but he took 50 percent, he divided by two the numbers that an average male would earn, he just halved them and you ran with that figure to come up with your numbers, correct?

A. Not at all. In fact, we did not do what you just described. What we did was we interpreted Dr. Schuster's opinion very literally, and rather than just to use your language, lopping his earnings in half, what we did instead, if you look on page 12 of our report, is we made a 50 percent downward adjustment to our work life adjustment. So, we took Dr. Schuster's opinion very literally, and rather than cutting the earnings in half, we reduced the work life adjustment by 50 percent.

Q. You really did move away from Schuster's numbers and opinions in your report, you said no before but now you're telling me you really did move away from it, correct?

A. Not at all.

Q. You embraced it?

A. Dr. Schuster's report, if you look at page six paragraph 12 of our report, you'll see that we have a quote from Dr. Schuster's report where Dr. Schuster says that the plaintiff can be expected with an additional approximate 50 percent loss in lifetime work force participation, and we took that and we applied that to our work life expectancy figure, which is the appropriate way to apply that 50 percent reduction.

Q. When you say work life expectancy, you mean the number of years he's going to live, don't you?

A. No, not at all. If you look at paragraph four of our report, you'll note that we talk about work life expectancy tables and these tables are a reflection of the work force participation that an individual is expected to experience.

Q. Would you be surprised if Dr. Schuster answered that question exactly the opposite as you just did?

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A. Answered what question in what way?

Q. The last question I asked you, he gave the exact opposite answer that you just did, would you be surprised?

A. I don't know that I would be surprised. I'm not sure I can answer that without having a more full understanding of what Dr. Schuster's answer was and what his intention was.

Q. Did you rely on Dr. Schuster's opinion that pre-injury Mr. Bastos could hold down 36 percent of the available jobs?

A. I did not use that figure specifically in my calculations, no.

Q. Did you rely on the fact that he says post-injury he could only hold two and a half percent of the jobs?

A. I also did not rely specifically upon that figure, no.

Q. So you didn't adopt his estimates of the number of available jobs out there per or post-injury, correct?

A. I suppose I implicitly did because

what I relied upon, of course, was Dr. Schuster's opinion about the earning potential of Mr. Bastos both pre- and post-injury.

Q. But you moved away from his calculations of two and a half percent pre and post completely, and you went slowly with the data for people or males who had one year of college in the United States, isn't that what you did?

A. No. That's actually completely incorrect. As I mentioned a moment ago, I relied upon Dr. Schuster's opinion about Mr. Bostos' earning potential both pre- and post-injury, specifically what Dr. Schuster relied upon to reach those figures I couldn't say. I could surmise that the 36 percent and 2 percent figures that you mentioned a moment ago might be things upon which Dr. Schuster relied when he ultimately formed his opinion of earning potential that I used in my calculations.

Q. The calculations that you used, the average statistical data for males would

include someone working as emergency medical technician, right, for an example?

A. I suppose it might.

Q. And an ironworker, correct?

A. It could.

Q. Did you choose a different database than Schuster's pricing of $55,000, cut in half?

MR. CHURBUCK: Objection to form.

A. When you say Schuster's $55,000 figure cut in half, what are you referring to?

Q. You read Dr. Schuster's report and you relied upon it, correct?

A. I did.

Q. Let's look at Dr. Schuster's report. Do you have it in front of you?

A. I do.

Q. In his conclusion on page 20 Dr. Schuster said, "If Mr. Bastos had not been injured, an earning potential of approximately $55,770.25 per annum could be expected with an unimpaired work life congruent with his similarly educated peers;

do you see that?

A. I do.

Q. And then he reduces this to $39,000 because there's periods when he might not find employment et cetera, and he takes the $39,000 and he cuts it in half to $19,000 per year; do you see that?

A. I do.

Q. That's his conclusion. That's what he says that he uses as Mr. Bastos' earnings?

A. That is exactly what we stated in our report, but it is unfortunately not what you asked me about before. You asked me before --

Q. Let me just --

MR. CHURBUCK: Let her finish.

A. You asked me before why I didn't use $55,770.25 times 50 percent because you represented to me that that's what Dr. Schuster had done. I don't think that's what Dr. Schuster did. The 50 percent reduction in lifetime workforce participation was applied by Dr. Schuster to

his opinion of Mr. Bastos' post-injury earning capacity of $39,621.50.

Q. But you move away from Schuster and his numbers and his conclusion, and you use general average statistics to come up with the life care numbers and the lost wages for this plaintiff, do you not?

A. No, I really don't.

Q. I think you really do?

A. The reason I say that is because as I note in my report, I note very clearly in my report that Dr. Schuster's earnings or his opinion is consistent with the statistical data that we rely upon.

Q. But your reliance on the statistical data comes up with numbers that far exceeds Schuster's number when you calculate the lost wages of this plaintiff?

A. Not at all.

Q. Did this plaintiff ever work in any other state other than New York and New Jersey?

A. I couldn't say for sure whether he did or not.

Q. You don't talk about his earnings in New York, though, do you?

A. No, I don't.

Q. You only talk about the earnings in New Jersey?

A. I did calculate his earnings based on New Jersey rates, that is correct.

Q. This accident happened while he was working in New York City, are you aware of that?

A. Yes.

Q. The only construction job he ever had and the only two days he worked construction were in New York City, one in Queens and one in Manhattan; are you aware of that?

A. I don't recall whether I was specifically aware of that or not.

Q. The 3.8 percent that's used to calculate an increase in numbers per year, do you recognize that figure that you used?

A. That figure represents the annual increase in both pre- and post-injury earnings in future year.

Q. Does that 3.8 percent really apply to a home health aide? Do they increase their salary 3.8 percent each year?

A. The 3.8 percent that I've used here is my estimate and my projection of how wages will increase each year going forward.

Q. Can you point out to me one home health aide that routinely gets 3.8 percent more each year for doing what they do year to year?

A. I can tell you that wages in healthcare support occupations rose in the mid-2000s by perhaps 4 percent. My calculations of how much these costs will increase in future years are based on two sources, not only how much costs have increased in the past but also how much costs are expected to increase in the future.

Q. But Mr. Bastos would have to pay an agency. He's not going to directly pay a nurse's home health aide, he's going to go to an agency and pay an agency, correct?

A. Probably, yes.

Q. That agency is not going to increase that home health aide salary by 3.8 percent per year, are they?

A. I would not agree with that statement at will. As I said, if you go back and you examine cost and wages prior to the most recent recession, you will see that cost and wages rose fairly significantly in years proceeding a recent recession.

Q. But you can't ignore the recent recession because when you go back 20 years, we had a recession that lasted five or six years in there from '07, '08, '09, '10, '11, '12 right. The numbers didn't get better until '13?

A. That's not technically correct.

Q. You can't ignore the recent recession because in the last 20 years it was a quarter of those years, and if you look at the healthcare data that's available in the last 20 years the actual increase is less than 3.8 percent and certainly for home health aide. It's nowhere near that figure, but you just used that figure and

artificially inflated the numbers here?

A. I'm not sure I would agree with some of your references, but your suggestion that I have not taken into account the recent recession is simply not a true statement.

Q. It was your answer that made me question you that way, Ms. Kucsma. You said if you look at the data ignoring the recent recession, then statistically things have happened. You can't ignore the recent recession because it's one-quarter of the last 20 years of our lives?

A. First of all, the most recent recession, I don't believe lasted five years. You'll have to look at the -- or I could look at the national bureau of economic research for the beginning and ending date of the recession, but the end date for the most recent recession was, I believe, the second quarter of 2009 that was the trough, but having said that my only point before when I referenced the rates back in the early 2000s was that for me it

is important for me to consider both data from the most recent recession as well as historical data prior to the most recent recession as well as projections about anticipated future wage growth, and those are all of the things that I considered in my analysis.

MR. MEZZACAPPA: Move to strike that which was unresponsive.

Q. I wasn't asking you your opinion of the recent recession. I think most people would fairly answer the recent recession did not just last until 2009. I think it started in '07 and it blew right past 2009 to maybe 2011, regardless of your opinion or what the statistical data show --

MR. CHURBUCK: Just note my objection. This sounds like a debate.

MR. MEZZACAPPA: It is. Let me finish the question.

MR. CHURBUCK: There was no question.

Q. If you ask the average person on the street, which will comprise our jury,

don't you think you'll get an answer that's longer than the second quarter of 2009?

A. You have asked me to join you here today as an economic expert, and I'm providing to you not only my opinion, but also information that is published by the national bureau of economic research, the organization that is considered to be the leading guide with respect to the timing of recessions and business angles in this country.

Q. Thank you. The plaintiff still resides in Newark today. I want you to assume the plaintiff still resides in Newark today. Isn't Staten Island, New York, closer than some parts of New Jersey from where he lives?

MR. CHURBUCK: You're asking an economist a proximity question, really? Just note my objection.

A. I suppose that it probably is true that there are fewer miles between Newark, New Jersey and Staten Island, than there are between Newark, New Jersey, and some other

parts of New Jersey, yes.

Q. For example, Cape May, New Jersey or Camden, New Jersey?

A. That probably, yes, although I couldn't say for sure.

Q. Well, Camden is down near Philly so I think it's closer to go to Staten Island than it is to go to Philly from Newark, would you agree?

A. The number of miles may be shorter. I'm not sure depending on traffic and bridge traffic, whether it would be shorter to get there I couldn't say, but I do think Staten Island is probably geographically closer than Cape May or Camden.

Q. Would you agree that 25 percent of the males in this country do not work year-round full time?

A. I would not necessarily agree with that statement, no.

Q. Would you agree that the labor force in the United States is approximately 300 million people?

A. I would also not necessarily agree with that statement.

Q. What percentage of all workers, regardless of what you would agree with, are full-time workers?

A. That I couldn't say off the top of my head.

Q. Did you do all the work on your report or did others assist you?

A. I did have the assistance of one of my analysts.

Q. What is the name of one of the analysts who assisted you?

A. His name is Ryan Guiliano.

Q. What percentage did he assist you on in the compilation of your report?

A. He assisted me throughout the preparation of the report, he did assist me with some of the research he assisted me with some of the typing. I don't recall specifically what he did right now, but anything he did do was under my direct supervision.

Q. What is his educational

background?

A. He has a bachelor's degree.

Q. In what?

A. I believe it is in either economics or finance, I've forgotten as I sit here today.

Q. On page 11 of your report, you cite the full-time earnings in the United States 2013 edition, correct?

A. Yes.

Q. And that's from Kansas?

A. That's where it is published, yes, but the data itself is actually derived through from the American community survey, which is U.S. government date.

Q. But the people who publish this study from Shawnee Mission, Kansas, in 2014, do they work for any defendants or just for plaintiffs?

A. I don't believe they work for anyone. I believe what they do is simply summarize U.S. government data and publish it in the publication referenced in our report.

Q. The Schuster report that says that the average male would earn $39,000 a year because sometimes the 55 is artificially inflated, they don't work full time. You didn't really think that you used a 25 percentile number in your report, correct?

A. Yes, as I noted on page six of my report, the figures cited in Dr. Schuster's report are consistent with those earnings of the 25 percentile.

Q. But Schuster didn't use the 25th percentile, did he?

A. He provided an earnings figure that is consistent with the 25th percentile.

Q. His earnings figures were more consistent with the 50th percentile, wasn't it?

A. Which figure are we talking about?

Q. His earnings, 55,000, 30,000 and then he halved it?

A. He has two different earnings figures. One is for the pre-injury earning capacity, one is for the post.

Q. I'm just talking about pre-injury?

K. KUCSMA

A. The pre-injury is consistent with the median earnings, that is correct.

Q. Which is 50th percentile, correct?

A. Correct.

Q. Would you agree that over the last 20 years the increase in earnings for physicians is 2.97 percent?

A. I would not necessarily agree with that statement.

Q. Would you agree that in the last 10 years it's been 2.5 percent?

A. I also would not necessarily agree with that statement.

MR. CHURBUCK: Two questions before this, what was the question?

MR. MEZZACAPPA: 2.97 percent of physicians over 20 years and 2.5 percent of physicians over the last 10 years.

Q. Would you agree that there's been a downward trend, not an upward trend in the healthcare wages that physicians, nurses and other medical professionals earn in the last 10 and 20 years?

A. I would agree that in recent years there has been a downward trend in the cost of some components of medical care, yes.

Q. Are psychologists included in other medical professionals in your opinion?

A. Yes.

Q. Are podiatrists?

A. Yes.

Q. Are physical therapists?

A. Yes.

Q. Are occupational therapists?

A. Yes.

Q. Would you agree that what home health aides do, run to the store, help toilet a patient, get things for them, answer the phone, things like that, these are not skilled medical workers that need a degree, an M.D. degree, a nurse's degree, a PT degree correct? They're something less than that?

A. I would not agree with that statement, but to my knowledge home health aides frequently do not need the same types of certifications that some of the other

professionals do that you mentioned.

Q. Do you need to go to college to be a home health aide?

A. I don't believe that in general you need to go to college to become a home health aide, no.

Q. And you still stand by your 3.8 percent increase for home health aides as a number, as a percentage?

A. I do based on the data I reviewed to date, yes.

MR. MEZZACAPPA: I have no further questions. Thank you.

THE WITNESS: Thank you.

MR. MEZZACAPPA: Let's just take a quick break before you begin.

(Whereupon, at 3:08 P.M., a brief recess was taken.)

EXAMINATION BY

MR. CHURBUCK:

Q. Good afternoon, Ms. Kucsma. My name is Robert Churbuck and I represent the third-party defendant in this matter which is Brasal Construction. I've got some

follow-up questions I'm going to ask you.

Again, the same rules apply. If you don't understand my question, let me know, okay?

A. Yes.

Q. If I understand your report correctly, you did an analysis of what Mr. Bastos would have earned but for the injury, that's one part of the analysis, correct?

A. Yes.

Q. And the other part of the analysis is what you think he's going to earn now that he has been injured; is that what you did in part?

A. Yes.

Q. And when you calculated the earnings irrespective whether pre- or post-injury, both of them you applied a 3.8 percent growth rate; is that correct?

A. In future years yes.

Q. When you arrived, however, at the 2015 figure, you applied a growth rate, I believe, of 1.8 percent for 2014 and a

1.2 percent for 2015, correct?

A. I don't think that --

Q. Let me refer to you page 11, right at the bottom.

A. The bottom of page 11?

Q. Bottom paragraph you found out what the median wage was in 2013 according to the chart, correct?

A. Correct.

Q. Then in order to bring it up to $2,015, you applied the growth rate of 1.3 percent for 2014 and 1.2 percent for 2015, correct?

A. That is correct, yes.

Q. Now, we're on the same page?

A. We are indeed.

Q. What's been the growth rate for 2015 so far this year?

A. That I couldn't say.

Q. It's available though, is it not?

A. No, the full year-end 2015 data or actually the data, I should say, for 2015 has not been published by the bureau of labor statistics through its occupational

employment statistics. That date is published once each year, generally, in about May of the following year.

Q. The figure of 3.8 percent, that's what you have estimated his raise will be each year, correct?

A. On average I have --

Q. On average?

A. Yes. I have estimated his earnings will increase by 3.8 percent each year in the future.

Q. It wasn't 3.8 percent in 2014, it wasn't 3.8 in 2013, correct, because you used different figures, they were 1.2, about 1.4?

A. That is correct.

Q. So you have made an assumption that from this point going forward, it will increase on 3.8 percent average?

A. I have made that determination based on two sources, based on actual wage growth in past years, as well as projections of future wage growth published by the board of trustees of the Social Security

Administration.

Q. You're aware that at the time of the accident, Mr. Bastos was working two jobs, correct?

A. I don't recall whether or not I was aware of that specifically.

Q. I don't mean he's working two jobs at the exact same moment, but I mean in a given day he was working two jobs; are you aware of that?

A. Again, I don't recall specifically whether that was the case or not. There may have been some discussion of that in Dr. Schuster's report, I don't recall as I sit here today.

Q. I want you to assume that on the day of the accident he was working as a construction worker, but he also had a part-time job where he worked at the Brick City Diner?

MR. MEZZACAPPA: Bar and Grill.

MR. CHURBUCK: Brick City Bar and Grill. Same thing. Leave me alone.

Q. First of all, with regard to and

he was a waiter at the Brick City Bar and Grill, I want you to assume that. Either one of these two jobs, does it make any difference as to the 3.8 percent figure that you used?

A. The figure that I used is based on projections of future wage growth across all occupations.

Q. So, it's not just waiters, it's not just construction workers, its not just lawyers, it includes all occupations; am I understanding you correctly?

A. That is correct, yes.

Q. That takes into account that some areas of the employment will get a bigger raise one year, but other areas will get a lesser raise or a lesser increase?

A. The projections of future wage growth as well as the actual wage growth in past years certainly takes into account differences in wage growth across occupations. It also takes into account differences in wage growth over time that different occupations may experience.

Q. I want to take you to -- before I get to that. Part of fringe benefits you said was health insurance and contributions to retirement plans?

A. Yes.

Q. Retirement plans include Social Security, correct?

A. That is correct.

Q. With regards to Social Security, both the employer and the employee contribute equally to Social Security, correct?

A. That's correct but I actually want to back up for a minute and make sure I didn't misunderstand your previous question. The retirement plan date that I relied upon --

Q. I didn't ask you about the data that you relied upon. I'm just asking you a question generally about Social Security?

A. Okay.

Q. That contribution, you agree with me that it's equal, both employer and employee?

A. That is typically correct, yes.

Q. Then the ten-point something percent of fringe benefits that you included on top of Mr. Bastos' salary, you didn't decrease his salary by the 6.5 percent that he would pay a year to Social Security, did you?

A. That's exactly why I started to answer the question the way I did before. The data that I used to determine the employer contribution to fringe benefits does not include any employer contributions that are legally required. So, in other words, I have not included the employer contribution into plans like Social Security in my analysis.

Q. But the fact remains Mr. Bastos, if he is employed according to your exhibit here, he is going to have to pay it, correct? He doesn't have a choice?

A. That is correct.

Q. So, 6.5 percent of the salary up to $85,000 a year at the present time for a single person he would have to pay?

A. Correct, and so would his employer.

Q. Yes, and you have not deducted that in terms of what his loss -- you have not taken a deduction for that in terms of his lost earnings?

A. I haven't added the employer contribution either.

Q. But that wasn't my question. My question was, you haven't deducted it from what you project he's going to earn?

A. I did not include Social Security retirement benefits at all in my analysis, that is correct.

Q. Also, in your analysis, you did include health insurance, correct?

A. Yes.

Q. Not every employer has to provide health insurance; is that not correct?

A. Not every employer, I suppose, does provide health insurance, that's correct.

Q. It only applies to companies that employ 50 persons or more; is that not

correct?

A. When you say it only applies, what are we talking about? There are lots of small companies that provide health insurance.

Q. Employers are only required to provide health insurance so long as they employ 50 persons or more; is that not correct? I'm talking about required.

A. Off the top of my head that may be correct, I don't specifically recall.

Q. You agree with me that he's not receiving any health insurance at the time of the accident or just prior to the accident?

A. That is correct.

Q. So far as you know, he had never worked in any employment where he received any of those benefits including health insurance?

A. I think we covered this earlier, but that's correct.

Q. Your analysis, whether it's pre-injury or post-injury, makes the

assumption that as of July 1, 2015, Mr. Bastos is suddenly on a career path?

A. I did assume that he would be on his career path as of July 1, 2015, that is correct.

Q. What did you base that on?

A. I based that in part on Dr. Schuster's opinion and in part on the fact that at the time of his injury he was not yet on that career path.

Q. We can agree at the time of the accident he's not on his career path, correct?

A. Yes.

Q. But what I want to know is why did you base July 1, 2015, or make the assumption that as of July 1, 2015, Mr. Bastos was suddenly going to be on this career path?

A. I used July 1, 2015 because my general assumption was that in the future, meaning based on the time I wrote my report, Mr. Bastos either would have been on that career path or likely will be on his

post-injury career path. So, it was simply in the future at the time I wrote my report.

Q. It could very well be that he doesn't go on to his career path, whatever it is, and assuming no accident he may not do this until he's in his 30s, correct?

A. May not do?

Q. He may not be on his career path until he is in his 30s, correct? Some people are, some people aren't?

A. As I mentioned earlier today, that is the reason I rely upon average or median earnings, yes.

Q. Let me ask the question to you a different way. April 14, 2014, Mr. Bastos is not on his career path. What leads you to the conclusion or the assumption that on July 1, 2015, some 15 months later, he's suddenly going to be on his career path?

A. Well, as I indicated a moment ago when I prepared my report, I simply assumed that absent the injury he would have gotten started on that career path in the future. I also assumed that in his impaired state,

he would have returned to work in some capacity quote, in the future, which at the time I wrote my report, I used as a date of July 1, 2015.

Q. Let's concentrate strictly on the one that you did pre-injury. Assuming no accident, what event are you assuming happens that suddenly gets him from not being on his career path to 15 months later he's now on his career path?

A. I simply assumed that absent the injury, he would have begun that career path on July 1, 2015. I didn't assume any singular event got him to that point, but rather that was the point in which he would begin a career path, that would allow him to earn the earnings potential that Dr. Schuster discussed in his report.

Q. When people are working, they are receiving a salary, whatever, it is correct?

A. Sometimes.

Q. For the purposes of this report you assume when he's working, he'll be getting paid, correct?

A. That is correct.

Q. Have you also considered that during the times he is not working he may be receiving unemployment benefits?

A. Yes, I did take that into account in my analysis.

Q. Where's that in your analysis?

A. I believe that's discussed on page nine of my report.

Q. If we go to the pre-injury lifetime earnings, have you taken into account the fact that there are times he will not be working and collecting unemployment?

A. Yes.

Q. Where?

A. If you look at the bottom of page 10, you will see that we take the lifetime earnings that are presented in Exhibit 1, and we make an adjustment to those earnings to reflect all of the items that are listed towards the top of that page. In other words, we make an adjustment to our calculation of lifetime earnings to account

for work life expectancy, periods of unemployment during which he was not receiving unemployment benefits, fringe benefits and also what we call job-related or maintenance expenses.

Q. So you deducted approximately four and a half percent off the total amount?

A. Yes.

Q. So far as you know, had Mr. Bastos worked full-time prior to the day of his accident for any company or were they all part-time jobs or don't you know?

A. That I couldn't say.

Q. Let me refer you to Exhibit 1 for a minute?

A. I'm there.

Q. I'm sorry. I'm just making sure you have it in front of you. I'm sorry.

A. That's okay.

Q. Just so I understand you correctly, so there's no misunderstanding, you anticipate that his gross earnings from year to year are going to increase by 3.8 percent, correct?

A. Yes and no. The reason I say that is because to understand his progression of earnings, you need to go back to page eight of our report. There are two reasons why Mr. Bastos' earning would have increased each year over time, absent his injury, and also two reasons why I estimate that his earnings will increase over time in his impaired state. One is that as he gets older and older, his earnings will increase as he gains more experience, becomes more productive and so on. That is reflected in the data in the tables on pages 8 and 11, and that is based on data published by the American community survey based on the actual experience of males in the population at various ages. So, one thing that happens to males and their earnings as they age is that as they gain more experience, network more, perhaps get promotions and so on, their earnings will increase simply as a result of them moving up what, we call this age earnings profile.

The second thing that is driving

an increase in an individual's wages over time is the average inflation and general wage growth that's reflected in that figure of 3.8 percent that we discussed earlier, and I mention all of this simply because if you look at both Exhibits 1 and 2 of our report and you look at the gross earnings in the last column, they do not increase by only 3.8 each year.

Q. That was going to be my next question because I sat down here, and I figured it out and I know that the numbers are a heck of a lot more than 3.8 percent. In fact, would you agree with me it's not until he gets to be about 53 that he's actually somewhere around 3.8 percent per annum increase?

A. Correct, and that makes sense because if you look at the tables on pages 8 and 11 you'll see that it's at that point, the 50 to 54-year-old category, where we see his earnings begin to level off so that the only thing driving his earnings at that point are these more general cost of living

adjustments and so on.

Q. I want to phrase the question correctly. Give me a second. Let me do it this way. What occupations, if any, did you assume Mr. Bastos would be working in on a career path?

A. I made no assumption about any specific occupations.

Q. What occupations are you aware of that in 2016 will be giving 8 percent raises?

A. That is not really -- what I should say is that's a bit, sort of suggests that we're not understanding the data properly.

Q. No, I'm just asking a question as to would you agree with me that between 2015 and 2016 on Exhibit 1, Mr. Bastos' gross earnings increased roughly a little over eight percent?

A. That sounds approximately correct, yes.

Q. Do you want to look? I don't want you think I'm making it up?

A. I don't think you're making it up, I haven't performed that calculation myself but that appears to be approximately correct, yes.

Q. So, my question to you very simply is this; what occupation or occupations do you anticipate in the year 2016 will be increasing their employees' salaries by eight percent?

A. I would expect many males in their 20s with some college but no degree to experience that kind of wage growth as they move through their career path.

Q. But back in 2014 and 2015 those numbers were only increasing less than two percent?

A. That's actually not correct and that's why I mentioned earlier that there are two different sources of wage growth. One which is what's reflected by the 1.3, and 1.2 percent is the more general wage growth irrespective of a young person who is moving up on his career path and is experiencing the rather rapid increases in

earnings that we see by looking at the data occurring among young people in their 20s and 30s.

In other words, the data that you see on page eight is actual data from 2013, and it indicates in the year 2013 males with less than one year of college, no degree, who were, say, 27 years of age were making considerably more than individuals in that same year who were between 18 and 24 years of age. The actual data from the year 2013 indicates that as a male increases in age, he experiences rapid increase in his earnings in the 20s, 30s and sometimes even into his 40s.

Q. Based upon the information, though, that you had for Mr. Bastos as to his earnings and, I believe, you only had 2012 and 2013 information?

A. Yes.

Q. Those two tax returns don't fit into this chart, do they?

A. I would --

Q. No, that was a yes or a no?

A. I actually can't answer that yes or no. Again, do those numbers appear on this chart? No, but do some of the males that are reflected in this chart are some of those males of the actual population just like Mr. Bastos? I would say probably yes.

Q. But the trend with Mr. Bastos is in 2012 he's making $8,000 a year and 2013, let me make sure I got this right, I don't want to have it backwards. Yes, in 2012 he's making $8,000. The following year in 2013, he's making something less than $3,000, correct?

A. That's correct.

Q. On your chart, however, it shows that the general trend is that males, generally, their salary is increasing, correct, that's the chart you used?

A. Based on the data yes, for males as they get older and move up their career path.

Q. But strictly with respect Mr. Bastos, Mr. Bastos is going in the opposite direction, is he not?

K. KUCSMA

A. That I definitely wouldn't agree with simply because all I reviewed were W-2s for two years.

Q. I understand that and that's what he gave you he said he was earning, correct?

A. Yes.

Q. He goes from making $8,000 in 2012 to making something less than $3,000 in 2013. Mr. Bastos is not on a real good career path at this point in time, correct?

A. Certainly based on his earnings in 2012 and 2013, it doesn't appear that he has settled into any sort of career or full-time employment, that is correct.

MR. CHURBUCK: Thank you.

MR. MEZZACAPPA: I have two questions.

EXAMINATION BY

MR. MEZZACAPPA

Q. Have you worked with Mr. Sitinas before this case?

A. I believe we may have worked with him on one prior case, but I don't specifically recall as I sit here today.

Q. Can I look through the green folder to further define some of the stuff, because you're going to make copies and send it to me.

A. Sure.

Q. We know your report is there and the other report. We've been through the questionnaire, then you used some of the statistical data.

A. This is the lifetime earnings date. These are the W-2s and tax returns.

Q. And then there's emails?

A. Billing.

Q. This is all done via email?

A. Yes -- well, I shouldn't say that. I think our bookkeeper also faxes the information as well.

Q. Do those fax cover sheets appear in this file?

A. Everything that she sent or received should be in that file.

Q. So there's a variety of emails, September 2 at 4:00 P.M., that was confirming it. There's a letter from your

office to Mr. Sitinas on September 1st. There's a bill, invoice 31375, two pages, a copy of that and --

A. There's this too that got stuck.

Q. Emails and a copy of a canceled check and this letter -- let's see this is from Mr. Sitinas to myself -- no, Michael P. Brennan. See what your brain does. I'm Michael Mezzacappa. I saw the first part.

This is dated April 2, 2015. All right. Could we get a copy of this letter as well.

MR. MEZZACAPPA: Thank you so much. Nothing else.

(Whereupon, at 4:00 P.M., the examination of this witness was concluded)

_____
KRISTIN KUCSMA

Subscribed and sworn to before me this _____ day of _____ 20___.

_____
NOTARY PUBLIC

E X H I B I T S

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K. KUCSMA

C E R T I F I C A T E

STATE OF NEW YORK)
: SS.:
COUNTY OF KINGS)

I, ROSANNE LEBOEUF, a Notary Public for and within the State of New York, do hereby certify:

That the witness whose examination is hereinbefore set forth was duly sworn and that such examination is a true record of the testimony given by that witness.

I further certify that I am not related to any of the parties to this action by blood or by marriage and that I am in no way interested in the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto set my hand this 11th day of September 2015.

_____
ROSANNE LEBOEUF