SUPREME COURT OF THE STATE OF NEW YORK
BRONX COUNTY : CIVIL TERM : PART IA10

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THOMAS PHILLIPS,

Plaintiff(s), INDEX NO. 300459/2010

-against-

KMCP, LLC,

Defendant(s). Testimony of Kristin Kucsma

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March 17, 2016
851 Grand Concourse
Bronx, New York 10451

B E F O R E:

THE HONORABLE LISBETH GONZALEZ,

JUSTICE.

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Catherine Mercorella
Senior Court Reporter

THE COURT: Mr. Brown, who do you wish to call as the plaintiff's next witness?

MR. BROWN: Your Honor, the plaintiff calls Professor Kristin Kucsma to the stand.

THE COURT: Thank you.

THE COURT OFFICER: Remain standing.

Do you swear under penalties of perjury that the testimony you give will be the truth, the whole truth, and nothing but the truth?

THE WITNESS: I do.

THE COURT OFFICER: Please state your name and business address for the record.

THE WITNESS: Kristin Kucsma, K-U-C-S-M-A, and my address is 293 Eisenhower Parkway, Suite 190, in Livingston, New Jersey 07039.

THE COURT: Thank you.

THE WITNESS: Thank you, your Honor.

THE COURT: Counsel, you may inquire.

MR. BROWN: Thank you, your Honor.

K R I S T I N K U C S M A , having first been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. BROWN:

Q Good morning.

A Good morning.

Q Could you tell the jury a little bit about your background, education, training and experience in the field of economics?

A Sure. I have a Bachelor of Arts degree in economics that I received from Seton Hall University where I was graduated with highest honors. I have 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 means is that over and above the requirements for a Master of Arts degree in economics, I completed all of my course work in pursuit of a Ph.D., passed all of my qualifying examinations, wrote part of my dissertation but did not complete it.

Q And Professor Kucsma, by whom are you currently employed?

A I'm currently the managing director and senior economist of the Sobel Tenari Economics Group.

Q And have you maintained any teaching positions in the field of economics?

A I have. I joined the Tenari Economics Group on January 2, 2008. Prior to that --

THE COURT: How do you spell that?

THE WITNESS: T-I-N-A-R-I.

THE COURT: And it's the Tinari Economics Group?

THE WITNESS: It was then. Now it's the Sobel

Tinari Economics Group, S-O-B-E-L.

THE COURT: Thank you.

THE WITNESS: Thank you.

A Before I joined the group, I enjoyed what I like to call my first career as a college professor. I was a member of the full-time faculty at Seton Hall University and Drew University, and I was also an adjunct professor at Rutgers University and St. Peter's College in Jersey City.

Q And Kristin, Professor Kucsma, have you had occasion to publish any articles or chapters in any books with regards to the field of economics?

A I have. The one that's probably most relevant for today's discussion is an article that was published in the Journal of Forensic Economics, and that's an article that talks very specifically about how to calculate economic losses in matters involving personal injury and wrongful death.

Q Have you received any particular honors or awards, professionally speaking?

A I have. As a professor, I won a number of teaching commendations. I was named professor of the year a couple of years in a row. As a testifying expert, I have been named the, I believe it's the number one testifying expert for two years now in New York, and my firm has also been named the number one consulting group in New Jersey for several years now.

Q Are you a member of any professional organizations?

A I am. I'm a member of the National Association of Forensic Economics, and I currently am the chairperson of a committee for that organization. I'm also a member of the Eastern Economic Association, and I am also wrapping up my last hearing for the Office of Attorney Ethics for The State of New Jersey.

Q What is forensic economics?

A Forensic economics refers very specifically to the use of general economic methods, techniques, generally-accepted economic data, and the use of that for a very specific purpose, and that is to use these basic economic tools and techniques to value economic losses in lawsuits.

Q And have you testified before in matters such as today?

A Yes, I have.

Q Can you give the jury the benefit of your experience in these type of matters, legal matters involving economic principles?

A Sure. To date I have testified approximately 150, 160 times in both federal and states courts. I've testified throughout the five boroughs of New York. I've also testified in upstate New York, throughout New Jersey, Pennsylvania, Virginia, Louisiana, Puerto Rico, Florida, and I believe those were all the territories and states in which I've testified.

Q In addition to matters in which you've been called to give testimony, were there other matters in which you've been

asked to consult by attorneys about economic loss but were never actually called to court to testify?

A Yes. I typically testify in only about five to seven percent of the cases that I actually work on. I have worked on thousands of cases since 2008 with both plaintiffs' attorneys and defense attorneys. I've worked on cases involving the wrongful death of individuals, personal injury to individuals. I also work on employment-related matters, harassment, discrimination, and so on. I've worked on a number of wrongful incarceration matters. So I've worked on a number of cases that do involve somebody suffering economic damages as a result of another party's actions.

Q You used the term "plaintiff" and "defendant," so I just want to clarify.

Today you're testifying on behalf of Mr. Phillips, who is the plaintiff in this case?

A That's correct.

Q But in other cases where someone was injured and they were making a claim for economic loss, have you been retained by firms representing the defendants?

A Yes. Approximately 25 to 30 percent of the work I do involves working with defense attorneys.

Q And when you were called in, whether it be by plaintiffs, the law firm representing the injured party, or the law firm representing the defendants, to perform a forensic

economic analysis in an injury case like this, what essentially do you do?

A The first thing I have to do is determine what I call the appropriate theory of damages. In other words, I need to start by reviewing the documents that were provided to me. Typically, those documents include things like legal documents, deposition transcripts of the plaintiff, a copy of the complaint, for example.

I'm also frequently provided with a variety of documentation of the plaintiff's earnings, W-2 Wage and Tax Statements, sometimes tax returns. If I'm working on a case involving a union member, as I am today, I also typically am provided with a variety of union documents, Collective Bargaining Agreement, pension plan summaries and things like that.

On occasion I am also provided with medical summaries, vocational reports, life care plans. I was provided with such a report in this case as well.

Once I review all of those documents, I then, as I mentioned a moment ago, determine what I call my theory of damages. I identify the different categories that I'm going to value as an economist. Once I've done that, then I conduct some research. I look at, for example, data that was published by the U.S. Department of Labor, the National Vital Statistics reports. I do some research.

Once I'm done with that, if I feel there is some additional information that I need, I will reach out to either plaintiff's counsel or defense counsel, it depends with whom I'm working, and I will let them know in order to provide a comprehensive analysis I require some additional information. They'll provide me with the additional information, and then I will set out to actually calculate the economic losses.

Q When were you first contacted by someone from my firm about performing a forensic economic analysis in this case?

A I don't recall specifically, but I believe it was sometime in early 2012.

Q What were you asked to do with regards to Mr. Phillips' economic loss in this case?

A I was asked to assess the economic losses suffered by Mr. Phillips as a result of a work-related injury.

Q Did you review certain materials initially as part of your analysis?

A I did. As I mentioned before, I did review some legal documents. I also reviewed some documentation of Mr. Phillips' earnings, tax return transcripts, W-2 Wage and Tax Statements.

When I was first retained, I had not yet been provided with a life-care plan, so that is not a document I reviewed originally, although I subsequently reviewed it and revised my report to the reflect that.

I also reviewed some very limited union documents that

I had been provided early on as well.

MR. BROWN: Your Honor, may I have this handed up to the witness?

THE COURT: Show it to your adversary first, please.

MR. FABIANI: There are four years, but they're not in order. They're out of order.

No objection.

THE COURT: Thank you.

THE WITNESS: Thank you.

Q Professor Kucsma, I have handed up to you Plaintiff's Exhibit 15, which is in evidence. It is the tax returns of Thomas Phillips. I ask you to take a look at them for a moment.

And they're for the years 2005 to 2008?

A I believe so. There actually is a tax return in here for 2004 and then each year through the year 2008.

Q Did you have an opportunity, as part of your initial analysis in this case, did you have an opportunity to review copies of those documents?

A Yes, I did. I don't believe I had been provided initially with the full return for 2004, but information about Mr. Phillips' 2004 earnings was actually presented on his 2005 tax return, so I still was able to review that information, even though I didn't review the entire 2004 return.

THE COURT: So I need a clarification for the

record. The span of the records in front of you is from what to what, please?

THE WITNESS: 2004 to 2008.

THE COURT: Thank you.

Q Now, after reviewing -- withdrawn.

You mentioned that in performing your initial forensic analysis, you reviewed the tax returns and you reviewed certain union documents?

A Yes. I had been provided with some limited union documents. I had been provided with what we call a summary plan description, specifically for the pension plan. That is just a general description of, in this case, how the union calculates a members' pension benefits.

I also had been provided with a document that gave me information about how many credits Mr. Phillips had accumulated toward that pension at the time of his injury, and I believe those were the only pension documents that I was originally provided.

I did have a conversation with both plaintiff's counsel and I also reached out to Mr. Phillips and I did let them know that it would be very helpful for me to have some additional union information and that if I was not able to get that additional union information, I would probably not be able to calculate the value of certain fringe benefits, for example, the annuity benefits.

At that point in time, Mr. Phillips reached out to the union. He told me that he had tried to get the information and was unable to do so. I proceeded with my analysis, but I did not value those fringe benefits, like the annuity benefits, because I simply did not have enough information at the time to do so.

Pension benefits I was able to evaluate. I had enough information, but I was forced to leave out my evaluation of the annuity benefits.

Q And that was in your initial analysis, correct?

A Yes.

Q Subsequently, were you provided additional union information, including the annuity benefits?

A I was provided some additional union information, yes, as well as a life-care plan.

Q Did you at that time revise or add to your analysis?

A I did. I then issued a revised appraisal of economic loss in February of 2014. The most significant difference between my original report in 2012 and my revised report in 2014 was that I now had been provided with a life care plan. I now added into my analysis the cost of lifetime care that, according to the life care plan, Mr. Phillips is going to need for his remaining life expectancy.

In addition to that, as soon as I revised my report in 2014, nearly two years after I had authored my initial report, I

also updated my report simply to reflect the fact that it was two years later. Any updated economic data that was available, I incorporated into my report. And I also split the past and future years accordingly.

Originally, the past, of course, ended in 2012. Obviously, once I revised my report in 2014, the past now extended through 2014. So those are the changes I made.

Q And then prior to coming to trial today, did you perform, did you perform any further analysis in coming to your final calculations with regards to Mr. Phillips' economic loss?

A I did. Once again, it is obviously now almost two years later after I issued my revised report, so once again I certainly did update my report to reflect the current time, and that was especially important for purposes of calculating future medical costs.

When I issued my revised report in 2015 or, excuse me, 2014, the rest of 2014 and all of 2015 were in the future, which means in that report I calculated the cost of medical care that Mr. Phillips was going to need to get in the future.

Now, obviously, in early 2016, '14 and '15 are in the past, so I had completely deleted any calculations of, quote, future medical care for those years, because it would not be appropriate.

Q We're going to get into the specifics in a moment of your calculations and your opinions. But just so we're clear,

with regards to the future life care, medical care and assistance with daily living and things of that nature, are there any costs in your calculations for care provided in 2013, 2014 and 2015?

A No, I did not consider any out of pocket expenses Mr. Phillips might have incurred. I did not include any calculation of any cost of medical care in the past.

Q When did the calculations with regards to future medical care begin in your calculation?

A I've actually started them here as of April 1 of this year.

Q 2016?

A 2016, correct.

Q Thank you.

After analyzing all that information, did you come to any opinions to a reasonable degree of economic certainty as to the economic loss of Thomas Phillips relevant to his work-related accident of September 2008?

A Yes, I did.

MR. FABIANI: Your Honor, I don't believe that Mr. Brown has proffered her as an expert yet, but I have no objection in the event that he decides to do so.

THE COURT: Thank you, Mr. Fabiani.

MR. BROWN: Your Honor, I would offer Professor Kucsma as an expert in the field of economics for the

court's purposes.

MR. FABIANI: I have no objection.

THE COURT: Thank you. The witness is deemed an expert in the area of economics.

Q Did you prepare a report with those calculations and opinions?

A Yes, I did.

Q Do you have a copy of that, which has been marked, I believe, for identification as Plaintiff's Exhibit 17? Do you have that in front of you?

A I do have a copy of it in front of me, not a copy of the marked exhibit, but I do have a copy.

Q And we have a version of it up here to be displayed for the jury.

THE COURT: Excuse me. 17 is what?

MR. BROWN: It is the report. It's for identification only, your Honor.

THE COURT: Thank you.

MR. BROWN: May I ask Professor Kucsma to come off the stand so she can go through her findings with the jury.

THE COURT: Any objection?

MR. FABIANI: None whatsoever.

THE COURT: Thank you.

Can you see the screen from where you're sitting?

MR. FABIANI: No, but I believe I have hard copies

of anything that's on there.

THE COURT: If at any time you wish to stand, you can go into the corner and take a look from there.

MR. FABIANI: I'll check occasionally to make sure we're on the same page, literally.

THE COURT: You may step down.

THE WITNESS: Thank you.

THE COURT: Now, is it big enough for you to see, because this is being projected from an iPad, so the size of the letters can be increased if need be. Would you like bigger letters?

THE JURORS: Yes.

THE COURT: Are you making it bigger?

MR. BROWN: Yes. Okay. We'll do the best we can.

THE COURT: The chair can be moved so that you don't trip over it.

THE WITNESS: Great. I would appreciate that.

THE COURT: Off the record.

(Discussion off the record.)

Q Professor Kucsma, on this first page we have some information. We see Mr. Phillips' date of birth and date of the accident and then there's something called a statistical life expectancy.

What is that?

A Yes. In order for me to calculate the loss of

compensation to Mr. Phillips, one of the things I needed to consider --

THE COURT: Excuse me one second.

Counsels, could you step up one second.

(Discussion off the record.)

THE COURT: Please continue.

THE WITNESS: Thank you, your Honor.

A In order for me to calculate loss of compensation, one of the things I needed to consider was the loss of pension benefits suffered by Mr. Phillips. If he had not been injured in 2008, if he had been able to continue working, he would have been given more credit in the pension system, which meant when he ultimately retired, he would have received a greater amount of pension benefits, in other words, a bigger monthly check from the pension.

Now, the reason I mention that is because in order for me to calculate the loss of pension benefits, I have to know when Mr. Phillips would have begun to get pension checks and when he would have stopped getting them. Well, he would stop getting them at his statistical date of death. His statistical life expectancy was something that I needed to know, so I would know how many years to calculate the loss of pension benefits.

In order for me to determine Mr. Phillips' statistical life expectancy, I looked at U.S. government data, and I looked very specifically at something called the National Vital

Statistics Reports. And based on that, as of September 25, 2008, males who are about 37 years of age could be expected to live, on average, to 78.77 years of age.

In other words, I would expect that Mr. Phillips, as of the date of injury, had a statistical date of death of February 18, 2050. That's how long he would have continued to get those pension checks.

Q Now, this life expectancy calculation, how is that number -- how do you come up with that number? How does the National -- can you remind me again what it's called?

A Sure. The National Vital Statistics Reports. It's actually the Centers for Disease Control. And what they do is they simply track, on a yearly basis, the number of people, men and women, born in the United States each year, and they also track the number of people, men and women, who die in the United States every year. And based on that data, they're able to calculate the probability of a person living another year, and based on that, they're able to ultimately come up with estimates of statistical life expectancy for men and women.

Q Are these estimates based just on healthy people?

A No. These estimates are based on the actual population of people in the United States. People from all different life styles. People that have all types of health conditions. People that exercise. People that don't exercise. People who have parents who lived to be 105. People that have parents that

died at a young age, and so on. So it really reflects the actual population of people in the United States.

Q The next figure there is the statistical retirement age?

A Yes.

Q What is that?

A This was also a very important figure for me, because, as I mentioned a moment ago, in order to calculate the lost pension benefits, I had to determine when Mr. Phillips would have started to collect those pension benefits. And, alternatively, in order for me to calculate the lost income, I had to determine how many more years he would actually work. So the statistical retirement age was necessary for calculating both lost income and lost pension benefits.

In order for me to determine Mr. Phillips' statistical retirement age, I needed to consider three things: The fact that he is a man, the fact that he was about 37 years of age at the time of injury, and the fact that he did not have a high school diploma.

Once I had gotten that information, I once again looked at U.S. government data, and I looked very specifically at 37-year-old males that don't have a high school diploma. And based on my review of that data, I saw that the actual population of males, 37 years old without a high school diploma, males in that group retire on average at the age of 62.8. So I

was able to determine that if Mr. Phillips hadn't been injured in 2008, he would have continued to work through March 1, 2034. That's when his lost income stops, and that's when the loss of pension benefits is going to start.

Q Now, these life expectancy, statistical retirement age, and projections that you made about how long he would have worked, are these based on a reasonable degree of economic certainty?

A Yes. And these are generally-accepted analyses and tables used by economists when they're valuing damages in litigation matters.

Q You mentioned the fact that Mr. Phillips didn't have a high school diploma.

Why was that something you had to consider in determining his statistical retirement age?

A That was something significant for me as an economist simply because the most reliable and most accurate data for me to use is data that is provided very specifically according to three characteristics of a person: Their gender, their age and their level of education.

So, in order for me to offer the most accurate assessment here to a reasonable degree of economic certainty, I had to consider the highest level of education he had attained.

Q If Mr. Phillips had had a high school diploma, how would that have impacted the statistical retirement age?

MR. FABIANI: Objection. Speculation.

THE COURT: Sustained.

Q What impact did the fact he didn't have a high school diploma have on his statistical retirement age?

A Generally, the lower level of education, the lower the statistical retirement age, which means alternatively what we typically see is higher levels of education are accompanied with higher rates of work and higher retirement ages.

Q I'm going to go to the next page here.

Can you tell us what we are looking at here?

A Sure. When I calculated the losses suffered by Mr. Phillips in this case, I started by calculating the first element of loss, and that was the loss of income. In other words, I started by considering how much additional money Mr. Phillips would have earned if he had not been injured in 2008 and if he had been able to maintain his employment as a construction laborer, specifically as a union construction laborer, through his statistical retirement age.

In order for me to calculate how much additional money Mr. Phillips would have earned if he had been able to continue working as a union construction worker, I first had to determine how many more years into the future he would have worked, and we discussed that earlier. I had determined, based on the statistical retirement age, that Mr. Phillips would have continued to work through approximately the age of 62.

The second thing I needed to do, though, was form an opinion about how much, on average, Mr. Phillips would have earned each year going forward, 2009, '10, and so on.

In order for me to form an opinion about how much on average Mr. Phillips would have earned each year, I reviewed what I call Mr. Phillips' earnings history. In other words, I looked at his tax returns, I looked at W-2 Wage and Tax Statements, and I looked at how much Mr. Phillips had actually, in fact, earned in each of the years leading up to the date of injury.

So, based on my review of the W-2s and the tax returns, I was able to determine that Mr. Phillips had in fact earned $57,481 in 2005. He had in fact earned $59,613 in 2006. He had in fact earned $62,400 for 2007. And in 2008, while he was employed, he had in fact earned $39,647. So that's one of the things I wanted to consider before determining how much on average Mr. Phillips would have continued to earn if he had not been injured.

Now, in addition to that, I also considered some benchmark statistical data. I also looked at data published by the U.S. Department of Labor, and I looked very specifically at annual earnings for people in the construction industry. And Mr. Phillips' actual earnings were consistent with that benchmark statistical data.

So, based on my review of how much Mr. Phillips, in

fact, earned, I determined if he had not been injured on September 25, 2008, he would have earned on average $62,400 each year going forward.

Q Do the tax returns -- it's not reflected here in the actual tax returns you reviewed, was there any indication that Mr. Phillips had earned more in prior years prior to 2005?

A As I mentioned earlier, on the 2005 tax return, all of the tax information for the year 2004 was provided, so I was able to look at Mr. Phillips' wages and salary for 2004, and the figure was in excess of $60,000. I don't recall right now whether it was slightly over 60,000 or maybe a thousand more, but it was between maybe 60 and $61,000.

MR. FABIANI: Why don't we not speculate. We have the records here in evidence.

MR. BROWN: That's fine with me, your Honor. I'll just find it and hand that to the witness.

MR. FABIANI: I think it's the first one.

THE COURT: Which exhibit are you looking at?

MR. FABIANI: 15.

MR. BROWN: This is Plaintiff's Exhibit 15 in evidence, the tax returns.

THE COURT: Thank you.

Q Would that refresh your recollection as to what Mr. Phillips' earnings were in 2004?

A It does. Thank you.

In 2004 Mr. Phillips actually earned $60,565.

Q Was that his adjusted gross income?

A No. That is his income just through employment. That's his wage income. It does not include any other sources of income he may or may not have had.

Q Moving on to the next set of calculations.

A Now, once I had determined how many more years Mr. Phillips would have worked on average, how much he would have earned each year, the next thing I needed to do was take into account the fact that if Mr. Phillips had continued to work in 2009, '10 and so on, his earnings would have increased each year on average.

And in order for me to determine how much on average Mr. Phillips' earnings would have increased each year --

THE COURT: Excuse me. Could you make that slightly larger.

A (Continuing) In order for me to determine how much on average Mr. Phillips' earnings would have increased each year, I would use data published by the U.S. Department of Labor, specifically the Bureau of Labor Statistics, and I looked at how much wages had in fact increased on average for people working in the construction industry, and the figures you see here reflect how much wages in fact increased in the United States for construction workers from 2008 through 2014. I had to estimate the figures for 2015 and '16 because that data is not

yet available.

So then what I was able to do was calculate Mr. Phillips' gross earnings, how much he would have earned each year going forward if he had not been injured in the year 2008.

Q And I'll move on to the next page -- oh, actually, was there something else you wanted to comment on?

A Yes. We need to look at the bottom of the page.

Q Sorry about that. You lead me.

A Sure.

Now, in order for me to calculate lost earnings, though, I did need to take into account several potential adjustments that might need to be made to those gross earning figures that you saw just a moment ago.

The first adjustment that I needed to make, and I'm going to start at the bottom and work my way up, I made an adjustment for what we call job-related expenses. As a union member, Mr. Phillips did have to pay a number of job-related expenses. He had union dues. He also had to pay for uniforms and sometimes for dry cleaning and certainly to get to and from work and maybe buy a hot dog for lunch. So he certainly did have some job-related expenses that he would have had to continue paying if he continued working.

So, the first thing I needed to do in each and every year was make a downward adjustment of 18.3 percent to account for those job-related expenses, and I got this figure by

reviewing Mr. Phillips' tax returns. He had reported business expenses on his tax return, so I was able to see very clearly what types of job-related expenses he had and how much money he was spending on that.

Q Can I stop you there for one second?

A Sure.

Q So you just didn't take what his lost earnings were, his average lost earnings in 2008, and just multiply them by his future work life expectancy?

A No. That would not be correct. In particular, it would be significantly overstating the lost earnings, because I know, I know from reviewing his tax returns, that he was spending 18.3 percent of his earnings each year for these job-related expenses. And if he had continued working going forward, he would have had to continue making those payments, and this money, he would not have had for his own personal use for personal clothing, food, for home, and so on.

Now, in addition to that, I also considered two other potential downward adjustments, and I'll tell you why I say potential in just a moment, but I also considered a downward adjustment for what we call unemployment and a downward adjustment for what we call work life expectancy. These two downward adjustments take into account the probability, the likelihood that Mr. Phillips may have missed some work here and there. So, again, even if he hadn't been injured in September

of 2008, would he necessarily have worked continuously through 2034? If he had missed some work, would he have been paid for that missed time or not? I had to take this into account.

If Mr. Phillips had missed work and not been paid for that work, I would have to make these two downward adjustments to my earnings, and I have done that. If, alternatively, as a union member, he had access to additional security benefit funds, other types of funds that are sometimes set up to provide income to people for short periods of time when they're unemployed or injured, then the downward adjustment may not be necessary, but it really hinges on two things: The probability he would have missed work and whether or not he would have received any sort of payment during those periods of missed work.

In order for me to determine the likelihood that Mr. Phillips might miss some work, I started by, once again, reviewing some U.S. government data, and I looked very specifically again at males like Mr. Phillips, 37-year-old males who do not have a high school diploma. And based on my review of that U.S. government data, I found that males in that category, on average, do miss work. On average they spend about 79.2 percent of the time working, which means alternatively they spend about 20.8 percent of the time not working because of injury, illness, so on.

Also, I needed to take into account the possibility,

the probability that Mr. Phillips may become unemployed. In order for me to determine the appropriate adjustment if he became unemployed and he was not provided with any sort of compensation, I reviewed data published by the U.S. Department of Labor. I looked very specifically at what the unemployment rate has been historically for males at various ages. I looked very specifically at the ages that Mr. Phillips would have been if he had continued working. And based on my review of that data, I determined that the appropriate downward adjustment to take into account that probability is 3.4 percent each year.

So what I've done is I've provided two sets of calculations. My first set of calculations I made all three of these downward adjustments every year. Definitely he would have had to continue paying these job-related expenses. No question about that. So that adjustment is made no matter what.

In the first scenario, though, I made all three downward adjustments. That assumes that Mr. Phillips would have missed work and he would not have received compensation during those periods of missed work. I also provided an alternative set of calculations in which I considered the possibility that Mr. Phillips may have been provided with compensation during those periods of missed work. So, in my second scenario, the only downward adjustment I made every year is, again, for those job-related expenses.

Q And the compensation you're talking about, would that

be some type of union benefit?

A Yes. It would be through the welfare fund, additional security benefits fund, many unions, and there was some indication in some of the union documents I've reviewed that there were these types of funds available, although, the specific nature of those funds was not provided to me in the documents that I reviewed.

MR. FABIANI: In light of the admission that there is no foundation for this testimony, I move to strike that testimony. If she doesn't know what the benefits were, how could she testify that they accomplished full compensation?

THE COURT: Step up.

(Discussion off the record.)

THE COURT: The objection is sustained. You have to lay a foundation, Counsel.

Q Was the only basis for the second scenario, scenario B, the information, the limited information you got in the union plan documents?

A No. Also, my experience working on a large number of cases involving union workers is that many union workers, again, are provided with these types of benefits if they become temporarily unemployed, particularly union members that rely upon the union to find employment for them, and it was very clear from some of the documents I reviewed that in this case the employment that Mr. Phillips obtained very specifically was

as a result of his union.

Q One further question along those lines.

The previous years' earnings that you looked at, 2004, 2005, 2006, 2007, those were his actual earnings for those years?

A That's correct.

THE COURT: Those were his what?

MR. BROWN: Actual earnings for those years.

Q And do they take into consideration any short-term times off from work and things of that nature?

A Yes. And that was the other thing I was going to point out. Because I am relying on how much Mr. Phillips actually earned in each year, if he did miss some work in any given year, that's already reflected in the numbers that I reviewed when coming up with his base earnings, whether it was that he missed work because of injury, because work was not available through the union, that's already been reflected in that earnings history that you saw earlier. So that $62,400, if he missed some work that year, that's already reflected, because if he hadn't missed work that year, then that number would have been even higher, and I would have used an even higher number.

Q So, if you then apply an additional discount to that average number that already reflected that, what effect -- what is your concern about that?

A My concern in that case is that I would be unduly

penalizing the plaintiff, because I would basically be making two downward adjustments for periods of missed work.

If he only earned $62,400 because he didn't work 52 weeks out of that year and then I make another downward adjustment to account for that period of missed work, I would basically be counting that downward adjustment twice and I would be significantly understating Mr. Phillips' earnings.

Q Is that one of the reasons why you used average earnings based on actual past earnings?

A Yes. That's the best representation, of course, of the plaintiff's earning capacity. It takes not only into account the wages he was actually paying, but it takes into account any sort of pattern of that plaintiff's unique employment during those years.

Q Okay. Dr. Kucsma, we are pressed for time, so I'm going to try to move relatively quickly.

THE COURT: Jurors, you can stand and stretch a second.

(Brief pause in the proceedings.)

Q Again, in the interest of time, I'm going to try to move relatively quickly, because there is another witness for this afternoon.

THE COURT: Mr. Brown, your back is to me. It's hard for me to hear you.

MR. BROWN: I was just telling Professor Kucsma,

in the interest of time, I'm going to try to move quickly through the next few numbers.

Q What are we looking at here?

A Here we are simply looking at my calculations of the lost earnings under those two scenarios I just described. And in this case what I've done is simply calculated the gross earnings without any downward adjustments, and then in this first column I made all three of those downward adjustments I described before, and then in the final column I made only the downward adjustments for job-related expenses.

And based on my analysis I determined that if Mr. Phillips had continued working from 2008 through the present time, and the only appropriate downward adjustment was for job-related expenses, the loss would be $428,875. That represents how much additional money he would have earned through today's date after he paid off those job-related expenses.

In this column I calculated the loss of earnings for the present time at $320,613. That takes into account not only the money that Mr. Phillips would have paid for those job-related expenses, but includes a second adjustment down for periods of missed work.

Now, I then, of course, had to extend this analysis into the future, because, as I mentioned earlier today, based on my research I had determined that if Mr. Phillips had not been

injured in 2008, he would have continued working through 2034. I used exactly the same method I just described.

THE COURT: Excuse me, Counsel. We need to see the top. Identify the column.

Q This is the adjusted earnings in the future years starting now?

A Yes.

Q And projected to when?

A Through Mr. Phillips' statistical date of retirement in 2034.

I used exactly the same analysis that I just described to you. Once again, I calculated the gross earnings each year going forward. I had to determine on average how much Mr. Phillips' earnings would have increased each year. In order for me to do that, I consider two sources: Number one, I looked at data published by the U.S. Department of Labor about how much wages had in fact increased in past years for construction workers, and I also considered projections that are published by the U.S. government, specifically the Social Security Administration, projections about how much wages are expected to increase going forward.

And based on my review of those two sources, I determined that on average Mr. Phillips' earnings would have increased by 3.9 percent each year.

Once again, I provided two sets of calculations. The

last column I calculated how much additional money Mr. Phillips would have earned if he had been able to work from today's date through 2034 and he had continued to make those job-related expenses. I calculated the additional compensation in that case at $1,512,474.

In this column, of course, I calculated how much additional money Mr. Phillips would have earned from today's date through 2034, taking into account all three of those downward adjustments I mentioned earlier. And in that case I calculated the loss of income at $1,157,034.

Q Real quickly, on that 3.9 percent number there.

A Sure.

Q You indicated that that is the figure you used for expected wage growth for year over year?

A Yes.

Q Okay. Now, does that take into -- does that number take into consideration that there are good economic times and bad economic times?

A It does. And, in fact, certainly if I look at wage growth in recent years, it hasn't been 3.9 percent. There's no question about that. But if I go back and I look at what wage growth was -- it's hard to remember these times -- if I go back to 2004, 2005, wage growth in many industries was in excess of 4 percent. So what I've done here, is I've looked now at an average through good times and bad times, and I do expect there

to be some good times going forward, as well as possibly another bad time. And based on that, I calculated the average increase. It might be lower in some years and it might be higher in other years, but on average I would expect it to be 3.9 percent.

Q Just so we're clear, these numbers here on the two scenarios, the $1,157,000 in scenario B -- I'm going to go back a page -- in order to calculate the total lost earnings for Mr. Phillips from the date of the accident going forward would have to be added to this $320,000 number?

A Yes.

Q So that this would be the past and these would be the future, correct?

A That is correct, yes.

Q Okay. And, similarly, with the $1.5 million number, the scenario where you don't apply all the discounts, you then add that to the 500 something thousand dollar number in the past and come up with a total loss?

A That is correct, yes.

Q Okay. Thank you.

Now, were you also asked to review -- were you also -- I'm sorry.

I think you mentioned previously you were also provided a life-care plan and asked to perform certain calculations on the life-care plan?

A I have. Real quickly, though, I did calculate lost

pension benefits. I don't want to leave that out, but I won't spend a lot of time on them.

Q Yes. Thank you.

A Sure.

As a union worker, Mr. Phillips was eligible for pension benefits, and, as I mentioned earlier, I had been provided with a summary plan description, so I know exactly what formula the union uses to calculate pension benefits. It actually is the number of years of service times, at least at that time, $22.50. That was the pension credit rate at that time.

I also reviewed a document that told me that at the time of the injury Mr. Phillips had already accrued, accumulated 14 pension credits, and that was important for me because that indicated to me that he had gotten one pension credit for every year that he was in the union. I needed to know that, because I needed to know, if he had continued working in the union, how many credits he would have gotten each year based on what he had gotten in the past. I assumed going forward he would continue to get one pension credit for the remaining 19 years that he would have worked, 19 years times $22.50 gave me a figure a little over $5,000 for the additional pension benefits that Mr. Phillips would have gotten.

Now, the reason I didn't use $5,000 but I only used a figure of about $4,000 is because, according to my research, Mr.

Phillips would have retired before the age of 65, and in the summary plan description, you have to be 65 to get what we call unreduced benefits. Since he would have retired earlier, I had to take 20 percent off of that figure, which is what allowed me to estimate that he would have gotten an additional $4,000 every year if he had worked through his statistical date of retirement.

Q And that's a total loss of pension benefits of?

A $65,541.

Q And with regard to that number, there's no growth factor. That 3.9 percent doesn't apply there?

A That's correct.

Q And when you mention that summary plan, I want to ask, we have here Plaintiff's 16 which is in evidence which are the documents from the electrical service employees union, and I want to ask you to take a look at that --

THE COURT: Counsel, sorry. Would you just let me see the top of the chart, please.

Thank you.

Q Specifically, there is a booklet in the back. Is that the summary plan -- is that the summary of the plan you were referring to?

A It is. This is not -- I don't believe this is the specific document I reviewed. I certainly could check my file a little later if need be, but this is a summary plan description

for the pension benefits.

Q The one you got was not in that form anyway?

A It was not in this form, that's correct, yes.

MR. FABIANI: Could we just take a look at that document, the entire exhibit.

THE WITNESS: Packet, sure.

MR. FABIANI: Before there's any more questioning of the witness here.

MR. BROWN: There is no more questioning on that document. But I will wait.

MR. FABIANI: No, go ahead.

THE COURT: You're done with your witness?

MR. BROWN: No, about that document.

THE COURT: Let's give counsel a chance to look.

Mr. Fabiani, tell me when you're done.

MR. FABIANI: I'm done.

THE COURT: Let's continue.

Q Then I'd ask you, Doctor, were you provided a life-care plan that had been prepared by Dr. Sanders Davis in this matter?

A Yes, I was.

Q And, Doctor, just so we're clear, I know you told us about your education, background and training. You're not a medical doctor; is that correct?

A That is correct, I am not a medical doctor.

Q Doctor -- I mean, Professor Kucsma, did you offer as

part of your analysis with regards to the economic -- as part of your economic analysis of the life care plan, did you render any opinion as to the services that are outlined in the plan prepared by Dr. Davis?

A No. I relied upon the life-care plan provided by Dr. Davis for three pieces of information: What types of care will Mr. Phillips need, how often will he need it, and how much would it cost him to get that care in the initial base year. I then used that information to do one very simple thing. I had to calculate how much money Mr. Phillips will need to cover the cost of that care over his remaining life expectancy. That means, as an economist, I needed to determine how much those costs are going to increase each year over his life expectancy, and then I added them up.

Q And there are certain tables that are here and the numbers are very hard to read, so I'll start with the top and you can explain what they are and direct me.

THE WITNESS: Sure. Can everybody see these? Your Honor, can you see these from back here?

THE COURT: They're really little numbers.

THE WITNESS: We only really need this. Great.

A What we see at the top here, right here -- I hope everybody can see this -- this is the information that was provided to me by Dr. Davis in his life care plan. These are the categories of care that he will need, and these are the

categories of special medical care and evaluations. That's all information provided to me by Dr. Davis.

He also provided me with how much it would cost to get this care in the year 2013, and he also provided me with information about how often that care would be needed.

You see in some cases Dr. Davis indicated the care would be needed every single year. In other cases he indicated these things would be needed only every other year, but all of that information is provided to me by Dr. Davis.

What I did then, of course, was I did two things: Number one, I calculated how much it would cost Mr. Phillips to get that care today in the year 2016, and I did that by simply relying upon U.S. government data about how much medical costs have increased in the short term, in the near past. Then once I determined how much it would cost Mr. Phillips to get each element of care today in 2013, I needed to determine how much on average those costs are going to increase over a much longer period of time through Mr. Phillips' statistical date of death, and once again I relied upon data published by the U.S. government, very specifically I examined various Consumer Price Indexes for different types of medical care. I looked back at how much the cost of care had increased over the last 10, 20, 30 years, and that allowed me to determine on average how much these costs are going to increase over Mr. Phillips' remaining life expectancy.

And then if you scroll all the way down to the bottom.

Q Sure.

A You will see that -- sorry, I guess you have to come in a little bit. I want to see that corner -- I used that same method for all of the different categories of care.

That sheet that we just looked at was just one element from Dr. Davis' life care plan. Once I went through every individual component in Dr. Davis' life care plan, and I evaluated every single one of them separately, I determined then that Mr. Phillips will need $216,131 to pay for all of his special medical care and evaluations included in the life care plan. I did that for every general category in the life care plan. And based on my review of Dr. Davis' report, I calculated that Mr. Phillips will need $2,910,938 to cover the costs of all of the care that Dr. Davis has said he will need for the remainder of his life.

Q And just so we're clear, of those items, by far the largest item is something called the home and community-based services?

A Yes.

MR. BROWN: Did you tell me before you have an objection to the last page?

MR. FABIANI: Not as it's changed.

THE COURT: Did you talk with each other?

MR. BROWN: Yes.

Q Doctor, after you performed all this analysis --

THE COURT: It's too little.

MR. BROWN: We're not up to that page yet.

THE COURT: If you're not doing that, then you can't show it.

Q Doctor, after you performed your analysis of the lost earnings in the past and the future and your analysis of the lost pension benefits to Mr. Phillips in the past and the future and the life care plan, did you come to an opinion to a reasonable degree of economic certainty as to the total economic loss or range of the total economic loss for Thomas Phillips?

A Yes, I did. I calculated the range of total economic loss to Mr. Phillips at between $4,454,126 and $4,917,828.

MR. BROWN: Thank you. I have nothing further.

THE COURT: Thank you.

MR. FABIANI: Perhaps, if before I commence my cross-examination I could take a look at Ms. Kucsma's file, the jury could take a little break.

THE COURT: Jurors, anybody want to use the restroom?

THE COURT OFFICER: All rise. Jurors exiting.

(Whereupon, the jury exits the courtroom.)

(Whereupon, a recess was taken.)

(Whereupon, the jury enters the courtroom.)

THE COURT: Mr. Fabiani, do you wish to

cross-examine the witness?

MR. FABIANI: I would, your Honor. Thank you.

CROSS-EXAMINATION

BY MR. FABIANI:

Q Good morning, Ms. Kucsma.

A Good morning.

Q How are you today?

A Good. How are you doing?

Q We have met before on one occasion, have we not?

A We have had the pleasure, yes.

Q How is Mr. Tinari doing?

A He's doing very well, actually.

Q Send him my regards.

A I will. Thank you.

Q Are you currently a professor at any university, or were those occupations that you had in the past?

A I am not presently teaching at a university, no.

Q And you've testified on direct examination that you are an ABD, which is all but your dissertation on your doctorate; is that correct?

A Yes.

Q When we met two years ago, you were also all but dissertation then; is that correct?

A That is correct.

Q So, in the last two years you have done nothing towards

your doctorate, correct?

A I have not done much work on it, that is correct.

Q Let me just ask you a few questions about some of the materials that you were provided by Mr. Browns' office that helped you determine the appropriate theory of recovery in this case.

You mentioned that one of the documents that you were provided was a copy of the complaint in this action, correct?

A I believe I had been provided with a Bill of Particulars, yes.

Q Well, I think you were asked on direct, and the complaint was mentioned on direct?

A Yes.

MR. BROWN: I don't believe so, your Honor.

THE COURT: I don't recall.

MR. FABIANI: All right. I wrote it down.

Q Were you provided with a copy of the complaint?

A I called it a complaint, but in fact, if you look at my report, I actually had been provided with a Response to Defendant for Verified Bill of Particulars.

Q A Bill of Particulars is a document that's prepared by lawyers in connection with a lawsuit, right?

A A complaint is my understanding, but if I used the wrong term, I do apologize.

Q My question really is, how, if at all, did the Bill of

Particulars or the complaint, whatever it is that you have in your file, assist you in developing your theory of liability, of damages in this case?

A The only thing that document was useful for for me was just to provide me with some basic information about what had happened to Mr. Phillips.

Q Now, you also had the tax returns?

A Yes.

Q You had the tax returns from 2005 to 2008?

A That's correct.

Q And you've seen the tax returns from 2004 because they are in evidence as Plaintiff's Exhibit 15, I believe, correct?

A Yes.

Q Did you look at Plaintiff's Exhibit 15 for the earnings of 2004 compared to 2005?

A As I mentioned in my direct testimony, that information was on the 2005 tax return, so to answer your question, technically, I reviewed the 2005 tax return to get that information, but I was provided with that information prior to my testimony today.

Q I understand your testimony completely.

My question is, did you look at it today, the 2004?

A Yes. I looked at it today as well, yes.

Q On the 2004 return, today when you compared the income from 2004 to the income from 2005, Mr. Phillips' income actually

went down from 2004 to 2005, correct?

A Yes.

Q So income doesn't always go up every year, is that correct?

A That's correct.

Q And that's especially true of union workers who work or who are paid on an hourly basis, correct?

A No, I wouldn't necessarily agree with that. Union wage rates typically increase each and every year according to Collective Bargaining Agreement.

Q The wage rate increases, but the wages are determined not only by the wage rate, they're also determined by the number of hours worked, aren't they?

A Yes.

Q And some years people work more hours and some years they work less hours?

A Generally that is true, yes.

Q Is depends on the availability of work, correct?

A Yes.

Q Were you aware that as of September of 2008 the business where Mr. Phillips had been working for the past 14 years was in the process of shutting down?

A Yes.

Q Now, you mentioned on your direct testimony something about how you determined that his employment was as a result of

the efforts of the union, correct?

A Yes.

Q What documents did you rely on in your file to support your conclusion that his employment was obtained as the result of the efforts of the union?

A I did note in my report that Mr. Phillips had been employed by Modern Empire through the IBEW union hall, and I provided as my sources the examination before trial of the plaintiff and the estimated monthly vested pension benefit. So to answer your question, I believe that that information was provided to me in the examination before trial of the plaintiff. I believe that's where that information came from.

Q So the only evidence -- so there's no document that tells you that he got his job at Modern Empire because the union sent him there, is there?

A There wasn't any document that stated that. Clearly, Mr. Phillips was a member of the International Brotherhood of Electrical Workers, and, clearly, he obtained this employment as a member of that union.

Q Isn't it a fact it's actually the opposite, he obtained the employment and in order to obtain the employment he had to join the union?

A That I couldn't say.

Q But you have no documents in there, for example, from the union saying we sent Mr. Phillips to Modern Empire in order

for him to work?

A I do not have anything that specifically states that. That is correct.

Q Do you have any evidence anywhere in your file that the union assisted Mr. Phillips in obtaining employment anywhere other than Modern Empire?

A The mere existence of unions basically allows people access to jobs with employers that regularly work with that union. So the reason why many individuals join unions is because simply, as a member of that union, job opportunities become available to them.

Q So I take that to mean your answer to my question is, no, you have no evidence in your file?

A Well, as I've said, I certainly don't have any document that specifically states that, that's correct.

Q We've already established in the past that you do know the words yes or no, correct?

A Yes, I do.

Q So when I ask you a question that can be answered yes or no, answer it yes or no, and we'll let Mr. Brown let you elaborate and pontificate as long as you'd like. Okay?

MR. BROWN: Your Honor, I object.

THE COURT: You're not going to use the word "pontificate."

MR. FABIANI: I withdraw the word "pontificate."

MR. BROWN: And I'd ask the Court instruct the witness if she can't answer it yes or no.

THE COURT: Ms. Kucsma, if you hear a question and it's a yes-or-no question, you do have to answer yes or no. If you're not able to answer it, just say I can't answer it or I don't understand the question. Okay?

THE WITNESS: Yes, your Honor.

THE COURT: Thank you so much.

MR. BROWN: Thank you.

Q Now, in your file you also have Mr. Phillips' report of hours worked, correct?

A I do have some documentation of his hours worked, yes.

Q Do you know how many hours he worked in, for example, 2004?

A Off the top of my head, no.

Q 2005?

A No.

Q So you don't know if he worked more or less hours in here and that's what caused the differentiation in income?

A That I don't specifically know, but the number of hours that Mr. Phillips worked in any given year is not relevant for me. What's relevant for me is the total amount of money he earned in each year.

Q You mentioned that the union agreement provides for salary increases on an annual basis, correct? You told that to

the ladies and gentlemen of the jury?

A Yes.

Q That every year wages do go up?

A Yes.

Q Sometimes they go up a little, sometimes they go up a lot, correct?

A That's correct.

Q And I think you mentioned on direct examination that during the years 2004 and 2005, before the financial crisis, wages increased at a greater rate than they increased in subsequent years, actually in the 12 years, 11 or 12 years since then, correct?

A In some industries, yes.

Q We're talking -- let's talk about -- we'll come back to that.

You have characterized on a number of occasions Mr. Phillips' work as being that of a construction laborer.

A That's correct.

Q And did you read his deposition?

A I did.

Q And I will let you answer this question: What about his deposition gave you the impression that his employment was as a construction laborer?

A When I use the term "construction laborer" I use that term because that is the designation that the U.S. Department of

Labor uses for individuals that perform the types of jobs and that belong to the type of union to which Mr. Phillips belongs.

Q Now, when you're talking about the union, you're talking about the IBEW3 here, correct?

A That's correct.

Q You know there are at least two different types of union memberships in the IBEW 3 electrical workers and there are also people who work in electrical supply houses, correct?

A That's correct, yes.

Q And Mr. Phillips was a person who worked in an electrical supply house not --

THE COURT: Can you slow down just a little bit. Our court reporter is having a hard time.

MR. FABIANI: I am frequently, with all due apologies, accused of that. I've been trying for 40 years to solve it, and I can't do it. But I will try to move more slowly.

THE COURT: Thank you.

You were saying two types of workers in the IBEW.

MR. FABIANI: At least.

Q And there's also those people who work in electrical supply houses, correct?

A Yes.

Q And Mr. Phillips was a person who worked in an electrical supply house, not on construction sites, correct?

A That is correct, yes.
Q Now, you also -- in your file you have a copy of the agreement between IBEW3 and the company --
THE COURT: I'm sorry. Electrical supply house. What was the other?
MR. FABIANI: Construction workers.
THE WITNESS: I think you said licensed electricians.
Q You have the Collective Bargaining Agreement between Mr. Phillips' employer and the IBEW3 in your file, do you not?
A I believe so.
Q I swear I didn't take it.
A Yes, I do.
Q And you have the agreement for the period 2002 to 2005?
A That is correct.
Q And in that agreement it sets forth what the annual wage increase will be for the years 2002 through 2005, correct?
A Yes.
Q And for the year 2002 to 2003, what was the hourly wage increase for a person in Mr. Phillips' category?
A From you said 2003 --
Q I think it's 2002 to 2003.
A 2002 to 2003, I don't know that I calculated that.
MR. FABIANI: May I approach the witness, your Honor?

THE COURT: To show her something?

MR. FABIANI: Yes, to show her where it is in the agreement.

Q It's right under your finger.

A It is indeed.

The agreement here specifies for a wage increase of 65 cents per hour in 2002, 70 cents per hour in 2003, and that's all based on wage rates that I believe are --

THE COURT: I'm sorry. In 2003?

THE WITNESS: 70 cents per hour.

A (Continuing) And those increases are based on starting rate figures that are presented in the preceding paragraph in that Collective Bargaining Agreement.

Q Well, there is a third number there for another year.

A There is, yes. You didn't ask me that year, but I'd be happy to tell you. It's 65 cents per hour increase for the year 2005.

Q I thought I asked 2002 to 2005. I'm sorry. That's what the agreement covers.

A I may have misunderstood you.

Q But that hourly rate, that hourly increase applied to all workers covered by the Collective Bargaining Agreement, correct?

A I'll tell you, it's not easy for me to tell. It comes directly after a statement about hourly wage rates of $9 per

hour. So, it's not clear to me specifically whether these increases apply to all wage rates or to that starting rate of $9 per hour.

Q Well, okay. Regarding that question you said that the $9 per hour is the starting rate. That's what new people start at. In 2002 Mr. Phillips had already been there for eight years, correct?

A Correct. But that sentence also talks about a maximum of $11 per hour. None of this makes any sense simply because Mr. Phillips was clearly earning well in excess of both $9 and $11 per hour. There is a big disconnect between the wage rates published in this Collective Bargaining Agreement and what I know for a fact Mr. Phillips earned.

Q Well, the wage rate, yes, but not the wage increase rate, correct? Because you don't know what his hourly wage increase was, based upon looking at the W-2s or the tax returns, do you?

A No, but I did calculate the wage increase from a percentage perspective based on the hourly wage rate that he reported to me, which incidentally is consistent with the W-2 Wage and Tax Statements, and based on that --

Q What happened to the no, but?

A Well, then I guess I can't answer your question. I apologize.

Q You answered the question no. That was fine. You

didn't know. That's fine.

A That's really not correct, though, because I actually did calculate, but I had to calculate the wage increase based on what Mr. Phillips was actually earning, and I had to do the math and calculate the average increase, which I did.

You can't simply take the 65 cents per hour and the $9 per hour and use that. I had to go back and consider what Mr. Phillips was actually earning, and I did do that. So if you want to ask me about that, I'd be happy to tell you.

Q I wasn't asking you whether he was earning a starting wage rate. I asked you what his hourly wage increase was. And you would agree with me that his hourly wage increase in 2002 was 65 cents, from 2002 to 2003?

A I wouldn't agree with that necessarily, but I would agree that this contract says that the wage increase in 2002 would be 65 cents per hour. That's what the wage contract says, yes.

Q And if Mr. Phillips were to testify that his wages were governed by that agreement, then would you agree with me that from 2002 to 2003 he got a rate of 65 cents an hour, from 2003 to 2004 he got an increase of 70 cents an hour, and from 2004 to 2005 he got an increase of 60 cents an hour?

A Yes, I would have to agree with that.

Q Thank you. That wasn't that hard. Very good.

Now, you prepared a total of four reports in this case,

correct?

A Yes.

Q And the first report was prepared when, when in 2012?

A I don't recall specifically, but, if you hang on, it should be in here.

September 12, 2012.

Q And then you did another report in 2014?

A I did a second report February 6, 2014.

Q And then you did two more reports sort of back to back in late 2015 or early 2016?

A I prepared two sets of calculations for my trial testimony today. I updated my figures. I don't know if that's what you're referring to.

Q You did one a couple of months ago and then you updated it again within the past couple of weeks so your figures would be accurate?

A That's correct.

Q That's what I'm referring to.

Let's take a look at your 2012 report. Do you have that in front of you?

A Sure.

Q On Page 4.

A Yes.

Q You made certain assumptions that form the basis of your opinions, correct?

A Yes.

Q And that is what experts in your field do, you're given information, you're given assumptions to make, and you do your expert analysis based on those assumptions, correct?

A Yes and no. Certainly, I do have to make some assumptions. In terms of someone tells me what to do or I determine them on my own, it depends.

Q That's fair.

And you would agree with me if an assumption is incorrect, that the end result of your analysis is probably also incorrect?

A I certainly would have to agree there, that if for whatever reason I used a different assumption, there is a possibility that my calculations would change, yes.

Q Now, in your report on Page 4, Paragraph 13, you are assuming that Mr. Phillips is totally and permanently disabled with zero residual earning capacity, correct?

A Yes.

Q Now, in your years of doing this work, I think you testified at least 150 times, worked on thousands of cases involving injured workers, you have worked on cases where you have been provided with information regarding alternative income as an offset to an income loss claim, correct?

MR. BROWN: Objection, your Honor.

THE COURT: I will allow it.

A Yes, I have.

Q And in this case were you provided any income, any information about alternative income possibilities for Mr. Phillips?

A No.

MR. FABIANI: May I approach, your Honor?

THE COURT: Yes, you may.

Jurors, you can stand and stretch.

Oh, I though you wanted to approach me.

MR. FABIANI: No, I wanted to approach the witness.

A Oh, I did, yes. I actually was provided with, I believe, your vocational expert's report. And I do apologize, yes.

Q Thank you.

So, you were provided with a report of a vocational rehabilitation consultant retained by KMCP that discusses alternative sources of -- alternative employment for Mr. Phillips subsequent to his accident, correct?

A That is correct, yes.

Q But you did not consider that in any of your analysis, correct? Yes or no?

A I ultimately did not rely upon this document, that is correct, but I considered other sources of information in addition to this document.

Q Okay. Fair enough.

Going back to your 2012 report, in your 2012 report, you calculated what, in your opinion, plaintiff would have earned from the date of accident in September of 2008 to October 31, 2012, the date of your report, correct?

A Yes.

Q And in your 2014 report, you also calculated what, in your opinion, plaintiff would have earned from the date of his accident through March 31, 2014, correct?

A That is probably correct.

Yes.

Q Would I lie to you?

A Of course not.

Q And in your 2016 report you calculated what, in your opinion, plaintiff could have earned from the date of his accident through --

A April 1, 2016.

Q -- through April 1, 2016?

A Correct.

Q Now, in 2012, look at your 2012 report, it was your opinion that plaintiff lost $5,828 for the year 2008. That is from the date of the accident to December 31, 2008, correct?

A Yes.

Q But in 2014 it was your opinion that for that same time period, from September 25, 2008, to December 31, 2008, plaintiff

lost $6,149 in income, correct?

A Yes.

Q And in 2016, when you did your most recent report for that same time period, from September 31, 2008 to December 31, 2008, it's now your contention that plaintiff lost $8,402 for that same time period, correct?

A That's correct, based on the most current economic data, yes.

Q So, the current economic data is that he would have earned more in 2008 than you predicted he would have earned back in 2012? Yes or no?

A I can't answer that specific question. Certainly, my number is greater in 2012 than it was -- is in 2016 than it was in 2012, that's correct.

Q Let's talk about the year 2009. So in 2012, three years after the year 2009 ended, it was your opinion, based upon sound principles of economics, that plaintiff had lost $38,539 for the year 2009, correct?

A Yes.

Q When you redid your calculations in 2014, somehow for that same time period, the amount of lost income increased to $38,791; is that correct?

A Yes.

Q And now that you've redone the numbers yet another time, it's your opinion that for that same time period back in

2009, plaintiff lost $41,714, correct?

A That is correct.

Q Do any of those numbers take into account the annual wage increase provided for in the Collective Bargaining Agreement that governed Mr. Phillips' employment? Yes or no?

A I can't answer it until I take a look at something here. Let's see.

So for 2009 the answer would be yes.

Q You utilized the hourly wage increase from 2009 in your calculations?

A Not technically, because I didn't have the Collective Bargaining Agreement when I originally provided my report.

Q That's fine. That's fine.

A But the data, I used the U.S. Department of Labor data.

Q That's fine.

THE COURT: Yes, you have to stop there.

THE WITNESS: Oh, I'm sorry, your Honor.

THE COURT: So the answer is that you did use the Collective Bargaining Agreement?

MR. FABIANI: She did not. She didn't have that.

THE WITNESS: I did not, but I used it consistent with the Collective Bargaining Agreement, yes.

Q Let's go back to your 2012 report, and specifically let's go to Page 10 -- I'm sorry -- let's go to Page 9.

THE COURT: We're still dealing with the 2012.

MR. FABIANI: We're starting with 2012. We'll work our way through the reports chronologically.

Q In 2012 you predicted a growth rate for plaintiff's wages for that year of 3.8 percent, correct?

A No.

Q For future years?

A On average for each year, yes, that's correct.

Q On average for future years?

A Correct.

Q 3.8 over the balance of his 20 -- what was the work life expectancy?

A Through 2034.

Q So that would have been 21-and-a-half years?

A Roughly, yes.

Q Now, in your 2014 report, however, you, looking back on his earnings for 2012, you used a growth factor of only 1.4 percent, correct?

A That is correct, yes.

Q Which more accurately reflected what the actual growth in wages was for that year, correct?

A That's correct.

Q As opposed to the 3.8 percent you predicted it would be?

A I didn't predict it would be 3.8 percent in that year. I predicted on average each year it would be 3.8 percent each

year. I certainly expected it would be lower in some years, as it was, and I expected that it would be higher in other years.

Q Isn't it a fact it has been lower in every year since 2008?

A It has been lower in each year since the recession, that is correct, yes.

Q And continuing through today, it has been lower in each and every year, has it not?

A It has been lower. It obviously -- I shouldn't say obviously, but it also has been increasing in recent years.

Q Well, it was down to .7 percent in 2011, wasn't it?

A 2012.

Q 2012.

And it went back up to 1.7 percent in 2015?

A I believe --

THE COURT: What's the number?

Q 1.7 percent for 2015 I believe is the number?

A I believe that's correct, yes.

Q I'm sorry. 1.2 percent.

Let's go to your most recent report.

A Okay. I want to make sure I'm looking at the right report. Let's see.

THE COURT: That would be the 2015 report?

MR. FABIANI: No. That's the 2016 report has a growth, if you go to page, I believe it's page --

THE COURT: I'm confused. There's four reports and the last two are 2015?

MR. FABIANI: 2016.

THE COURT: '16. Thank you.

Now we're looking at the 2016 report?

MR. FABIANI: Yes.

Q Let's look at Page 3.

There you've got 2013, a growth rate of 1 percent?

A That's correct.

Q 2014 a growth rate of 1.3 percent?

A Across all occupations, that's correct.

Q For 2015 a growth rate of 1.2 percent?

A Across all occupations, yes.

Q That's something you chose to use in your chart. I didn't make this number up, did I?

A I also considered --

Q That's a yes or no. Did I make the number up?

A I want to be very clear for the record. I have to tell you it isn't clear to me right now which report has been marked as an exhibit. I don't know. So I want to be careful and make sure I'm working off the two.

Q Let's make sure we're looking at the exact same thing, and then will you answer the question?

A I will indeed. I promise.

Q Then we won't have any confusion.

MR. FABIANI: May I approach the witness, your Honor?

THE COURT: Yes.

(Discussion off the record.)

THE WITNESS: Could we just look at the iPad once more. I want to make sure we're all talking about the same thing.

MR. BROWN: Your Honor, may I approach?

THE COURT: Yes.

THE WITNESS: Just to be on the safe side.

See, this is different from what you're asking me, so you need to look at the second 2016 report, the one most currently updated, because trial, or at least my testimony, was postponed.

Q The report that you did for today uses 1.4 percent?

A Correct -- 1.8 percent --

THE COURT: Which year?

THE WITNESS: 2014.

A 1.8 percent for --

THE COURT: Excuse me. You've been referencing three years, 2013, 2014, 2015. So now you're talking about the second 2016 report, right?

MR. FABIANI: Right.

THE COURT: Are you using different figures?

MR. FABIANI: I will clarify.

THE COURT: Thank you.

Q You did two reports in 2016 approximately six weeks apart?

A Yes.

Q And in the first report that you did in January of 2016, you said that the wage increase for the year 2013 was 1 percent, correct?

A Across all occupations, that is correct, yes.

Q But in your report that you did for trial six weeks later, you said that the growth rate wage increase rate in 2013 was 1.3 percent?

A For the construction industry, yes. That's the difference between those two.

THE COURT: You just were talking about 2013 and now you're talking about 2014.

MR. FABIANI: 2013. I'm only talking about 2013.

THE COURT: For 2013 what number did you say?

MR. FABIANI: She changed it from 1.0 to 1.3 percent.

Q And in 2014, in your report from January of this year you had 1.3 percent, but when you came to court to testify, the number today, the number was 1.8 percent, correct?

A That's correct.

Q And six weeks ago when you did the report, the growth rate for 2015 was 1.2 percent, but when you came here to court

to testify today, the growth rate was 1.4 percent, correct?

A Based on the construction industry, that is correct, yes.

Q And for 2016, six weeks ago you thought that the growth rate was 1.2 percent, now you think it's 1.4 percent, correct?

A No, that's really not correct. The reason I say that that's really not correct --

Q It's not correct?

A You're mixing apples and oranges between the two reports. In the first report the data was based on all occupations. For purposes of today's testimony, I updated those figures to reflect very specifically the newly available data for the construction industry. So to say that I sort of changed these numbers really is not quite right.

Q Well, you used different numbers?

A That's true.

Q I didn't say you changed them.

A That is true. I used them because I focused on a more specific industry for purposes of today's testimony, that's correct.

Q And it's your testimony that Mr. Phillips' employment in a supply house as a shipping and receiving clerk and a floater qualifies him to be categorized as being in the construction industry as opposed to be being in the manufacturing distribution industry?

A I would expect --
Q Yes or no?
A Yes.
Q Fine.
Now, in 2014, let's go back to your 2014 figures. Just answer this yes or no. Let me find the right page. Turn to Page 8 of your 2014 report.
A Yes, I'm there.
Q You've got an unemployment adjustment of 7.7 percent, correct?
A Yes.
Q In the year 2012 report, you had an unemployment adjustment of 7.8 percent, correct?
A Yes.
Q When you came here to court to testify today you only used an unemployment adjustment rate of 3.4 percent, is that correct?
A That's correct.
Q Let's move on. Let's talk about the future medical costs. I think we established -- I think Mr. Brown established you're not a medical doctor.
THE COURT: You're talking too fast.
Q I think Mr. Brown established you're not a medical doctor. You're relying exclusively on information provided to you by Dr. Davis or by plaintiff's counsel from Dr. Davis,

correct?

A I did review Dr. Davis' report, that's correct, and that's what I relied upon.

Q Did you, by any chance, review any of the bills for the services that were performed on Mr. Phillips to, say, double-check the accuracy of Dr. Davis' numbers?

MR. BROWN: Objection.

THE COURT: I will allow it.

MR. BROWN: Your Honor, may I be heard?

THE COURT: Sure. Come up.

(Discussion off the record.)

THE COURT: You may answer the question. Do you remember it?

THE WITNESS: I think that I do, but perhaps --

MR. FABIANI: Perhaps Ms. Mercorella can read it back.

THE COURT: Please read it back.

(Whereupon, the requested portion was read by the reporter.)

A It would never be appropriate for an economic expert to try to confirm or verify the opinion of a life care planner. I'm not qualified to do so, so I certainly did not form any opinion about Dr. Davis' opinion.

Q I wasn't asking you about his opinion. I thought I would just ask the one question. I'm asking you not about his

opinion on what services were needed, I'm asking you about his statement as to the cost of those services. That's my only question.

Did you independently check the bills of the doctors that actually provided medical services to Mr. Phillips to compare what those doctors charged with what Dr. Davis was saying the services were going to cost?

A I'm really not trying to be difficult, but I think that the costs are part of Mr. Davis' opinion, so, no, I certainly didn't. I would not. It would never be appropriate for an economic expert to form any sort of opinion about the opinions offered by a life care planner, including the costs that this life care planner felt were necessary to provide certain types of treatment.

Q So if you have a life care plan report that said that it was going to cost $100,000 for an x-ray, you would just assume that report was accurate and do your calculations based on the cost of $100,000 for an x-ray?

A It would not be up to me as the economic expert to form any opinion about that.

Q So you never verified, and you are aware that there are databases that provide the costs of medical services in various areas of the country, are you not?

A Certainly there is data available on costs, but what we're talking about here very specifically is the customized

care that is appropriate for Mr. Phillips. I am not capable of determining specifically what that is, which means I am not capable, nor do I have any business, offering any opinion about what it is, how often it takes, how much it should cost, where he could get it, where he should get it, and so on.

Q You looked at his report and you saw what some of the modalities he was recommending were, correct?

A Yes.

Q An office visit to an orthopedist, correct?

A That's correct.

Q If he had written down an office visit to the an orthopedist was going to cost $750,000 for a ten-minute office visit, would you have just taken that number and done your calculations blindly without checking the accuracy of that number?

A I think I've already answered your question.

MR. BROWN: Objection. Asked and answered.

THE COURT: She's already given an answer. Thank you.

Q Her answer is, yes, that she would just take whatever the number was.

MR. BROWN: Objection, your Honor.

THE COURT: Yes, sustained.

You can't testify.

Q Let's go back to your initial report back in 2012.

A Yes.
Q Your initial report.
A I have it, yes.
Q Now, if you add up all of Dr. Davis' recommended modalities of treatment and the care that he is going to testify Mr. Phillips is going to need over the balance of his life and you came up with a number of about $2,910,000?
A Are we talking about my 2012 report? I didn't do that in my 2012 report, because I didn't have the life care plan at that time.
Q That is correct. My apologies. I'm talking about the 2014 report.
A Yes, I did include the cost of lifetime care in 2014, and I calculated the cost of lifetime care at that point at --
Q $3,007,390; correct?
A That's correct.
THE COURT: 3 million?
MR. FABIANI: 7,390.
Q Included in that cost, if you go to Exhibit Number 1, I believe -- I'm working off this; my eyes are 63 years old -- you projected that in 2014, Mr. Phillips would have certain costs that added up to, at least on special medical care and evaluations, $14,302, correct?
MR. BROWN: Objection, your Honor. May I approach?

THE COURT: Sure. But I didn't hear what he said anyway because it's too fast. I heard 14,000.

MR. FABIANI: $302.

THE COURT: For?

MR. FABIANI: 2014.

THE COURT: I have that.

MR. FABIANI: For special medical care and evaluations, which included a whole laundry list of modalities.

THE COURT: Okay. Now you can come up. Thank you.

(Discussion off the record.)

MR. BROWN: I'll withdraw the objection, your Honor.

MR. FABIANI: I'm trying to get through this as quickly as possible so we can get through by lunchtime.

THE COURT: But please do not speak as quickly as you sometimes have.

MR. FABIANI: Then we'll be here for days.

THE COURT: The objection is overruled, but we do need a clarification as discussed at the bench.

Mr. Fabiani, if you kindly would ask the necessary questions.

Q When you did your calculations in 2014, you included certain modalities and treatments for the year 2014, correct?

A For the remainder of 2014, that is correct. That was in the future at that point.

Q Just as to special medical care and evaluations, your cost for 2014 was $14,302, correct?

A Yes.

Q As we sit here today, do you know how much was actually expended by Mr. Phillips in 2014 for those categories of treatment that you costed out for that year?

A I don't know if Mr. Phillips got the treatment.

Q Thank you.

A I don't know if he was able to afford to get the treatment. I have no idea.

Q Here we go.

THE COURT: Excuse me. Jurors, you will disregard the last part of the testimony. You will strike it, and, jurors, you will wipe that out of your minds. Thank you.

Anything else.

Q Same question with respect to special therapeutic evaluations and therapeutic treatment. For 2014 you had a total cost of 2,000 -- 20,000, rather, $990, correct?

A I believe so, yes.

Q And do you know how much, if anything, Mr. Phillips has expended for those various modalities of treatment in the year 2014?

A I've reviewed no bills of any medical treatment

whatsoever.

Q So the answer is no?

A Correct.

Q That would be the simplest way to do this.

I'm going to Exhibit 3, anticipated medical complications and associated surgical interventions, for 2014 you have $62,198, correct?

A Yes.

Q And do you know, as you sit here today, how much, if anything, Mr. Phillips expended for anticipated medical complications and associated surgical interventions in the year 2014?

MR. BROWN: Your Honor, in the interest of time, the plaintiff will stipulate that these expenses have not been incurred between the time of the original report and today. That's why they were removed from her testimony on direct.

THE COURT: Okay.

MR. BROWN: We stipulate that they're not --

MR. FABIANI: They're still in the report, they're just moved backwards.

MR. BROWN: The plaintiff will stipulate there is not a claim for expenses for the years 2013, '14 or '15 since that is in the past. I'm just trying to move this along.

MR. FABIANI: I'm trying to cut to the chase.

Q Isn't it a fact in the 2016 analysis you provided today you just took those costs that you previously predicted would be incurred in 2014 and moved them to 2016?

A What I did was --

Q Yes or no?

A What I did was rely upon the most up-to-date life care plan in my possession of Dr. Davis that indicated that all of those things would still be needed in the future and, yes, I projected them in the future, which by definition starts today. It couldn't start two years ago.

Q But when you did your initial report in 2014, you thought that those were going to be done in 2014, correct?

A No, I didn't think anything. Again, those calculations were based on Dr. Davis' report of the future medical care and that was all conditional on the fact that in 2014 the future began in 2014.

Q And you would agree with me, then, that in the two years that have elapsed between 2014 and today, he has received none of that treatment; correct?

A I couldn't say one way or another.

MR. FABIANI: I may be finished. May I consult with Mr. Colavecchio?

(Discussion off the record.)

THE COURT: You have one more question?

MR. FABIANI: Actually, I do have one more question.

That's actually a very good question, Mr. Colavecchio. I thank you.

Q If you don't know whether he had the treatment, why did you move it into the future?

A As I mentioned a moment ago, I relied upon the most up-to-date life care plan issued by Dr. Davis. I was not provided with any revised life care plan. Therefore, I simply, once again, conducted my analysis based on the opinion, most recent opinion of Dr. Davis.

Q Did someone tell you between 2014 and today that Mr. Phillips had not had any of the treatment that was previously predicted for 2014?

A Dr. Davis did not issue any sort of updated life care plan changing what Mr. Phillips would need in the future.

Q If you don't know that he didn't have the treatment or did have the treatment, how did you know to put the treatment in the future?

A Again, it's not my job and it would not be appropriate for me, as the economist, to alter a life care plan in this case. I had not been provided with any revised or amended life care plan. I had been provided with the original life care plan of Dr. Davis. I relied upon that. It would not have been appropriate for me to add more things into it or take things out

of it.

Q So you never checked to see if any of the things that had been predicted back in 2013 when Dr. Davis did his life care plan had actually been done between then and today, you never checked?

A Again --

Q Yes or no, did you check?

A Your question, though, implies it would be appropriate for me to check. I have not reviewed any bills.

Q Whether it was appropriate to check is for the jury to determine.

MR. BROWN: Objection, your Honor. He's testifying.

THE COURT: Sustained.

Q Can't you just answer the question so we can get out of here?

THE COURT: No arguments.

MR. FABIANI: May I please ask the witness be directed to answer the question yes or no so we can go?

THE COURT: Yes.

A And the question was did I check to see if he had gotten any of these treatments?

Q Yes.

A No, I didn't.

Q Thank you.

THE COURT: Redirect?

MR. BROWN: Very quickly, your Honor, yes.

REDIRECT EXAMINATION

BY MR. BROWN:

Q Dr. Kucsma, you were asked --

MR. FABIANI: Objection.

MR. BROWN: Did I say doctor?

MR. FABIANI: You did.

MR. BROWN: That was an accident.

Q Professor Kucsma, you were asked by Mr. Fabiani about whether or not you made certain assumptions. You actually told him you made certain assumptions based upon materials that were provided to you.

Do you remember that question?

A Yes.

Q And he asked you specifically about whether or not you had been provided a copy of a report by a defendant's expert who is a vocational rehabilitation person saying that there were some jobs the plaintiff might be able to return to.

Do you remember that?

A Yes.

Q Do you also remember seeing a report from a Dr. Wolpin who the defendants hired to examine the plaintiff?

A I remember seeing several reports by him, yes.

Q Was that part of -- when you made the assumption that

plaintiff would never return to work, was Dr. Wolpin's report, the defendant's expert, part of the assumption, part of the materials you relied on?

A Yes.

Q Why was that?

A There was information contained in Dr. Wolpin's report about the ability --

MR. FABIANI: Objection as to what's contained in Dr. Wolpin's report.

And I would like to see your file, because I didn't see Dr. Wolpin's report in your file when I looked.

THE WITNESS: I didn't print it out. I don't have hard copies of Dr. Wolpin's report.

THE COURT: If it's not in her documents, we're not going in that direction.

Q Did you bring to court everything you reviewed? For instance, did you bring the National Vital Statistics that you examined in this case?

A No. I don't print out a lot of the data and documents I review because it's not necessary for me to do so. I have access to them on line; and in the spirit of not killing more trees, you just don't print all of those things out. I simply go back and refer to them when I need to.

THE COURT: Anything else?

MR. BROWN: Yes.

Q You were asked certain questions about how you calculated the rate of increase of Thomas Phillips' wages.

Do you remember that line of questioning?

A Yes.

Q And I believe you were asked specific questions about rates of increase which were contained in the Collective Bargaining Agreement and you were asked if you used those.

Do you remember that?

A I do.

Q I think you said at one point you didn't use those, but you used a rate consistent with that.

What did you mean?

A That is correct. I did not have the Collective Bargaining Agreement when I prepared my calculations. So what I did do, as I indicated in my direct testimony, was rely upon data published by the U.S. Department of Labor. However, once I was provided with the Collective Bargaining Agreement, I then went back to confirm that the increases I had used were consistent with information provided in the Collective Bargaining Agreement and, for example, in the year 2009, based on the U.S. Department of Labor data I used, I used an annual increase of 2.2 percent. When I calculated the annual increase using the 65 cents per hour stipulated in the CBA, I got an increase of 2.3 percent a year. In each year thereafter from 2010 through 2015, based on the information in the Collective

Bargaining Agreement, I got annual increases of approximately 2 percent. I never used -- I used rates lower than 2 percent in this case, because I simply didn't have this information when I prepared my report. I relied upon U.S. Department of Labor data.

MR. BROWN: Your Honor, I can bring the witness back after lunch or ask the Court to give me two more questions.

THE COURT: We'll come back after lunch. Thank you very much. Thank you very much, everybody. Lunchtime.

THE COURT OFFICER: Jury exiting.

(Whereupon, the jury exits the courtroom.)

(A luncheon recess was taken.)

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

THE COURT: Do we have to address any issues before the jury comes in?

MR. BROWN: No, your Honor.

THE COURT OFFICER: All rise. Jurors entering.

(Whereupon, the jury enters the courtroom.)

THE COURT: Mr. Brown, you may continue your redirect.

MR. BROWN: Thank you, your Honor.

REDIRECT EXAMINATION

BY MR. BROWN: (Continued)

Q Professor Kucsma --

THE COURT: And of course you remain under oath.

THE WITNESS: Under oath, yes, your Honor, of course.

Q Do you recall before lunch you were asked a series of questions by Mr. Fabiani about --starting with your 2012 report -- about the amount of lost income Thomas Phillips experienced between September 31, 2008 and December 31, 2008?

Do you remember that?

A I do.

Q Okay. And he asked you to take a look at your 2012 report and your 2014 report and then the report that was done this year.

A That's correct, yes.

Q And the numbers as to what Mr. Phillips lost between September and December of 2008 changed in those reports, correct?

A That's correct.

Q Can you just explain to the jury why that was.

A Sure. One of the adjustments that I made to the earnings when I calculated those figures was an adjustment for unemployment, and the unemployment data that I relied upon is updated each year at the end of each year. Technically speaking, it becomes available sometime in January of the following year. And as the economy continues to recover, the unemployment rates have been going down. So when I took into

account lower unemployment rates in recent years, it was bringing down the unemployment average that I was using, bringing down the negative adjustments I was making to the earnings, which meant that my calculations were rising.

Q Just so I'm clear, in calculating not just these earnings here, not just the earnings between September and the end of December 2008, but in all your calculations, you're not simply looking at taking his wage and multiplying it times the amount of time he missed; is that correct?

A That is correct, yes.

Q That would have been a larger number, correct?

A Yes. And I was just looking here. You know, for example, if I had simply taken 62,000 and I had just multiplied it by roughly 8 years, 2008 through 2016, I would have a figure of close to $500,000, and, clearly, my estimates of loss are significantly below 500,000 because I did make some downward adjustments to my earnings in each year.

Q And you even did that just those three months between when he was injured and the end of that year, correct?

A Yes, of course.

Q So you reduced what his earnings would have been. You didn't assume that he just would have worked between then and the end of the year; is that fair to say?

A That is correct, and I have taken into account those job-related expenses as well, yes.

Q And these percentages that you rely on, the unemployment percentage, the growth rate you told us about, are those numbers that you make up?

A No. These are numbers that are published by the U.S. Department of Labor.

Q And so the revisions that you've made over the years between 2012 and 2014 and 2016 where the percentage, whether it be the growth rate or unemployment rate, changed, was that reflected in your subsequent reports?

A Yes.

Q And is that what changed the numbers?

A Yes.

MR. BROWN: Thank you. Nothing further.

THE COURT: Any recross, Mr. Fabiani?

MR. FABIANI: Thank you.

THE COURT: Thank you. You may step down.

THE WITNESS: Thank you, your Honor.

-oOo-

CERTIFIED to be a true and accurate transcription of the stenographic notes.

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Catherine Mercorella,

Senior Court Reporter

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