In The Matter Of:

Eugene Stolowski, et. a. v.

234 East 178th Street and the City of New York

January 13, 2016

Laura Bisignano, Official Court Reporter

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Min-U-Script® with Word Index

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF THE BRONX : PART IA-2
INDEX NO. 8850/05

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EUGENE STOLOWSKI; EILEEN BELLEW, as Administratrix of the Estate of JOHN G. BELLEW, Deceased; JOSEPH G. COOL, SR., JOSEPH G. DiBERNARDO, as Administratrix of the Estate of JOSEPH P. DiBERNARDO, Deceased; BRENDAN K. CAWLEY; JEANETTE MEYRAN, as Executrix of the Estate of CURTIS W. MEYRAN, Deceased.

Plaintiffs,

Trial

-against-

234 EAST 178TH STREET, LLC, and THE CITY OF NEW YORK,

Defendants.

----------x

THE CITY OF NEW YORK,

Plaintiff

-against- Index No. 894/06

234 EAST 178TH STREET, LLC

Defendant

----------x

January 13, 2016
Bronx, New York

BEFORE: HON. ELIZABETH A. TAYLOR,

Justice.

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LAURA J. BISIGNANO
Senior Court Reporter
Supreme Court

(Whereupon, the diagrams were so marked Plaintiff's Exhibit Numbers 152 by the court reporter.)

(Whereupon, the jury enters the courtroom.)

(Whereupon, the following takes place on the record in open court in the presence of the jury among Mr. Cannavo, Ms. Darling, Mr. Whiteley, Mr. Fabian, Ms. Donatello and the Court:)

THE COURT: You may be seated. Good morning, members of the jury. At this time, the Court will recognize Mr. Cannavo.

MR. CANNAVO: Thank you, Your Honor. At this time, Judge, on behalf of the plaintiffs, we will call Kristin Kucsma to the stand. Thank you, judge.

K R I S T I N K U C S M A, a witness called on behalf of the Plaintiffs, after being duly sworn, testified, as follows:

THE WITNESS: Good morning.

COURT OFFICER: For the record, please, state and spell your first and last name.

THE WITNESS: My name is Kristin, K-R-I-S-T-I-N. K-U-C-S-M-A.

COURT OFFICER: And your business address?

THE WITNESS: 293 Eisenhower Parkway, Suite 190, in Livingston, New Jersey 07039.

COURT OFFICER: Thank you.

THE WITNESS: Thank you.

THE COURT: You may inquire, Mr. Cannavo.

DIRECT EXAMINATION

BY MR. CANNAVO:

Q We'll have no problems hearing you, which is good. I want to take you through this. First of all, did you do an economic analysis for the plaintiffs in this matter at our request?

A Yes, I did.

Q All right. Before I get to that, can you just introduce yourself to the Court and jury? Tell us who you are, what you do, your background, and we'll go from there.

A Sure. As I mentioned before, my name is Kristin Kucsma. I am the managing director and senior economist of the Sobel Tinari Economics Group which basically means I am an economist, and most of the work I do involves working with attorneys, both plaintiffs attorneys and defense attorneys, to evaluate losses in litigated matters.

So, when one party sues another party, my job is to evaluate things like lost earnings, lost fringe benefits, lost household services, future medical costs and so on.

I have a Bachelor of Arts degree in economics that I received from Seton Hall University, where I was graduated with highest honors. I also have a Master of Arts degree in economics that I received from Rutgers University, and I'm also technically

ABD, which literally stands for "all but dissertation," and what that signifies over and above the requirements for a Master's in Arts degree in economics, I completed all of my course work, I passed all of my qualifying examinations in pursuit of a P.H.D. I wrote part of my dissertation, but I have not completed the dissertation.

Q Okay. And tell us what you do as an economist in trying to figure out these numbers.

A Sure. As an economist, I studied a wide variety of factors that we're all familiar with. I study things like inflation rates. I want to understand why prices rise sometimes, why they fall during other times, what that means, what causes that to happen.

I also study labor markets. I study things like jobs and unemployment rates, again, so that I can have an understanding of why unemployment rates are very high sometimes, why they don't seem to come down for a long time, what the government might be able to do to help that.

I study other things like interest rates, wages and so on. And in each of these cases, my primary focus is to understand why these things move the way they do over time and understand what causes them to move, so that I can form an opinion about whether prices and interest rates and wages are going to rise or fall going forward in the future.

Q And how long have you been doing this work as an

economist?

A I have been an economist since in or around 1992. That's the point at which I started what I would like to call my first career as a college professor. I was a member of the full time faculty at both Seton Hall University and Drew University, and I was an adjunct professor at Rutgers University and St. Peters College.

I taught primarily economics at both the graduate and undergraduate levels, but I did on occasion teach finance and statistics as well. I did that until January of 2008, or I should say I did that until the summer of 2006.

I did a little consulting, and then in January of 2008 I started what I like to call my "second career" as what I do today as an economist with the Sobel Tinari Groups.

Q You were a professor at these colleges from the '92 to 2008 ---

A 2006.

Q You taught basically in the field of economics?

A Yes.

Q And have you been qualified as an expert in the field of economics and economic analysis in the past?

A Yes, I have. Many times.

MR. CANNAVO: All right. Judge, I would offer Miss Kucsma as an expert in the field of economics and economic analysis.

MR. WHITELEY: No objection, Judge.

MR. FABIAN: No, Your Honor.

THE COURT: Thank you. Miss Kucsma is deemed an expert in economics and economic analysis.

You may continue, Mr. Cannavo.

MR. CANNAVO: Thank you. All right.

Q Did we ask you to do an economic analysis for John Bellew, Jeffrey Cool, Joseph DiBernardo and Eugene Stolowski for various elements of their loss?

A Yes, you did.

Q All right. To save some time, did you perform an analysis, let's start with Mr. Bellew, did you perform an economic analysis regarding the loss sustained by the estate of John Bellew?

A Yes, I did.

Q All right.

MR. CANNAVO: Your Honor, with the Court's permission, Miss Kucsma has prepared those documents that we've viewed last week to make it easy for the jury to just follow, and I'd ask she be allowed to step down now and explain her analysis for the Court and jury.

THE COURT: Yes. You may step down.

THE WITNESS: Thank you, Your Honor.

(Witness complies.)

Q So, if you could just take us through it, take whatever

you need and explain what you found for Mr. Bellew and what your process was?

A Sure.

MR. WHITELEY: Judge, note our objection to the recent exchange of Miss Kucsma regarding Miss Bellew we only received for the first time last week. This is the new exchange. I don't know if it's dated. It's dated 2013.

THE COURT: Mr. Whiteley, I would like to remind you there's a jury here. If this is an issue to be discussed outside the presence of the jury. Your objection is overruled.

You may continue.

Q Go ahead. Just explain it to us. I'm not going to ask you what the numbers are. You tell us what you did and what you found.

A Sure.

MR. CANNAVO: Can everyone see back here? Why don't we bring it over here? Judge, let me move it over here.

THE WITNESS: Thank you.

A In this case, I started by considering the economic losses to the survivors of John Bellew, so, specifically, his wife and his children. And the first thing that I did was review a variety of documents provided to me, documents that demonstrated how much Mr. Bellew had been earning as a

firefighter in the years preceding his death.

Other documents about some of the fringe benefits that as a firefighter he receives various retirement benefits, pension benefits and so on.

I also reviewed some information provided to me about the household chores, the types of things that Mr. Bellew did around the house, maintaining the home, chores around the house, assisting the other family members with the household services. And once I had reviewed all of those documents I was then able to calculate the economic loss to Mr. Bellew's family.

And before I explain very specifically how I calculated these figures for Mr. Bellew, I used basically the same method for each of the firefighters that I'm going to discuss today. I reviewed basically the same sorts of documents for them in order to form my opinion.

MR. WHITELEY: Your Honor, we're going to object this document being displayed to the jury. It's not in evidence. There's no calculation that support it, and as I said it was recently exchanged. This is a document now being presented to the jury ---

THE COURT: Mr. Whiteley, again, we're in front of the jury. I warned the attorneys that during trial you're not to make speaking objections.

MR. WHITELEY: We object to the document being ---

THE COURT: Let's step in the back. We're off the

record.

(Whereupon, there was an in camera off the record discussion among Mr. Cannavo, Ms. Darling, Mr. Whiteley, Mr. Fabian, Ms. Donatello, and the Court.)

THE COURT: We're on the record.

MR. WHITELEY: Your Honor, Defense 234 renews its objection to the document being displayed to the jury if it's not in evidence.

THE COURT: Mr. Cannavo.

MR. CANNAVO: Judge, I will ask Miss Kucsma the basis for her calculations, and I won't offer it into evidence, but I just need the economist, Judge, to explain these numbers, and I'm going to ask her each element and how she got it.

THE COURT: Okay. And members of the jury, generally what happens when we have an expert that comes up and they're working on calculations, generally, they will handwrite it, you know, to show to the jury. But as we have issues with penmanship and everything and just for the sake of ease, the Court is going to allow the witness to work with her calculations that she came up with on the board.

You may continue, Mr. Cannavo.

MR. WHITELEY: Objection, Judge.

Q Miss Kucsma --

THE COURT: Overruled.

Q -- if the jury did not have this ---

And by the way, you were the one that prepared these typed sheets of these calculations?

A Yes.

Q You didn't ask me to do it; right?

A That is right. I brought them with me from New Jersey.

Q If we did not have those typed out numbers, you would have to write them down in hand each item?

A Yes.

Q And you would be able to do that for us?

A Certainly.

MR. CANNAVO: Thank you, Judge.

Q We're going to do it a little bit differently. Can you just tell us and can you explain each item that you typed out formulated on this economist analysis?

MR. WHITELEY: Has the document been marked for ID, Judge?

MR. CANNAVO: Yes, they are.

MR. WHITELEY: Do you have the ID number for the record?

THE COURT: That's something that the clerk takes care of the markings.

MR. WHITELEY: I believe it's marked.

MR. CANNAVO: 152 A, B, C, D and I think they missed a couple. They're going to be marked 152 for

identification. I'll take them one step at a time, Judge.

MR. WHITELEY: We object.

Q Miss Kucsma, if I'd ask you to do this evaluation and analysis, would you have been able to write out all these numbers for us?

A Certainly.

Q Okay. Instead of doing that, let's start with each item and explain to us what you did for John Bellew and how you got to those numbers on the board.

A Sure. I started off by calculating the loss of adjusted earnings or loss of adjusted income. In other words, the first thing I examined was the additional income that the Bellew household would have had if John Bellew had not died. So, if he had not died in 2005 and he continued his employment, he would have earned money and that would have provided income for the household in general as well as, of course, for his wife and children. So, that was where I started.

Q And just so we're clear, you did the initial evaluation on this over two years ago; correct?

A That is correct, yes.

Q And you updated them because two years have passed and that would be two more years of loss to the family?

A That's correct. I also updated my calculations because when I prepared my original report in 2013, I used all of the economic data, all of the collected bargaining agreements,

everything that was available to me at that time.

Now, of course, in early 2016, there's new economic data available to 2014 and part of 2015 and a greater significance for this analysis, there also is a new collective bargaining agreement. So, it's very important in order for me to make sure my opinion offered today is as accurate as possible to make sure that I made these changes to reflect the changes in the economic data and the collective bargaining agreement that determines the earnings of the firefighters.

Q So, let me ask you. I'm going to ask you to turn to the lower portion first.

A Sure.

Q And explain what you did there and explain each of those numbers and how you got to them?

A Sure. Absolutely. I started off by considering a scenario, if you will, in which Mr. Bellew didn't die. He continued to live. He continued to work. He earned income as a firefighter, but he didn't experience any growth in his earnings. In other words, Mr. Bellew was earning approximately eighty thousand. He earned $80,529 in 2004. So, I started off by considering how much he would have earned and what his benefits would have been if he'd continued to earn $80,529 through ages fifty-five and ages sixty.

In other words, if today in 2016 he was still earning exactly what he had earned back in 2004, and if ten years from

now he was still earning exactly what he was earning today, what would the loss of earnings be? In other words, how much would he have earned and therefore how much income would he have been able to provide to his household.

So, we see here on the first two lines I calculated the adjusted earnings in past years and future years. What I mean when I talk about past and future years the past years I'm simply looking at the period of time that begins when Mr. Bellew died in January of 2005 and extends through the present time, January of 2016.

Q Without any increase in his wages or benefits at all?

A Correct.

Q That's what's called ---

A These are the earnings in past years; correct. Future years, I'm simply looking at the period of time that would begin now if Mr. Bellew were alive today and working how much would he earn from today going through either his age fifty-five or his age sixty-two.

I used these ages to determine when Mr. Bellew's earnings as a firefighter might have ended if he had decided to retire at the age of either fifty-five or sixty-two.

Oh, so based on my calculations I determined that if Mr. Bellew had not died, if he had continued working through the present time, he would have earned, I should say, he would provided his family with an additional $679,946, and the way I

calculated this figure was very simple.

I started by looking at how much Mr. Bellew had earned in 2004, $80,529. I did have to take into account though the fact that if Mr. Bellew had lived and earned money, not all of that money would have been available for the household and for his family because certainly Mr. Bellew would have had to spend a fraction of that money on himself, food for himself, clothing for himself. So, I take that $80,529 figure, and I adjust it down every year to take into account what we call personal consumption so that I can ultimately determine out of his earnings how much would have been available for the rest of the family once he had spent some money on himself.

I also made another downward adjustment every year to that eighty thousand dollar figure, and that is to take into account something what we call work life expectancy. In other words, I took into account the possibility if Mr. Bellew had not been injured or had not died in January of 2005, he may have been become injured or ill at some point in the future. In other words, I could not assume as an economist that he would have worked continuously from 2005 through age fifty-five and age sixty-two.

I can't do that as an economist, assume someone never misses a day of work, because in fact when I look at the actual experience of males that go to work, they do in fact miss work here and there. So, I also make a downward adjustment each year

to take into account periods of missed work where Mr. Bellew may not have received income, and therefore would not have had income to provide to his family.

Now, having said that as I mentioned a moment ago, making those two deductions, I was able to determine that Mr. Bellew would have been able to provide his family with an additional $679,946 from January 2005 through the present time.

MR. WHITELEY: Just note my objection. No basis for the determination of personal consumption, no testimony about it or the methodology. No testimony regarding the methodology of the work life adjustment.

Q Why don't you tell us about that then, Miss Kucsma?

A Sure, absolutely. The data and the methodology that I used to determine the appropriate adjustment for work life and personal consumption I used the same method and the same data for all of the individuals I'm going to discuss today. In order to determine the appropriate downward adjustment each year for injury, illness, et cetera, I considered data published by the U.S. government. Very specifically, I looked at the actual experience of males in the United States who are of the same age as the decedents as plaintiffs were in January of 2005 and who have the same levels of education.

So, for example, in the case of John Bellew, I looked at the actual experience of thirty-seven, thirty-eight years old males in the United States with a Bachelor's degree, and I looked

historically on average how much time they spend out of the work force, and that's what I was able to use to form my opinion about how much time Mr. Bellew may have missed from work.

In order for me to determine the personal consumption adjustment, in other words, I had to figure out, out of the earnings of Mr. Bellew and ultimately Mr. Cool and the other plaintiffs and decedents, how much of that would they have spent solely on themselves, not on shelter because shelter, housing, utilities, that obviously benefits the whole family, but I wanted to drill down and figure out how exactly how much of their paycheck they would have spent only on themselves, a hot dog at lunch, a cup of coffee in the morning, clothing.

In order for me to determine the appropriate downward adjustment to make each year for personal consumption, I looked at data published by the U.S. Department of Labor, and I looked very specifically at something called the Consumer Expenditure Survey. And as the name suggests, the Consumer Expenditure Survey is a survey that the Department of Labor conducts and it examines how people spend their money.

Q How much did you reduce it by?

A I reduced it for Mr. Bellew --- I made a downward a adjustment in each year of 9.2 percent to take into account the work life expectancy. I then made a series of different adjustments for the personal consumption, and I'll tell you why in just a moment, but I made a downward adjustment of anywhere

from fifteen percent while all of the children were still living in the household, up to thirty-seven percent once there were no longer any children living in the household.

Typically, when there are many children living in a household the parents then much spend a much larger earnings on their children and that is reflected in these calculations.

Q And that is the flat projection, that's called the flat projection for the past, and then you took it. So, that was up to now in the second number that you have, 431,988 at age fifty-five and $788,780, and that's assuming he was making eighty thousand dollars a year throughout his work life with those adjustments?

A That is correct.

Q Without ever getting a raise?

A That is correct.

Q And based on your evaluation, are those the calculations that you have for his past lost earnings which would up to the present time and for future lost earnings up to age fifty-five and sixty-two?

A Yes.

Q Okay. Go ahead. What else did you do?

A Now, in addition to that I took into account that as a firefighter Mr. Bellew was also eligible for various retirement benefits, and very specifically as a firefighter he was eligible for pension benefits.

So, when he retired as a firefighter at either age fifty-five or sixty-two while his earnings as a firefighter would have stopped, he would have begun to collect pension benefits. Those pension benefits are defined in something called a summary plan description.

It is issued by New York City by the firefighters, and in that summary plan description there is a formula that tells me how the City determines what these pension benefits will be. In other words, how big a check will get -- a firefighter will get when he retires.

Q And what did you determine for Mr. Bellew if he retired at fifty-five?

A I calculated the pension income if he retired at fifty-five at $1,182,180.

Q How did you do that?

A I determined that by a formula published in this summary plan description and the formula basically says that once a firefighter retires his pension benefits will be determined based on his final salary, fifty percent of his final salary plus one sixtieth of any earnings he receives if he works beyond twenty years. So, it's a mathematical formula that I was able to take.

I was able to look at Mr. Bellew's final salary, take fifty percent of that, and then anything over twenty years I can add up those earnings and multiply it by one over sixty.

Q His final salary would have been assuming he was making

eighty thousand dollars a year right up to the time of retirement either at fifty-five or sixty-two?

A That's correct.

Q Without one iota or one percent of increase over that time?

A That is correct. He retires at fifty-five or age sixty-two, and he's earning exactly the same salary that he was earning in 2004.

Q All right. And what was his life expectancy?

A In order for me to determine Mr. Bellew's life expectancy I reviewed something called the National Vital Statistics Reports. These are reports that are published by the U.S. government very specifically by the Centers for Disease Control, and when I reviewed the National Vital Statistics, I was able to determine that a male of John Bellew's age in 2005 had a statistical life expectancy of 79.18 years.

In other words, based only my review of the National Vital Statistics Reports I was able to calculate Mr. Bellew's statistical date of death at June 19, 2046. So, if he had not died in 2005, if he had retired as a firefighter at age fifty-five, he would have started to collect pension benefits and he would have to continued to collect pension benefits through the age of 79.18 years.

Q So, the number of years of life expectancy that you assumed would be what?

A 79.18 years.

Q Would be his ultimate life expectancy?

A His statistical life expectancy, correct.

Q And you're aware of something called a Pattern Jury Instruction?

A Yes, I am.

Q And they have life expectancies there as well?

A They do.

Q All right. Why didn't you rely upon the Pattern Jury Instructions that the lawyers use?

A The data that is reproduced in the Pattern Jury Instructions is the same data generally speaking that I relied upon. In other words, it is data that is provided by the National Vital Statistics Reports.

The data published in the Pattern Jury Instructions however is out of date. It's not the most available data. So, I was able to go to the Centers for Disease Control, access the most current National Vital Statistics Report I am happy to pronounce that people are living longer today than they were a couple of years ago which is why the statistical life expectancy figures that I relied upon are slightly higher than is contained in the Pattern Jury Instructions.

MR. WHITELEY: Note my objection.

Q The last published Pattern Jury Instruction life table was in 1996, because this was raised with another economist that

already testified, what was the recent statistics that you relied upon?

A I relied upon the statistics that was published in 2015 They were published in 2015. They were based on life expectancies in the year 2011.

Q Okay. So, we have now the pension benefits. You made that determination based on his life expectancy going forward. There's now something else. Variable supplements fund. What is that and what did you make that determination on?

A Again, in my review of the summary plan description for firefighters, there are several different types of retirement benefits provided to firefighters.

In addition to pension benefits, firefighters also are eligible for something called a variable supplements fund, and essentially what that fund is it simply is a fund into which the City places twelve thousand dollars each year once a firefighter achieves twenty years of service. Whether he retires at that point or not, that money starts to become banked for him so that he could access that when he does retire.

And the pension benefits and the money placed into the variable supplements fund, both of those things represent additional income that would have been available for the Bellew family either at John Bellew's age fifty-five or age sixty-two.

Q Then there's two more columns at the bottom. What are those? Household services in past years, household services in

future years. What are you considering for that?

A I also took into account the fact that Mr. Bellew provided or performed household chores, maintenance of the home, maintenance outside the home, assistance with chores in the home, assistance with raising the children. I was provided with information about the types of services that Mr. Bellew provided to his family, and based on that information I was able to calculated the economic value of those household services. Household services have tremendous economic value even though most of those services, of course, are not formally paid for because most fathers do not charge for their children, husbands do not charge their spouses for the services. It doesn't change the fact however that those services have real legitimate economic value.

And I know they have real legitimate economic value because everyday people go to work providing these types of services and they get a paycheck.

Everyday there are bus drivers that drive children to and from school. Everyday there are house cleaners that go to work that clean homes and are paid for that. And I mention that because that is what I use to calculate the market or the economic value of these household services.

I consider what Mr. Bellew could have charged his family if he had wanted to for the provision of all these services by simply taking a look at what people pay other people in the

marketplace to do these types of things.

Q And I tell you they reached their value. Is there an economist that do these calculations and reach a value for what the services would have been valued at?

A This is a regular part of what I do.

Q Okay. Go ahead. So, what were the numbers you have for past up to the present time and into the future?

A I calculated the economic value of the household services that Mr. Bellew would have continued to provide to his family through the present time at $93,631, and I calculated the economic value of the household services that Mr. Bellew would have provided to his family going forward from today's date through his statistical date of death. So, through the year 2046 I calculated that figure at $525,730.

Q All right. And the total values, what were the total values of the loss, assuming he retires at age fifty-five?

A I calculated the total value of the economic losses to the Bellew family at $3,286,435, assuming Mr. Bellew would have retired as a firefighter at age fifty-five.

Q And at sixty-two?

A I calculated the total economic losses to the Bellew family at $3,404,906, again, assuming Mr. Bellew had retired as a firefighter at age sixty-two, and all of my calculations regarding compensation here assume that when Mr. Bellew retired as a firefighter he was earning exactly the same salary that he

had been earning in 2004.

Q All right. Now, there's one above that. Just did you do the same evaluation for why are those numbers different?

A I did exactly the same evaluation that I just described. However, the evaluation I just described one on which I based my calculations with absolutely no earnings growth is simply not realistic. It's not consistent with either statistical data and it is not consistent with the collective bargaining agreement that the New York Fire Department has.

In fact, I was able to review the collective bargaining agreements that span the period of time from 2004 through 2015, and during that period of time, the New York firefighters for many years received an increase each year in their pay of four percent. In more recent years, they did receive lower increases. For example, 1.8 percent in 2011, 1.2 percent in 2012, but nonetheless when I reviewed the collective bargaining agreements I saw that in fact firefighters received an increase in pay each year.

If Mr. Bellew had not died and he had continued working as a firefighter he too would have seen an increase in his salary each year pursuant to that collective bargaining agreement. These figures that take that into account. Nothing else changed. Every other part of my analysis stayed the same, except now instead of Mr. Bellew would have continued to earn eighty thousand dollars a year after year after year.

I took into account the fact that salary would have increased each year. And when I did that, I was able to determine that Mr. Bellew adjusted earnings in past years, the income he could have provided to his family up to the present time up would have been $834,637 dollars.

The amount of income that he would have provided to his family in future years from today's date through either age fifty-five or sixty-two would have been $674,475 if he retired at age fifty-five or $1,398,091 if he continued to work as a firefighter through age sixty-two.

Because his pension income is based on his final salary, well, in this case, his final salary at either age fifty-five or sixty-two would have been higher. It not had been eighty thousand dollars and changed any longer. So, I had to recalculate the pension benefits using that formula I described before. In this case, if Mr. Bellew had retired as a firefighter at age fifty-five, he would have started to collect pension benefits and that would have provided his family with 1,983,358 in pension income.

Alternatively, if he had retired as a firefighter at age sixty-two and started collecting pension benefits, then he would have been able to provide his family with an additional 1,979,476. Once again, we have the variable supplements fund.

Q That stays the same?

A That stays the same, correct, as do the household

services.

Q Okay. All right.

And what percent increase did you assume to make the second group of calculations where you indicate what the earnings growth was?

A In past years I used the past increases that were outlined in the collective bargaining agreement.

Q Which is what?

A From 2005 to 2010 I used an annual increase of four percent.

Q That was from the contract?

A That was from the contract.

Q And by the way, did you get a chance, the uniformed services in the City of Sanitation, Police, Fire department, did they always have contracts?

A Typically, yes.

Q And did you review before 2005 and see historically what these types of increases would be?

A I have. Historically, the uniformed workers, sanitation workers, firefighters, police officers had historically earned considerable increases each year in the amount of four percent. In some years, in excess of four years, in recent years the increases did drop and I did take that into account each year.

In 2011, as I mentioned I used an annual increase of 1.8 percent, 2012, 1.2 percent, 2013, one percent, 2014, 1.1 percent,

2015, 1.7 percent, 2016, 1.2 percent.

Q So, I understand, Miss Kucsma, the bottom numbers are flat, that means you never get another increase in your life; correct?

A Correct.

Q The other one gives the jury a perspective as if in terms of getting an increase and seeing how those numbers might change?

A That's correct. And this set of calculations here is more consistent, of course, with the reality of how firefighters have been paid. In my professional opinion, these are the figures that I offer to a reasonable degree of economic certainty as my estimate of the additional income and services Mr. Bellew would have provided to his family had he not died.

Q All right. Now, also as part one part of Exhibit 152 A,

MR. WHITELEY: Just note my objection, Judge. No explanation for the growth rate or anything in the future with regard to the ---

Q Can you explain? Go ahead and explain.

A Start going forward in 2017 I did estimate Mr. Bellew's earnings would have continued to increase by an average 3.9 percent each year. And that, of course, was based on my review of annual increases that the firefighters had received in past years in those contracts as well as my review of data that is published by the Social Security Administration about an

anticipated future wage growth in the United States.

Q And we can throw into the equation the other unions that are out there, the municipal unions, teachers' unions, they all expect increases and they get contracts for that; correct?

MR. WHITELEY: Objection.

THE COURT: Overruled.

A That is correct, yes.

Q But the jury is free to decide if they choose to award damages to give no increase or to have a framework to give numbers beyond that?

A Absolutely.

Q Okay. And the numbers you're giving are within a reasonable degree of economic certainty, the increase could be more, it could be less, you're just giving that option?

A That's correct. Hopefully, what I've done is provide the jury with a framework that they can use, adjust accordingly as they see fit to determine, if anything, the appropriate level of economic damages.

Q Okay. All right. Now, Mr. Bellew, we know posthumously was promoted to lieutenant. Did you do a calculation based on lieutenant earnings, and I'm just going to ask you to look at the numbers and just take the top three ones for a flat projection as a lieutenant from fifty-five to sixty-two, and then what would be for an increase such as the ones ---

MR. WHITELEY: Just note my objection, Judge. The

reference to the posthumously promotion.

What are the calculations based on that?

THE COURT: It's noted.

You may continue.

Q All right.

MR. WHITELEY: Is it sustained or overruled, Judge?

THE COURT: Jurors, we're going to take a brief recess.

COURT OFFICER: All rise.

(Whereupon, the jury exits the courtroom.)

THE COURT: You may be seated.

Let me see the attorneys in the back.

(Whereupon, there was an off the record discussion held in camera among Mr. Cannavo, Ms. Darling, Mr. Whiteley, Mr. Fabian, Mr. Donatello and the Court.)

(Whereupon, a recess was taken.)

(Continued on next page.)

THE COURT: We're on the record.

Mr. Whiteley.

MR. WHITELEY: Thank you, Your Honor. The Defense 234 objects to the line of questioning that is now being proposed by plaintiff's counsel with respect to Mr. Bellew. Specifically, he's trying to elicit testimony from his expert about a line of earnings based upon what Mr. Cannavo already stated to the jury that Mr. Bellew was promoted posthumously to the title of lieutenant.

It's true that he was promoted posthumously to the title of lieutenant and that typically is done for police officers and firefighters who suffer a line of duty loss of life, Your Honor, and it's an award and it's an honorary award that allows, frankly, the actual pension that the family is to earn to be far greater than the actual pension.

As we know what the family is earning is not a subject of this trial. It's a subject of a final source hearing that will take place after the trial. We are not allowed to talk about the actual pension that is being earned by this family, which based upon our calculation, is something around the amount of $4 million over the lifetime, of the expected lifetime of Bellew had he not died on January 23, 2005. So there's a tremendous collateral source issue here and that $4 million earning

reflects the lieutenant upgrade if you will which is an honorary award.

I think it's totally improper for Mr. Cannavo to be eliciting testimony about a posthumous honorary award, and. In fact, we already stated that in front of the jury that he was so awarded a posthumous raise, and now we are compounding that error, Judge, to allow this expert and this jury to hear testimony upon a growth rate and an advanced salary based upon a lieutenant that he was never promoted to a lieutenant during his lifetime. So we would object to this entire line of questioning regarding his posthumous promotion to lieutenant and economic consequences of that in this trial.

THE COURT: Thank you, Mr. Whiteley.

Mr. Cannavo. I'm sorry. Mr. Fabian.

MR. FABIAN: Yes, Your Honor. I just want to let the record reflect that it is accurate that Mr. Bellew was posthumously to lieutenant. The assistant corporation counsel has walked a very delicate line in having to make this argument because obviously the fire department, in its wisdom, deemed it appropriate to promote him into a lieutenant after his death.

With that said, there is no evidence in this trial that prior to his death that he was a lieutenant or that he was going to become a lieutenant. With that said,

Your Honor, I understand and agree that perhaps this issue of putting the lieutenant earnings before this trial may not be appropriate. Because if he had continued to live, there's no indication that he was going to be a lieutenant and that he was going to have the benefit of the income that is being purported here.

Again, just so the record is clear when it is read, I understand that the fire department promoted Mr. Bellew to lieutenant after his death. I obviously respect that decision and I just want you to be aware of that, Judge.

THE COURT: Thank you, Mr. Fabian.

Mr. Cannavo.

MR. CANNAVO: Judge, I appreciate this and I know we are all working under this fiction because of the state of the law. I get that they're not allowed to bring out that he is getting his pension. But at the end of case, Judge, post verdict, they get to take away -- they get a credit, Judge. It's not that they take it away physically but they get a credit for the amount of the pension benefits that they're paying and will pay out over the lifetime.

The problem here, Judge, is that I am limited from Mrs. Bellew to the firefighting earnings. Let's say there's $1 million, but yet because her husband was

promoted to a lieutenant is now getting a pension benefit of $2 million. It's unfair that she cannot explain to the jury, have the jury calculate, how much more it would have been if he was lieutenant because he was a lieutenant Judge, based upon the pension benefits.

So what I ask, Judge, is that we allow Miss Kucsma to do this and on the verdict sheet Your Honor can simply say lost earnings for John Bellew as a firefighter and the second thing lost earnings as a lieutenant. Then Your Honor knows when you do the calculations at the end, how much you can deduct and Your Honor can determine whether or not you should take it off as a firefighter or a a lieutenant based on what he's actually going to be getting in the actual pension benefit and there's no prejudice there.

Judge, I truly appreciate the City is in a predicament here that they can't bring up these pension rights but that's the law, Judge. The Court of Appeals said it. That's the law.

MR. FABIAN: Judge, the other thing, as I sit here and I have to deal with this rather delicate situation because clearly the City's fisc is at stake here meaning that if the City doesn't want to pay this, you know, I'm going to be put in a position of having to advise our client, the fire department, that their generosity actually

works against them. This is done to honor the individual who gave their life in the course of doing it to help the family, and yet when we come into a courtroom, it's really really prejudicial from a financial perspective.

You know, this is a perfect example of a problem that was attempted to be addressed in 2009. It's a double recovery, Your Honor, and it's unfair. You know, that's not what the system is decided to do. They are not permitted to collect twice for the same injury and that's what's happening here, and I hope the Court understands my frustration, my concern for the City, my concern for the tax payers in that. As I sit here, I have to think about what advice I'm going to give the fire department going forward. Should we not do this?

MR. CANNAVO: Judge, I can say that I appreciate the City's position. But it was the City that had to lobby for this, a long time ago to have this collateral offset.

It turns out the way the legislature wrote it. I, as Eddie, comes down and says the City forgot about the future lost earnings. We understand that, Judge. It changed after this case; so I, as Eddie, still controls.

All I'm saying, Judge, and I would ask Miss Kucsma to assume that after he died he would have been promoted to lieutenant what those numbers would be. Your Honor can simply put on the verdict sheet earnings as a

firefighter and earnings as a lieutenant. Because at the end, Miss Bellew should not be punished where if she's getting a 2 million-dollar pension benefit but is only able to prove here $1 million, then she has a complete wipe out and we get this. And I appreciate the City's position, Judge, but that's the state of the law. I, as Eddie, puts them in a spot. It wasn't me. It wasn't Judge Taylor. It wasn't Miss Bellew. It's just the state of the law.

MR. FABIAN: Well, Judge, you know, the state of law I guess will be addressed at the appropriate time at the motion practice because the First Department I think has issued a decision that very much impacts the nature of this case.

With that said, I think I have expressed my concern on behalf of the City of New York and on behalf of the fire department and I think that, you know, to me the trial or, at least that's what I was taught, was a search for the truth and the truth is that here, you know, these individuals, the City, has been continuously very generous and to permit this to happen, Your Honor, I hope that you can appreciate the challenge that I'm confronted with in having to -- even having to make this argument in front of the very people who served this City is problematic to me. But I do have to preserve the record and I think the record is now preserved.

THE COURT: Mr. Whiteley.

MR. WHITELEY: Thank you, Judge.

THE COURT: You get the last word since it's your application.

MR. WHITELEY: I appreciate it very much, Your Honor. We do believe that it was a mistake for plaintiff's counsel to have put before this jury the fact that Mr. Bellew was provided an honorary award of a posthumous promotion to lieutenant. By doing that, he's prejudiced the defense in this case. That was an award that the City gives out of respect to the families of firefighters and to the firefighters who have lost their lives in the line of service. Obviously, something that is very sacred and very important. But it was error for Mr. Cannavo to have placed that in front of this jury and then to seek to base a claim or lost future earnings based upon that posthumous award. And to allow this expert to testify about future economic lost based upon a gratuitous award posthumously would be an error, Judge. I would respectfully request that this expert not be permitted to do that.

With respect to the actual financial issues and the collateral source hearing, the truth is that the family will earn a tremendous amount more in the pension because of this posthumous award.

THE COURT: We are not discussing the collateral

source hearing at this point.

MR. WHITELEY: Right. It's inappropriate at this trial, Judge, for us to talk about that but that's the truth. That's the collateral source issue, and so there's nothing that Mr. Cannavo can say about it being unfair. The only thing he would say is unfair is he might reduce a double recovery to a single recovery but it certainly isn't going to be unfair. Thank you, your Honor.

MR. CANNAVO: May I offer as a suggest. Your Honor give a curative instruction.

Judge, I don't think I ever said it was an honorary degree or an honorary award. I don't think I used those words. I asked her to assume that posthumously he would be promoted to a lieutenant. That's an assumption. I think Your Honor can say, jurors, do not assume. This a hypothetical. I don't want you to make any assumption about it, but this is a hypothetical assuming if he was promoted what the numbers would be.

MR. WHITELEY: Judge, I thought I had the last word but now I'm taking the last word if it's okay.

THE COURT: Before you take the last word --

MR. CANNAVO: I just offered the suggestion, Judge.

THE COURT: Do you have anything to say, Ms. Darling?

MS. DARLING: Just, Your Honor, that the collateral source hearing does impact this and the way it impacts is that Mrs. Bellew is going to have all of her money taken away based on her husband's lieutenant salary. It doesn't seem fair. It seems that the jury should be, at least, be able to see an apples-to-apples analysis of what's going to be removed because they don't know the money that's going to be removed. They don't know about the existence of the collateral source hearing. That's my opinion.

THE COURT: Mr. Whitely.

MR. WHITELEY: The money is not being removed from anyone. The money is actually being received by the family presently and will be continued to be received for the expected life expectancy of John Bellew had he not died. So that's not an an issue.

With respect to Mr. Cannavo's suggestion that maybe this can be resolved with a curative charge, that's almost crazy, Judge. Because to follow through on what he's saying would be to tell the jury to ignore the fact that he was posthumously promoted to lieutenant and then allow the expert to go on to the next half hour talking about the expected wages of a lieutenant. So there is no curative charge that could be -- the prejudice has been done. It's in front of this jury that Mr. Bellew was

posthumously promoted and it would be compounding that mistake to allow this expert to talk about a lieutenant's salary based upon that.

THE COURT: Anything further, Mr. Whitely?

MR. WHITELEY: No. That's it, Judge. Thank you.

THE COURT: Thank you, Mr. Whiteley.

MR. WHITELEY: I appreciate the opportunity to make the record, Judge.

THE COURT: Thank you. The application is denied, and we're off the record.

(Discussion off the record.)

COURT OFFICER: All rise. Jury entering.

(Jury enters courtroom; the following occurred:)

MR. CANNAVO: Judge, may I ask Miss Kucsma to come down and continue where we left off.

Q. Miss Kucsma, just so we're clear, did I ask you to make an assumption that had Mr. Bellew lived and was promoted at some point to a lieutenant, what those calculations would be.

A. Yes, you did.

Q. All right. And this is just an assumption on your part so the jury can get a comparison between what a firefighter would have earned in Mr. Bellew's place as opposed to him as a lieutenant?

A. That is correct, yes.

Q. All right. So tell us based upon that assumption that at some point after had he continued to live after his death or whatever, he would have been promoted to lieutenant, what would those those numbers be? Tell us the future.

A. Sure. In this case, I determined that the additional income that Mr. Bellow would have provided to his family through the present time would have been $822,590.

Q. That's based on the lieutenant salary at the time of his death?

A. That is based on him becoming lieutenant and moving up the steps, first step, second step, third step as a lieutenant.

Q. As a lieutenant.

A. And in order for me to calculate what he was earning as a lieutenant, I simply looked at the difference between the regular pay for a firefighter, First Grade and the regular pay for lieutenant at various steps, and I was able to compute by looking at those figures how much more Mr. Bellew would have earned each year as a lieutenant compared to what I testified to previously he would have earned as a firefighter.

Q. Do you know what the flat earnings would have been for a lieutenant based upon your calculation? What would they have been?

A. In past years, as I mentioned, $822,590.

Q. Based on what salary?

A. That is based on the first step in 2006 in the amount of $74,413. Base salary for a lieutenant second step in the amount of $75,498; third step, $76,572, maximum $81,174.

What I did was compare those figures that I just read to the base salary for a first grade firefighter and that base salary, not including any overtime or anything else, that would determine ultimately how much a firefighter makes. That base salary in 2006 was $65,841. So I would expect that as a lieutenant, Mr. Bellew would have earned at first about 13 percent more as a lieutenant than he had as a firefighter comparing the lieutenant first step base salary to the firefighter's salary, 14.67 percent more as a lieutenant second step, 16.3 percent more as a lieutenant third step, and 23.29 percent more as a lieutenant when he hits the maximum. All of those were compared to that base salary as a firefighter of $65,841.

Q. Just tell us, flat earnings in the past is how much?

A. In the past years $822,590.

Q. In the future based on the retirement at age 55 and 66?

A. If retired as a firefighter at age of 55?

Q. Lieutenant.

A. I'm sorry. Lieutenant at age 55. Thank you. He would have provided additional income in the amount of $532,589 to his family. If he had retired as a lieutenant at age 62, he

would have provided an additional $972,471 to his family from now until age 62.

Q. All right. And then you did the same pension analysis you described?

A. Correct.

Q. Based on what salary at age 55 and what salary at age 62 did you do this flat projection?

A. In this case, once again, I considered the final salary that he would have earned as a lieutenant at age 55 and age 62.

Q. Based on a flat never increasing?

A. Correct. Based on the fact once he achieved the maximum step as a lieutenant, his earnings would have simply stayed flat until he reached age 55 or 62. I then applied that pension formula and I was able to determine that if he retired at age 55 as a lieutenant, and started collecting pension benefits, he would have provided his family with an additional $1,450,075 in pension benefits. If, on the other hand, he had retired as a lieutenant at age 62 and started to collect pension benefits, he would have provided his family with an additional $1,160,693 in income.

Q. All right. And variable supplements fund, househouse services, past and future, that stays the same whether he's a firefighter or a lieutenant?

A. That is correct.

Q. All right. And you're doing this evaluation simply the jury can decide that he would not be become a lieutenant and will remain a firefighter or could be promoted and the jury is given that point of comparison?

A. That's correct, yes.

Q. Okay. All right. Now, if there was earnings growth and it's not just flat where he gets no increase at all, for those three items, the past earnings, future earnings, and pension income, and is that all based on the same evaluation that you gave us before?

A. Correct.

Q. Same as --

A. Based on the contracts and so on, yes. I calculated the additional income in past years at $1,012,085 assuming Mr. Bellew retired as a lieutenant at age 55. He then would have provided an additional $831,546 in income to his family from today through his retirement at age 55. He would have started collecting pension benefits at age 55, collected them for his remaining life expectancy and that figure is $2,444,008.

If, on the other hand, he had been promoted to lieutenant and he had worked as a lieutenant through age 62, once again, he would have provided his family with an additional $1,012,085 in income through the present time. He would have provided them with an additional $1,723,677 through age 62. He would have started to collect a pension at that point and he

would have collected $2,437,502 in pension benefits.

Q. All right. Does that complete your evaluation for Mr. Bellew?

A. Yes, it does.

Q. All right. And, again, with regard to the numbers, the flat projections for both firefighters and lieutenant, that's based upon simply the salaries that's been earned in 2005 based on --

A. Four.

Q. Four?

A. Correct.

Q. Without any increase at all?

A. That is correct.

Q. And then there's increases that the jury can consider whether it be more or less or nothing?

A. Absolutely.

Q. Okay. All right. Let's then go to the next person and, again, these numbers for Joseph DeBernardo were they prepared by you?

A. Yes, they were.

Q. And if you had to wipe this out, you could have written all these numbers out?

A. I could have, yes.

Q. Okay. It would have taken a little time?

A. It would have, yeah. I thought this would be more

efficient.

Q. Tell us with regard to Mr. DiBernardo, again, as a firefighter without any earnings growth?

A. Sure.

MR. WHITELEY: Judge, we're just going to have our objection to all of these documents again being displayed. Rather than me objecting to each individual plaintiff, just note my objection for all, I guess, four of the plaintiffs.

Mr. Cannavo, that's what you are going to be doing?

MR. CANNAVO: Yes.

MR. WHITELEY: And I'll keep quiet. Thanks, Judge.

Q. If I ask you to write these out, instead of having the typed version, you would have just taken your calculations and put them on the board?

A. That's what I would have done. It would have taken me quite a while but I would be happy to do it.

Q. All right. Joseph DiBernardo, again, as a firefighter, did you come to some formula based on the same analysis you gave us before as to what his past lost earnings would have been with a flat projection?

A. I did, and I used the same method that I used before. Once again, I'll just use, as my starting point, what

Mr. DiBernardo was earning or had earned, I should say, in 2004.

He had earned $94,961 in 2004. That is what he, in fact, earned. So I used that as a starting point. Once again, without earnings growth, I simply assumed that he would continue to earn $94,961 every year until age 55 or age 62. And based on that, I was able to calculate his adjusted earnings in past years, what he would have earned through the present time at $702,819.

I was then again, assuming he continued to earn $94,961 year after year, able to calculate that he would have earned an additional $700,717 from today's date until his 55th birthday or alternatively $1,191,219 from today's date through his age 62.

Once again, I also calculated the pension benefits. If Mr. DiBernardo had lived and continued to work as a firefighter, he would have retired as a firefighter at either age 55 or 62 and started collecting pension benefits. Same formula that I described before. Based on the final salary and any earnings after 20 years of service, I computed the pension income. If Mr. DiBernardo retired as a firefighter at age 52, he would have begun to collect pension benefits --

Q. Fifty-five?

A. I'm sorry, fifty-five. And he would have collected $1,486,462. If instead he had retired as a firefighter at age 62 and started to collect a pension, he would have collected a

total of $1,202,546.

Last but not least, he also was eligible for the variable supplement fund for $12,000 that gets put into that fund once a firefighter reaches 20 years of service, and I calculated the amount of money that he would have put into that variable supplement fund available for Mr. DiBernardo upon retirement at $400,440.

Q. And what was his expected life expectancy?

A. Based on the National Vital Statistics report, I determined that Mr. DiBernardo's statistical life expectancy is 78.22 years. His statistical date of death, February 26, 2049.

Q. Okay. All right. And so that's the flat projection?

A. That's correct.

Q. And what is the total that you found for flat projection of 55 and 62 respectively?

A. $3,290,438 assuming retirement age 55. $3,497,024 assuming retirement at age 62.

Q. All right. Now, I want to ask you this question because it's been brought up before. Assuming that Mr.-- you're assuming he's going to be a firefighter to age 55 or 62. And I want you to assume there's been questions raised as to whether firefighters retire earlier than that and did you take that into account?

A. I did take that into account. My analysis is based on

retirement from the firefighters or from the fire department, I should say, at these various ages. What I implicitly have taken into account in my analysis is the fact that if I review U.S. Department of Labor research, firefighters rank number one as the occupation that includes people that will have multiple jobs, either more than one job while they're firefighters or jobs after they retire as firefighters. So my calculations are based on retirement from the fire department at age 55 or 62.

I have not explicitly considered the possibility, for example, that Mr. DiBernardo may have done something else after age 55 and age 62. So there would have been additional income that he would have earned after 55 and 62 as something other than a firefighter.

Alternatively, if he had retired as a firefighter at, say, age 50, once again, based on my review of the data published by U.S. Department of Labor, there's a very good probability he would have begun a second career or continued a second career that he had already started. In other words, even if he retired as a firefighter at age 50, he would not be without income from age 50 to age 55. So that's reflected in my analysis here as well.

Q. Okay. All right. Now, you then also did for us some earnings growth and, again, is that earning growth similar to the analysis or the same as the analysis that you gave for John Bellew?

A. Identical.

Q. Okay.

A. Wage increases from the collective bargaining agreement, from the contract. In that case, I calculated the earnings in past years at $874,670. If Mr. DiBernardo continued as firefighter, gotten those union increases from the second time through either his age 55 or age 62, I determined he would have earned an additional $1,163,057 through age 55 as a firefighter. $2,286,582 through age 62 as a firefighter.

Once again, I calculated the pension income since it depends on the final salary. The final salary is higher here because I applied those yearly increases. I calculated the value of the pension at $2,781,286 assuming that Mr. DiBernardo retired as a firefighter at age 55. I calculated the pension income at $2,797,296 assuming Mr. DiBernardo would have retired as a firefighter at age 62.

Q. Okay. Now, and supplements that's the same thing regardless there is an earning growth or not?

A. That's correct.

Q. Okay. Now, just so I don't screw this up. Age 74, 670, that's based on his 94,000 salary of 2004 and reflecting the increases that we know would have occurred right up to the present time?

A. Yes.

A. That's correct.

Q. Okay. That's not assuming variable factors, some increase that we don't know about?

A. No. That's based only the increases that were expressly published in the contracts of collective bargaining agreements.

Q. And in terms of the other number for future earnings, what increase did you assume there?

A. Once again, in order to calculate the earnings of future years, I did use an average annual increase of 3.9 percent.

Q. All right. And, again, this is for the jury to get a comparison of, no increase ever and with increases over the future years?

A. That is correct, yes.

Q. And, again, the calculations you've given for Mr. Bellew are all these within a reasonable degree of economic certainty?

A. Yes.

Q. And the calculations you are now giving for Mr. DiBernardo, again, are all within a reasonable degree of economic certainty?

A. That is correct, yes.

Q. Before you turn the page, in terms of Mr. DiBernardo's earnings that you've shown here, in your opinion, is it reasonable to assume that there would be some increases in their

salary going forward instead of just having a flat earnings growth over their career?

A. Absolutely. As I mentioned for Mr. Bellew, in my professional opinion as an economist, these figures represent the lost of earnings and retirement benefit to a reasonable degree of economic certainty. It's simply not realistic. I know for the fact that the firefighters did not go without wage increases from 2005 through the present time. Based on that and other statistical data, it is not reasonable for any economist to assume that firefighters would not have received at least some annual increase in their wages going forward.

Q. All right. Now, I also ask you to assume that at some point Mr. DiBernardo would continue with the force and become a lieutenant, assuming at some point he was promoted to lieutenant. Did you also do calculations to give to the jurors a comparison between the earnings of a firefighter and the earnings of a lieutenant?

A. Yes, I did.

Q. Okay. Could you just give us that and, again, start with the no earnings growth and then tell us about the earnings growth?

A. Sure. I used exactly the same method that I used to calculate Mr. Bellew's earnings and pension benefits as a lieutenant.

To calculate the earnings and pension benefits for

Mr. DiBernardo as a lieutenant, if I assumed that Mr. DiBernardo would not have received any increases in pay other than the increase when he was promoted to lieutenant, if he received no further increases, I calculated the adjusted earnings in past years at $855,337. That's how much he would have earned through today's date as a lieutenant. I also calculated the adjusted earnings of the future years at $863,900 if Mr. DiBernardo retired as a lieutenant at age 52 or -- I'm sorry -- 55 and I calculated the adjusted earnings at $1,468,629, assuming Mr. DiBernardo had been promoted to unit and had worked as a lieutenant through his age six 62.

I also calculated pension benefits based on the formula I described before and if Mr. DiBernardo had been promoted to lieutenant, if he had retired at age 55 as a lieutenant, he would have started to receive pension benefits and would have received a total of $1,825,060 as pension income.

If, on the other hand, he worked as a lieutenant until age 62, and then he retired, he would have started to collect the pension and he would have earned a total of $1,479,092. Once again, he would have been eligible for the variable supplements fund as well which is a fixed number.

Q. All right. As a lieutenant, the total loss assuming retirement of age 55 is?

A. $3,944,737 assuming no wage increases, and if he

worked to age 62 as a lieutenant, $4,203,498 without any wage increase.

Q. All right. What wage increases? Can you just tell us then is it the same analysis you've already given as to Mr. Bellew?

A. The same analysis.

Q. All right. Fifty-five, what's his past earnings and 62, just tell us what that is?

A. $1,066,095.

Q. All right. Although you have the same number for age 62, just so we're clear, age 62 is really -- it's the same number because that's dealing with the past up to the present?

A. That's correct.

Q. Go ahead.

A. And then in the future, if Mr. DiBernardo had been promoted to lieutenant and retired as a lieutenant at age 55, he would have earned an additional $1,433,909 between now between age 55. If he had worked as a lieutenant through age 62, he would have earned an additional $2,819,079, again, from today through age 62. He then would have started to collect a pension at either age 55 or 62.

If he retired as a lieutenant at age 55, he would have collected a total of $3,421,470 in pension benefits. If he had retired as a lieutenant at age 62, he would have collected a

total of $3,445,264 in pension benefits.

Q. Okay. And, again, these numbers for Mr. DiBernardo are all within a reasonable degree of economic certainty?

A. Yes.

Q. And, again, this is done for comparison so the jury can see the difference between a firefighters's income and a lieutenant's income?

A. That is correct, yes.

Q. And it's entirely up to them as to whether he remains a firefighter or at some point in his career gets promoted?

A. It's entirely up to the firefighters. That's correct.

Q. Who did you do next?

A. I then examined the economic losses experienced by Jeffrey Cool.

Q. And did you do the same type of calculations that if you had to wipe them out, instead of having them typed up, you would had been able to do this?

A. Yes.

Q. Can you tell us, again, Mr. Cool as a firefighter, did you do the earnings growth without any increase at all with salaries?

A. I should point out I did exactly the same analysis for Mr. Cool that I already described for Mr. Bellew and Mr. DiBernardo. The one difference is I have included in this

case a cost of lifetime care. In other words, in addition to the loss of compensation Mr. Cool has experienced, I also have calculated a figure that reflects the future medical cost, the amount of money --

MR. WHITELEY: Note my objection, Judge, to the testimony regarding the future life care plan. It was only recently exchanged and is not supported in evidence.

MR. CANNAVO: Judge, I don't want to comment on this.

Q. Put aside the life care plan for a moment --

A. Sure.

Q. -- the loss of medical. Let's just deal with the earnings.

A. Sure.

Q. And start with the earnings as a flat projection and then we'll go on.

Did you do the same type of flat projection analysis you did for Mr. Bellew and Mr. DiBernardo?

A. I did exactly the same analysis. Once again, I looked at what Mr. Cool had earned in 2004. He earned $90,375 in 2004.

Q. That's his tax returns. That's what fire department pays?

A. That's correct. That's a W-2 wage and tax statement. That's what he actually earned.

Q. That's the same for Mr. Bellew and the same for Mr. DiBernardo?

A. That's correct.

Q. That's what they actually earned?

A. That's correct. That's what I used as my starting point.

Q. In 2004, you're now stopping the clock and telling the Court and jury, assume that he never gets another raise in his lifetime, this is what these numbers are?

A. That's correct. He would have earned $803,024 at the present time. He would have earned an additional $513,818 if he had retired as a firefighter at age 55.

Alternatively, if he had continued employment as a firefighter at the age of 62, he would have earned an additional $1,027,636 between now and age 62.

Once again, when he retired at age 55 or age 62, he could have started to collect a pension. I used the same formula I described before. If Mr. Cool had remained as a firefighter until age 55 and then started to collect his pension, he would have collected a total of $1,390,444 over his life expectancy. If, instead, he had remained working as a firefighter through age 62 and then started to collects his pension benefits, he would have collected a total of $1,027,636 in pension income over his remaining life expectancy.

Once again, he also would have received the variable

supplements fund of $12,000 put into that account each year at 20 years of service and, as I mentioned before, that completes my discussion of the compensation.

Q. Okay. All right. Now, I want you to assume that there's been testimony by Mr. Cool and the other firefighters here that they absolutely loved this job, wanted to do it the rest of their lives, etc. Why is it not reasonable to assume that even though they loved the job, they would be willing to work at it without any increase?

A. Again, as I mentioned earlier, number one, I know for a fact that firefighters experience an increase in their wages every year from 2005 through the present of time. So based on the existence of the contract and what I now know has, in fact, happened over the last 10 years is completely unreasonable and unrealistic to assume that Mr. Cool or any of these firefighters would never had received an increase in pay.

Likewise, going forward, based upon the fact that the firefighters did receive in every year, including during the recession, every year an increase in pay based on that as well as based on statistical data, economic data, specifically, it is not reasonable for me as an economist to assume that a firefighter or really anyone would work for another 10, 20, 30 years without any increase in pay.

Q. Unless they really love their job?

A. I suppose they could offer to give back any increase

in pay but at a very minimum of what we see when we examine wages over of time at a very minimum we see that people receive a cost of living adjustment year over year. If they didn't and they went for 10 or 20 years without any increase in pay?

Well, during that 10-or-20 year period, the cost of housing is going up. The cost of cars is going up, a loaf of bread, eggs, shampoo. Everything is going to cost more 10 or 20 years later and if, at a minimum, you don't get a cost of living adjustment to your wages, you're not going to be able to afford anything.

So most people, even if they loved their job, they're going to have to demand or expect at least some nominal increase in their wages so they can continue to support themselves and their family.

Q. And, historically, it is supported that wages do go up?

A. Yes, absolutely.

Q. Okay. All right, tell us then, Mr. Cool, did you do the same analysis for a projected earnings growth for him?

A. I did. Same calculation. Now, using the annual increases from the contract in past years, I determined that if Mr. Cool had continued to working as a firefighter through the present time, he would have earned an additional $985,716.

If he had continued to work as a firefighter from today through his age 55, he would have earned an additional

$802,779.

Alternatively, if he had continued working as a firefighter through his age 62 from today's date, he would have earned an additional $1,852,090.

Once again, at either age 55 or 62, he would have retired as a firefighter, started to collect pension benefits. If he retired at age 55, he would collect $2,318,679 in pension benefits over his life expectancy. If he chose to retire instead at age 62, he would collect a total of $2,289,904 in pension income over his remaining life expectancy.

Q. Okay. And the supplement would be the same regardless?

A. That is correct.

Q. All right. I'm not going to ask you to assume anything about Mr. Cool as a lieutenant but instead I'm going to ask you to tell us about this cost of future lifetime care medical expense. Okay?

A. Sure.

Q. And did you get -- did you understand there was a Dr. Schuster, who testified before the Court and jury about the cost of potential future medical care and expenses for Mr. Cool?

A. Yes. That is my understanding.

Q. And the cost of future assistance and things of that nature. You understand that?

A. Yes.

Q. All right. Did we ask you to take his figures and give us, add them up, and tell us what that would mean for Mr. Cool over his lifetime in this matter?

A. Yes, you did.

Q. Were you able to do that?

A. I was.

Q. Can you tell us for Mr. Cool what that would be?

A. Yes. Assuming no increase in these cost of Mr. Cool's remaining life expectancy. So, in other words, assuming that the cost of his care stays exactly the same year after year over his life expectancy, I calculated the cost of that lifetime care at $1,070,039. That's the total amount of money that would be necessary to cover the cost of all of the care that Dr. Schuster described, assuming the cost of that care never increases between now and Mr. Cool's statistical life expectancy which is 78.42 years or June 19, 2045.

Q. And, again, that life expectancy of Mr. DiBernardo and Mr. Bellew is based upon the statistical averages that you told us about from the U.S. Department?

A. Yes, it is.

Q. All right. And regarding what you're telling us, what was the annual cost that you used to come up with the final figure of a million dollars?

A. The annual cost for Mr. Cool was between about $31,000 and $34,000 and that's simply because the frequency of some of

the care increases later in Mr. Cool's life. So from 2017 through 2026, the annual cost of care is $30,785. Starting in 2020 -- let me just make sure I'm looking at the right row here. That was -- I'm sorry -- through 2027, starting in the year 2028 continuing through his statistical life expectancy, I calculated an annual cost of $34,425.

Q. And then you add them up and that's the number without any increase?

A. That is correct, yes.

Q. All right. Can you just tell us the total that you came up with, the summary for earnings growth without any increase including the cost of lifetime care for Mr. Cool, past and future?

A. Sure. I estimated the total value of economic loss for Mr. Cool at $4,172,725 assuming that he retired as a firefighter at age 55 and had no increases in his earnings, no increases in medical costs.

Alternatively, I calculated the total value of economic loss for Mr. Cool at $4,402,649 assuming Mr. Cool would have worked as a firefighter through age 62, never gotten an increase in pay and had no increase in those medical expenses.

Q. All right. And with regard to the earnings growth, what were the numbers, the totals for age 55 and age 62, again assuming no increase in the lifetime care?

A. I calculated the total value of economic loss at

$5,572,612 assuming that Mr. Cool would have retired at age 55 and gotten increases in his pay each year. I did not assume any increase in the medical costs though and, lastly, I calculated the total value of loss to Mr. Cool at $6,593,149 assuming he retires at age 62, he does get the increase in pay each step of the way, but the cost of his medical care remains the same.

Q. All right. And, again, this is for the jury to make a comparison, assuming no growth and assuming some growth over the years of his work life and lifetime?

A. That's correct, yes.

Q. And they're free to decide what that range might be?

A. Absolutely.

Q. And regarding the cost of lifetime care that, again, is a flat projection where medical expenses, help, household help, none of that goes up?

A. Correct. I had assumed that the cost of all of those various household care that you just described remain the same, starting today 2015 and continuing all the way through Mr. Cool's statistical date of death approximately 30 years go.

Q. If he needed an x-ray today, would you say it's the same cost as if he needs an x-ray 30 years from now?

A. I wouldn't say that as an economist but I have built that into this analysis. That is correct.

Q. There would be no change in the cost?

A. I have not taken into account the likely increase in

these costs of Mr. Cool's lifetime. That's correct.

Q. And if there was an increase would those numbers then change?

A. In my professional opinion and based on my review of the economic data for the past 10, 20, 30 years, there absolutely would be an increase in the cost of at least elements of care and that would result in a higher calculation of the cost of lifetime care.

Q. And in your opinion and, again, these numbers for Mr. Cool are, they are all within a reasonable degree of economic certainty?

A. Yes.

Q. In your opinion, with regard to the lifetime care, if there is any increase, can you give us an example of how that would change?

A. In this case, if I took into account the increases in the costs of care, the total cost of lifetime care is roughly doubled. It would be slightly more than $2 million if I took into account the fact that the cost of care will increase each year over the next 30 years.

Q. All right. But you've given the jury just a flat projection that there was no increase for the next 30 years?

A. That is correct.

Q. And, again, those are assumptions that he will need help and assistance in medical care?

A. Absolutely, yes.

Q. Again, it's up to the jury to determine what, if any, he may need and they can adjust that number in any way that they see fit?

A. They certainly can go.

Q. Okay. All right. You're not telling them what they have to do or telling them what Mr. Cool needs. That's up to them based upon the evidence that they have heard?

A. No. I'm not a medical doctor. I'm not a life care planner. I'm certainly not a member of the jury. It's up to the jury to determine, in total, what economic damages, if any, are appropriate. As I said before, hopefully, I've just provided framework that they will find useful.

MR. CANNAVO: A few minutes, Judge, and we are done. I know these numbers are coming hot and heavy.

Q. Did you also do a projection for Mr. Stolowski regarding his lifetime care based on the projection that Dr. Schuster did and gave to this Court and jury?

A. Once again, I did calculate the total.

MR. WHITELEY: Note my objection again, Judge. With respect to Mr. Stolowski, there's been actually no exchange for Mr. Stolowski on the lifetime care plan.

Q. Well, Dr. Schuster testified here, right, Miss Kucsma? Do you know that?

A. Yes.

Q. And he gave the jury a whole bunch of numbers. You were able to, based on those numbers, figure out how much that is?

A. That is correct.

Q. Okay. Can you tell the Court and jury on an annual basis, no increases, how much that would be for Mr. Stolowski and after we go into that calculation, we're almost done, Judge.

A. Sure. Based upon the opinions of Dr. Schuster, based upon Mr. Stolowski's statistical life expectancy of 79 t.05 years, I was able to calculate the cost of future medical care assuming that costs do not change at all between 2016 and 2050 at $1,734,667.

Q. And what did you use as a base for doing that?

A. I used the opinions of Dr. Schuster. Specifically, I considered three pieces of information from his report, what Mr. Stolowski will need, how often he'll need it, and how much it will cost to get that treatment in the year 2050.

MR. WHITELEY: Objection, Judge, not in evidence.

THE COURT: Overruled.

MR. WHITELEY: Objection.

THE COURT: Overruled.

Q. On an annual basis as a flat projection, what was that amount that Dr. Schuster offered?

MR. WHITELEY: Objection, not in evidence.

THE COURT: Overruled.

A. These figures do change. Even without inflation, they do rise over time, again, because of the fact that there are certain elements of care that Mr. Stolowski is going to need more of as he gets older. But, having said that, I estimated the total cost each year at an average about $45,000 per year. Some years, it was about $38,000. In other years, it was about $62,000.

(Continued on the next page ...)

Q What years were that?

Can you just give us that breakdown?

What was your a assumption then?

A The figures are approximately 30 to $35,000 in most of the years up until about 2028.

Thereafter, in most years, they are about 62 to $65,000.

Again, some of the elements of care that Dr. Schuster indicated Mr. Stolowski will need were not needed every year, so that's why my cost is not the same in every year. Because in some years he needs more of something, or an additional element of care, so the costs are slightly higher. If he only needs that every other year, for example, then in the middle years the cost will go down again.

Q Again, this is a flat projection, no increase in any of these costs through Mr. Stolowski's lifetime?

A That is correct, yes.

Q Regarding what you were able to find -- by the way, Dr. Schuster did testify in this matter, and you read his testimony, right?

A I did not review all of his testimony, but I did review his original report, his supplemental report and some of his testimony.

Q Can you tell us, based on what you reviewed -- well, you got those numbers there, but that's the total as a flat

projection.

A That is correct, yes.

Q Again, the jury can determine that he needs more or less care, and can adjust those numbers as they choose.

A Absolutely.

Q All right.

Again, is this all done for Mr. Stolowski within a reasonable degree of economic certainty?

MR. SKWRAO: Objection, Judge.

THE COURT: Overruled.

MR. STPHAO: Judge, I am done.

Thank you, Ms. Kucsma.

Thank you, Judge.

I have no further questions.

THE COURT: Members of the jury, we're going to take our afternoon recess. I ask that you return to the jury room at 2:00 p.m. waiting for the court officer to escort you upstairs.

Enjoy your lunch.

COURT OFFICER: All rise. Jury exiting.

(Whereupon, the jury exits the courtroom.)

THE COURT: You may be seated.

Ms. Kucsma, I would just like to remind you, as you are still providing testimony in this case, during the recess, please do not discuss your testimony with anyone or

allow anyone to discuss your testimony with you.

Do you understand?

THE WITNESS: I do.

THE COURT: Thank you.

You may enjoy your lunch.

THE WITNESS: Thank you, Your Honor.

MS. DARLING: Let the record reflect I'm handing Mr. Whiteley the St. Barnabas Hospital record radiology disc.

(Handing.)

(Whereupon, a luncheon recess is taken, and the proceedings are adjourned to 2:15 p.m.)

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

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COURT OFFICER: Come to order. All rise.

Part 2 is back in session.

THE COURT: You may be seated.

MR. CANNAVO: Thank you, Judge.

MR. WHITELEY: Thank you, Judge.

Your Honor, Ms. Darling has questions for this witness.

THE COURT: You do?

MS. DARLING: Yes, I do.

I'll be very brief, Judge, as I told the jury I

would be throughout the trial, and I've kept that promise.

MR. WHITELEY: It's like watching a movie, Judge.

THE COURT: We're ready for the jurors.

COURT OFFICER: All rise.

Jury entering.

(Whereupon, the jury enters the courtroom.)

THE COURT: You may be seated.

Good afternoon.

At this time the Court will recognize Ms. Darling.

MS. DARLING: Thank you, Your Honor.

CROSS EXAMINATION

BY MS. DARLING:

Q Good afternoon Ms. Kucsma.

A Good afternoon.

Q I just want to ask you a couple questions.

Now, you and I have never met before.

A That's correct.

Q But I will tell you that Dr. Leonard Freifelder, who took the stand on behalf of the Estate of Curtis Meyran, who I represent, do you know Dr. Freifelder?

A I have met him on one or two prior occasions, yes.

Q But you never spoke to him about this case; is that correct?

A That's correct, I did not.

Q Surprisingly, his analysis is very similar to your

analysis in that he talked about future lost earnings, future pension lost, past lost earnings and household services.

In his analysis he used three different analysis, which one was if he retired after 15 years, if he retired after -- sorry, if he retired after 20 years, 25 years, and at age 62, full retirement, similar to your using the age 62 for all of the firefighters who you spoke about this morning.

So my question to you is, why, when you never spoke to him about this case, are both of your analysis of these five different plaintiffs all the same?

MR. WHITELEY: Objection.

THE COURT: Overruled.

A It actually is not at all surprising to me, and I say that simply for two reasons:

Number 1, the elements of economic loss that I valued are the standard elements of economic loss in a case like this.

Secondly, the methods that I used and Dr. Freifelder would use are the correct methods to use in a case like this.

So it doesn't surprise me at all because, ultimately, the approach, the methods and date we relied upon are very similar.

Q So no matter who did these numbers, as long as they were a qualified economist, you would presume they would all be the same, given the same set of facts for that plaintiff; is that correct?

A I would assume if they used the proper methodology and relied upon the proper data, that they would arrive at the same calculations, yes.

MS. DARLING: No further questions.

THE COURT: Mr. Whiteley?

MR. WHITELEY: Thank you very much, Your Honor.

CROSS EXAMINATION

BY MR. WHITELEY:

Q Hi, doctor. How are you?

Is it doctor?

A At the moment, no.

Q What shall I call you?

A "Miss" is fine, thank you.

Q Thank you very much for coming down here today.

Let's start with what -- I guess you did examinations for four plaintiffs, correct?

A Yes, I did.

Q Let's start with Mr. Cool, Jeffrey Cool.

He is a firefighter here in the courtroom, or he was.

Have you ever met Jeffrey Cool?

A Not until I met him here in court.

Q Okay.

And Mr. Cool is how old?

A Mr. Cool is -- pardon me. One moment.

He is approximately 48 years of age.

Q Okay.

He was 38 at the time of the accident, so he would be about 49, correct?

A That's correct, approximately 48, 49 years of age, yes.

Q So the jury is clear, you don't have any medical training or medical expertise, right?

A That is correct, I do not.

Q You're not here to offer any opinion or any testimony with regard to what medical equipment or what medical treatment Mr. Cool might need, correct?

A That is correct.

Q But you did offer a number, right, regarding cost of lifetime care.

Precisely what evidence did you base that estimate of lifetime care?

What did you base that on that's in evidence in this case? If you know.

A I relied upon the testimony of Dr. Schuster, very specifically testimony regarding the various types of care that Mr. Cool will require, the frequency, how often he will need it, as well as the current cost of that care.

Q So did you read Dr. Schuster's testimony?

A I did read part of his testimony before my direct testimony, and I read it in totality during lunch today. What I had not read before I got here today was the part of his

testimony about his qualifications and things like that, because it wasn't directly relevant for my analysis.

Q But what numbers were you able to rely on that Dr. Schuster gave you, if any?

First of all, let me ask you this:

Did you ever meet Dr. Schuster?

A No, I have never met him.

Q Did you ever speak with Dr. Schuster?

A I had spoke went him once or twice, not in connection with this case.

Q So you never spoke with Dr. Schuster regarding Mr. Cool's case?

A That is correct, yes.

Q We'll talk about Mr. Stolowski later, but we'll just go one plaintiff at a time.

Do you have a file, doctor, that has in it the numbers that you're relying upon that Dr. Schuster gave you?

A I do have my spreadsheet of calculations here.

Q That's a spreadsheet of yours that you prepared, right?

A Yes.

Q What I'm asking you is what did you get from Dr. Schuster that shows any numbers or any medical numbers?

There are a bunch of categories, right?

A That's correct, there are.

Q What did you get from Dr. Schuster with regard to

Jeffrey Cool?

A I received, as I mentioned before, a list of the various categories of care that Mr. Cool will require, such as visits to a physiatrist, pain management specialist, medical case manager, spine surgeon, neurologist, orthopedist, urologist, otolaryngologist, psychiatrist, physical therapist.

I also received information about various medications he will need, a Lidoderm patch, Flector patch.

I received information about various laboratory tests that he will need to undergo, comprehensive metabolic panel, creatine kinase total serum.

I also received information about various diagnostic tests, MRIs and X-rays that Mr. Cool will require, and I also received information about support care that Mr. Cool will require.

Q May I take a look at that, Ms. Kucsma?

A Sure.

(Handing.)

Q Thank you.

So you received this document. It's dated January 1, 2016, correct?

A No, I didn't receive that document; those are my calculations.

Q Okay.

Oh, I'm sorry.

I was asking you what Dr. Schuster had given you.

A Well, certainly, the information I just referenced was information provided to me by Dr. Schuster.

Q But you never spoke to Dr. Schuster about Jeff Cool, right?

A That's correct.

Q Now, how did you get information from Dr. Schuster if you never spoke to him?

A Well, as I mentioned before, I did review his testimony of his trial transcript. In his testimony he mentioned the various types of care Mr. Cool will require, the frequency and current cost.

Q When did you review that testimony?

A As I mentioned a couple moments ago, I reviewed part of it before my direct testimony today, obviously --

Q When, specifically?

A I don't recall specifically.

Q Yesterday? Two days ago?

A No. Last night I believe.

Q Last night you read it?

A Correct.

Q So, again, how is it that on January 1, 2016 we have this report that's from all these medical costs if you only read this last night?

A The date to which you're referring, January 1, 2016, if

you look closely, I believe that that indicates that is the implementation date for the lifetime plan and not the date I prepared that document.

Q I'll ask you to accept that we received this also on New Year's Eve, January 1, 2016, from the plaintiffs' attorney. On New Year's Eve, we got the same list you got, January 1, 2016.

Did you prepare this or did someone else prepare this?

A I did prepare that.

Q You prepared this January 1, 2016 without ever speaking to Dr. Schuster about Jeffrey Cool, right?

You've already said --

A That's correct, I had not spoken with Dr. Schuster.

Q Without reading his testimony until last night, you prepared it somehow, magically, January 1, 2016.

Are you magic?

A No.

As I mentioned during my direct testimony, I had also reviewed a report that had been prepared by Dr. Schuster before I came here today to testify, though it was imperative I also reviewed Dr. Schuster's trial testimony to make sure that everything to which he testified was consistent with the report that I had originally relied upon and it was.

Q But, doctor, did you prepare this or did you not prepare this?

A I did prepare that.
Q So it isn't based upon any numbers that Dr. Schuster gave you, correct?
A It is. As I said, I --
Q Again, you didn't speak with him, and all you did was read what?
A I reviewed a report that --
Q Can you show me the report that you read, that you got all these numbers from?
A Sure.
May I?
MR. CANNAVO: Judge, does the testimony in the report --
Q May I just see the report that you got all these numbers from, doctor?
A Sure.
I don't believe I printed out the supplemental report, but I do have the original report with me.
(Handing.)
Q Thank you.
What does it mean when a doctor prescribes something "as needed"? If you know.
A I could not tell you specifically what Dr. Schuster means by that, but I could tell you that I do not value any categories of care if they're indicated "as needed." I don't

have enough information in that case to include those in my calculations.

Q What does a doctor like Schuster mean if he says "if indicated"?

What does he mean by that as a category?

A Again, you probably have to ask Dr. Schuster, but unless --

Q Cause you don't know, right, doctor?

A I could guess --

Q I'm sorry, I keep calling you a "doctor" and you're not a doctor.

A Not yet, but I could -- I would be guessing as to what Dr. Schuster indicated.

I did not include, though, anything "if indicated" in my analysis either.

MR. WHITELEY: Your Honor, we'll renew our objection to the lifecare plan of Mr. Cool based upon no information that we received other than the January 1 report, dated January 1, 2016, that was prepared without any evidence in this Court to support it.

MR. CANNAVO: Judge, objection to the speech and his testimony.

MR. WHITELEY: We'll renew our objection, Judge, and we've made this record.

THE COURT: Let's step in the back for a moment.

MR. WHITELEY: Thank you, Judge.

Do the jurors need a break?

(Whereupon, an off-the-record discussion is held in camera.)

(Whereupon, the following takes place in open court in the presence of the sworn jurors.)

THE COURT: Members of the jury. We're going to take a brief recess.

COURT OFFICER: All rise.

Jury exiting.

(Whereupon, the jury exits the courtroom.)

THE COURT: You may be seated.

MR. WHITELEY: Can we have the witness excused while we make the record?

THE COURT: Just to remind you, don't discuss your testimony with anyone or allow anyone to discuss the testimony with you during the recess.

THE WITNESS: Yes, that's fine.

Thank you.

(Continued on the following page.)

(Whereupon, the following takes place on the record in camera among Mr. Cannavo, Ms. Darling, Mr. Whiteley, Mr. Fabian, Ms. Donatello, and the Court:)

THE COURT: We're on the record.

We just concluded the direct examination from Mr. Cannavo and the questioning by Miss Darling of the witness, Miss --

MS. DARLING: Kristin Kucsma.

THE COURT: And now we're at the cross-examination of Mr. Whiteley, and, Mr. Whiteley, you're asking the Court for a continuance?

MR. WHITELEY: No, I wasn't asking for a continuance. Your Honor offered me the continuance when I advised the Court that there had been a late exchange of several documents and that there were inconsistencies in the documents that had been presented in front of the jury, even though they're not in evidence with the documents that have been previously provided to us.

So, we're prejudiced, Judge, twofold. One, the jury is seeing documents that have never been provided to us with different numbers on them that had never been provided to us. They are seeing them, and they are seeing them throughout the entirety of the direct testimony of Miss Kucsma because they had been displayed in front of her.

THE COURT: How are the numbers different, are they

increased or reduced?

MR. WHITELEY: They're different.

THE COURT: If you don't know, if they're increased or reduced, that's fine.

MR. WHITELEY: Judge, with all due respect, the documents have been facing the jury box and not me. So, I haven't been able to compare those documents with the documents that were previously exchanged by the plaintiff's attorney. Mr. Cannavo has just pointed out that several of the numbers that he's displayed to the jury are lower than the numbers that he gave us on January 4th and on January January 1st after most of this trial was completed. But still I don't know how those new calculations were made, and just because he's taken a high number and now given us a lower number doesn't make it any easier for me to calculate or to cross examine this witness when I don't know the math and I don't know the history, and I don't know why there's a difference between what he's previously given us and what he's now given us.

As I said also, Judge, I'm willing to stipulate to several numbers here. But, apparently, plaintiff's counsel is unwilling to stipulate to any of them and wants, I guess, these high numbers to be before the jury and to see them. Even though they shouldn't be in evidence in my opinion. So, I merely pointed out on my examination, Judge, that I

had been recently been given certain things with regard to Mr. Cool so the record's clear.

I was given his life care plan for the first time on January 1st with the calculations. We were told that those calculations were prepared by Doctor Schuster, and with regard to Mr. Stolowski we were given those life care plan calculations for the first time around January 4th or 5th and again told that they were from Doctor Schuster.

Now, this witness is telling us that she actually prepared these charts and these numbers, and not Doctor Schuster. So, that's a surprise to me and, obviously, different than what was exchanged to us that we were supposed to believe these things were numbers that Doctor Schuster prepared, and he's the one who has the expertise to calculate these medical costs. This economist has no expertise at all in the field of medicine. She's not permitted to speculate what medicines cost or what health care costs or what the other categories of the life care plan are. That's not her expertise.

So, Judge, I merely pointed that out to the Court that we had been given this different information exchanged very, very late.

And then you asked to see us in the back, at which time, in response to that lateness, you offered me if I wanted a continuance and I said, yes, because I would like

to compare them.

THE COURT: Mr. Cannavo.

MR. CANNAVO: Judge, I have sat through two months of this nonsense, and there has to come a point where it ends. Counsel is making things up. He is pulling things out of thin air and exaggerating the facts and ignoring the facts. The life care plan for Mr. DiBernardo --- I mean for Mr. Cool and Mr. Stolowski were not late disclosures. They are here, Judge.

First of all, this was all discussed last week at great length on January 5th, last Tuesday, when Miss Kucsma was first scheduled to testify and counsel has a record on this, Judge, because counsel wanted to mark in evidence as Court Exhibits, mark as Court Exhibits, not in evidence, several documents to prove his point about his prejudice.

In response, Judge, I provided a number of documents to show that indeed, all of this is nonsense, because they were well aware of the life care plans prepared by Doctor Schuster for Mr. Stolowski and Mr. Cool.

And, Judge, we have here, and Your Honor has already seen it and I've marked them as part of the exhibit for the court. There is an exchange at 3101(d), an exchange for Doctor Richard Schuster which provides his comprehensive report for these very numbers which gives every one of these calculations. January 2, 2014, two years ago. This

exchange of the life care plan by Doctor Schuster was given to the defendants.

Secondly, Mr. Stolowski, a life care plan by Doctor Richard Schuster was also provided January 2, 2014 which has the entirety of Doctor Schuster's evaluation and all of his numbers. That's two years ago. That's two years ago, Judge, to the day. Last week, counsel raises an objection because Doctor Schuster testifies.

He goes over his report. He goes over his evaluation of things he will need, and I know this was very difficult for the court reporters to take down because he went very quickly and outlined numbers for different modality. Counsel for the defendant questioned him about the need for flector patches that he had never had before.

This was all gone before when Doctor Schuster testified on December 18th in this matter. What is customary, Judge, is after the doctor who does the life care plan, and he is not a medical doctor, he is a P.H.D. in that field. After he does it, the economist who is scheduled to come in, then does the calculations as to what those numbers mean. Those were done by Miss Kucsma. They were exchanged before the New Year. Counsel had them not only then, but when we came back on January 4th. They were presented and the same issue was raised.

Your Honor has before you the blowups, and when

counsel says they were to his back and couldn't see them, that is laughable, Judge.

Number one, they were presented to everyone before we appeared here in court on January 4th in that identical format. Except for the fact that Miss Kucsma has now eliminated the age sixty-five as a pension potential and has reduced the cost of the life care plan.

In every other respect, Judge, counsel has in his hands and has had in his hands those very numbers to look at. They are the identical numbers that are on the board and Your Honor can compare them.

So, there is no surprise, and there is no prejudice and Your Honor heard extensive argument on this very topic. Miss Kucsma simply has taken the numbers of Doctor Schuster. Counsel objected to putting in Doctor Schuster's calculations when Doctor Schuster was on the stand.

That is what he did, despite knowing, Judge, that Mona Yudkoff, Y-U-D-K-O-F-F, exchanged a life care plan that Judge Schachner allowed but they exchanged that life care plan August 17, 2015.

Coincidentally, Judge, to show there's no surprise or prejudice she compares, believe it or not, every one of Doctor Schuster's cost evaluations with her own. Every one of them. So, she did that for Mr. Cool, she did that for Mr. Stolowski. She took the numbers from Doctor Schuster's

report and she compared them with her own. There's no surprise here, Judge. What we have done, and I believe in great fairness is we have given the jury a flat projection of the identical costs that Doctor Schuster had in his report and which Miss Yudkoff gives in her report, and the comparison for the jury is what Miss Yudkoff, if she appears, is she gives eight thousand dollars. Mr. Schuster gives thirty-four thousand dollars.

The jury is free to reject both of them, calculate something different, but there is a basis for this in that Doctor Schuster followed by Doctor Perry has indicated these men need this additional care.

So, there's no surprise here, Judge, there is no prejudice, there is no need for a continuance. Counsel had over a week.

THE COURT: He's not asking for a continuance.

MR. WHITELEY: I would accept your offer for a continuance.

THE COURT: I didn't offer anything.

MR. CANNAVO: I think Your Honor inquired as to whether counsel was asking for it and he never responded.

MR. WHITELEY: And I said yes.

MR. CANNAVO: Off the record.

MR. WHITELEY: On the record.

MR. CANNAVO: But, Judge, may I state that he has

had over a week to present these to his economist, to review them and to come up with some different numbers or some disagreement on the numbers? There's no surprise here, Judge. We have followed every protocol we're required to follow, provided every opportunity for them to do the same calculations and they have done so.

They have an economist. They have a life care planner, and they have the numbers to compare them with from both Miss Kucsma and from Doctor Schuster. There's no surprise here, Judge.

This is simply a waste of time. It is again, Judge, an effort to impede this case, to interrupt every plaintiff's expert for a period of time for no reason other than to delay this matter. And I find this, Judge, at this point to be outright outrageous and offensive.

THE COURT: Thank you, Mr. Cannavo.

Mr. Fabian.

MR. FABIAN: I think when I hear Mr. Whiteley speak I think what Mr. Whiteley, and I don't obviously need to speak for him, what he's saying is that the cross-examination of an economist requires preparation and requires an understanding of the technical aspects of the computation that she did because the numbers continue to change, and I think there's no dispute that they continue to change, and the whole objective of a cross-examination is in

essence to put into question the credibility and the skill set of the individual being questioned that he needs to be afforded an opportunity now to look at the different numbers so that when he gets up there he can, in essence, impeach her credibility, question her skill set, and put it before a jury that this is someone who is not well versed or skilled in the art of assessing these economic damages because if she were, then the numbers would remain the same and here the numbers seem to have changed.

THE COURT: When did they change?

MR. FABIAN: I think some of them changed for the first time today when they were put up before the jury. Now, arguably, Judge, I am not -- you know, I see that the numbers have been put up, in some instances are actually lower than the number that were previously exchanged.

THE COURT: Have any of them been increased?

MR. FABIAN: Not --- I don't believe so, Your Honor. I don't believe that any of them have been heightened. And, in fact, to plaintiff's credit, instead of giving us three scenarios of fifty-five, sixty-two and sixty-five they actually brought it down to fifty-five sixty-two, and, you know, I acknowledge that. But I hope that the Court understands that the issue here is one of the preparation that is required to conduct a technical cross-examination of an economist.

You know, you know, I cannot stipulate to any of these numbers. That requires I get comptroller approval. I am merely Assistant Corporation Counsel. I lack that authority. So, I cannot stipulate to any of these numbers and you know while the numbers have been lowered, I do understand the position that is being taken by Mr. Whitely.

THE COURT: Thank you.

Miss Darling, do you have anything?

MS. DARLING: Just three things, Your Honor. One is you told the plaintiffs, forget about the jury, you told the plaintiffs and the other parties that the plaintiffs were going to rest today. Appears that it's not going to be happening. That's really not fair to the plaintiffs. There's been inordinate delay in this case caused by Mr. Whiteley because the Judge gives a ruling, the Court gives a ruling, and then it's just not followed. And, thirdly, the thing that I find most objectionable about this, forget about the fact that this woman if she comes back will now come back for the third time, because she was here last week and that's a cost.

THE COURT: Why didn't she testify last week?

MR. CANNAVO: Juror got sick.

MS. DARLING: She testified because of the exact thing we're discussing now.

MR. CANNAVO: She didn't testify, Judge, the juror

got sick. But, nonetheless, because we had the time, this objection was made. Your Honor spent two hours on this, and I believe there is a record of this going over this very same issue. And Your Honor ruled that she can testify about this and, Judge, I just want to add and, Mr. Fabian, I don't know if he'll acknowledge this, I said to him with regard to the medical expenses I will have her bring that down to a flat projection and not have it higher because of increases.

That's why the numbers are lower, Judge, and I represented that to counsel last week, and I wish he would acknowledge that I told him I was going to do this so that it's clear. We discussed this issue.

MR. WHITELEY: Nothing was discussed with me.

THE COURT: One at a time.

MR. WHITELEY: Well, I haven't spoken in awhile.

THE COURT: Because you get the last word, Mr. Whiteley.

MS. DARLING: I got cut off.

MR. CANNAVO: Yes.

THE COURT: I'll allow Mr. Fabian out of turn.

MR. FABIAN: In dispensing my duty of candor to the Court, I acknowledge that what Mr. Cannavo stated is so. He told me that he was going to be bringing down the number to a flatter presentation and that at that same conversation, that number belongs to the City of New York because we

continue to pay for the care of these firefighters. And therefore, ultimately, that number will be reimbursed to the City of New York. That's also on the record, Judge.

But I just want you to know what he stated is accurate.

THE COURT: Miss Darling, I cut you off.

MS. DARLING: No. Actually, Mr. Cannavo cut me off.

MR. CANNAVO: I didn't mean to.

MS. DARLING: My third point is to look at the whole picture because the reality is that this is somewhat of an irrelevant discussion because Mr. Whiteley's client has the benefit of 4545 of the C.P.L.R. and he doesn't have to pay any of this because it's all getting collateral sourced out. So, he's making a big deal about something that after the trial at the collateral source hearing he's not going to have to pay. Whatever has to be paid is going to be Mr. --- assuming there's an offset is going to be Mr. Fabian's responsibility.

But we did discuss this last week, and to be discussing it now seems to be extremely unfair to the parties.

MR. FABIAN: Your Honor, this issue of a collateral source is something that is going to be at the appropriate time highly contested. I absolutely understand Mr.

Whiteley's position because it's up in the air. There is no assurance that he is going to be getting an offset, and he needs to do his job which is what I truly believe he is trying to do here, which is cross examine this witness in a effective way that allows him to show this jury why it is that she is not particularly skilled at computing. Credibility is always an issue. He's attacking her credibility.

THE COURT: Wait a minute, Mr. Fabian.

MR. FABIAN: Yes.

THE COURT: Everyone agrees that all of the numbers are the same with the exception of one line which is reduced. Isn't that correct?

MR. WHITELEY: I don't know that that's the case, Judge.

THE COURT: I'm talking to Mr. Fabian. You get the last word, Mr. Whiteley. Mr. Whiteley, I am speaking to Mr. Fabian.

MR. WHITELEY: When you say everybody agrees --

THE COURT: We're off the record.

(Whereupon, there was an off the record discussion held among all counsel and the Court.)

THE COURT: We're back on the record. Mr. Fabian you may continue.

MR. FABIAN: Your Honor, I think that's correct.

Other than that one line that was brought down to a flat rate with no growth, which I think reflects a cost of medical care, I think all the other numbers are pretty much the same.

THE COURT: Thank you, Mr. Fabian.

Mr. Whiteley, you get the last word.

MR. WHITELEY: Thank you, Judge. So, with respect to the exchanges here, I think this is the unfortunate reality of the situation where attorneys are permitted to bring in documentation from experts and willy nilly exchange them during the course of the trial. Every trial I have ever done, we exchange our experts long before trial. If there's some good reason why there's a late exchange, you know that is brought out and the Court hears that, and then there's, perhaps, an exception to that. But here there's no good reason at all.

We're two months into the trial, and we're getting new life care plans from Jeffrey Cool and from Eugene Stolowski. I don't believe there's been any prior exchange of either of those life care plans in terms of numeric break out.

And, so, to the extent that there was a doctor's findings of what medical equipment was needed and so forth there was no math associated with that, no totals provided with that, and so now on the fly we're being asked once

again, and this has happened on many occasions with many of the experts that the plaintiff has submitted, we're being asked to on the fly re-evaluate things that our experts evaluated at the beginning of this case and exchanged before the trial began, and it's just unfair and it's prejudicial to the defense to have to try to cross examine a complicated expert like an economist with numbers that have changed.

And just because in some instances those numbers have gone down, it's our view that those numbers are inappropriate in their entirety. So, just because he gives you a two or three million dollar number and then drops it down to one or two million dollars doesn't make the one or two million dollars correct. And it still should be subject to the same kind of rigorous cross-examination that the two or three million dollars number is. Just because they reduce it doesn't make it right, doesn't make the fact that it's a late exchange go away.

We're still on our heels here without the benefit of having taken these numbers literally given to us today to our own expert ---

THE COURT: When you say numbers literally given to you today, what you mean is --

MR. WHITELEY: These charts that were shown to the jury.

THE COURT: You mean these numbers were given to

you previously?

MR. WHITELEY: No.

THE COURT: It's just that today, the one line that we're referring to, those numbers were reduced.

MR. WHITELEY: I'm not sure it's just one line, Judge. I know it's at least one line. It's the life care costs.

THE COURT: We compared it on the record and it is the one line. Go ahead.

MR. WHITELEY: It's life care cost of Cool. It's the life care cost of Stolowski. Those numbers have changed and also there's a column there saying, and it's all well and good that Mr. Cannavo has had simplified his columns to age sixty-five, as though he's been generous, but the truth is the age sixty-five scenario actually had lesser numbers on some occasion than the age sixty-two. There's a change there. There were three columns there. The age sixty-five scenario had some numbers that were lower than the age sixty-two numbers. So, there is changes that are higher, and again we're being asked to reassess these on the fly and ask this expert about complicated mathematical calculations that, by the way, she still has never exchanged to us, never given to us and barely explained to us on the stand.

And, once again, I'm renewing my objection to these documents having been displayed to the jury already without

a proper foundation, and for the jury to have seen all of them on all the conclusive numbers, even though they're changed and even though they're unsupported.

THE COURT: Thank you, Mr. Whiteley. This Court finds that there's no prejudice or surprise, and your application for a continuance is denied.

We're off the record.

(Whereupon, there was an off the record discussion held among counsel and the Court.)

(Whereupon, the jury enters the courtroom.)

(Whereupon, the following takes place on the record in open court in the presence of the jury among Mr. Cannavo, Ms. Darling, Mr. Whiteley, Mr. Fabian, Ms. Donatello, and the Court:)

THE COURT: You may be seated.

Mr. Whiteley, you may continue.

MR. WHITELEY: Thank you very much, Judge.

CROSS EXAMINATION

BY MR. WHITELEY (CONTINUING)

Q Miss Kucsma, when we left off we were talking about the medical life care plan; correct?

A Yes.

Q And that was Doctor Schuster's plan that he prepared; correct?

A That's correct.

Q And there was several categories in that plan; correct?
A Yes.
Q And you don't have any opinion because you're not a medical doctor as to whether Mr. Cool needs any of those categories or he doesn't need any of those categories. Would that be accurate?
A That is correct, sir.
Q Okay. You're simply asking the jury to rely upon what Doctor Schuster said, and if what he said they believe, then the numbers that you're calculating they should look at those numbers based upon whether Doctor Schuster was credible or not; correct?
A That is correct. My numbers are based on his opinion, yes.
Q And not in any way a reflection of anything you know about Mr. Cool or his medical needs; correct?
A I'm not a medical doctor, so, I'm not offering any opinion about what he may or may not need, that's correct.
Q It's kind of like a cake, if you will, right? There's a foundation for the cake, and then you're kind of the next layer on that cake.

There's no foundation on the cake, then all the stuff on top just falls apart. Would that be accurate?

MR. CANNAVO: Objection, Judge.

MR. WHITELEY: I'm just making an analogy.

A I actually love to bake cakes. I'm not sure that's the

analogy I would have chosen, but that's okay.

Q But if the numbers are inaccurate that Doctor Schuster gave you, then obviously all your calculations are inaccurate as well; correct?

A Certainly, for whatever reason I used different numbers then my ultimate calculations would probably be different, that's correct.

Q Okay. If his numbers are wrong, then your calculations are also wrong; correct?

A I can't agree with that only because I'm not the jury.

So, I'm not here really to determine whether his numbers are right or wrong, but as I said if for whatever reason the jury thought that some of the costs I used were too low, they could adjust my figures upward. If they felt some costs I used were too high, they could adjust my costs downward.

Q If one of Doctor Schuster's opinions was that Mr. Cool would need four been hundred thousand dollars worth of medication for Lidoderm --- I'm sorry --- Lidoderm patches and Flector patches, even though Mr. Mr. Cool has never once used either a Lidoderm or a Flector patch, and if the jury thought Mr. Schuster was right about that, then your numbers would be right; correct?

A That is correct.

Q And if the jury thought Mr. Cool doesn't need patches for the rest of his life, for the last eleven years never used the Lidoderm patches and Flector patches --

A The jury can adjust my figures downward, yes.

Q If Doctor Schuster had claimed Mr. Cool needed metabolic testing and kidneys and serum testing for the rest of his life, simply for the basis of taking those patches that he has never once used, if that was wrong on Mr. Schuster's part, then your numbers with respect to that category of medical treatment would also be wrong; correct?

A Well, again, as I mentioned before, if for whatever reason the jury felt there was certain things that Mr. Cool would not need, they could reduce my figures. If they felt there was certain things he might need more of, they could certainly adjust my figures upward.

Q Okay. And your numbers don't in any way reflect any growth factor; correct?

A That is correct. They did not include any inflation factor.

Q You've elected to not include any of that in your calculations; correct?

A I did not include them in my calculations, that is correct.

Q And your calculations were about a million dollars; is that correct?

A For the cost of life time care, yes.

Q Okay. Now, Miss Kucsma, you gave a report a couple of years ago, right, in 2013 on the same case involving Mr. Cool?

A I did prepare a report in 2013 for Mr. Cool, yes.

Q And your numbers at that time were 3.6 six million to 3.7 million; is that correct, as opposed to 4.1 to 4.4 or 5.5 to 6.5; correct?

A In my 2013 report, I did calculate lost earnings and household services.

Q Your total numbers, if I could point to your total, on Page 2, three million six hundred and twenty-five thousand to three hundred --- I'm sorry -- to three million seven hundred forty-nine thousand, those were your totals that you arrived at in 2014?

MR. CANNAVO: For what, Judge?

Q For the opinion of total economic loss; correct, for Mr. Stolowski, for Mr. Cool?

A Those figures are reprinted on Page 16 of my report, and as I indicated before, those figures are accurate. They do reflect the value of lost earnings and lost household services.

Q Okay.

And some things have changed, I think you said on direct, that you had to go back and recalculate some of your numbers, right, like on earnings because now you had the benefit of some contracts that you didn't have the first time you wrote the report; correct?

A Yes.

Q And would that, in your opinion, would that have made

the earnings and the pension numbers go up or go down with the contract that you recently acquired?

A I would have to compare my calculations.

Let me see.

(Whereupon, there was a brief pause in the proceedings.)

(Continued on next page.)

Q. Well, let me bring it out this way, Doctor. In your first evaluation, you assumed the 4 percent growth; right? Did you not?

A. That's correct, yes.

Q. And the contract, the contract you're talking about is the UFA contract -- right? -- that was signed in 2015?

A. Yes.

Q. That is a collective bargaining agreement that effects every firefighters; correct?

A. Yes.

Q. And that shows what the actual raises are; correct --

A. That is correct.

Q. -- for a period of time. And do you have a copy of that contract, Doctor?

A. With me, no.

Q. Okay. The memorandum of agreement is dated August 15, 2000 -- August 5, 2015. It reflects the percentage growth rate for the firefighters -- correct? -- from 2010 through 2015?

A. That is correct, yes.

Q. I'm sorry. 2016.

A. That's correct.

Q. Okay. And what you're telling this jury is that you used you this document, this memorandum of agreement; correct?

A. I did, yes.

Q. In your calculations?

A. Yes.

Q. It's not here in your file?

A. That is -- I must have that in my bag back there, but I don't believe -- I don't recall if I brought a copy with me or not.

Q. And the growth rate for 2010, what did you find it to be?

A. I used a growth rate for 2010 of 4 percent.

Q. Okay. But the contract says it's a 1 percent growth rate effective August 2010. Are you aware of that?

A. That's correct. It's effective August 1 of 2010 which means it does not apply for the entire year of 2010. I took into account in my analysis, the fact that the increase referenced in the contract did not begin on January of each year. So I did have to adjust my growth rates to fit that.

Q. You gave for the entire year of 2010 a 4 percent growth rate even though from August of 2010 the growth rate was accurately 1 percent; correct?

A. I did apply a growth rate of 4 percent for the entire year 2010, yes.

Q. So you overstated that first year, correct, Doctor if the contract is to be believed?

A. I may have overstated it slightly for the year 2010, yes.

Q. Okay. And for 2011, what growth rate did you give?

A. 1.8 percent.
Q. And what did you base this on?
A. That again was based on information contained in that contract.
Q. But the contract says 1 percent for 2011. Are you aware of that?
A. I would have to review the contract again.
Q. Let's take a look at it. We can mark it actually as a court's exhibit.
A. Thank you.
MR. WHITELEY: Your Honor, could we mark that as -- what are we up to?
THE COURT: Defendant's --
MR. WHITELEY: Exhibit -- I'll have to look.
THE COURT: Well, mark it for identification.
MR. WHITELEY: Yes. Let's mark it for identification and then do we know what the last plaintiff's exhibit was?
THE COURT: Defendant exhibit --
MR. WHITELEY: Do we know what the last defendant's exhibit was?
MS. DARLING: I do.
MR. WHITELEY: Thank you, Donna.
Q. Do you see where it says 2011, Doctor?
A. I do see that.

Q. You see that 1 percent there?

A. It does say 1 percent in this memorandum of agreement, yes.

Q. Not 1.8 percent?

A. Yes.

Q. So, again, you overstated by almost doubling that 2011 growth rate?

A. Based on that memorandum of agreement, it does appear to be the case. I would need to look at the contract that's in my file.

Q. Okay. But you're not doubting that this is the contract, are you?

A. I'm not doubting that is a memorandum of agreement, that's correct.

Q. Signed by the firefighters' union in the City of New York?

A. That is correct, yes.

Q. August 5, 2015, which we're marking as Defendant's Exhibit XX?

A. Yes. That appears to be that document.

Q. You don't have a different agreement, do you?

A. I could look in my bag to see if I printed out a copy of the contract but I don't have it up here with me.

Q. It's up to you, Doctor. I don't want to delay but if you feel more comfortable going to your bag and grabbing it,

that's fine with me.

A. Sure. If I may, very quickly.

May I, Your Honor?

THE COURT: You may.

MR. WHITELEY: That's fine.

THE WITNESS: Thank you.

MR. CANNAVO: I just want to see what counsel is referring to.

MR. WHITELEY: We're going to mark this as XX.

THE COURT: Defendant's XX for identification.

(Defendant 234 Exhibit XX was marked into evidence.)

A. I did not -- I don't believe I printed out the most current agreement unfortunately.

Q. You're not aware of any other agreement that took place after August 5, 2015, are you?

A. Other than --

Q. -- that one I'm showing you which is XX for identification.

A. Again, that clearly is a memorandum of agreement. What I have here though from past years is a full collective bargaining agreement. It is not clear to me that those are the same documents.

Q. You're not doubting in any way the accuracy of the memorandum of understanding between the City and the union

representing all the firefighters in the City of New York, are you?

A. Again, I'm not doubting the accuracy of that document whether that is, in fact, the collective bargaining agreement that would be appropriate in this case that I couldn't say.

Q. Okay. The term of this document is from August 1, 2010 through July 27, 2018. Do you see where it says that?

A. I believe that is correct that is correct, yes.

Q. And it lays out the percentage of growth to each firefighter for that time period; correct?

A. It illustrates increases from August of 2010 through December of 2016.

Q. Okay. And, Miss Kucsma, what was the growth rate you gave for 2012 in your report and in your calculations?

A. 2012, I used a growth rate 1.2 percent.

Q. Okay. Whereas the growth rate under that contract is 1 percent; right?

A. Again --

MR. CANNAVO: Well, Judge. That's not the contract, if I may.

MR. WHITELEY: Memorandum of agreement.

MR. CANNAVO: Thank you.

A. This memorandum of agreement does indicate 1 percent. That's correct.

Q. And you don't have anything to contradict that, do

you?

A. I apologize. I did not print out the most current agreement unfortunately.

Q. Okay. Do you have a belief that the agreement that you didn't print out has different numbers than the memorandum of agreement?

A. Yes.

Q. Okay. It would have been nice to bring it here to show everyone but you're not --

MR. CANNAVO: Objection, Judge.

THE COURT: Sustained.

MR. CANNAVO: A lot of things would be nice.

THE COURT: Sustained.

Q. You don't have that with you and there is no way to verify that or look at it?

A. It is not standard practice to print out all of the publically available information upon which I rely. It would take reams and reams of paper and if it's available online, I typically do not print it out. I simply refer you to it online when I need.

Q. Okay. And this memorandum of agreement does bring out the growth rate for each and every year up for, at least, through 2016; correct?

A. It does include, yes, annual increases through 2016. In 2016, the annual increase is 3 percent. I used the figure of

2.6 percent in my report.

Q. And, Doctor, for the first three years of the calculation you used numbers that were higher than what was reflected in the memorandum of understanding; correct?

A. That is correct. The growth rates I used are higher than the increase in this exhibit, yes.

Q. And these growth rates don't sound like they are that important, but they are very important from an economic standpoint to effect the ultimate numbers that you're arriving at here on your charts. Would you agree with that?

A. I certainly would not say they don't sound important. They certainly have one factor that I did use in my calculation, yes.

Q. But there's a huge difference between the numbers that you report with the growth rate versus without. Would you agree with that?

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

Q. Well, without a growth rate, for instance, you say that the pension is 1,300,000 but with a growth rate you say it's 2,300,000, the same pension; correct?

A. That is correct, yes.

Q. So that's almost a doubling based upon the different growth rates; correct?

A. That's correct, yes.

Q. And so these percentages all matter quite a bit

because they add up after year, after year, after year. They are all compounded; correct?

A. They are compounded, yes.

Q. If you're looking at someone's life expectancy 30, 40 years, one could imagine how much of an impact even a small percentage might have; correct?

A. I wouldn't necessarily agree with that. Certainly, the fact the growth rates are compounding does mean that they have an effect on certain calculations. In some cases, the effects can be significant. In other cases, it maybe much smaller.

Q. For instance, the wages, you put without a growth rate of million versus with a growth rate it's a million eight for age 62. Do you see it says that on the chart?

A. I do.

Q. Exhibit 152 for identification?

A. Yes.

Q. So now you use certain numbers that were wrong or at least not in agreement with the written agreement of memorandum of understanding; correct?

A. As I indicated a moment ago, the annual increases I used are not equal to the annual increases indicated in the memorandum of agreement, and in some case the annual increases I used were higher. In other cases, they were lower.

Q. And then there was a long period of time -- right? --

the future for Mr. Cool going forward to the date that he would last be expected to have worked; correct? How many years are we talking about there?

A. If he retired as a firefighter --

Q. Let's take the-age-55-and-the-age-62 scenario. How many years are we talking about in the future?

A. If he retired as a firefighter at the age of 55, we are looking at the period of approximately six to seven future years for 2022. If, on the other hand, he retired at the age of 62, we would be looking at the period of time of approximately 12 to 13 future years through 2029.

Q. And the growth rate that you put for each and every one of those years from 2016 onward was 3.9 percent; correct?

A. Yes.

Q. And that 3.9 percent, that's not based upon anything that's in the memorandum of agreement; correct?

A. It certainly is based, in part, on annual --

Q. Could you answer the question, Doctor? Is it based upon the written agreement? Yes or no?

A. It is based on information in past contract, yes.

Q. But is it based on that written agreement: Yes or no?

A. Well, as we discussed before, this written agreement does not contain any annual increases after 2016.

Q. It stops at age -- at year 2016; correct?

A. Yes.

Q. And then the last contract, this memorandum of understanding starts with 1 percent, 1 percent, 1 percent, 1 percent and so on until it goes up to 1.5 and then 2 percent; correct?

MR. CANNAVO: Let's be accurate then. It does go up to 1.5. It goes up to 3.

MR. WHITELEY: I'll read them off. Actually, if I can have the document back?

MR. CANNAVO: Let's be accurate.

MR. WHITELEY: I agree.

Q. The memorandum of understanding is 1 percent for 2010, 1 percent for 2011, 1 percent for 2012, 1 percent for 2013, 1 percent -- 1.5 percent for 2015. Would you agree with that?

A. That's correct and I believe it goes up to 2.5 percent and 3 percent.

Q. Correct. 2.5 percent for 2015 and 3 percent for 2016; correct?

A. Yes.

Q. But it never goes to 3.9 percent. would you agree with that?

A. Not in that memorandum of agreement. That is correct, yes.

Q. And so this 3.9 percent that you came up with exceeds any of the years that this written agreement covers by almost a full percentage point. You would agree?

A. I would agree with that. Of course, it is lower than the annual increases in the prior two contracts.

Q. And it would -- you would agree on, Miss Kucsma, that we're in a period of time right now where inflation is pretty much in check. The interest rates are almost zero; correct?

A. As an economist, I couldn't agree with that statement simply because I do not know (A) what you mean when you talk about things in check and (B) I don't know what types of interest rates you're referring. There are some interest rates --

Q. The federal interest rate that just got raised to 2.5 percent from zero where it's been for the last six years. Would you agree with that?

A. Yes.

Q. Okay. So it's almost zero and now it's .25 percent for the first time in six years; correct?

A. The monetary policy tool that is referred to as the discount rate that is correct. That is not an interest rate that anybody in this room either paid if they borrowed money or received if they lend money or save money. Those interest rates, of course, are the interest rates that are posted in banks that are available in the Wall Street Journal for various bonds, for example. That rate you just referenced has nothing to do with any practical significance for evaluating economic damages.

Q. And going forward, what was the document or what was the study that you used to calculate that 3.9 percent?

A. That was based, as I indicated in my direct testimony, on two sources. Number one, I did review the contracts in past years for the New York Fire Department. Those, I do have with me. So I did review the contracts that extended from 2006 through 2010. And in each of those contracts, it was clearly stated that the firefighters had received a 4 percent annual increase.

In addition to that, I've also completed data published by the U.S. Department of Labor about how wages, in general, have increased in the past and I --

Q. I thought you testified on direct it was based upon your evaluation of the social security numbers?

A. That is what I was about to get to.

Q. Okay.

A. I also considered projections that are contained in the annual report of the board of trustees of the social security administration.

Q. Are you familiar with the economic report of the president of the United States?

A. I am.

Q. Okay. Isn't that a publication that puts out, through the president's office, what the weekly change in earnings are?

A. One of the statistics that reports changes in weekly

earnings, yes.

Q. And the average, would you agree, Miss Kucsma, from 2010 to 2015 was about 2.4 percent in that period of time? I would be happy to show it to you.

A. It could be right, yes.

Q. Okay. And the average from -- if we even go back to 1985 to 2014, going back 20 -- what is that? -- 20, 25 years, the average would be 2.9 or less. Would that be accurate?

A. It might be accurate. There is a critical problem though with that specific statistic that you're referencing. That very specific statistic references average weekly earnings.

Average weekly earnings are a function in two of things. Number one, hourly wage rates and salaries and, number two, the number of hours that people work each week, which is why we, I should say, do not rely upon that statistic for purposes of determining on average how much wages would increase.

If average weekly earnings go down, for example, it may be because wage rates have dropped or it may simply be that people didn't work as many hours in that week. So, in my professional opinion, I would not rely upon that specific data as a basis for determining wage growth.

Q. So what you're saying is that the statistics that are put out by the president of the United States, reflecting the annual percentage change in earnings, that's not something that

you should rely on, what the president puts out in this country?

A. I would not rely on that statistic to form an opinion about how much on average wages, hourly wages in salaries, are going to increase going forward, yes.

MR. WHITELEY: Could we mark this also as an exhibit, Exhibit YY, just so the jury can see that.

THE COURT: That's for identification.

MR. WHITELEY: For ID, and, Your Honor, I would offer both the memorandum of agreement that the doctor -- that Miss Kucsma has indicated had percentage rates that are relevant to the evaluation here and the president's statistics on wage growth, which she might not think is important.

MR. CANNAVO: Objection, Judge.

THE COURT: Sustained.

MR. WHITELEY: -- is acknowledging --

MR. CANNAVO: Objection, Judge.

THE COURT: Sustained.

In the meantime, we'll mark the second document as Defendant's Exhibit YY for identification.

(Defendant 234 Exhibit YY was marked for identification.)

Q. Miss Kucsma, I'm showing you what's been marked as Exhibit YY for identification, which is the economic report of the president.

MR. CANNAVO: Objection, Judge, characterizing to it in that way. I object.

THE COURT: Sustained.

MR. WHITELEY: It's entitled --

MR. CANNAVO: I object to it. It's a hearsay document.

THE COURT: Sustained.

Q. I'm showing you an economic report offered by the president's office.

MR. CANNAVO: Objection.

THE COURT: Sustained.

MR. CANNAVO: Judge, he's offering a document -- I object.

THE COURT: Sustained.

Q. Miss Kucsma, is that a document -- is that set of statistics offered by the president?

THE COURT: Mr. Whiteley, the way we do it is it's not in evidence. You ask the witness first to review the document and then you may ask a question.

Q. Could you review the document, Miss Kucsma?

A. Yes.

Q. There's no question. Let me know when you're done reading.

A. I actually have reviewed it because I have seen it before. I've seen it before.

Q. There's no question. There's no question. But I'll follow up with one. Have you reviewed it?

A. Yes.

Q. Okay. Do you consider that the president's statistics on wage authoritative with regard to wage growth on a weekly basis in this country?

A. This document is not directly from the economic report of the president. I've seen this document before. This is a document that is typically created by another economic expert who allegedly takes the data from the economic report of the president and puts it into this table. So this document is not from the economic -- from the president.

Q. And it's based upon -- this document is based upon --

MR. CANNAVO: Objection, Judge.

THE COURT: Sustained.

Q. It is from the president; correct?

MR. CANNAVO: Objection, your Honor.

THE COURT: Sustained.

MR. WHITELEY: Okay. We'll mark it as YY. We will go through this exercise if she's really doubting the authenticity of that.

THE COURT: Mr. Whiteley, if you'd like to testify, we could put you on the stand.

MR. WHITELEY: We can go through the exercise. We'll mark this as YY.

MS. DARLING: ZZ.

THE COURT: The next document will be Defendant's Exhibit ZZ.

(Defendant 234 Exhibit ZZ was marked for identification.)

Q. Miss Kucsma, I'll show you what's been marked for identification as item ZZ, a document entitled Hours of Earnings.

MR. CANNAVO: Objection, Judge.

MR. WHITELEY: I'm just reading the title of the document.

THE COURT: That's not how we do it.

MR. CANNAVO: That's a hearsay document, please Your Honor.

Q. Would you take a look at that document, Miss Kucsma, is that the document that -- from which the statistics are gathered regarding the president's weekly wage growth?

MR. CANNAVO: Objection, Judge. This is hearsay --

MR. WHITELEY: If she knows.

MR. CANNAVO: -- building on hearsay, Judge, please.

MR. WHITELEY: If she knows.

A. Since I did not prepare Defendant's Exhibit YY, I certainly could not say for sure where those numbers came from.

Q. Have you seen that document before? I assume you've seen that?

A. Exhibit ZZ?

Q. Correct.

A. Yes, I have.

Q. Do you recognize that as an authoritative source?

A. No. As I just mentioned before, this is not something that I would rely upon for forming an opinion about the annual increase or changes in the wage rate.

MR. WHITELEY: And we'll stop questioning on that. We'll have our expert talk about those documents. Thank you.

Q. So you came up with 3.9 percent even though the contract or the wage agreement only talked about 1 percent for the most part and one year it said 3 percent; correct?

A. The most recent contract, that is correct. But as I mentioned before, I did not consider only the most recent contract but I considered preceding contracts as well in which case in each and every year the firefighters received a 4 percent increase in pay.

Q. Which ended in 2010; correct?

A. Yes.

Q. And let's take the next section of your report. In both your reports, you refer to a work life adjustment that you make. Is that accurate?

A. Yes.

Q. And this work life adjustment that you make, you basically are taking 100 percent of the wages and you're multiplying it by some factor to reduce it for -- explain again to me why it is you're reducing it?

A. For the probability of injury, illness to take into account the probability that each one of these men might have missed some work here and there, might not have received income during those periods of missed work, for that reason, I had to adjust my calculation of what they had earned downward.

Q. Is it based on some statistical source, this work life adjustment that you made?

A. Yes.

Q. And statistical sources that you used to come up -- I'm sorry. This is a little dull. I have to go through it.

What statistical sources that you used to come up with your reduction of 86.4 percent from the 100 percent figure?

A. I --

Q. What sources?

A. Yes, and I just want to be very clear for the record the 86.4 percent is specifically for Mr. Cool, this rate does change slightly for the other men. But, in this case, I consider it, as I mentioned during my direct testimony, U.S. government data.

Q. What U.S. government data? That's what I want to get

at.

A. Specifically, I looked at U.S. Government data about how much time people spend in and out of the work force.

Q. What was the data called? That's what I'm asking. What is the source of your statistics? I don't want to know it's just from the U.S. Government?

A. Sure. The statistics come from two sources. One is an article that appears in the Journal of Forensic Economics.

Q. What it's titled?

A. It is entitled "Probability Mass Functions for Years to Final Separation from the Labor Force Induced" by the Markov model.

Q. What's the Markov model?

A. The Markov model is a statistical model that, very generally speaking, examines changes in the state of the world. In this case, the change in the state of the world that it is examining is movement out of the work force.

Q. So the Markov model is not something that the United States Government puts out; correct?

A. That is probability correct, yes.

Q. Markov is a private individual, probably an economist of some sort; correct?

A. Yes. Several economists use that statistical method to analyze U.S. Government data.

Q. So you use -- one of your sources is the Markov model,

we'll call it.

A. Well, no. I just want to very clear for the record. The source isn't the Markov model. The Markov model is a statistical measure like an average. The source is the entire article that I just referenced, an article that contains the data and different tables that present the data.

Q. And the people that are measured in those tables, those are people in just the United States or around the world or something else?

A. These are people living in the United States.

Q. Okay. All different types of jobs, all different types of ages, all different types of field of employment; correct?

A. All different types of jobs. As I mentioned earlier, I did examine data very specific for men of the ages that each one of these --

Q. I'm not asking you what you examined. We're asking about the article, Miss Kucsma. The article talks about everyone of all ages, all jobs, all employment; correct?

A. That is correct, yes.

Q. And what was the second source that you used as your base to calculate the work life adjustment?

A. I looked at another article that also appears in the Journal of Forensic Economics.

Q. What was that called?

A. The title of this article is the Markov Process model.
Q. What's the Markov Process Model? The same Markov model that's referred to in the first article?
A. Yes. It's the same statistical model.
Q. Who is this guy Markov?
A. Off the top of my head, I could not tell you specifically who he was other than --
Q. Was he an economist?
A. I don't believe so. I believe he was --
Q. Do you recognize him as authoritative on all work life adjustment calculation, Mr. Markov, who you don't even know?
MR. CANNAVO: Objection, Judge.
A. Well, unfortunately --
THE COURT: Sustained.
A. Again, this is why --
Q. Do you recognize him -- it's sustained.
Do you recognize Markov as authoritative even though you don't know who he is?
A. Markov --
Q. Yes or no?
A. I can't answer your question and I'll tell you why I can't answer it.
Q. If you can't answer my question, I'll ask you a different one.
How is it that you first came to rely upon the Markov

statistics in these two articles?

A. By reviewing the Journal of Forensic Economics, which is something I do regularly. I'm also a participant in the National Association of Forensic Economics, which means I routinely participate in seminars. I'm the chairperson of a committee for that organization.

Q. Did Markov ever speak in that --

MR. CANNAVO: Judge, she didn't finish her answer.

MR. WHITELEY: I'm asking about Markov.

THE COURT: Mr. Whiteley.

MR. CANNAVO: Well, he asked her about her knowledge.

MR. WHITELEY: I asked her about Markov, not her resume, Judge.

THE COURT: Mr. Whiteley.

MR. WHITELEY: I asked that the witness be restricted to answer any questions I ask.

THE COURT: Mr. Whiteley, we have a reporter. When you ask a question of the witness, you cannot cut the witness off.

MR. WHITELEY: Well, if the witness --

THE COURT: Ask another question.

Q. Okay. Miss Kucsma, the second authoritative or the second article that you referred to, which cites to the Markov

model, again, does that Markov model also include statistics of all types of jobs?

A. Yes.

Q. Yes or no? And that would include people who work for any type of employer from industrial jobs, agricultural jobs, government jobs, nongovernment jobs. Everything under the sun in terms of U.S. workers. Would you agree with that?

A. It does include all occupations, yes.

Q. And so it's a broad based set of statistics -- would you agree with that -- based upon the entire parameter of workers across the country; correct?

A. I wouldn't necessarily agree with that but it certainly is across all occupations.

Q. And did you ever, Miss Kucsma, did you ever try to utilize the actual statistics that are published by the New York City Fire Department that talks about precisely what the probabilities are of people working in the profession for different years? Did you do that in any of your calculations?

A. I have reviewed those statistics, yes.

Q. Did you use those statistics in forming any of your calculations. Specifically, your work life adjustments statistics, did you use those in those work life adjustments or not?

A. I did not specifically use those statistics, no.

Q. So instead of using statistics that would apply to

firemen in New York City, working for the New York City Fire Department, just like Mr. Cool does and every other plaintiff in this case does, you chose to use the Markov model that speaks to every one across the country. Is that accurate?

A. I did choose to rely upon the statistics I described forward, yes.

Q. Okay. And you calculated 86.4 percent. So that's a reduction of about 13.6 percent. Would that be accurate?

A. Yes.

Q. And that's based upon some coalescence of these two articles you read by Markov?

A. It is based on the information of those two articles, yes.

Q. Okay. And there's some mathematical formula that you came up with from using those two Markov models or is it just one Markov model?

A. There are two different articles, two different sets of data and --

Q. Two Markov models or one Markov model?

A. The Markov model is applied to different types of different sets of data.

Q. I see. Okay. And on some basis, you use those two model that come to 13.4 percent reduction; correct?

A. I used the data published in those articles. That data was presented based on the Markov statistical model.

That's correct.

Q. Would you agree with me, Miss Kucsma, that if you're looking forward, out 20 or 30 years or looking over someone's work life expectancy, the best thing to do would be to use the statistics that apply to the actual job that the person was doing. Would you agree that that's more accurate than looking at general statistics?

A. I would not --

Q. Yes or no.

A. Well, the reason I can't answer that question is because for one thing it presupposes that all of those statistics are available for one thing. But, secondly, the statistics that I used also allows me to consider the age of these men as well as their levels of education.

Q. But we all know the ages of the men. Okay. We can tell the ages of the men from their birthdays; right?

A. That's correct.

Q. You don't need a special Markov model to determine the age of Mr. Cool, do you?

A. No. I don't believe I said that I used the Markov model as to that.

Q. All right. And you said that you didn't think these things were available but have you ever seen -- I thought you said you did look at these things, the New York City Fire Pension Fund Comprehensive Annual Financial Report?

A. Yes, I have reviewed that.

Q. Okay. A pension trust fund of the City of New York for the fiscal years 2013, 2014, 2015. They are annually produced; right?

A. That's correct.

Q. Do you have those documents?

A. With me, I don't believe so, no. Again, they are publically available, but I didn't bother printing them out.

Q. And those documents actually demonstrate the precise percentage of the FDNY members who are active at every single age. Would that be accurate?

A. I believe they may provide that information for the coming year, yes.

(Continued on the next page ...)

Q And for each year -- I mean, you can go back five years and come to -- you can go back 15 years, as you've done on some of your other things. You can go back and get all these documents.

A Possibly.

Q And they show, every five years, what percentage of people who are active and percentage of people who are nonactive in the Fire Department for every single age.

Are you aware of that?

A At a snapshot in time, yes.

Q For instance, if you're over 50, only 13.7 percent of the Fire Department members are active over age 50.

Did you know that?

A That sounds about right, yes.

Q So, instead of a 13.4 percent reduction, that would be a reduction over age 50 of about 87 percent.

Would that be accurate if you were to do a work-life adjustment based on these statistics?

A No, actually -- because, unfortunately --

Q If you're over 50. If you're over 50.

Would that be accurate?

A I don't believe so, no.

Q If you're over 55, are you aware that, based on these statistics, only 4.48 of the members of the Fire Department are active over the age of 55?

Did you know that?

A That may be correct. As I said, I did review the annual report, so that may be correct.

Q Okay.

So, at least with respect to the statistics effecting the New York City Fire Department members published every year by the New York City Fire Pension Fund 95 plus percent of people over the age of 55 are inactive, correct?

A I believe --

Q If you know?

A Again, I believe, based on the current annual report, that figure may be correct. I don't recall specifically.

Q That's a pretty important figure, isn't it, the current annual report put out by the New York City Fire Department, if you're the person that's really calculating this person's numerical figures of going out over the rest of his lifetime?

That's a pretty important figure, right?

A I'm not sure I understand your question. There are multiple problems with it.

Q The way I see it -- tell me if you agree.

You have the Markov model, your model, the Markov model, which talks about everybody in the world, generally.

MR. CANNAVO: Objection, Judge.

THE COURT: Sustained.

MR. CANNAVO: It doesn't speak about the world.

Q You have the Markov model, which talks about everybody in America, and you have then the specific statistics published every year by the City of New York addressing firemen. Those two are who you get to choose from.

You're going with Markov, right?

A I cannot answer that question "yes" or "no" simply because your question suggests that I didn't review the data in the annual report. I did, as I've already said.

In my professional opinion, the most appropriate data for me to rely upon was the data that I used for one very important reason.

As I mentioned during my direct testimony, while I have presented figures based on retirement from the New York City, Fire Department I also mentioned that the U.S. Department of Labor indicates that, among all occupations, firefighters are the Number 1 occupation for people that have multiple employments and second jobs.

So it was most relevant for me to consider, not only the firefighting employment of these men, but overall employment, which is why, in my professional opinion, it would not be appropriate to simply focus on the information in the annual report.

And that's really only one of the reasons, but it's the main reason why I decided that was not appropriate for my analysis.

Q So you're basically saying that the Markov model is a better model for that analysis than looking at the actual statistics produced by the Fire Department, correct?

A That's not what I'm saying at all.

What I'm saying is, as an economist, I reviewed all the data in this case, and, in my professional opinion, the data that is based on the overall population for my purposes in this case is most appropriate, certainly more appropriate than simply looking at the data published in the annual report by the New York City firefighters.

Q For firefighters.

Now, would you agree with me, though, that -- are you open to the concept that there are different sources of statistics that can be looked at in evaluating -- I think the calculation you called it was the adjusted earnings.

There's different ways you can get to the work-life adjustment, correct, other than the Markov model?

A I'm not sure I follow your question.

Q Let me rephrase it then, because I want it to be very clear.

You've chosen to use a model based upon two articles you read in a magazine that both cited to the Markov model. You've chosen that as your statistical model.

Would you be open to the idea that there are other models in the world other than the Markov model?

Are you open to that or no?

A First of all --

Q Yes or no, doctor? Yes or no?

A Just for clarity --

Q Yes or no?

A These two articles didn't just appear in a magazine. They appeared in peer-reviewed journal. The journal is considered to be the top tier journal in our field, the journal is Forensic Economics.

In my professional opinion, it would not be appropriate to rely upon the data as published in the annual report for New York City firefighters --

Q We're not talking about that anymore. We're talking about anything else other than the Markov model.

Are you open to the concept that the Markov model isn't the exclusive way to look at calculating work-life adjustment.

There's other statistical basis that you could look at, correct?

A It probably is true.

Q You think you could give me that much?

A Correct.

Q Would you let me have that?

Markov isn't everything, right?

Markov isn't the total standard all economists use. There are plenty of other statistical sources you can use other

than the Markov model, right?

A There probably are other data printed about work-life expectancy, that's correct.

Q And you would agree with me, wouldn't you, Ms. Kucsma, that the most important thing would be to have the most accurate data possible?

You would agree with that, right?

A The most appropriate data for each particular case, yes, and that's what I used.

Q Appropriate meaning accurate, right?

We're talking about accuracy. You don't really know what's going on in the future. The best thing you can do is look at the past and use the most accurate data, correct?

A Again, the most appropriate data. And that's critical, because I would assume -- I would assume the U.S. Government data published is accurate. I would assume that the data published by the New York City firefighters is also accurate in that case. But that's not the question for an economic expert.

The question is, "What is the most appropriate data?"

There's lots and lots and lots of data published. A lot of it's accurate. But the question is which is the most appropriate for, in this case, calculating the loss of income, services and the future medical costs.

Q And, in your view, that was the Markov model, and that resulted in a 13.6 percent reduction for Mr. Cool, correct?

A Yes.

Q Okay.

But you are open to the concept that there are other statistics with different percentages, and the -- I think what you concluded was the most appropriate and most accurate of those statistics would be what you would want to use, correct?

A The most appropriate is what I would want to use.

Q But not the most accurate.

A Again, certainly accuracy.

But your question presupposes that there are multiple data sets, some are accurate, some inaccurate. There are lots of data published, as I said, much of it is accurate, some of it's not accurate. But there is a lot of accurate data posted, so to speak, but the question is what is most appropriate for this particular case.

Q You would agree with me, as a defendant in this case, a landlord, we wouldn't have any control over producing the statistics that the City of New York and the Fire Department produce when they produce the projections of how many people are actually gonna be employed and certain age groups in the Fire Department.

We would have nothing to do with that, agreed?

A I want to be very careful though about -- because your question suggests that the annual report includes projections of how many firefighters will be employed in the future.

Q I'll withdraw that.
A I believe that's what it does, which is another reason I don't think it's appropriate.
Q You're accurate. It's only based upon what is factual and what is known and what is transpiring on the day it's published, correct?
A It is based on what is happening now and has happened in the recent past, that's correct.
Q All right.
There's no projection -- no one is going to put -- withdrawn.
So, with respect to the different a categories, we've talked about the growth rate which effects all the numbers that you put in here, the wages, both the past and the future, right?
A Yes.
Q And the pension.
The growth rates at 3.9 percent you've given versus the one and two and three percent that we've seen in the statistics, those all effect those first three numbers, correct?
MR. CANNAVO: Objection, Judge.
THE COURT: Sustained.
Q The growth rates effect the first three numbers in your chart.
MR. CANNAVO: In which part, Judge?
MR. WHITELEY: Which what?

MR. CANNAVO: In which part, Judge?

Q We have Jeffrey Cool, age 55, age 62, age 55, age 62 --

MR. CANNAVO: Yeah, but they're two different statistics, Judge.

Which one is he referring to? One has no growth, the other one does.

Which one is he talking about?

Q The lower column has no growth, the upper column has a growth factor, correct?

A Yes.

Q Okay. That's all. Very simple.

The next is a variable supplement fund.

You've calculated that at $395,000; is that correct?

A Yeah, that's correct.

Q That is the same no matter because there's no growth rate effecting that, right? It doesn't grow.

A It's not so much it doesn't grow; it just is a fixed amount, $12,000. It isn't a function of a person's earnings.

Q It's $12,000 a year from the age of retirement to the age of, what, the expected life expectancy?

A Yeah.

Technically, though, as I mentioned in my direct testimony, it begins accumulating after 20 years of service. So, even if someone doesn't retire at that point, that money is banked for them, and then they can start withdrawing or using it

once they retire.

Q So it begins at either age 55 or age 62 under your two scenarios, correct?

A In terms of when he might start collecting it, yes, not when it starts accruing to him though.

Q $12,000 a year, correct?

A Yes.

Q Based upon if he had retired at age 55, what was his life expectancy? How many years did you calculate that he would have that for?

A Mr. Cool's life expectancy, statistical life expectancy, is 78.42 years. His statistical date of death is June 19, 2045.

Q So if he was to retire at 55 that would be 23 years?

A That's correct.

Q And then it's times 12,000?

What is that doctor?

A No, no, no, no.

As I mentioned before, the $12,000 starts accruing after 20 years of service, not when he retires.

So, in this case, at age 55 Mr. Cool would have had more than 20 years service. The $12,000 per year would have started in earlier years; it would have been banked; it would have been set aside from him. And then, when he retired from the Fire Department at either 55 or 62, he could have started

withdrawing that money, and the $12,000 per year would have continued.

Q You brought up an interesting topic, the credits firefighters earn for the number of years active as firefighters, correct?

A I don't believe I brought that topic up, but I did make reference, of course, to the years of service, yes.

Q Okay.

And you said that Mr. Cool would have 20 years of service at what age?

A I don't believe I said.

Q You would have to know that if you made that calculation, right?

A Let's see.

Mr. Cool joined the Fire Department -- let's just see. He began employment with the FDNY on July 7, 1992.

Q So he would have 20 years at what time?

A 2012. July 2012.

Q Okay. And he would retire at age 55.

What year would that be?

A That would be approximately the year 2022.

Q Okay.

And if he has -- if he earns $12,000 a year, every year until his statistical death, that would be 23 years times 12,000, right? From age 55 to age 78.

A No, but, again, the $12,000 per year would start with his 20 years of service, which would have been in or around the middle of 2012.

Q Okay.

Can you do me this -- just do a calculation for us, for me and for the jury.

What is 12,000 times 23?

A 12,000 times 23 is 276,000.

Q Okay.

And if you were to retire at age 62, that would be a 16-year life expectancy, correct? 62 to 78?

A Approximately, yes.

Q What's 16 times 12,000?

A 12,000 times 16 is 192,000.

Q Okay.

And the last category we have is the cost of the lifetime care. We've already talked about that.

You assumed no growth rate, correct?

A That is correct.

Q If there is a another lifecare plan that is produced before this jury, and the jury believed that lifecare plan more than Dr. Schuster's lifecare plan, that number would change to reflect the lifecare plant the jury believed more, correct?

A I'm not sure I follow your question.

But, certainly, again, if for whatever reason the jury

felt Mr. Cool would need other types of care, more care, less care, they can certainly adjust my numbers accordingly.

Q And that would substitute that number out and put the other number in if the jury believed that other number was more accurate, correct?

A Again, if they felt that the care items outlined by the defendant's lifecare plan was more appropriate, then they certainly can choose that number instead of mine.

Q Okay.

Let's move on to the next plaintiff, which is firefighter Bellew.

Firefighter Bellew unfortunately passed away at the fire of January 23, 2005.

You're aware of that, right, Ms. Kucsma?

A Yes, I am.

Q At the time he passed away, how old was he?

A He was 37.78 years of age.

Q Did you do a calculation based upon both a firefighter-grade projection into the future and as a lieutenant?

A Yes, I did.

Q When you projected his growth rate as a lieutenant, were you aware if he was ever a lieutenant during his lifetime?

A As I mentioned --

MR. CANNAVO: Before the incident, Judge?

MR. WHITELEY: Correct.

A So was he a lieutenant before he died?

Q Correct.

A Not to my knowledge.

Q Okay.

And the lieutenant salaries that you've given him are reflected in a chart, correct, that you have in your report?

A Yes.

Q And you've not only given him the lieutenant's salary, but you've given him first, second and third step, and then maximum, four different categories of wages, correct?

A I did assume the progression through those steps, yes.

Q And those progressions were, as you mentioned in your report, a 13 percent, a 14.6 percent, a 16.3 percent and a 23 percent premium, as you put in your chart, correct?

A Yes.

Q So, in addition to growth rates, you use the same type of calculations right?

A Yes.

Q You use the same numbers, the 3.9 percent?

A In future years, yes.

Q In the future.

A Correct.

Q And you made the same errors with regard to the one percent, one percent, one percent, one percent, 1.5?

You made the same errors in Bellew that you did with Cool, correct?

A I wouldn't agree with you, only because, as I said, I was using collective bargaining agreement. It is not clear to me the figures in the memorandum agreement you showed me are the same, but I did use the same annual increases for Mr. Bellew that I had used for Mr. Cool, yes.

Q And if you contradict what's reflected in the written agreement that we've presented to you, which is Exhibit XX --

MR. WHITELEY: Judge, we would like to offer that in evidence so the jury can see it, the written agreement, the collective bargaining memorandum.

MR. CANNAVO: Objection, Judge.

MR. FABIAN: Judge, the City could be happy --

THE COURT: The objection is sustained.

Q Ms. Kucsma, if you have no documentation to support your growth rate, because you didn't bring it with you, there's no evidence supporting the growth rates you put in there, correct?

A I wouldn't agree with that, obviously. This information is available online.

Q I'm not asking you about what's online. I'm asking you what's in evidence, to your knowledge.

Is there anything in evidence that supports any of your calculations?

MR. CANNAVO: Objection, Judge.

THE COURT: Sustained.

MR. WHITELEY: I would offer again the accurate copy of the August 5, 2015 memorandum reflecting the growth rates approved by New York City and the Union for Firefighters as Exhibit XX.

MR. FABIAN: I have no objection, Judge.

THE COURT: Objection is sustained.

MR. WHITELEY: Okay.

Q So, doctor, if that document isn't in evidence, you don't even have a document, right?

You don't even have a collective bargaining agreement, correct?

A I did not print it out, that is correct.

MR. WHITELEY: I would ask to preclude this expert's calculations --

MR. CANNAVO: Judge, this is inappropriate. I have an objection. She's an expert.

THE COURT: Mr. Whiteley, again, legal issues are for the Judge to determine, and we determine issues like that outside the presence of the jury.

Do you have any other questions of this witness?

MR. WHITELEY: I do, Judge.

Thank you.

Q You did another work-life, adjustment with respect to

Mr. Bellew, correct?

A Yes, I did.

Q And the work-life adjustment you did for him was from 100 percent to 90.8 percent, or basically you subtracted about 9.2 percent with respect to Mr. Bellew according to your calculations, correct?

A Each year, yes.

Q Again, you used the Markov model as opposed to the actual statistics that were supplied by the New York City Fire Department, correct?

A I did rely upon the U.S. Government statistics in those articles, yes.

Q Which cited to the Markov model as the substantive base, correct?

A No, that's not the substantive base.

And I'm really not trying to be difficult, and I don't want to get too technical, but the substantive base is U.S. data. The Markov model is just a statistical model that evaluates and measures how that data is changing over time.

Q Okay.

The Markov model is the model you used though, right?

A That is the model that was used to analyze the U.S. Government data, yes.

Q In both of those articles.

A That's correct, yes.

Q You also subtracted personal consumption with respect to be Mr. Bellew as you did with Mr. Cool, correct?

A I did make a downward adjustment each year for personal consumption for Mr. Bellew.

Because Mr. Cool is still alive, the adjustment I made for him was one for job maintenance or job-related expenses.

Q What data do you have with regard to your personal consumption numbers?

A As I mentioned during my direct testimony, I relied upon data that is published by the U.S. Department of Labor, very specifically, something called the Consumer Expenditure Survey, which is a survey that determines how people spend their money, how much they spend on food, how much they spend on clothing, utilities and so on.

Q You're aware Mr. Bellew has four children, correct?

A I am aware of that, yes.

Q And people I think you said, when they have that many children, or have four children, they don't tend to spend too much on themselves, but as their children age and move off out of the home, then they tend to use more and more of their money that they earn on personal consumption, correct?

A There certainly is more available for the parents once the children have moved out of the home, yes.

Q Thank you.

I would just ask you the same question I asked with

regard to Cool.

Are you open, Ms. Kucsma, to the concept that there are other statistics that can be used to arrive at a work-life adjustment other than the statistics that you used?

Are you open to that?

A Again, I am aware of the fact that other data exists, yes, but, in my professional opinion, the data that I used, of course, the data that was analyzed by the Markov model, is the most appropriate.

Q And you would agree with me the most appropriate and most accurate data would be what you should use, especially when you're making these long-term progressions with regard to the person's life, correct?

A The most appropriate and most reliable, yes.

Q The household services numbers that you came at, where did you -- what were the -- what evidence did you base the $93,000 in household services?

A I calculated the economic value of household services by simply determining, on average, how many hours each week Mr. Bellew would have devoted to the provisions of those household services.

Q Where are those calculations?

A Those calculations were originally presented in my report dated December 16, 2013.

In addition to that, they do appear starting on Page 9

of a document that I --

Q Where do they appear on your report?

A They begin on -- the calculations begin on Page 13 of my report, but the background information, data, sources, description of my methods, that begins on Page 11.

Q So you calculated that Mr. Bellew would have spent 667 hours a year on household services.

Is that accurate?

A On average, yes, that's slightly less than 13 hours per week.

Q Are you aware of what Mr. Bellew did around the household during his lifetime that compromised 667 hours of work?

A Specifically, no.

Q Anything? Are you aware of anything?

A Off the top of my head, I don't recall whether I had been provided with any itemized --

Q Who would have provided you with that?

A -- description of the household services.

Q Who would have provided you with that?

A That information is sometimes provided to us in cases like this by the spouse. In many other cases we do what I did here, and rely upon statistical benchmark data.

Q So those hours are not based upon anything specific with regard to Mr. Bellew; it's based upon, again, some general

statistic that you arrived at, correct?

A Well, yes and no.

It is based upon statistical data, but it's not general. It's based upon statistical data for a married male who works full time and has children various ages.

Q But not based upon anything you learned from the plaintiffs' attorney, or from any other experts, or from any evidence in this case, correct?

A It is not based on specific information provided to me, in this case by Mrs. Bellew, that is correct.

Q Presumably, Mr. Bellew, as his children age, they would have been able to help out around the household, correct?

A Possibly, I suppose.

Q Did your calculations figure that into the factor?

A Sure, absolutely.

As I mentioned a few moments ago, the data I relied upon was based on, among other things, the age of the children. And if you look at Page 12 of my report, you'll see that's very clearly laid out, where I talk about the number of hours that a married father who works full time devotes to household services when at least one child is under the age of 13. It's about 13 hours per week.

I then also considered the same data that would apply for a married male who works full-time who's youngest child is between the ages of 13 and 17. That figure was about 14 hours a

week and so on.

Q So, in addition to the pension that you arrived at, and the past earnings and future earnings, when you moved up to this chart here at the top of Exhibit -- with respect to Mr. Bellew, which is ID 152A, you used the same base methodology without growth rate calculation for the first three lines in the bottom chart, correct?

A Correct.

Q And you used your growth rate, whether it was wrong or right, you used that growth rate of 3.9 percent in the future and the overstated growth rate in the past, correct?

A I used the same method to calculate the lost earnings and pension for Mr. Bellew, and the top table there does include increases in pay each year.

THE COURT: At this time we're going to take a bathroom break.

COURT OFFICER: All rise.

Jury exiting.

(Whereupon the jury exits the courtroom.)

THE COURT: You may be seated.

Do you need a break?

THE WITNESS: Maybe I will.

THE COURT: Same warning. Don't discuss your testimony with anyone.

(Whereupon, the witness exits the courtroom.)

(Whereupon, the jury enters the courtroom.)

(Whereupon, the following takes place on the record in open court in the presence of the jury among Mr. Cannavo, Ms. Darling, Mr. Whiteley, Mr. Fabian, Ms. Donatello and the Court:)

THE COURT: You may be seated.

Mr. Whiteley, you may continue.

MR. WHITELEY: Thank you very much.

THE COURT: We'll move quickly and try to finish up Mr. Bellew.

CROSS EXAMINATION

BY MR. WHITELEY:

Q Miss Kucsma, when you did your initial report concerning Firefighter Bellew, would it be accurate to say that you use the fourth percent growth rate for everything?

A That is correct, based on the information I had at the time, I did, yes.

Q And then you adjusted and you used something closer to one or two percent, using what you say is the contract that you don't have, and we prepped you with evidence of that memorandum showing one percent, one percent, one percent, et cetera; correct?

A That's correct.

Q So, if anything, based upon that data that you recently acquired this contract, this collective bargaining agreement,

that four percent should have been reduced. Would you agree with me?

A It was. My testimony is based on the new wage rates that I determined from the collective bargaining agreement, all of which, of course, were below four percent from 2011 through 2016.

Q Just so we're accurate, Miss Kucsma, you would agree that in the report that you wrote in 2013, you used a four percent growth rate for the past and for the future throughout that report; correct?

A Yes, that is correct.

Q And, now, with the benefit of the new information that you obtained in 2015 that growth rate was reduced; correct?

A That's correct, yes.

Q From four percent to something closer to one or two percent; correct?

A In past years, yes.

Q So, the total number should have gone down from 2013 to the present report that you're exchanging here, which is your conclusions on this board marked 152A; correct?

A Not necessarily. The reason why is, for example, if you look at my original report.

Q Well, let me do it this way. Let me ask you, first of all, what were your numbers that you gave in 2013 as the total economic loss for Firefighter Bellew?

A In 2013, if I look at Page 16 of my report, I see that I calculated the loss of adjusted earnings income and household services at three million three hundred forty-six thousand four hundred forty-three dollars, assuming that Mr. Bellew had retired as a firefighter.

I calculated the lost income and lost household services at three million nine hundred sixty thousand five hundred and sixty-eight dollars, assuming that Mr. Bellew had retired as a lieutenant.

Q So, in 2013 and, again, your synopsis is more quickly available on Page 2, you calculated 3.346 million to 3.96 million; correct?

A Yes.

Q So, kind of in line with what you have down here, without earnings growth; correct?

A I suppose technically the numbers are very similar, obviously, the components of analysis are different.

Q Okay. And the reason --- And yet, today, you're here presenting us with a chart that has a number, at least with a growth perspective of 4.4 to 5.2, but you use the growth perspective as I understand it, even greater than you're using here today; correct?

A Yes. The growth rates are used in my original report were by and large higher than the growth rates that I used for today's testimony.

Q Can you read from your original report the opinion of economic loss to a reasonable degree of economic certainty that you gave in 2013 on Page 2?

MR. CANNAVO: Page 2, can we offer it in evidence then, Judge? We're going to start reading it.

Q I'm just asking for her own opinion.

A Sure. I think I already did the loss of income and household services that I computed in my 2013 report was between three million three hundred forty-six thousand four hundred forty-three dollars and three million nine hundred sixty thousand five hundred sixty-eight dollars.

Q And that opinion, at least according to Page 2 of your report, also included possible promotions of Mr. Bellew; correct?

A And I believe I just mentioned that, that the lower number assumed that he retired as a firefighter. The higher number of lost income and household services was based on him retiring as a lieutenant.

Q Okay. And that number was between 3.3 and 3.9 for the total economic loss?

MR. CANNAVO: Objection, Judge. She didn't say that.

THE COURT: Sustained.

THE WITNESS: Sorry, Your Honor.

MR. CANNAVO: Objection, Judge.

Q That number was according to your report on Page 2,

between 3.3 and 3.9 million dollars; correct?

A For lost income and household services, yes.

Q Thank you.

And at that time, apparently, you never bothered to calculate any lost pension from Mr. Bellew; correct?

A I did not include any calculation of lost retirement benefits in my original report, that is correct.

Q And that report was exchanged to all parties as the economic loss of Mr. Bellew; correct?

A That, I don't know. I don't disclose these documents directly to you. I don't know if it was closed to you.

Q But there was no calculation at any point in 2013 of any lost pension. Would you agree with that?

A I did, as I mentioned a moment ago, not include any calculation of lost retirement benefits in my 2013 report, that's correct.

Q Let's move onto Firefighter DiBernardo. Now, Firefighter DiBernardo unfortunately passed away on November 22, 2011. Are you aware of that?

A Yes.

Q And, yet, your calculations that you have done in your report, are these calculations based upon a wrongful death cause of action or are they based upon a personal injury ---

MR. CANNAVO: I object to that, Judge. It doesn't matter.

THE COURT: Sustained.

Q You have given calculations with regard to Mr. DiBernardo that go out to what year?

A Through, again, his age is fifty-five and sixty-two, which means through approximately 2025. That's when he would have turned fifty-five years of age, and 2032, when Mr. DiBernardo would have turned sixty-two years of age.

Q Okay. And you've given projections out through at least according to the charts I see in your report, 2035 for some reason?

A In my original report.

Q In your report that you just gave to us which isn't dated, but we just got last week?

A Oh, yes, I had also included projections through age sixty-five.

MR. CANNAVO: Judge, I object to that. But he doesn't, be that as it may.

Q And the recent report, we call it the "recent exchange," you gave us projections out to 2035; correct?

MR. CANNAVO: Judge, there was an exchange in January of 2014. So, I object to that.

THE COURT: Sustained.

Q In the recent exchange, the exchange that we prepared here, this one, this is your work product; right?

A Yes, it is.

Q Okay. And it's based upon this work product that you have, this chart, that Mr. Cannavo has presented to the jury for Mr. Bellew, Mr. DiBernardo, I'm sorry --- and that's as an Exhibit, not in evidence, but for ID, I can't read the number. The document that was marked for ID, reflecting Joseph DiBernardo, these are your documents that were marked for ID today; correct?

A Yes.

Q And these calculations that you are presenting to the jury are based upon these calculations that you recently exchanged to all parties; correct?

A Yes.

Q Okay. Not based upon the 2013 calculations; correct?

A That is correct, yes.

Q And in those recent calculations, for whatever reason, you have numerical figures going out to the year 2035; correct?

A That's correct.

Q Even though it's an accepted fact in this case, and there's been a lot of testimony on it, and it's undisputed that Mr. DiBernardo died on November 22, 2011 of accidental circumstances?

A That's correct, yes.

Q So, you are not asked to do anything differently, even though Mr. DiBernardo could not have lived to 2029 or '30 or '31 because he's no longer with us?

A I don't understand that question. I apologize.
Q Well, you're generally asked of the projections into the future, even though you don't know whether someone --- how long someone might live; correct?
A That is correct.
Q Okay. You do it based upon statistics and you look at life expectancy tables; correct?
A Correct.
Q And you look at those because you never know how long someone might live until you look at the statistical analysis, and you say most people in the United States with a college education they live to age X; correct?
A Correct.
Q But in this case, unlike those cases, unfortunately, Mr. DiBernardo is deceased, so there's no need to project out ---
MR. CANNAVO: Objection, Judge.
Q -- to 2011 is there?
THE COURT: Sustained.
Q What is the basis for your projections out passed 2011?
MR. CANNAVO: Judge ---
MR. WHITELEY: Fair question.
THE COURT: Sustained.
Did you want to answer the question?
A I was actually going to say, I don't think I can answer it, I think it's a legal question, and I am not the Judge, and I

am not an attorney, so I don't think I can answer that question as an economic expert.

Q So, it's accurate that Mr. DiBernardo was not a lieutenant; correct?

A My understanding ---

MR. CANNAVO: Judge, before the incident, can we say that, counsel, to avoid your problem.

Q Correct. He was not at any time before the incident, he was not a lieutenant; correct?

A That is my understanding, yes.

Q And are you aware if he ever became a lieutenant?

A My understanding is that he did become a lieutenant, yes.

Q And at what time did he become a lieutenant?

A I don't recall specifically as I sit here today.

Q Okay. And the calculations you did with respect to DiBernardo, are otherwise indistinguishable from the calculations you used for Firefighter Cool and Firefighter DiBernardo; correct, Bellew?

A Just to go quickly in my report, I did note that Mr. DiBernardo was reportedly promoted to the rank of lieutenant May 10th or after his injury May 10, 2005.

Q Okay. And based upon Mr. DiBernardo's earnings, you did the same types of calculations for him as you did for the other firefighters?

A That's correct, same method, yes.
Q You used a non-growth factor which did a past and a future wage loss and a lost pension; correct?
A Correct.
Q Are you aware if Mr. DiBernardo ever received a pension?
MR. CANNAVO: Judge, objection.
Q I'm sorry. Are you --
THE COURT: Sustained.
Q Are you aware if Mr. DiBernardo ever ---
MR. WHITELEY: Strike that.
Q Okay. So, this is the non-growth factor evaluation; correct, you did on the bottom of the chart?
A Yes.
Q Totaling 3,200,000 to 3,500,000 approximately?
A Approximately, yes.
Q And the second chart you've done is using a growth factor for the same three items, again, you used the same growth factors you used before which is about 3.9 percent for the future?
A Yes.
Q Going out all the way to 2035; correct?
A Going out to 2032 for the figures for the retirement age of sixty-two going out through 2025 for the retirement age of fifty-five.
Q Okay. And the variable supplement fund you used the

same twelve thousand dollars figure that you used the other firefighters; correct?

A Yes.

Q Okay. Do you know what the measure of pecuniary loss is in a wrongful death case from an economic perspective?

MR. CANNAVO: Judge, legal question.

THE COURT: Sustained.

Q Do you know if Mr. DiBernardo supported anyone during his lifetime, yes or no?

A Specifically, I don't know.

Q Okay. Were you ever given any evidence that he supported anyone during his lifetime financially?

A I don't believe so, no.

Q Okay. And if there was testimony in this record from Mr. DiBernardo's father, Chief Joseph DiBernardo, that he received no financial support, nor did his wife, nor did anyone receive financial support from Joseph DiBernardo during his lifetime, would that effect in any way your calculations?

MR. CANNAVO: Objection, Judge. Again, this is a legal issue on the death claim.

THE COURT: Sustained.

Q Your earlier report that you did for Joe DiBernardo back --- you did one back in 2013; correct?

A Yes.

Q And those numbers back in 2013 you did for Joe

DiBernardo were 3.3 to 3.9 million dollars; correct?
A Possibly. I don't believe I have a copy of that report.
MR. CANNAVO: I can give you a copy.
THE WITNESS: Thank you.
A This is the Bellew report.
Q Sorry about my mistake.
A I believe it's a report dated January 10, 2014.
Q Got it.
The numbers you reported back in 2013 for Mr. DiBernardo were in the range of 4.2 to 5 million dollars; is that correct?
A For adjusted earnings, yes.
Q Your opinion of adjusted earnings?
A Correct.
Q 4.2 to 5.1, somewhere between these two numbers; correct?
A Would be correct, yes.
Q Okay. And not as high as 5.2 to 6.3 as you reported here; correct?
A My original report did not include the original retirement benefits that are included in the exhibit that we're looking at.
Q And that's in the exchange that we just got a couple of weeks ago; correct?
A Yes.
Q Okay. And were you never asked to do that calculation

originally?

A It is my standard practice to update my calculations as we get closer to trial in. In some cases with things like retirement benefits and pension benefits, I will wait until we get closer to trial to value them.

Q And the work life adjustment that you did for DiBernardo was that using the same mark off methodology that you used in the other two firefighters?

A Yes, same data, same method, yes.

Q And, at least, with respect to Mr. DiBernardo that calculation resulted in a calculation down from one hundred percent down to seventy-eight percent or reduction from down from twenty-two percent of his earnings?

A Approximately, yes.

Q Okay. Just like with the other firefighters, are you open to the concept that there are other statistics that can be used to calculate the work life adjustment and, of course, the most important thing being the appropriateness and the accuracy of those other statistics?

A I am aware of the statistics. Of course, in my professional opinion I used the most appropriate data and statistics.

Q The mark off model?

A Based on U.S. government data yes.

Q And you didn't use the firefighting statistics that are

published every year by the New York City Fire Department for Mr. DiBernardo; is that correct?

A That is correct, I did not use the statistics published in the annual report. Those statistics are not time series data of work life expectancy. They're snapshots of data periods of time, and I did not use those, that's correct.

Q Thank you. Last firefighter is Firefighter Stolowski and Firefighter Stolowski is still working as we know from his testimony. And, so, his claim is very different here than all the firefighter; correct?

A Yes.

Q The only claim that's being asserted for Mr. Stolowski is a claim for his future medical costs; correct?

A That is my understanding. That certainly is all I have calculated.

Q And that's in --- It looks like 152 D for ID on your chart here.

A That appears to be the Exhibit Number, yes.

Q Okay. And you didn't use any growth rate or did you use a growth rate in making any of those calculations?

A No, I did not apply any medical inflation rates to any of my calculations of future medical care.

Q Okay. And all of these medical calculations that you've made, and, again, you're not a medical doctor and you have no opinion one way or the another as to what specific medical needs

or support needs Mr. Stolowski has; correct?

A That is correct.

Q All of your calculation are based purely upon what you were provided by Doctor Schuster; correct?

A That's correct and what he testified to in court, yes.

Q And so, again, if the jury believes Doctor Schuster and his numbers, then presumably you've added them up correctly?

A Yes.

Q Okay. And if the jury chooses to question any of Doctor Schuster's medical findings, need for future hospitalization, needs for therapeutic care, need for laboratory tests and so forth, any of those categories of loss, or any of those specific findings, then the jury should discard Doctor Schuster's numbers and therefore discard your calculations; correct?

A Because as I had mentioned many times today certainly the jury is free to adjust my figures up or down, so they can determine what they feel is the appropriate value of economic damages in this case.

Q Okay. And are you aware -- do you have any other evidence that's been provided to you with regard to Mr. Stolowski and his needs medical or otherwise?

A No.

Q Okay. So, you have no personal opinion one way or the other about those things?

A That's correct, I do not.

Q So, this service that you're providing here and this expertise is you're essentially just adding up the numbers that were handed to you by Doctor Schuster?

A In this case, yes. My main function was to perform some basic math since I did not include any year to year increase for inflation.

Q So, you basically did an addition of all the numbers that were supposedly provided to you by Doctor; correct?

A And some multiplication, and I might have taken an average here and there, but yes, that's correct.

Q Okay. Just so I'm clear also, again, we were not given this medical report regarding ---

MR. CANNAVO: Judge --

Q --Mr. DiBernardo until January 5th?

MR. CANNAVO: Seriously?

THE COURT: Sustained.

Q Did you prepare the actual spreadsheet with all those life care numbers? Was that your work product or was that Doctor Schuster's work product?

A That was my work product.

Q When specifically did you do that work product?

A I believe I first prepared those spreadsheets towards the end of 2015. Of course, I then reviewed Doctor Schuster's testimony, went through each column in that spreadsheet, confirmed that each number in the spreadsheet was consistent with

his testimony, hit the enter button and technically you can say that I recalculated those figures.

They didn't change, of course, because Doctor Schuster's testimony was consistent with the information originally provided to me in his report.

Q And when did you do this exactly?

A Do what?

Q This final recalculation that you just described?

A Last night. I always review all of my demonstrative aids the night before I come to trial.

Q And how does that explain how we got them on January 4th?

A Well, as I mentioned earlier ---

MR. CANNAVO: Objection to this. Judge, they got ---

THE COURT: Sustained.

Q And did you ever speak to Doctor Schuster directly about Mr. Stolowski and his medical needs?

A No.

Q So, you never called him on the phone and asked him questions about that?

A No.

Q Were you ever given any of the medical records or any of the documents before you did this addition?

A No. They would be no use to me as an economist.

Q So, you have no opinion any of the medical needs of Mr. Stolowski; is that correct?

A That's correct.

MR. WHITELEY: Thank you very much, Miss Kucsma. I appreciate you coming down. Sorry to keep you so ate. I thought it was necessary.

THE COURT: Mr. Fabian.

CROSS EXAMINATION

BY MR. FABIAN:

Q Good afternoon.

A Good evening.

Q Good evening to you too. I'm going to ask very few questions. Obviously, there's been a lot of talk about the growth rate.

Could you just give me us a brief explanation as to what the growth rate is?

A Yes. When I use the term, "growth rate," I'm talking about the annual or yearly increase in a person's wages. So, how much on average the salary, the wages of each one of these men would have increased each year from 2005 to '6, '6 to '7 and so on.

Q So, when you use, and in this particular case you use a 3.9 percent growth rate; correct?

A In the future, yes.

Q And that would be year over year; correct?

A That is correct, yes.

Q So, can you give us an example, just so that the jury knows how it works. If I were --- Not "I," because I'm not supposed to use that word.

If someone were to have a hundred dollars and take it to the bank, and they were going to get 3.9 percent year over year how would that work? What would it be after year one?

A Well, if somebody took a hundred dollars and put it in the bank and got 3.9 percent they would have $103.90 one year from today.

Q And then in year two, what would they have?

A Then they would have $107.95.

Q And year three and let's make it to year five. Just as an example.

A Okay. Year three, they would have $112.16. Year four, they would have $116.54, and last but not east, year five, they would have roughly $121.08.

Q Right. So, over time, that growth rate impacts how quickly the amount that is started with grows; correct?

A Sure.

Q And it seems to be doing so, would it be fair to say, it's doing so exponentially?

A Actually, I would not agree with that at all.

Q Thank you. But it's growing?

A Sure.

Q We start with a hundred dollars. By the time that year five comes that money has grown to 121; correct?

A Sure.

Q So, you would agree with me then that it's important to use the appropriate growth rate; right?

A I would certainly agree that it is important to do that.

Q Now, as an economist, what you're doing is you're looking at the past and you're trying to forecast the future. Would that be accurate?

A That is part of what I do, yes.

Q That is part of what you do?

A Sure.

Q So, in this case you can look back and you can try to predict what's going to happen in the future; right?

A Certainly, part of my opinion about what likely will happen in the future is based in part on data about what has happened in the past, that is correct.

Q Right. But it's a prediction. You're not guaranteeing that what you're forecasting in the future is what actually is going to happen; correct?

A Unfortunately, I don't have a crystal ball. None of us do. So, I cannot say with absolute certainty, only to a reasonable degree of economic certainty.

Q Right. So, you're making a prediction. That's accurate, though, you give me that? It's a prediction what

you're making?

A I suppose that's one word I could use, yes.

Q Okay. So, in this particular case, right, when we see the numbers, and we see the years, and we see the life expectancy and we see the work expectancy, those are predictions that you're making; correct?

A Not really. I prefer to refer to them as determinations because of the fact that they are based on statistical data and research.

Q But that's exactly what I agree with you. They're based on statistical data that is trying to assess what could happen. Is that accurate?

A Only partly. Obviously, some of the data I rely upon is a reflection of what in fact did happen.

Q Because what did happen is based on what happened before; right? You're looking backwards, what did happen?

A That's one thing I consider, yes.

Q Right. But when you're looking forward, because you just told us you don't have a crystal ball, you said it?

A That's correct. I wish I did, but I don't.

Q You're just looking, you're just trying to help us understand what could happen; right?

A That's correct.

Q Okay. So, you cannot come here before this Judge and this jury and give them a guarantee that your model will tell

them exactly what's going to happen twenty years from now? You cannot do that?

A Well, as I said before, I certainly -- I, no one else can predict the future with absolute certainty. That is correct.

MR. fabian: Thank you. I appreciate that.

Q Now, we were talking --- We went through each of these figures; right? Let's actually follow the order you were using, right.

We have a figure that includes no growth rate; correct?

A Yes.

Q And we have a figure that does include a growth rate; correct.

A Yes.

Q Can you tell me what the average growth rate --- what the average growth rate is between this figure and this figure? So, in other words when I compare this figure, what's the average growth rate that you accounted for to get us to that figure?

A Well, I already told you. Actually, specifically the growth rates that I used, but I would be happy to repeat it very quickly, not too quickly.

Q Okay. Listen.

A I testified to all of these in my direct testimony.

Q Absolutely.

A So, I used specific growth rates in each of the past years from 2005 through the present time. I then used an average

growth rate of 3.9 percent.

Q I just want you to give me the average growth rate. What's the average growth rate that would give get me from this number to that number? What's the average growth rate?

A That, I don't know off the top of my head. But the greater significance would be meaningless to us because you have lumped together various categories, the variable supplement fund and the cost of life time care, has no growth applied to it ever.

The earnings, of course, have growth rates that I already testified to during my direct testimony, and the pension income technically speaking has very, very little growth. There's a tiny cost of living adjustment of about $252.00 per year.

Q I understand what you're saying. But here you would agree with me, I'm comparing apples to apples, if you give me the average growth rate, it's the exact same thing. I'm comparing apples?

A No, I would actually not agree with you at all on that.

Q That is okay. You were talking about these two different numbers; right? You see the adjusted earning in the past years?

You said that that stayed the same. Can you tell me what growth rate is, the average growth rate? Since this is not apples to apples, can you tell me what the average growth rate is that would give get me at age fifty-five that would get me from

800,779 for Jeffrey Cool to 1,852,090?

What's the average growth rate that would take from this number to that number in that period of time?

A The growth rate that I used, of course, was 3.9 percent a year. The reason that the number is so much larger for age sixty-two is because it includes an additional seven years worth of earnings, not because it includes some astronomical annual growth rate.

It just has seven more years of earnings.

Q So, in seven years this number slightly doubles?

A Yeah.

MR. CANNAVO: Objection, Judge.

MR. FABIAN: No.

A That number --

Q Am I wrong?

A That number is twice as large. Again, you're comparing apples to oranges. The difference between $1,852,090 and $802,779 is simply that the first figure includes an additional seven years worth of earnings.

Q So, this figure includes an additional seven years?

A That's correct.

Q So, I'm not trying to confuse anyone. All I'm saying is age fifty-five, this is the number.

A If he works through age fifty-five, that's correct.

Q Then he works an additional seven years?

A That's correct.
Q And then, when he does that, it becomes that number; correct?
A That's correct.
Q Right. So, there's a seven year lapse in time; correct? You'll agree with me?
A I guess you could say that. Yeah, seven year difference in time.
Q Yeah, seven year difference in time. In those seven years the number goes from 802,000 to about 1.8 million. Yes?
A No. It may just be semantics, but there are different numbers. It's not a matter of it going from. The second figure represents earnings through age sixty-two.
The first figure represents age fifty-five.
Q Are you saying that it grew from seven years? It got higher, it got bigger?
A It got bigger because he worked another seven years. In each of those years, I assumed his earnings increased by 3.9 percent.
Q I'm not contesting that you're talking about seven years. All I'm asking is given the growth rate you used in that seven years, the number went from 800,000 to 1.8 million, yes, no?
A I guess I can agree that, certainly, the adjusted earnings went to that amount when I extended my earnings through

age sixty-two.

Q And the only thing I want to highlight is the growth rate makes a difference, you would agree with me, that it makes a difference? The growth rate impacts growth?

A It certainly impacted it, but not as significantly as you would think. As I said, the main difference between these two numbers is just seven more years of earnings.

The first figure of $802,779 includes six years of future earnings. The second figure includes thirteen years of future earnings. That's the main difference in those two numbers.

Q And when you prepare these reports, right, this is very obvious to all of us, you were told all of these individuals were employees of the City of New York; right?

A My understanding they were firefighters with New York City, yes.

Q And they shared with you information about fringe benefits; right?

They shared that with you, about the benefits that come with being employed by the City of New York?

A I don't believe that they, to use your word, specifically, provided me with that information, publicly available information. I'm aware of the fact that New York City firefighters have these fringe benefits. I looked up the fringe benefits on line.

Q Right. So, since you looked up the fringe benefits on line, there are certain things that you learn from looking those things up on line; right?

A Yes.

(Continued on next page.)

MR. FABIAN: Great. Thank you

THE WITNESS: Thank you.

THE COURT: Thank you, Mr. Fabian.

MR. FABIAN: You're welcome.

THE COURT: Mr. Cannavo.

MR. CANNAVO: May I, Judge?

REDIRECT EXAMINATION

BY MR. CANNAVO:

Q. When counsel was asking about these growth rates, you stopped the growth rate at 3.9 percent -- correct? -- in the second calculation?

A. In the future years, yes.

Q. All right. There had been years in the past where the fire unions, the police unions, the sanitation unions have gotten increases of 5 and 6 percent a year in the years past -- right? -- historically?

A. That is certainly true. And interesting enough --

Q. Well, that's all I need. We're going to get done.

A. Sure.

Q. So we don't need the additional; right?

A. Sure.

Q. They had gone up more than 3.9 percent a year?

A. Absolutely. I have contracts demonstrating that.

Q. You didn't do that here to add 5 or 6 percent over the future; correct?

A. That's correct.

Q. You stopped it at 3.9 because that was historically what the more recent average increases were before the big recession; right?

A. Yes.

Q. And, in fact, we know that these firefighters and their unions are not going to be happy with 1 percent growth in future years now that the recess is behind us.

MR. WHITELEY: Objection to what makes people happy.

Q. Well, we know that the unions will keep pushing for more increases; right?

MR. WHITELEY: Objection to what all the unions will do.

Q. Well, we know from the facts that counsel brought out that they took --

THE COURT: Overruled.

Q. -- 1 percent and they got it up to 3 percent for half a year in 2016 and 2017; right?

A. Yes.

Q. There's a growth trend there, isn't there?

A. Yes, the annual increases were increasing.

Q. Now, when counsel was asking you in your general calculations that you provided to everyone and I want you to assume they were provided to everyone back in January of 2014.

For Mr. Bellew, it was 3,000,346 to 3,000,960 and that did not include the pension benefit; correct?

A. Or the variable supplements fund, correct.

Q. All right. And you had to wait to see what the -- everyone was waiting to see what the new contract may provide; correct?

A. Correct.

Q. And that would give us a better idea of what the pension rates might be based on a flat projection from the last year's salary; right?

A. Correct.

Q. All right. And the same thing with Mr. DiBernardo, $4,216,000 to $5,183,000. That did not include a pension increase; correct?

A. That is correct.

Q. All right. And the firefighter statistics that counsel has been asking about when firefighters leave the job, you assumed 55 and 62 as their retirement age as firefighters; correct?

A. Yes.

Q. All right. Now, could you have made the assumption that when firefighters, and you brought out the number one group that goes on to have another job of firefighters statistically; right?

A. Correct.

Q. Did you assume or could you assume that they would retire at age 50 but then go on to have another job?

A. Sure.

Q. Let's take Mr. Bellew. Mr. Bellew was a college educated man. He had a wife. He had four young children. If he retired at half pay, is it reasonable for this jury to assume that he would at the age of 50 go on to get some other job and earn income that way?

A. Yes.

Q. All right. Instead of doing that bifurcated calculation of a retirement as a firefighter at one age and then what his earnings might be at other, you simply gave the jury a comparison of the single growth rate without raising it for firefighters; correct?

A. Correct.

Q. Would it be reasonable to assume that a firefighter like Mr. Bellew, who has four young kids and a wife, college degree, would continue to work until age 55 or 62 and earn income?

A. Yes.

Q. Okay. He would have his pension and whatever earnings that might be?

A. That correct, yes.

Q. It could have been more than what you projected here as a flat projection for his last salary as a firefighter;

correct?

A. It could have been, yes.

Q. All right. Again, that's for the jury to determine what his growth might be, what his jobs might be, what his income might be; correct?

A. Yes.

Q. All right. And the personal consumption -- the assumption of these statistics as the kids get older, they take care of themselves better and the person, the person that's using this consumption, has more for themselves; correct?

A. Yes.

Q. In reality, kids need help more today more than ever; right?

A. In some cases, yes.

Q. Okay. That's something to take into account as well?

A. Yes.

Q. Okay. All right. Now, with regard to this Markov model that you're holding that you're talking about, did you take that into account here? Could the jury consider some other model to use as to when someone might work until a certain age?

A. I mean I suppose the jury certainly is free to make any adjustments to my calculations they feel are appropriate, but the data and the model and the studies that I relied upon are generally accepted among forensic economists, published in our top tier journal and, in my opinion, most appropriate.

Q. And would it be reasonable for this jury to assume, putting aside statistics, consider each one of these individual's life. For example, Mr. Bellew, a young guy with four kids and a wife that he would continue to work beyond age 50 that counsel suggest is when firefighters normally leave the job. Would that be reasonable to assume?

A. Yes. In fact, I believe Mr. Bellew's youngest child will turn 22 in approximately the year 2026 and that would be roughly when Mr. Bellew would have been approximately 59 years of age.

Q. All right. Reasonable to assume that with a young kid like that he would have kept working?

A. Yes.

Q. All right. And, by the way, regarding this, it doesn't apply to Mr. Cool, but regarding Mrs. Bellew and the loss of services that you talked about there, you used a statistical average of what the average person would have provided in terms of care and household services; correct?

A. Specifically married males who work full time with children of various ages, yes.

Q. And that number that you gave us with Mr. Bellew was based on him doing approximately 13 hours a week of household services; correct?

A. Yes. And, actually, between about 10 and 14 hours per week. Again, depending on the number of small children in the

household.

Q. And that's a statistic; correct?

A. Yes.

Q. It doesn't indicate what Mr. Bellow might have actually done; right?

A. It's a good representation of it, but that's true. He could certainly had devoted each time each week or maybe less time each week.

Q. All right. And with a young man with four kids, having to manage that type of a household, it's reasonable for this jury to not consider the statistical average of 13 hours a week and perhaps consider that maybe he would have done more than that; correct?

A. Certainly. They could adjust my figures upward.

Q. And, again, that is based on the statistics and a flat average for them to consider; right?

A. Yes.

Q. All right. Now, let me just take -- and I'm done with this, Judge.

You took here for Mr. Bellew -- let's use him. This flat projection of past and future earnings is assuming his last salary which we know to be a fact based on his tax returns and the W-2 income from the City that is based on just, taking that last income and adding it together up until age 55; right?

A. Generally speaking, yes.

Q. All right. With the reduction, you also gave him a reduction of personal consumption --

A. Exactly.

Q. -- in that other figure?

A. Correct.

Q. You actually reduced his salary and then projected it out flat?

A. That's correct.

Q. Without even giving him the benefit of a 1 percent increase that counsel for the owner wants this jury to believe is where this is going?

MR. WHITELEY: Objection as to what I would want to believe.

THE COURT: Sustained.

Q. You didn't even give him a 1 percent bump in calculating those figures; correct?

A. That's correct.

Q. And you gave, at best, a 3.9 percent increase for this jury to make the comparison; correct?

A. That's correct.

Q. They can give no increase. They can give up to 3.9 percent. Would you agree statistically on average they made that much in increases?

MR. WHITELEY: Objection as to form.

Q. All right. They could --

MR. WHITELEY: Objection, Your Honor.

Q. -- give --

THE COURT: Sustained.

Q. -- no increase if they choose or they can give somewhere between that; right?

A. Sure.

Q. One percent more; correct?

A. Sure, absolutely.

Q. Two percent?

A. They could do whatever they feel is most appropriate.

Q. In fact, the most recent contract up to 3 percent is what they're going to be getting in 2016; right?

A. Yes.

Q. Now, counsel told the Court and jury you made a big mistake in the numbers you used; right?

A. I think did say that once or twice, yes.

Q. Okay. And he impressed upon the jury that you used 1.8 percent to something like that instead of 1 percent?

A. Yes.

Q. Tell the Court and jury how much your big mistake would have meant in calculating Mr. Bellew's. Let's use his earnings. What difference would it have made if you had calculated at 1 percent instead of 1.8 for those numbers?

MR. WHITELEY: For a lifetime?

MR. CANNAVO: We're talking about the numbers.

Well, Judge, it's only --

MR. WHITELEY: The only way to do it is over a lifetime.

MR. CANNAVO: No, no.

Q. Miss Kucsma, he pointed out for the years -- we're talking about these years that he --

MR. WHITELEY: Compounded thought, counselor. It's compounded every year of their life.

MR. CANNAVO: Judge, may I?

THE COURT: Let him ask a question.

MR. CANNAVO: Thank you. May I?

Q. Miss Kucsma, counsel pointed out 1 percent increase in August of 2010 to September of 2011, September 11 to October 2012, etc; 1 percent for 2012 to '13; 2013 to 2014 and then went to 1.5 percent for '14 and '15; 2.5 percent '15 and '16 and 3 percent into '17. How much difference would that have made just on those past numbers?

A. If I do not take into account the fact that these wage increases happened midway through the year, so very conservative in other words --

Q. All right.

A. -- I would calculate the earnings for Mr. Bellew in 2016 instead of $111,846 at approximately $109,000.

Q. Okay.

MR. WHITELEY: For one year. He asked for five

years for the life of past --

THE COURT: Mr. Whiteley.

A. Well, by the time I got to 2016, if I had used the growth rates that you mentioned earlier, I would get a figure of about $109,000 in 2016 instead of a figure of $111,846. And that's assuming actually a 1 percent increase for all of 2010, which I believe you already conceded only started August in 2010. Prior to that, they were getting a 4 percent increase.

Q. So if you take all the numbers, you correct everything, write out from 2010 up until 2015, it's a $2,000 difference?

A. In past years, yes.

Q. That's for the calculation; correct?

A. Yes. For the earnings in 2016, that's correct.

MR. CANNAVO: All right. Thank you.

Judge, thank you.

THE COURT: Thank You, Mr. Cannavo.

Mr. Whiteley.

MR. WHITELEY: Yes.

RECROSS EXAMINATION

BY MR. WHITELEY --

Q. Those same calculations would be compounded for all the future calculations -- correct? -- all the future that you did for Bellew, for Cool, the ones that you for DiBernardo, all of those mistakes that you made from 1 percent to 1.8, from 1 to

1.2, they compound over a lifetime; correct?

A. Well, again, I can't agree with you that they were mistakes. In --

Q. I'm going --

A. -- my review of the contract, but, yes.

THE COURT: Just answer the question.

Q. This is in the same analogy or he same supposition that Mr. Cannavo did based upon those projections into the future that would go out to the years 2032 and 2035 each year compounding that mistake; correct?

THE COURT: Okay. Mr. Whiteley, now let the witness answer the question. Go ahead, Miss, Kucsma.

A. As I mentioned earlier, I would not agree with your characterization of it as a mistake.

Q. You didn't --

THE COURT: Mr. Whiteley, let her finish her answer. Go ahead.

A. But nonetheless if, for example, I calculated the earnings for Mr. Bellew as a firefighter in 2017, instead of about $116,000, I would get a figure of about $113,250.

Q. And what about in the year 2030?

A. Well, do you want me to sit here and spend the time doing it?

Q. I just want you to be honest with the jury.

MR. CANNAVO: Objection to that, Judge.

THE COURT: Sustained.

Q. It's a compounding mistake; right? Every year you would have do it again and every year adds up and that's true of the pension and that's true of the future wage lost earnings; correct? Yes or no?

A. Again, in this case, certainly, if I started in 2016 with about $109,000 instead of about $111,000, no question about the fact that if I then increase the numbers each year by 3.9 percent, I would end up with a lower final salary using the $109,000 figure than I would have if I used the $111,000 figure. No question about that.

Q. Also with respect to the pension, that is based upon a long projection into the future also; correct?

A. That's based on the final salary, that's correct.

Q. And, again, most of that, almost all of that is based upon the 3.9 percent, which is no where reflected in the contract; correct?

A. Well, that I would disagree with. 3.9 percent is clearly reflected in the contract preceding the most recent contract, which is why, in my professional opinion, that is the appropriate growth rate to use in the future years.

Prior to August of 2010, the New York City firefighters were, in fact, getting an increase every year of 4 percent. The fact that in recent years during the depth of recession they conceded to lower wage increases is not something

that I would expect as an economist to continue in future years.

Q. And I'm not really concerned about what you think. I'm concerned about what the contract shows.

What the contract shows is 2001 -- 2010, '11, '12, '13, '14, '15 and '16 it goes from 1 percent, 1 percent, 1 percent, 1 percent, 1.5 percent, 2.5 percent and then the maximum is into 2016, 3 percent. Correct? Just a yes or no.

A. In the most recent contract --

Q. Just a yes or no.

A. Yes.

Q. Thank you. And you don't really know what's going to happen in 2017, do you? Nobody knows, do they?

A. None of us do. That's correct.

Q. And so the 3.9 number that you arrived at is just a guess, your educated guess, your economic guess, but it's not based upon the contract from 2015/16, and the one that's been in place since 2010; correct?

MR. CANNAVO: Objection to the characterization as a guess, Judge.

THE COURT: Sustained.

Q. It's basically a guess; correct?

MR. CANNAVO: Objection.

THE COURT: Sustained.

Q. And the number that you have for -- I'm almost done -- for these firefighters, if you did assume a 1 percent growth

instead of a 3.9 percent, would you agree with me that the numbers for each and every one of these firefighters would be very much closer to the 3.2 to 3.4 million then they would to the 4.8 to 5.2 million. It will be around 3, 3, 3, 4 or something like that; correct?

A. Without doing the math, I couldn't say but certainly the numbers would be in between the two sets of calculations that I've provided.

Q. Because the majority of the difference here can be accounted for the 3.9 percent growth that you used on every one of the firefighters; correct? The majority is the difference between these two numbers is accounted for by the 3.9 growth percent growth factor you would assume for every one of the firefighters going forward; correct? Just yes or no.

A. Well, I'm looking it at the numbers to see if that actually is correct.

Q. They're supposed to be the same chart except one is with a growth factor and one is without a growth factor; correct?

A. That's correct.

Q. And the majority of the growth factor that you've accounted for is the future growth factor; correct? Yes or no.

A. That's correct.

Q. And you've used in all of your calculations for whatever reason you've used 3.9 percent. What I'm saying is if

you used 1 percent as Mr. Cannavo also suggested that number would be a lot closer to 3.2 to 3.4 than it would be the 4.4 to 5.2? Yes or no.

A. I couldn't say with certainty but it stands to reasonable it probably would.

Q. Yes, it does. Thank you very much. I'm done.

THE COURT: Thank you, Mr. Whiteley.

Mr. Fabian?

MR. FABIAN: Thank you, Judge. I have no questions.

MR. CANNAVO: Can I ask one question? I mean just one.

THE COURT: Okay.

RE-REDIRECT EXAMINATION

BY MR. CANNAVO:

Q. Because, Miss Kucsma, this bottom number on each of these for John Bellew, Jeff Cool, Joe DiBernardo, this number is flat throughout; correct? No increase?

A. Correct.

Q. If we take the midway, instead of 4 percent increase and no increase of 2 percent, would you agree that the number at the bottom here would be approximately 50 percent higher or halfway between?

A. Probably, yes.

MR. CANNAVO: Nothing further. Thank you.

THE COURT: Thank you, Mr. Cannavo.

Mr. Whiteley?

MR. WHITELEY: That's it, Judge. Thank you very much.

THE COURT: Thank you, Mr. Whiteley.

Thank you, Mr. Fabian. One second. Attorneys step out up.

(Discussion off the record.)

THE COURT: Members of the jury, on behalf of the parties and the Court, I can't stop thanking you enough for your attention and dedication to this matter. We're going to take our afternoon recess or evening recess and I'd ask that you return tomorrow at 11 downstairs in the jury room waiting for the court officer to escort you upstairs. Enjoy the rest of your evening.

COURT OFFICER: All rise. Jury exiting.

(Jury exits courtroom.)

THE COURT: I just want to excuse Miss Kucsma.

THE WITNESS: Yes.

THE COURT: Thank you for your testimony. You may stand down.

THE WITNESS: Thank you, Your Honor, and have a nice night.

(This matter was adjourned to January 14, 2016 at 11 a.m.)

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