DEPOSITION OF KRISTIN K KUCSMA, A.B.D., B.A., M.A.; 2016 Depo. Trans. LEXIS 667

United States District Court for the Eastern District of Missouri, Eastern Division

Case No. 4:16-cv-00319-CEJ

July 1, 2016

Reporter
2016 Depo. Trans. LEXIS 667 *

ANDREA RACHELLE CLINTON, Plaintiff, -v- MENTOR WORLDWIDE LLC, Defendant.

Expert Name: KRISTIN K KUCSMA, M.A., A.B.D., B.A.

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[12]T R A N S C R I P T of testimony taken

[13]stenographically by and before MARGARET

[14]VOLLMUTH-CORSON, a Certified Court Reporter and

[15]Notary Public of the State of New Jersey, at the

[16]offices of VERITEXT LEGAL SERVICES, 290 West Mount

[17]Pleasant Avenue, Livingston, New Jersey, on Friday,

[18]July 1, 2016, commencing at approximately 3:28 p.m.

[19]

[20]

[21]

[22]

[23]

[24]

[25]Job No. CS2338954
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[1]K R I S T I N K. K U C S M A, M. A., with

[2]offices at Sobel Tinari Economics Group, 293

[3]Eisenhower Parkway, Suite 190, Livingston, New

[4]Jersey 07039, having been duly sworn, testified as

[5] **[*3]** follows:

[6]EXAMINATION BY MS. BUNCE:

[7]Q. Good afternoon.

[8]A. Good afternoon.

[9]Q. Can you please state your full name and

[10]business address for the record?

[11]A. Sure. Kristin Kucsma, 293 Eisenhower

[12]Parkway, Suite 190, Livingston, New Jersey 07039.

[13]Q. And is it fair to say you've been

[14]retained to provide expert opinions on behalf of

[15]Ms. Andrea Clinton?

[16]A. Yes.

[17]Q. And you are here today to give

[18]testimony regarding those opinions, correct?

[19]A. Yes.

[20]Q. All right. So you work for Sobel

[21]Tinari. Is that correct?

[22]A. Yes.

[23]Q. Now, how does retention work in matters

[24]like this? Do counsel retain you, Kristin Kucsma,

[25]or do they retain the company where you work?
Page 6

[1]A. They retain our group.

[2]Q. Okay. And when you say your group,

[3]who's in your group?

[4]A. The Sobel Tinari Economics Group.

[5]Q. And how do you then become the face of

[6]the group to sit for the deposition?

[7]A. I am the managing director of the

[8]group, so every case that comes into the group gets

[9]assigned by me, and nearly every case that is

[10] **[*4]** reviewed by the group is ultimately reviewed by me.

[11]Q. Do you take on every deposition then

[12]for every case the group takes on?

[13]A. For most of them, yes, but we do have

[14]two other economists with the group, and they also

[15]testify on occasion.

[16]Q. Because I know that you have given your

[17]deposition far more than I have conducted

[18]depositions I'm not going to bother going over the

[19]ground rules, but of course, as you know, if at any

[20]point in time you need to take a break, feel free to

[21]let me know. We can go off the record.

[22]A. Great.

[23]Q. We're going to start with your C.V.

[24]just to go over that just real quickly.

[25](Exhibit 1, Curriculum vitae of
Page 7

[1]Kristin K. Kucsma, M.A. dated April 30, 2015, is

[2]marked for identification.)

[3]MS. BUNCE: And Doug, I'm sorry that I

[4]didn't bring any copies to be able to give to you

[5]over the phone, so --

[6]MR. KREIS: No problem. I've got

[7]copies printed out here of some things that you are

[8]probably going to be going over, so if there's

[9]anything that you tender as an exhibit that I don't

[10]have a copy of I'm probably not **[*5]** likely to need it,

[11]but somebody over there at Veritext could, you know

[12]scan an e-mail to me if it was necessary.

[13]MS. BUNCE: Sure. Great.

[14]Q. I'm going to hand you what has been

[15]marked Exhibit No. 1.

[16]A. Great.

[17]Q. Does this appear to be a current copy

[18]of your C.V.?

[19]A. No, this is not the most up-to-date

[20]copy of my C.V.

[21]Q. Do you have a more current one with

[22]you?

[23]A. No. I raced out of the office, and I

[24]didn't bring one with me.

[25]Q. No worries. Looking quickly through
Page 8

[1]it, though, can you tell me what has changed?

[2]A. You're in luck. I actually do have

[3]the most up-to-date version of my C.V. with me. I'm

[4]going to just hand you my most up-to-date version of

[5]my C.V., my list of trials, and my list of

[6]depositions.

[7]Q. Okay. And is this something you would

[8]mind us marking as an exhibit? Is that okay?

[9]A. Sure. That's fine.

[10]Q. Okay. Well just mark this as No. 2

[11]then, which is your more current C.V.

[12](Exhibit 2, Curriculum vitae of

[13]Kristin K. Kucsma, M.A. dated January 19, 2016, is

[14]marked for identification. **[*6]**)

[15]Q. Okay. So I do see here, comparing

[16]Exhibit 1 with Exhibit 2, the date on Exhibit 1 is

[17]April 30, 2015, and Exhibit 2 is January 19, 2016.

[18]Is that correct?

[19]A. Yes.

[20]Q. Well then have you work off of 2,

[21]which is the most recent, but can you tell me

[22]quickly what really has changed between 1 and 2?

[23]A. Sure. The most substantive changes

[24]between 1 and 2 would include there's been a change

[25]in my position within my parent company. I continue

Page 9

[1]to serve as managing director of the Sobel Tinari

[2]Economics Group, but I also, effective January 1 of

[3]this year, was named principal of my parent company

[4]at Sobel & Company. I am not, however, an equity

[5]owner of the company.

[6]In addition to that, I have other

[7]speaking engagements that appear on Kucsma 2 that

[8]did not appear on Kucsma 1, I also continue to be a

[9]member of the National Association of Forensic

[10]Economics. Now on Kucsma 2 you'll see I'm

[11]chairperson of a committee for that organization.

[12]Q. And what committee do you chair?

[13]A. The software committee.

[14]Q. Ooh.

[15]A. I have an additional **[*7]** paper that I

[16]presented in the fall of 2015 that appears on Kucsma

[17]2 but not on Kucsma 1.

[18]Q. What was the topic of that paper?

[19]A. The topic of that paper was a

[20]comprehensive assessment of economic damages in

[21]wrongful death matters, focus on on-call services.

[22]And I already mentioned I've had additional speaking

[23]engagements, and then last but not least, the number

[24]of trials, arbitrations, mediations, and depositions

[25]in which I've testified has increased since April of
Page 10

[1]2015.

[2]Q. You mentioned the speaking engagements

[3]that were on Kucsma 2 that were not on I. How many

[4]speaking engagements did you have between that

[5]roughly eight-month period of time in those?

[6]A. I hate no idea. Let's see.

[7]Looks as if between Kucsma I and Kucsma

[8]2 I added eight speaking engagements.

[9]Q. And what were the various topics of

[10]those speaking engagements?

[11]A. The speaking engagements focused on

[12]valuing economic damages, deposing your economic

[13]expert, and I believe those were the general topics.

[14]Q. And what were the different audiences

[15]for those speaking engagements? **[*8]**

[16]A. The audiences consisted primarily of

[17]attorneys, both plaintiffs' attorneys and defense

[18]attorneys.

[19]Q. And were they part of continuing legal

[20]education programs?

[21]A. I believe most of them were. Some of

[22]them were continuing legal education courses. At

[23]least one was an Inn of Court.

[24]Q. You mentioned that as of January 1 of

[25]this year you've been principal of your parent
Page 11

[1]company?

[2]A. Yes.

[3]Q. Does that involve any change or

[4]increase to your job duties?

[5]A. It doesn't require any significant

[6]change in my job responsibilities. The only

[7]meaningful change, so to speak, is that now I

[8]participate in partner meetings and so on for my

[9]parent company, and of course I represent the Sobel

[10]Tinari Economics Group at those meetings.

[11]Q. Are you the only partner from Sobel

[12]Tinari Economics Group that is a principal in your

[13]parent company?

[14]A. Yes.

[15]Q. And how many principals are there in

[16]your parent company?

[17]A. I don't know how many principals there

[18]are. I believe there are approximately 16 partners

[19]and/or principals.

[20] **[*9]** Q. So focusing just on Sobel Tinari

[21]Economics Group, how many folks work there?

[22]A. I believe we currently have

[23]approximately 16 full-time staff members.

[24]Q. And you mentioned you are the managing

[25]director of Sobel Tinari Economics Group?
Page 12

[1]A. Yes.

[2]Q. What are your job responsibilities as

[3]managing director?

[4]A. I basically oversee the group, which

[5]means I oversee all the day-to-day activities,

[6]administrative functions, managing functions, human

[7]resource functions. I also work with our team of

[8]economists and analysts to review cases, prepare

[9]commentaries or appraisals of economic loss. I am

[10]currently the group's lead testifying expert.

[11]Q. So in essence, you do it all?

[12]A. I do just about everything that's

[13]needed to do with, of course, the assistance of all

[14]of my other team members.

[15]Q. Of course. How is it that you came to

[16]work at Sobel Tinari?

[17]A. I had spent what I like to call my

[18]first career in academia, and in the summer of 2006

[19]I had just completed a two-year position at Drew

[20]University, and I was trying to decide at that point

[21] **[*10]** in time whether I wanted to remain in academia or

[22]not. I decided that I was not going to remain in

[23]academia, and I reached out to Dr. Frank Tinari, who

[24]I had known at Seton Hall. I, in fact, had thrown

[25]him his retirement party at Seton Hall. I reached
Page 13

[1]out to him really just to talk with him in general.

[2]He mentioned to me that he had a position open up at

[3]Tinari Economics Group, asked if I would be

[4]interested. We had lunch. I said yes, and as they

[5]say, the rest is history.

[6]Q. All right. Now, you gave a laundry

[7]list of the various things that you have to do as

[8]managing director. Would you be able to give an

[9]estimate of what percentage of your time is spent

[10]really focusing on cases and providing testimony as

[11]an expert witness?

[12]A. I really don't know, but I would

[13]estimate that the overwhelming majority of my time

[14]is spent on those things. The Sobel Tinari

[15]Economics Group is a very collaborative environment.

[16]I'm working with my economists and analysts nearly

[17]every day, all day throughout the day.

[18]Q. So does Sobel Tinari do things outside

[19]of litigation support?

[20] **[*11]** A. A small fraction of the work we do is

[21]devoted to traditional economic research projects

[22]not related to litigation. For example, we

[23]conducted an analysis of the Council on Affordable

[24]Housing in the State of New Jersey.

[25]Q. And how is it that you kind of bring

Page 14

[1]those kinds of two things together, doing that more

[2]traditional economics research with the litigation

[3]support?

[4]A. Well, the litigation support work we

[5]do is very much economics related in the sense that

[6]when we evaluate economic losses in a litigated

[7]matter were using the tools, techniques, methods,

[8]theories of economics for that particular purpose,

[9]and as such, it's very important for us to remain

[10]current in the research, literature, methods, and so

[11]on of the discipline of economics. So they're very

[12]closely related.

[13]Q. So by doing this economics research,

[14]more traditional economics research on the side, it

[15]allows you to stay current and up-to-date to be able

[16]to aid you to do the litigation work that you do?

[17]A. Well, yes and no. A large part of

[18]what I do as a testifying expert is regularly

[19]research **[*12]** data, review articles, participate in

[20]conferences and seminars and so on.

[21]Q. Okay. Now, when your group is retained

[22]as, I don't want to just say an expert witness, but,

[23]you know, to do the economic research and produce

[24]the reports and then give the testimony, what

[25]percentage would you say of these cases are on
Page 15

[1]behalf of plaintiff's versus on behalf of defendants?

[2]A. About 30 percent of the work we do is

[3]on behalf of defendants, which means about 70

[4]percent of the work we do is on behalf of

[5]plaintiff's.

[6]Q. And when you are retained by defense

[7]counsel, what types of case are those typically?

[8]A. We work on a wide variety of matters

[9]with defendants. We've worked on wrongful death

[10]matters, personal injury matters, employment related

[11]matters, commercial related matters, all on behalf

[12]of defendants as well, of course, as on behalf of

[13]plaintiff's.

[14]Q. So typically when a client comes to you

[15]and they're interested to retain your services, how

[16]does it typically work? And I'll give an example,

[17]and you can tell me, no, that's not how it works at

[18]all, --

[19] **[*13]** A. Sure.

[20]Q. -- and then you can describe it to me.

[21]So if I came to you and said,

[22]Ms. Kucsma, we have a case for you, would you say,

[23]here are the categories of different damages that I

[24]could calculate for you; or do you want the client

[25]to say, Ms. Kucsma, I would like you to calculate X,
Page 16

[1]Y, and Z for me?

[2]A. No. As far as I'm concerned, one of

[3]my primary roles as an economic expert is to

[4]determine the appropriate elements of economic

[5]damages. Having said that, certainly in some cases

[6]it will be important for me to have a conversation

[7]with counsel because before I can determine the

[8]appropriate elements of economic damages I need to

[9]have a full understanding of the case.

[10]Q. Have you previously been retained by

[11]the Aylstock firm to serve as an expert witness?

[12]A. I may have been. I don't recall

[13]whether I've specifically been retained by their

[14]firm or not. We work with thousands of firms.

[15]Q. I can appreciate that. And this case

[16]particularly involves a product called ObTape. It

[17]is a transvaginal sling that is used for the

[18]treatment of stress urinary **[*14]** incontinence. Are you

[19]aware of whether you've given any sort of testimony

[20]in other cases involving ObTape?

[21]A. I am not aware of any other cases, but

[22]it is possible I have worked on other cases

[23]involving that.

[24]Q. And do you know if you've been involved

[25]in any other cases involving any transvaginal slings
Page 17

[1]for the treatment of stress urinary incontinence?

[2]A. I don't know specifically. I do know

[3]that I have been involved in other cases involving

[4]transvaginal mesh cases and so on, but I don't

[5]recall, as I sit here today, very specifically what

[6]the products were.

[7]Q. Perfect. What, if anything, did you

[8]do, besides driving from your office to this office

[9]here, to prepare for the deposition today?

[10]A. I briefly reviewed my file.

[11]Q. And what does your file contain?

[17]A. My file contains a copy of my original

[13]appraisal of economic loss in this matter, a copy of

[14]my revised appraisal of economic loss in this

[15]matter. It contains a variety of employment records

[16]related to Ms. Clinton. It also includes some legal

[17]documents related to this matter. I also **[*15]** have some

[18]lax return transcripts, a completed fact-finding

[19]questionnaire, and lastly. I have a collection of

[20]medical documents. They have been provided to me as

[21]part of a packet with a document from the Social

[22]Security Administration.

[23]Q. Now, I'm assuming what you have in

[24]front of you is your original file for this case.

[25]Is that correct?
Page 18

[1]A. Yes.

[2]Q. So this isn't something you would

[3]necessarily want me marking all over. Is that fair?

[4]A. You could mark it, but I need to take

[5]it home with me when we leave here today, so --

[6]Q. So I may ask someone here, we might be

[7]able to take a quick break to see if there's going

[8]to be a way that they can maybe make a photocopy of

[9]the contents of your file, but we'll handle that on

[10]a break. So I am going to now move on.

[11]MS. BUNCE: And just to let you know,

[12]Doug, it started storming outside, so you're really

[13]not missing out on any great weather here.

[14]MR. KREIS: Oh. I'm sorry to hear

[15]that.

[16]Q. So I have now marked Exhibit No. 3,

[17]which is an amended deposition notice for your

[18]deposition here today. **[*16]**

[19](Exhibit 3, Amended deposition notice,

[20]is marked for identification.)

[21]Q. Do you know if you've seen this

[22]document before?

[23]A. I have not seen it, no.

[24]Q. Why don't you go ahead and flip to the

[25]very back page which has a list of about 15 items in
Page 19

[1]terms of document requests. I'm going to just walk

[2]through this really quickly.

[3]We've already talked about your C.V.

[4]You've brought that here. You've mentioned that you

[5]brought copies of both your original and revised

[6]reports. We're good there.

[7]Correspondence to or from plaintiff's

[8]counsel. Do you have any sort of correspondence

[9]with Ms. Clinton's counsel?

[10]A. No. The only documents I have between

[11]our office and plaintiff's counsel is item 3A. I

[12]brought all of the invoices. I did not rely upon

[13]any communications with counsel for facts or data,

[14]nor did I rely upon any communications from counsel

[15]for any assumptions that I made.

[16]Q. Okay. And just quickly scanning 4

[17]through 15, can you let me know -- well, you can

[18]skip 8 because you've mentioned that you brought

[19]your invoices with you, but **[*17]** of the remaining topics

[20]that are there did you bring any of these documents

[21]with you to the extent that you have any?

[22]A. I did not bring any of the items in

[23]number 4. I typically don't print those out

[24]They're all sourced in my document. Same thing with

[25]any items in number 5, to the extent that one would
Page 20

[1]consider some of the economics literature to be

[2]scientific. Documents, again, other than publicly

[3]available that are sourced in my report I do have

[4]with me.

[5]I do not have number 9. Technically.

[6]number 9 is the exhibits prepared to illustrate my

[7]opinions at trial. The reason don't have any

[8]documents like that with me is that it is our

[9]standard practice when a case goes to trial to

[10]prepare demonstrative aids and to update our

[11]calculations at the time of trial. The

[12]demonstrative aids, however, though, consist largely

[13]of the tables contained in our report and bullet

[14]point items of information in our report.

[15]I have a list of my trials and

[16]depositions. I mentioned medical records, and I

[17]believe that is it. I didn't have to conduct any

[18]experiments, so I didn't have **[*18]** to get any funding for

[19]that type of research. I have no photographs.

[20]Q. Perfect. So as you said, to the extent

[21]that you referred to something in your report that

[22]is not publicly available where I can go on the

[23]Internet and grab it or go to a library and grab it,

[24]you have that document here with you?

[25]A. Yes.

Page 21

[1]Q. Okay. Now, as you were going through

[2]the list of documents that you did say that you had

[3]with you, you mentioned a fact-finding

[4]questionnaire?

[5]A. I did. I believe I have a copy of

[6]that.

[7]Q. So this is a copy I can mark as an

[8]exhibit?

[9]A. I believe so. Yes, it is.

[10]Q. I just want to make sure I don't take

[11]your only copy.

[12](Exhibit 4, Fact-Finding

[13]questionnaire, is marked for identification.)

[14]Q. Well, we may talk about the contents of

[15]the fact-finding questionnaire a little bit later,

[16]but I'm actually more curious today how did you go

[17]about getting this questionnaire completed?

[18]A. I believe in this case we sent a copy

[19]of the questionnaire to plaintiff's counsel, and it

[20]was then returned to us by plaintiff's counsel. **[*19]**

[21]Q. And is this form the standard form that

[22]your group uses when you're initiating a case and

[23]trying to get background information?

[24]A. This is a form that we do frequently

[25]use when we evaluate matters involving the personal
Page 22

[1]injury of an adult.

[2]Q. So you have other standard forms that

[3]you use in other types of litigation?

[4]A. Yes.

[5]Q. Now, is there anything else that you

[6]may have reviewed or relied upon in preparation of

[7]your reports in Ms. Clinton's case that we haven't

[8]talked about yet in terms of having been produced or

[9]being publicly available?

[10]A. No.

[11]Q. Now, when you were contacted to be

[12]retained in this case what were you tasked to do?

[13]A. I was asked to evaluate the economic

[14]damages in this case.

[15]Q. And ultimately you offered opinions on

[16]those economic damages, correct?

[17]A. Yes.

[18]Q. And in what areas of economic damages

[19]did you offer opinions?

[20]A. In this case I calculated three basic

[21]elements of economic damages in my revised report,

[22]should say. I calculated the loss of earnings in

[23]this case, I **[*20]** also calculated the value of the health

[24]insurance benefits, and lastly, I calculated the

[25]economic value of household services. When I
Page 23

[1]prepared my original report I did not have

[2]employment records that specifically related to the

[3]health insurance, so that was excluded from my

[4]original analysis.

[5]Q. Now, part of your task in coming up

[6]with the economic losses is to determine that number

[7]in its present value, correct?

[8]A. Yes.

[9]Q. Can you please describe or define for

[10]us what that means?

[11]A. In this context when we talk about

[12]present value we're asking a very simple question.

[13]What lump sum of money would the plaintiff need to

[14]receive so that she could take that lump sum of

[15]money, invest it, for example, put it in the bank,

[16]for example, let it earn interest over time, and in

[17]each Future year withdraw an amount of money exactly

[18]equal to the income she would have earned, the value

[19]of the health insurance she would have received, and

[20]in this case the value of the household services she

[21]would have continued to provide absent her

[22]impairment.

[23]Q. Now I want **[*21]** to talk specifically about

[24]just one category just to make it easy --

[25]A. Sure.

Page 24

[1]Q. -- because I'm talking very generally,

[2]but it's easier just to grab a category than to say

[3]lost earnings.

[4]A. Sure.

[5]Q. Now, you consider yourself to be a

[6]forensic economist, correct?

[7]A. Yes.

[8]Q. As a forensic economist do you think

[9]there's one way to calculate lost earnings?

[10]A. I do think for any particular case

[11]that there is one method that is appropriate for

[12]calculating lost earnings.

[13]Q. Now, I'm going to try to dumb this down

[14]because I'm not a forensic economist, but I've been

[15]giving this some thought.

[16]MS. BUNCE: And Doug, I apologize that

[17]you're not going to be able to see the benefit of my

[18]crude drawing, but this is --

[19]MR. KREIS: Okay.

[20]MS. BUNCE: This is kind of how I was

[21]thinking about it.

[22]Q. I was thinking about it like a black

[23]box where you have your one method for calculating

[24]lost earnings, and then into that box you get to

[25]input different facts and variables, and so those go
Page 25

[1]in, and depending on the **[*22]** facts and the data and the

[2]variables that you use, you really have that kind of

[3]one black box method, and out pops the number that

[4]you come tip with. Do you think that's a fair way to

[5]describe it?

[6]A. I actually wouldn't agree with that,

[7]and the main reason I wouldn't agree with it is

[8]because the term "black box" implies that the method

[9]is somehow very opaque and that it's somewhat

[10]mysterious. In our reports we explain very clearly

[11]the method that we use. We illustrate all of the

[12]calculations, we source all of the data. So while I

[13]would agree that certainly I take facts, combine

[14]them with data and economic methodology to arrive at

[15]my calculation of lost earnings, I personally

[16]wouldn't refer to it as a black box.

[17]Q. So your problem is with my use of black

[18]box, and I appreciate that. So it would Just be

[19]like a formula, You have a certain formula, and you

[20]think there's one kind of standard formula that as a

[21]forensic economist you should use for calculating

[22]lost earnings, but in that formula --

[23]A. No. Just -- I don't mean to cut you

[24]off. I just want to be very clear For the **[*23]** record.

[25]I would absolutely not agree with the statement that
Page 26

[1]there is a singular formula or a single method for

[2]calculating lost earnings.

[3]Q. Okay.

[4]A. I just want to be very careful in this

[5]case. If you're asking me about this case, --

[6]Q. Right.

[7]A. -- I believe there is one method that

[8]is the most appropriate for this particular case.

[9]Q. Okay. So let's go back to that though.

[10]I thought you had said that there's one method for

[11]calculating lost earnings. You're now saying one

[12]method in this case?

[13]A. Yeah. And I think I said that

[14]earlier, but I may have forgotten.

[15]Q. I may have --

[16]A. That's okay.

[17]Q. I may have skipped over it.

[18]A. Yes.

[19]Q. How do the methods for calculating lost

[20]earnings vary?

[21]A. The general underlying methodology at

[22]its very simplest level --

[23]Q. Right.

[24]A. -- is very similar across eases. And

[25]what I mean by that in this case is we, as forensic
Page 27

[1]economists, will project earnings into the future,

[2]reduce them to present value. But for example, in

[3]some cases it is **[*24]** most appropriate to use as our

[4]starting point the earnings of a plaintiff in his or

[5]her last full year of employment. In other cases it

[6]may be more appropriate to took at what they earned

[7]over the last three years. In other cases I may

[8]have an offer letter or an employment agreement. So

[9]when you begin to drill down and really develop the

[10]method, you will find that each analysis is unique

[11]to the particular case or the particular plaintiff

[12]at hand.

[13]Q. Sure. But going back to what you were

[14]saying before, fundamentally to be able to do the

[15]math, the math is kind of -- the heart of it is kind

[16]of the same. You might -- what you were describing

[17]before is you might adjust the variables going into

[18]the calculation. Like you said, you might start at

[19]year one versus year ten or two versus eight, but

[20]the calculation that you might use is going to be

[21]the same?

[22]A. As I said, certainly at its simplest

[23]level, yes.

[24]Q. Yes.

[25]A. In nearly every case we will start by
Page 28

[1]projecting the earnings going forward, make various

[2]upward and downward adjustments to them, and then,

[3] **[*25]** depending upon the venue of the case, reduce those

[4]future earnings to present value.

[5]Q. Perfect. So because where I'm trying

[6]to get at is the things that really kind of change

[7]your results aren't necessarily the method, you

[8]know, at its very fundamental core. It's not the

[9]math calculation that you perform that changes the

[10]result. Really what changes it are some of the

[11]facts and the data variables that you input into

[12]that formula. Is that fair?

[13]A. Certainly if I used different facts or

[14]different data, then there is a good possibility

[15]that my --

[16]Q. Right.

[17]A. -- calculations would change, yes.

[18]Q. Sure. And we have a great example even

[19]in this case, and we haven't marked those exhibits

[20]yet, but for example, in your original report you

[21]had a different number for her for what her earnings

[22]were than what you reference in your revised report,

[23]correct?

[24]A. Yes.

[25]Q. So because that was a fact that changed

Page 29

[1]between your reports, that actually changed the

[2]result of the outcome of the lost earnings

[3]calculation, correct?

[4]A. That's correct. **[*26]** I did change my base

[5]earnings in my revised report, and the result was a

[6]change in my opinion of loss. That's correct.

[7]Q. Sure. So if a fact is changed or an

[8]assumption is changed, that can impact the result of

[9]your analysis?

[10]A. Oh, certainly it can, yes.

[11]Q. So do you think it would be fair to say

[12]that the resulting calculations that you come up

[13]with and that you have offered in your reports are

[14]only as good as the inputs that you have available

[15]to you in coming to those conclusions?

[16]A. I don't know that I would say they're

[17]only as good as, but certainly my opinion of

[18]economic loss is based on facts provided to me and

[19]based on what I feel is the most appropriate data.

[20]Q. And you just anticipated my next

[21]question. So your expertise really comes in not so

[22]much in actually doing the crunching of the numbers,

[23]which maybe even I could do with my calculator on my

[24]iPhone, but it's really in determining what some of

[25]those variables are that you're going to use in the
Page 30

[1]calculation. Is that fair?

[2]A. That is a large part of what I do,

[3]yes.

[4]Q. **[*27]** So for example, in this case, and

[5]again, we'll talk in more detail, they are decisions

[6]that you have to make about growth rates for wage

[7]rates or what discount rate that you're going to

[8]use, and so it's really your expertise in making the

[9]decisions about what some of those rates are, what

[10]some of the those variables and inputs are that

[11]really impact the result that you come to?

[12]A. That's part of it, yes.

[13]Q. What's another part of it?

[14]A. The facts of the case and obviously

[15]the calculations themselves, but certainly yes, one

[16]of the things that I do as an economic expert is

[17]review all of the information and determine the

[18]appropriate methods and, as you said, variables and

[19]data and so on.

[20]Q. And as an expert you have no control

[21]over the facts of the case, correct?

[22]A. That is correct.

[23]Q. They come to you as they are, good,

[24]bad, indifferent, and you just have to take the

[25]facts as they're given to you and then work those
Page 31

[1]with the variables that you're able to determine

[2]through your expertise, plug them into the formula,

[3]and get your result, correct? **[*28]**

[4]A. That's correct.

[5]Q. And so again, your analysis, your

[6]results, are only as good as the facts as they've

[7]been provided to you. Is that fair?

[8]A. Certainly if I --

[9]MR. KREIS: Object to form.

[10]Q. So for example, if it turns out that

[11]one of the facts that you were given in order to

[12]make your calculations and come up with your

[13]results, if those facts turn out to he incorrect,

[14]that would have an impact on your results, correct?

[15]A. Certainly if for some reason I changed

[16]one of the facts that I used in my analysis, it is

[17]possible that my calculations would change.

[18]Q. Sure. Or if there was a fact that

[19]wasn't provided to you that's completely outside of

[20]your control, but it could potentially impact your

[21]analysis and your results?

[22]A. Without knowing what the fact is --

[23]MR. KREIS: Object to the form.

[24]A. -- I suppose it's possible, yes.

[25]Q. Sure. And I'm talking very broad
Page 32

[1]stroke at this point.

[2]But seeing that you're not an expert of

[3]the facts of the case and, you know, you kind of

[4]have to take them as they are, is **[*29]** there anything

[5]that you do in your role as an expert to try to

[6]confirm the facts that you are given, or do you just

[7]take them as true?

[8]A. Well, first of all, I think it's

[9]important to remember it's true I'm not an expert in

[10]the facts, so to speak, but also of greater

[11]significance, I'm not the trier of fact. So it

[12]isn't necessarily ever appropriate for me to decide

[13]whether a fact is reasonable or appropriate and so

[14]on. Having said that, though, there certainly are

[15]some facts that I am able to confirm by review of

[16]various documents. There are other facts, for

[17]example, a person's date of birth that I will

[18]certainly accept when they're presented to me unless

[19]I happen to see elsewhere a different figure.

[20]Q. So taking this case specifically, is

[21]there anything that you would have liked to have

[22]reviewed to learn more about the background facts

[23]that you didn't get the opportunity to review?

[24]A. No. The only additional information

[25]that we would have liked to review was employment
Page 33

[1]records, and we ultimately were provided with them,

[2]and once we reviewed them we issued a revised

[3] **[*30]** report.

[4]Q. Did you ever review deposition

[5]testimony from Ms. Clinton?

[6]A. No.

[7]Q. Do you typically review deposition

[8]testimony in personal injury cases?

[9]A. Sometimes.

[10]Q. And what dictates whether or not you

[11]review deposition testimony in preparing your

[12]opinions in a personal injury case?

[13]A. Sometimes it's a matter of timing.

[14]Sometimes the plaintiff is not deposed until after

[15]we've prepared our report. But it also depends on

[16]whether or not I feel that I need any additional

[17]information. In this case I had been provided with

[18]information in the fact-finding questionnaire,

[19]specifically information about the household

[20]services that Ms. Clinton had been performing prior

[21]to her impairment and her inability to perform

[22]certain services after her impairment. I didn't

[23]feel that it was necessary to obtain any additional

[24]information in that regard.

[25]Q. So you were comfortable with the
Page 34

[1]information that you had to be able to move forward

[2]with your analysis?

[3]A. Yes.

[4]Q. Now that we're done talking about my

[5]black box, we're going to **[*31]** move on and talk

[6]specifically about the reports that have been

[7]generated in this case.

[8]THE REPORTER: I am sorry to

[9]interrupt, but I just wanted to let you know that if

[10]you wanted documents copied, I don't know what time

[11]the office is closing today due to the holiday

[12]weekend.

[13](Recess taken from 4:06 to 4:09 p.m.)

[14](Exhibit 5, Original report prepared

[15]by Sobel Tinari Economics Group dated September 28,

[16]2015, is marked for identification.)

[17](Exhibit 6, Revised report prepared by

[18]Sobel Tinari Economics Group dated June 6, 2016, is

[19]marked for identification.)

[20]Q. Now I am going to hand you, Ms. Kucsma,

[21]the exhibits that have been marked Exhibit 5 and

[22]Exhibit 6, and these represent your original report

[23]and your revised report.

[24]A. Great.

[25]Q. Now, before we talk about those
Page 35

[1]specifically, I just wanted to ask quickly if you

[2]can recall when you were contacted to be first

[3]retained as an expert in this matter?

[4]A. I don't recall specifically, but

[5]believe it was sometime in or around early September

[6]of 2015.

[7]Q. And so based on that **[*32]** recollection and

[8]then taking a look at the date of Exhibit 4, which

[9]was the fact-finding questionnaire, and that is

[10]dated September 19, 2015, it appears you would have

[11]gotten the questionnaire shortly after you were

[12]retained as an expert?

[13]A. Yes.

[14]Q. I don't believe that I asked you this,

[15]and I apologize if I did. Outside of the

[16]fact-finding questionnaire --

[17](Interruption from outside deposition

[18]room.)

[19]Q. So as I mentioned, might have asked

[20]you this question. I apologize if I did. Have you

[21]or anyone at your firm spoken directly with

[22]Ms. Clinton?

[23]A. No.

[24]Q. And do you have any idea if Ms. Clinton

[25]has ever seen or reviewed the reports that you've
Page 36

[1]done on her behalf?

[2]A. That I don't know.

[3]Q. So taking a look at these two reports,

[4]Exhibit 5 and Exhibit 6, one of them is dated

[5]September 28, 2015, and the other is dated June 6,

[6]2016. What prompted the filing of the revised

[7]report earlier -- I was going to say earlier this

[8]month, but it's now July 1, so last month?

[9]A. As I indicated not long ago, when we

[10]prepared our **[*33]** original report we had not been

[11]provided with documentation of Ms. Clinton's

[12]earnings history, and we made note of that in the

[13]original report. Since we had not been provided

[14]with that documentation in our original report, we

[15]projected Ms. Clinton's lost earnings based on

[16]statistical data. Subsequent to the issuing of our

[17]first report we were, in fact, provided with

[18]documentation of Ms. Clinton's compensation, her

[19]earnings as well as health insurance. We revised

[20]our report to reflect that information.

[21]Q. Other than that earnings information

[22]that you received was there any other new

[23]information that you received that worked its way

[24]into your revised report?

[25]A. I don't believe so, but I'm just
Page 37

[1]quickly reviewing my reports.

[2]I believe that was it. Just as I

[3]mentioned a moment ago, the additional employment

[4]and earnings information.

[5]Q. Now, you've mentioned you have staff of

[6]about 16 people who work at your group. Do you

[7]write these reports, or do other members of your

[8]group write the report?

[9]A. I write parts of the reports, but I do

[10]work typically **[*34]** with one other economist and with one

[11]or two analysts.

[12]Q. And is that one other economist Kenneth

[13]Betz?

[14]A. Yes.

[15]Q. And who are the analysts that you work

[16]with? Or more specifically, would have worked with

[17]you on these particular reports?

[18]A. In this case I had the assistance of

[19]one of my senior analysts, Jeff Rella, and I also

[20]had some assistance from one of my junior analysts,

[21]Sarah Betz.

[22]Q. Any relation to Kenneth?

[23]A. Yes, actually. Kenneth Betz's

[24]daughter.

[25]Q. How do you divide the work? Because
Page 38

[1]you mentioned you write parts of it. How do you

[2]make the decision of what parts you work on and what

[3]parts Kenneth works on or Jeff or Sarah?

[4]A. Well, in this particular case Ken's

[5]role was very limited. He reviewed some of the

[6]documents when they first came in. He certainly was

[7]involved in a preliminary discussion about the case,

[8]and he of course reviewed the reports before he

[9]signed them, but other than that he was largely

[10]uninvolved in the actual preparation of the report.

[11]Jeff and Sarah, on the other hand, did, under my

[12]direct **[*35]** supervision and at my request, conduct some

[13]of the research, type up parts of the report, format

[14]parts of the report.

[15]Q. Now, you mentioned earlier, and again,

[16]excuse me if I am mischaracterizing your testimony,

[17]but that part of your role as the economics expert

[18]is to really determine what categories of losses can

[19]be calculated for a particular case, and then you

[20]work with counsel and maybe give you recommendations

[21]of the types of categories of tosses that could be

[22]calculated. Is that kind of a fair characterization

[23]of your testimony?

[24]A. Pretty much. I don't typically make

[25]recommendations to counsel. What I typically do is
Page 39

[1]simply prepare a report that includes the

[2]appropriate elements of economic damages. Every

[3]once in awhile I may feel the need to have a

[4]discussion with counsel about it.

[5]Q. Perfect. Thanks for making that

[6]clarification.

[7]Did Ken have any involvement in

[8]deciding which categories of losses you would be

[9]calculating for Ms. Clinton?

[10]A. Technically, no. And I say that

[11]simply because he and I did discuss the case when it

[12]first came **[*36]** in. We did have a general discussion

[13]about what the elements of economic damages would

[14]be. He agreed with my decisions about the

[15]appropriate elements of economic damages, but those

[16]decisions were made primarily by me in this case.

[17]Q. And granted I know the revised report

[18]was issued less than a month ago, but have you

[19]reviewed any additional materials related to this

[20]matter since the time of your revised report?

[21]A. No.

[22]Q. And do you have any plans on reviewing

[23]any additional materials to revise your opinions in

[24]this case?

[25]A. As of this moment my only plan would
Page 40

[1]be to update my calculations at the time of trial to

[2]reflect the time of trial and to reflect any newly

[3]available economic data that's already been sourced

[4]in my report.

[5]Q. Now, this is going to be a little bit

[6]of a redundant question, but I just want to make

[7]sure that we're clear. If you take a look at the

[8]last page of your report, and I believe it's the

[9]same in each, where you have a list of documents

[10]reviewed, does this represent the entire list of

[11]documents that you have reviewed in preparing

[12] **[*37]** Ms. Clinton's report?

[13]A. Yes.

[14]Q. And with the exception of the

[15]fact-finding questionnaire which came from your

[16]office, all of these documents came from

[17]Ms. Clinton's counsel. Is that fair?

[18]A. That is correct.

[19]Q. All right. So why don't we set aside

[20]the original report for now. We might come back to

[21]it, but we can focus on your revised report right

[22]now. I'm going to walk through it, and I want to

[23]start with the Background Facts and Assumptions

[24]section.

[25]A. Sure.
Page 41

[1]Q. Now, the first section there entitled

[2]Summary Information, is it fair that that's all the

[3]information that you received from Ms. Clinton

[4]either through her fact-finding questionnaire or

[5]through the documents that you received from

[6]plaintiff's counsel?

[7]A. Yes.

[8]Q. Now, in the second section that you've

[9]entitled Life Expectancy you mention a date of

[10]impairment. How do you define "date of impairment"

[11]in your reports?

[12]A. In this case in particular we consider

[13]the date of implantation as the date of impairment.

[14]Q. And why is that?

[15]A. I don't recall **[*38]** whether I had a

[16]specific conversation with counsel about this or

[17]not, but the fact-finding questionnaire indicates

[18]that the initial date of injury was December 2,

[19]2004.

[20]Q. But later in your report you do note

[21]that following her implantation on December 2, 2004,

[22]she was able to return to work, correct?

[23]A. Yes.

[24]Q. And I think throughout your report as

[25]well you assume her ability to perform household

Page 42

[1]services at least for a period of time following her

[2]implant surgery. Is that fair?

[3]A. I would say a better way perhaps to

[4]describe what I did with respect to household

[5]services is I did not at any point in my report

[6]assume that Ms. Clinton was completely incapable of

[7]performing household services.

[8]Q. Understood, but with her reduced

[9]capacity to perform household services you note that

[10]happening or use a starting date approximately eight

[11]months alter the date of impairment. Is that

[12]correct?

[13]A. Yes.

[14]Q. So the word "impairment" is a little

[15]bit of a misnomer?

[16]A. I don't know that I would say its a

[17]misnomer. It is the general term **[*39]** that we used in

[18]this particular case because of the fact that unlike

[19]a motor vehicle accident, for example, where someone

[20]may have a broken leg that one would typically think

[21]of more traditionally as an injury, we used it as a

[22]more general phrase in this case.

[23]Q. Understood. Thanks.

[24]So I'm just marching right down through

[25]this. With Life Expectancy you noted that you used
Page 43

[1]the life tables to determine that at the time of her

[2]impairment, which again is the date of her implant,

[3]December of 2004, she would have an additional 56.9

[4]years of life expectancy given her age at the time

[5]of the implant. Is that correct?

[6]A. Yes.

[7]Q. And I went out, and I looked at the

[8]CDC, and I believe this to be true. Are the life

[9]tables for 2011 submitted September 22, 2015, the

[10]most current and up-to-date life tables to use for

[11]this type of calculation?

[12]A. I believe that at present they are the

[13]most current and up-to-date.

[14]Q. Okay. In section number 3 which you've

[15]entitled Statistical Retirement Age you noted that

[16]for women of Ms. Clinton's age and educational

[17]level, **[*40]** again, at the time of the impairment, she

[18]would have 35.99 years to retirement. Now, I'm

[19]going to put in front of you --

[20]MS. BUNCE: And Doug, I apologize

[21]because I have one copy, so this is even going to be

[22]awkward because I don't even have a copy for myself.

[23]Q. But I'm going to put in front of you,

[24]Ms. Kucsma, a copy of the source that you've

[25]identified for this piece of information. I'm going
Page 44

[1]to mark this Exhibit No. 7.

[2](Exhibit 7, Article entitled

[3]Probability Mass Functions for Years to Final

[4]Separation from the Labor Force Induced by the

[5]Markov Model, is marked for identification.)

[6]Q. And I was hoping you could help me out

[7]because I looked through the tables as best as I

[8]could to try to find 35.99, and I couldn't find it.

[9]I'm not saying it's not there, but I was just kind

[10]of hoping you could point to me how you came up with

[11]that number.

[12]A. Sure. It probably isn't here. I say

[13]that simply because if you look at our report and

[14]you look at the source, you'll note that we had to

[15]interpolate the data.

[16]Q. Right. And that's because her age was

[17] **[*41]** 25.96 rather than being 26. Is that correct?

[18]A. Correct. If I look at the table,

[19]table 15 to be very specific, and I look at the

[20]median number of years to retirement for a

[21]25-year-old woman, it's 36.94. If I look at the

[22]median number of years to retirement for a

[23]26-year-old woman, it's 34.95. 35.99 is between

[24]35.95 and 36.94.

[25]Q. But 25.96 is not between those two
Page 45

[1]numbers, correct?

[2]A. 25.96 is between 25 and 26 years of

[3]age.

[4]Q. But it would be closer to 26 than 25,

[5]correct?

[6]A. Right. Which is why, keep in mind,

[7]again, for a 25-year-old it's 36.94 years. For a

[8]26-year-old it's 35.95 years. She was almost 26. I

[9]used 35.99, which is almost 35.95.

[10]Q. I thought you said that 26 was 34.95?

[11]A. I was afraid I had misspoken. No.

[12]It's 35.95. I apologize for that. Yeah. If you

[13]look at the table 15.

[14]Q. Yes, I --

[15]A. I did misspeak when I said it the

[16]first time.

[17]Q. Okay. I got it.

[18]A. Right.

[19]Q. That's where was coming up with I'm

[20]not sure how 35.95 --

[21]A. Yeah. I apologize for that. I

[22]thought I had **[*42]** done that.

[23]Q. And then when you look at number 4

[24]where you're talking about the expected working

[25]years, again, and I think I did a little bit better
Page 46

[1]job of trying to figure this one out, but I'm going

[2]to mark again just almost more for my edification

[3]Exhibit No. 8, which are the tables that you list as

[4]a source under section number 4.

[5](Exhibit 8, Tables 20 through 27 from

[6]the Journal of Forensic Economics, is marked for

[7]identification.)

[8]Q. And this, as you describe, is -- or

[9]actually, you know what? I'm going to let you

[10]describe what this number is.

[11]A. These figures or this figure. I should

[12]say, represents Ms. Clinton's work life expectancy.

[13]I will tell you where I got the number from first,

[14]and then I will explain to you what makes that

[15]different from the years to retirement. So once

[16]again, I'm looking now at Table 22, and I am once

[17]again looking at the median number of years of work

[18]life expectancy for a 25-year-old, and that is 29.5.

[19]The median number of years of work life expectancy

[20]for a 26-year-old is 28.5. Ms. Clinton was just shy

[21]of 26 years **[*43]** of age, which is why my work life

[22]expectancy figure is just slightly higher than 28.5.

[23]Q. Perfect. Thank you.

[24]A. Sure.

[25]Q. And now you mentioned you were going to
Page 47

[1]explain the difference between these two numbers?

[2]A. Sure. The 35.99 years to retirement

[3]reflect just that, the number of years between the

[4]date of implantation -- or I should say the number

[5]of years from the date of implantation at which

[6]point Ms. Clinton would permanently remove herself

[7]from the labor force. The 35.99 years to

[8]retirement, however, does not mean that Ms. Clinton

[9]would have worked continuously for those 35.99

[10]years. As an economist I need to determine of the

[11]35.99 years to retirement how many of those years

[12]would Ms. Clinton have actually been in the

[13]workforce. The work life expectancy figure tells me

[14]that. So the work life expectancy figure tells me

[15]of the 35.99 years to retirement, Ms. Clinton would

[16]work 28.54 of those years, or as you see on page 4,

[17]79.3 percent of the time.

[18]Q. And I was going to save this question

[19]for later, but we might as well talk about it now.

[20]When **[*44]** you're making a determination then in

[21]calculating out lost earnings in the future down the

[22]road you calculate that to her expected retirement

[23]age, correct, and you don't base it on the year

[24]where she would remove herself from the workforce

[25]based on the expected work life number, right?
Page 48

[1]A. That's correct. In my professional

[2]opinion what is most appropriate is to project the

[3]lost earnings through her statistical date of

[4]retirement and make a downward adjustment each year

[5]to account for the periods of missed work that arc

[6]reflected in that work life expectancy.

[7]Q. Sure. Because the work life expectancy

[8]doesn't necessarily assume that she's going to take

[9]off -- at least in her case there's a seven-year gap

[10]between those two numbers. Doesn't mean she's going

[11]to take off seven years early, but it could mean

[12]that throughout that period of lime she might be

[13]gone for, you know, a year here, a year there, and

[14]so your method of doing it kind of spreads out that

[15]kind of probability of when she might take those

[16]years off?

[17]A. That's correct.

[18]Q. Is that fair? Okay.

[19] **[*45]** All right. We're going to flip the

[20]page to page 4. In section 7 entitled Occupation

[21]and Employment you note here that she was working as

[22]a housekeeper by the Parkland Health Center in

[23]Farmington, Missouri, at the time of her implant

[24]surgery. Now, if you just look quickly at your

[25]original report, same page, same section, you
Page 49

[1]indicate that Ms. Clinton was actually a psyche

[2]aide?

[3]A. Yes.

[4]Q. And so is housekeeper an oversight, or

[5]is that a correction to her actual job description?

[6]A. In our original report we did not have

[7]employment records, as I indicated earlier today, so

[8]I relied upon the job title at the time of injury

[9]that was reported in the fact-finding questionnaire,

[10]and that says psyche assistant. Subsequent to the

[11]preparation of my original report I did receive a

[12]number of employment records, and in at least one of

[13]those employment records there was reference to her

[14]title and/or her job responsibilities, so I updated

[15]my description of her title and responsibilities to

[16]reflect those employment records.

[17]Q. I hate to bother you because you've got

[18]four **[*46]** stacks of paper in front of you, but do you

[19]think you could find among your records what record

[20]you had noted that indicated she had maybe the title

[21]or job responsibilities of a housekeeper?

[22]MS. BUNCE: We can go off the record

[23]as she does that.

[24](Discussion off the record.)

[25]A. I've located the document.

Page 50

[1]Q. All right.

[2]A. It actually has a number in the bottom

[3]right-hand corner. I don't know if this number will

[4]be of use to you or not, but --

[5]Q. Go for it.

[6]A. PHC000022.

[7]Q. Just checking to see if I have that

[8]record with me. It doesn't appear that I do. Could

[9]you, for the record, say what that record indicates?

[10]A. Sure. This record says "ESN Info" at

[11]the very top of it. It then contains employee data,

[12]and it indicates that Ms. Clinton was a housekeeper.

[13]More specifically, it states her job title was

[14]housekeeper, and that she was working in the

[15]department of geriatric psyche.

[16]Q. And what is the date of that record?

[17]A. It looks as if this record was created

[18]on May 22, 2006.

[19]Q. Great. Thanks for clarifying that **[*47]** for

[20]me.

[21]A. Sure.

[22]Q. Given the employment records that you

[23]were able to obtain between the original report and

[24]the revised report, you were able to come up with

[25]some information that you have listed in subsection
Page 51

[1]8, the earnings history, indicating what her

[2]earnings history was while working at Parkland

[3]Health Center. Is that correct?

[4]A. Yes.

[5]Q. So the update from original to the

[6]revised report is you take -- you no longer have to

[7]speculate, you no longer have to take the estimates

[8]that you made about what her earnings were, and you

[9]have the actual numbers there, correct?

[10]A. Yes. I now know what she in fact

[11]earned, so as you indicated, I do not have to rely

upon the statistical data that I used in my original report.

Q. And as we mentioned earlier, looking back at paragraph 7, we had talked about the fact that following Ms. Clinton's implant she did return to work, and you note in paragraph 7 that she was able to work beginning in January 2005 and did work for a period of time until she was terminated on May 22, 2006, correct?

[*48] A. Yes.

MR. KREIS: Objection to form.

Q. And part of your analysis, or maybe one of your assumptions in coming up with these lost earning calculations, is that her termination was a

Page 52

result of the pain and suffering attributed to her ObTape. Is that correct?

A. Yes.

Q. And in paragraph 7 as well you indicate that plaintiff has not returned to work since that time, "that time" being May 22, 2006. Is that correct?

A. Yes.

Q. And then later on page 5 under paragraph 12, Functionality and Future Employability, you indicate that you assume that plaintiff will not reenter the active labor force. Is that correct?

A. Yes.

Q. Now, again, as the economics expert in

[16]this case it's not your role to determine whether

[17]Ms. Clinton is actually able to return to work, is

[18]it?

[19]A. That is correct.

[20]Q. So you're taking information that you

[21]received either from plaintiff or plaintiff's

[22]counsel regarding her injuries and her ability to

[23]work, and that works into your calculation for lost

[24]earnings, correct?

[25]A. I say yes and **[*49]** no simply because I did
Page 53

[1]assume that Ms. Clinton is incapable of returning to

[2]work: however, whether she can return to work or no

[3]is somewhat irrelevant for my analysis of what she

[4]would have earned, of course, in her pre-impaired

[5]state.

[6]Q. But if you were to get information --

[7]this is a total hypothetical situation. If you

[8]determined that Ms. Clinton had a period of time

[9]where she was unable to work but was able to return

[10]to work, for example, in 2012 to her normal job

[11]working as a housekeeper at Parkland Health, that

[12]certainly would change your calculation of lost

[13]earnings related to her ObTape?

[14]A. Certainly --

[15]MR. KREIS: Object to form.

[16]A. Certainly if for whatever reason I

[17]considered the possibility that Ms. Clinton were

[18]capable of returning to work, if there was some

[19]basis provided to me for that it is quite possible

[20]my calculations would change.

[21]Q. And is there anything that you can

[22]recall reviewing in the records you were provided

[23]that indicated to you that Ms. Clinton was not

[24]capable of returning to work?

[25]A. As I mentioned earlier, **[*50]** I had been
Page 54

[1]provided with many documents from the Social

[2]Security Administration. I don't recall as I sit

[3]here today whether there was some specific

[4]statements in there commenting on Ms. Clinton's

[5]ability to work. Having said that though, she was

[6]approved for social security disability benefits.

[7]In addition to that, there was reference in a letter

[8]from Parkland Health Center regarding her separation

[9]from them that their decision -- the letter dated

[10]May 17, 2006, says that "At this time I must inform

[11]you that I can no longer hold your position here at

[12]Parkland. We have exhausted all of your FMLA and

[13]your ETO time. This decision is not based on your

[14]performance, but due to the fact your health has not

[15]allowed you to work as needed."

[16]Q. And again, as you mentioned earlier,

[17]you haven't reviewed any deposition testimony from

[18]Ms. Clinton regarding her ability or attempts to

[19]return to work, have you?

[20]A. I have not reviewed her deposition

[21]transcript. That's correct.

[22]Q. Now, when you're making calculations of

[23]lost earnings it appears, at least in this case, and

[24]you **[*51]** can tell me if this is a case specific analysis

[25]or if this is something that you typically do when
Page 55

[1]calculating lost earnings, but it appears that you

[2]assumed that Ms. Clinton would continue in the job

[3]that she had at the time of her termination to the

[4]end of her work life. Is that something you

[5]typically do?

[6]A. I actually don't make that assumption

[7]at all.

[8]Q. Okay.

[9]A. I know why it appears as if I do in

[10]this case, but in this case have relied upon

[11]Ms. Clinton's position and her earnings at the time

[12]of impairment to estimate what her earnings would be

[13]going forward. I do not necessarily assume she

[14]would remain in the same employment, and in fact if

[15]you look at page 9 of our report in each and every

[16]year I make a downward adjustment to my earnings

[17]calculations to reflect the probability of

[18]unemployment. So I actually build into my analysis

[19]the probability that she would move from one job to

[20]another, but I have assumed that her earnings

[21]capacity would remain fairly consistent over her

[22]working life.

[23]Q. And I think that's probably more fair,

[24]and you describe **[*52]** it far more better than -- far more

[25]better. Strike that. It is Friday afternoon. You
Page 56

[1]described it better than I had.

[2]Really what it is, it's more a measure

[3]of her earnings capacity. Not that she would work

[4]as a housekeeper for the next 50 years of her life,

[5]but she would be in a jab that would earn her money

[6]commensurate to what she was earning as a

[7]housekeeper?

[8]A. Yes.

[9]Q. Is that fair to say?

[10]A. Yes.

[11]Q. Now, I know we had talked before that,

[12]you know, in your role in calculating lost earnings

[13]you don't really look into whether or not someone

[14]has made attempts to reenter the workforce or

[15]whether they are or are not capable of actually

[16]returning to the workforce, but as a forensic

[17]economist do you look at any issues at all impacting

[18]somebody's employability when you're making these

[19]types of calculations?

[20]A. No. In my professional opinion it is

[21]not appropriate for an economic expert to offer

[22]opinions about employability. That type of opinion

[23]would be offered by a vocational expert or an

[24]employability expert.

[25]Q. And you're not a vocational **[*53]** expert?
Page 57

[1]A. I am not.

[2]Q. But I'm sure you've had opportunity in

[3]your role as a forensic economist to review reports

[4]from vocational experts?

[5]A. Yes.

[6]Q. And sitting here today, can you just

[7]describe to me some of the factors that a vocational

[8]expert might look at in determining someone's

[9]employability?

[10]A. I certainly don't know specifically

[11]all of the factors a vocational expert would

[12]consider, but I know that oftentimes vocational

[13]experts review medical records. Some vocational

[14]experts, but not all, conduct tests of plaintiffs,

[15]sometimes cognitive tests, sometimes physical tests.

[16]It has been my experience that most vocational

[17]experts conduct in-person interviews with the

[18]clients.

[19]Q. Have you ever seen a vocational expert

[20]consider whether a person's elicit drug use would

[21]impact their employability?

[22]A. I can't think of a report in which

[23]that has been an issue, but it is quite possible

[24]that I have worked on a case where that was

[25]mentioned.

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[1]Q. But again, for your pale here that is

[2]not something you consider. You **[*54]** leave that to the

[3]vocational expert. Your role is just to calculate

[4]the lost earnings that this person has allegedly

[5]suffered?

[6]A. That's correct. I am not here to

[7]offer any opinion about that.

[8]Q. I want to try to walk through this in a

[9]way that makes sense, so I apologize to you now if

[10]were jumping around a little bit. I want to talk

[11]briefly about paragraph 10 entitled Fringe Benefits.

[12]And you note here that she was eligible to receive

[13]various fringe benefits, including a retirement

[14]savings plan consisting of a 403(b) and a 401(k),

[15]and then you go on to note that you value the

[16]employer matching contribution into retirement

[17]savings at 1.7 of gross earnings. Where in the

[18]records that you've received did you note that there

[19]was an employer match to the retirement savings

[20]program?

[21]A. I do have an entry on PHC 22

[22]indicating that Ms. Clinton received full benefits.

[23]Q. You said that was PHC 22?

[24]A. Yes.

[25]Q. Okay.
Page 59

[1]A. And then I had some additional

[2]documents -- specifically I have a document that has

[3]the number PHC000060, and that is a document **[*55]** that

[4]contained information about the retirement plans.

[5]Q. And it was based on those two pieces of

[6]information that you assumed that there was a match?

[7]A. Yes. I believe so. I'm just looking

[8]to see if there's any reference in any other

[9]documents.

[10]I believe those were the two documents

[11]that we relied upon. There also is an indication on

[12]PHC 10 and 11 and various pay stubs that did

[13]indicate that Ms. Clinton was, in fact, contributing

[14]to the 401(k) plan.

[15]Q. Okay. I'm going to mark just so we can

[16]talk about those two records that you're referencing

[17]PHC 10 and 11. So now the fringe benefits that they

[18]offer is a matching program, so that then requires

[19]that one participate in that program, correct?

[20]A. If you look at PHC 60 specifically

[21]with reference to the 401(k) plan, that document

[22]indicates that Parkland provides a 3 percent

[23]contribution of your base salary after one year of

[24]employment. There's no reference at all to an

[25]employee contribution. However, if you look at the
Page 60

[1]next two boxes that talk about the 403(b) plan, then

[2]there is reference to an employee **[*56]** contribution. PHC

[3]60 indicates that there are two retirement plans.

[4]Q. Okay.

[5]A. One that requires an employee

[6]contribution and one that does not.

[7]Q. And so the 403(b) is the one that

[8]requires the contribution?

[9]A. It appears that that's the case from

[10]PHC 60, yes.

[11]Q. So then therefore that would indicate

[12]to you that with the 401(k) plan it was simply a

[13]matter of after one year of employment Parkland

[14]would provide a 3 percent contribution regardless of

[15]whether the employee was participating in the

[16]program?

[17]A. That is certainly what PHC 60

[18]indicates, yes.

[19]Q. Is there anything -- and we'll just

[20]mark this. Well make this quick. I'm going to

[21]mark this as Exhibit 9, which is the PHC 10 and 11

[22]that you referenced.

[23](Exhibit 9, Copies of two check stubs

[24]of Andrea R. Clinton Bates stamped PHC000010 and

[25]PHC000011, is marked for identification.)
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[1]Q. Is there anything on here that

[2]indicates to you the contribution that Parkland made

[3]to her 401(k) above and beyond what she was

[4]contributing?

[5]A. No. These pay stubs do not **[*57]** include

[6]any employer benefits.

[7]Q. Okay.

[8]A. And that's actually not unusual for

[9]pay stubs, but there is no reference on those

[10]documents of any employer contributions or other

[11]benefits for which the employer may have been

[12]paying.

[13]Q. Is there anything on a W-2 that you saw

[14]that would have indicated how much she was getting

[15]in terms of an employer contribution to a retirement

[16]savings plan?

[17]A. There is some information in box 12 on

[18]the W-2, and I believe that this information

[19]reflects some contribution into a retirement plan.

[20]Q. And was that the W-2 for 2005?

[21]A. Yes. And also 2004.

[22]Q. Now, how did you come up with the 1.7

[23]percent figure?

[24]A. The 1.7 percent figure I believe was

[25]based in part on the information provided in the pay
Page 62

[1]stub. I don't believe I brought my calculation of

[2]that figure, but it was based in part on the

[3]employee contribution contained, as I said, on her

[4]pay stubs.

[5]Q. Though you said the pay stub doesn't

[6]note the employer contribution, correct?

[7]A. That's correct. The pay stub includes

[8]the **[*58]** employee contribution to the 401(k) plan.

[9]Q. Right. And how does that factor into

[10]then that 1.7 percent figure? Because doesn't that

[11]figure simply represent the employer's contribution

[12]to the savings plan?

[13]A. Which figure?

[14]Q. The 1.7.

[15]A. Yes. The 1.7 percent reflects the

[16]employer matching contribution, and I don't see in

[17]my file here specifically that figure, but it is

[18]based, as I said, on information on the pay stub

[19]about her contribution as well as information

[20]provided in PHC 60. And I do apologize because I

[21]don't believe that I brought the actual calculation

[22]with me.

[23]Q. Did that number somehow assume some

[24]sort of involvement in both the 403(b) and the

[25]401(k) program, or was it based simply on
Page 63

[1]participation in one or the other of the programs?

[2]A. I'm going to take a quick peek here.

[3]I do apologize. I did not, as I said,

[4]bring that note with me, but it is based on the fact

[5]that she was making employee contributions, and

[6]again the employer match indicated on PHC 60.

[7]Q. Okay.

[8]A. I do apologize. Unfortunately, I just

[9]don't **[*59]** have that note in my file.

[10]Q. That's fine. We can move on.

[11]So I'm going to skip ahead a little bit

[12]to your report. We can go back to your revised

[13]report, and I'm going to skip over the health

[14]insurance section and the household services section

[15]of your report so that we can start talking about

[16]the adjusted earnings that you calculated. So we

[17]can take a look at page 7 of your report, and here

[18]initially in order to come to her cumulative lost

[19]earnings you first have to look at the earnings she

[20]would have lost in years past?

[21]A. Yes. That's correct.

[22]Q. So you have to kind of draw a line in

[23]the sand and, you know, for purposes of your report

[24]that's 2016, your revised report, so you looked at

[25]what she would have earned in the past years, you

Page 64

[1]make those calculations, and then you have to look

[2]forward to what she would be earning in the future.

[3]You kind of put those together, and you get your

[4]total number. Is that correct?

[5]A. That's correct.

[6]Q. All right. So Let's take a look at the

[7]past years. You said you started with her

[8]pre-impairment earnings in **[*60]** 2004 dollars of

[9]$ 13,055.00, and that again was based on the

[10]information that you were able to receive from her

[11]earnings history from her company. Is that correct?

[12]A. Yes.

[13]Q. Okay. Then you said to get

[14]corresponding values for those numbers you applied a

[15]yearly increase consistent with recent and annual

[16]expected wage growth as presented in the table that

[17]follows, and then you have a source here to Bureau

[18]and Labor Statistics, correct?

[19]A. Yes.

[20]Q. All right. Question for you first. In

[21]taking a look at the table that you have on page 7,

[22]you do apply a growth rate of 1.8 percent, but you

[23]do have for Ms. Clinton actual pay stub and W-2s for

[24]2005, correct?

[25]A. I do have W-2s for 2005. That's
Page 65

[1]correct. And I do have a pay stub. That is

[2]correct.

[3]Q. So how does this 13,290 that you have

[4]listed in the table actually correspond to

[5]Ms. Clinton's W-2 for 2005?

[6]A. Well, the W-2 is not relevant for that

[7]calculation.

[8]Q. For her gross earnings?

[9]A. In this case the question is if she

[10]had been able to continue working in 2005 in the

[11] **[*61]** same capacity that she was working in 2004, what

[12]would she have earned.

[13]Q. But where is the indication that she

[14]wasn't working in the same capacity? Because she

[15]was terminated in May of 2006, and so she returned

[16]to work in January 2005 and worked until she was

[17]terminated in May 2006. What is the indication that

[18]she was missing work during 2005?

[19]A. Well, there is an indication, as I

[20]noted in my report, that reportedly subsequent to

[21]the mesh implant Ms. Clinton's pain and suffering

[22]decreased her work attendance. There also was

[23]reference by her employer to the fact that she had

[24]missed work due to her injury.

[25]Q. But would it not be more accurate to
Page 66

[1]take the hourly wage she was making in 2005 and

[2]determine the number of days she missed in 2003 as a

[3]result of her alleged injuries to come up with the

[4]lost earnings she had for 2005?

[5]A. In this case, as I mentioned, I used

[6]2004 as being representative of what she earned in a

[7]typical year in which she was not impaired, and I

[8]did assume that absent the impairment she would have

[9]worked in 2005 in a comparable capacity. **[*62]**

[10]Q. But again, you also have data available

[11]to you for 2005 indicating how much she was making

[12]on an hourly basis, correct?

[13]A. I believe that is correct, yes.

[14]Q. So that 1.8 percent that you came up

[15]with growth rate, was that actually based on looking

[16]at the hourly rate she was making in 2004 and 2005?

[17]A. The general answer to your question is

[18]no. It was based on the statistical data available

[19]through the Bureau of Labor Statistics, and it in

[20]fact looks as if it's lower than the increase in her

[21]hourly wage rate from January 2005 through Tummy

[22]2006. If I look at her pay stubs.

[23]Q. So that would be 2005 to 2006. Do you

[24]have any indication of the increase from '4 to '5?

[25]A. No.

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[1]Q. And what two documents are you looking

[2]at to show you what her increase was from '5 to '6?

[3]A. If I look at PHC 10, I see that in

[4]January of 2005 she had a regular hourly rate of it

[5]looks as if its $ 6.57 or $ 6.59 per hour depending

[6]on whether that third number is a 6 or an 8, and

[7]then in January of 2006, if I look at PHC 12, her

[8]regular hourly rate was $ 7.24. **[*63]** So if I have $ 7.24

[9]compared to a rate of $ 6.59, that represents roughly

[10]10 percent increase.

[11]Q. So why did you in this case, because as

[12]we just -- as we just showed, we had actual numbers

[13]to work with for '4, '5, and '6. Why did you decide

[14]to use the numbers in the Bureau of Labor Statistics

[15]rather than the actual values that represent what

[16]Ms. Clinton was making?

[17]A. Well, I didn't have an hourly rate

[18]necessarily for 2004. I had a single year from 2005

[19]to 2006. I felt it was more appropriate in this

[20]case to consider the statistical data because it did

[21]not seem reasonable for me to assume that Ms.

[22]Clinton's earnings would have increased year over

[23]year by 10 percent. It wasn't clear to me whether

[24]that represented some catch-up increase or something

[25]like that.

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[1]Q. But again, and I know that I keep

[2]harping back on this, to have calculated though the

[3]earnings that she made in 2005 you could have used

[4]real numbers? You could have used the actual hourly

[5]rate she was making, you could determine how many

[6]days she missed work in 2005 and come up with some

[7]sort of number **[*64]** that would have been representative

[8]of what she could have worked in 2005 absent her

[9]injury?

[10]A. Possibly. --

[11]MR. KREIS: Object to the form.

[12]A. -- but also possibly not. And the

[13]reason say that is it's not as simple as looking

[14]at the number of days she could have worked. She

[15]worked a mix of overtime, evening pay, weekend,

[16]weekend nights, and so on, to in my opinion the most

[17]appropriate way to determine what her compensation

[8]was based on mix of days, nights, weekends, eves,

[19]and so on, all these different rates of pay, was to

[20]simply look at what her compensation had been in

[21]2004 that reflected those varying schedules, and I

[22]did assume that that mix of days and weekends and so

[23]on would be reflected year over year. In other

[24]words, she would work a similar pattern year over

[25]year.

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[1]Q. I want to talk about the Bureau of

[2]Labor Statistics, the Occupational Employment

[3]Statistics that you used to come up with the growth

[4]rates in the table on page 7. I just grabbed, for

[5]purposes of example only --

[6]MS. BUNCE: And again, Doug, I'm

[7]sorry, but this is actually **[*65]** simply a printout of the

[8]Internet source that she has cited on page 7.

[9](Exhibit 10, U.S. Bureau of Labor

[10]Statistics Occupational Employment and Wages, May

[11]2013 30-1013 Psychiatric Aides, is marked for

[12]identification.)

[13]Q. This is Exhibit 10. So I went to the

[14]Bureau of Labor Statistics, I looked at median

[15]hourly earnings for health care support occupations,

[16]which is what you've noted here as what you used to

[17]determine these growth rates. Now, going back to

[18]the conversation that you and I had earlier, you

[19]determined in your revised report that Ms. Clinton

[20]was not a psyche aide, but in fact was a

[21]housekeeper, correct?

[22]A. Yes.

[23]Q. What decision then did you make in

[24]going from your original report to your revised

[25]report, keeping the statistics for the health care

Page 70

[1]support occupations rather than looking at the

[2]tables for maids and housekeeping cleaners?

[3]A. As I indicated earlier, while her

[4]title through her employment was that of

[5]housekeeper, she did work for a health center, and

[6]she was a housekeeper specifically for the geriatric

[7]psyche department, **[*66]** so in my opinion, the average

[8]increase in earnings for health care support

[9]occupations would be more reflective of the types of

[10]increases that Ms. Clinton would have received

[11]because she was employed, albeit as a housekeeper,

[12]in that industry, and she really was providing the

[13]services as a housekeeper in a health facility. So

[14]I consider that to be health support. Health care

[15]support.

[16]Q. Okay. So I ant handing you what has

[17]been marked Exhibit No 10. I went out to the

[18]Bureau of Labor Statistics and went out to their

[19]Occupational Employment Statistics pages, and I

[20]pulled the wages, and this is just for an example,

[21]for May 2013 for a psychiatric aide. And I was

[22]hoping you could, because this is all Greek to me,

[23]help me figure out how you came up with the 2.1

[24]percent growth rate that you have listed in Table 7

[25]for 2013 based on this information?

Page 71

[1]A. Well, unfortunately, this is not the

[2]information that we used. You would have to go to

[3]the Occupational Employment Statistics and get the

[4]data for health care support occupations. I didn't

[5]use the wages for psychiatric aides. **[*67]**

[6]Q. So --

[7]A. There's a --

[8]Q. The problem is there's -- they have

[9]health care support occupations, but then there are

[10]occupations listed underneath it. Are you saying

[11]that there's some sort of information for the top

[12]level health care support occupations?

[13]A. Yes.

[14]Q. Now, what was your basis for using that

[15]versus psychiatric aides?

[16]A. Well, once we received the employment

[17]documents that indicated that, in fact,

[15]Ms. Clinton's role was more akin to a housekeeper,

[19]albeit in the geriatric psyche facility as opposed

[20]to an actual psychiatric aide, then I felt it was

[21]more appropriate again to consider the wage growth

[22]for the overall health care support occupations.

[23]Q. But health care support occupations

[24]also includes, does it not, some occupations that

[25]would be a little bit more, should I say -- they
Page 72

[1]would require a little bit more education than

[2]Ms. Clinton has?

[3]A. That is correct.

[4]Q. So I think if I recall looking through

[5]this, occupational therapists were listed under

[6]health care support occupations?

[7]A. Yes.

[8] **[*68]** Q. What are some of the other occupations

[9]that you know of that are listed under health care

[10]support occupations?

[11]A. I don't recall specifically. Physical

[12]therapists may be in that category. Home health

[13]aides, I believe, are in that category.

[14]Q. And now some of those professions,

[15]physical therapy, occupational therapy, those jobs

[16]require advanced degrees. Is that correct?

[17]A. Sometimes, yes.

[18]Q. Certainly you need a college degree to

[19]be able to be a physical therapist?

[20]A. Typically, yes.

[21]Q. So why did you think it was more

[22]appropriate to use that umbrella health care support

[23]occupations rather than drilling down to an actual

[24]occupation that might be more on par with the type

[25]of work that Ms. Clinton was performing?
Page 73

[1]A. Most people experience wage increases

[2]as a result of their particular job as well as the

[3]industry in which they're employed. For example, if

[4]I looked at administrative assistants for a period

[5]of time, particularly in the mid 2000s,

[6]administrative assistants that worked for financial

[7]services companies were paid significantly **[*69]** more than

[8]administrative assistants that worked in other types

[9]of businesses. Even though technically they were

[10]performing the same tasks, had the same title, but

[11]their earnings were also -- were also governed and

[12]dictated by the industry in which they were working.

[13]Q. But again, still, health care support

[14]occupations, psychiatric aides is in the industry in

[15]which she was working. How do you then justify that

[16]maybe somebody who's working as a housekeeper in a

[17]psyche ward, her wage growth is at all impacted by

[18]the wage growth era physical therapist or an

[19]occupational therapist?

[20]A. Well, I would expect that in any given

[21]organization at least part of the decision about

[22]compensation for employees, wage increases for

[23]employees, is going to be based not only on the

[24]particular task of each individual, but the

[25]performance of the overall organization. Again,
Page 74

[1]which is going to be a reflection of the industry.

[2]Q. Okay. Is there a way, because this is

[3]not accurate or it's not the source that you used in

[4]coming up with these numbers, can you use this as a

[5]guide to show me how **[*70]** you would come up with these

[6]numbers? What values did you use?

[7]A. I'll see if I could.

[8]Q. Because my understanding --

[9]A. Let's see.

[10]Q. -- is that the tables are the same

[11]regardless of what occupation you click into.

[12]A. No, I don't usually look at the tables

[13]that we have here in Exhibit 10.

[14]Q. Okay. So there's different information

[15]at the umbrella level of health care support

[16]occupation?

[17]A. Yes. I think there are two basic

[18]obstacles, we'll call them, with using Exhibit 10

[19]for today's discussion. One is that Exhibit 10

[20]appears to include median wages only for 2013 for

[21]psychiatric aides. For all of the other industries

[22]listed here they have average wages. And the reason

[23]I bring that up is because what were Looking at

[24]here is a document that has wage information

[25]specifically for psychiatric aides, and what you

Page 75

[1]will see is that within this document there are

[2]different hourly wage rates according to industry;

[3]again, indicating what I was suggesting earlier,

[4]that it isn't only your job title, but it's the

[5]industry in which you're working **[*71]** that governs

[6]changes in your wages. But unfortunately, I cannot

[7]show you any calculations because in order to show

[8]you calculations for wage growth I would need to

[9]have at least one more year. I would need to have

[10]the data for 2012 or 2014, and then we could use

[11]some of this data to calculate how the wages have

[12]changed year to year.

[13]Q. Okay.

[14]A. We only have data for a single year

[15]here.

[16]Q. Okay. But can you -- and again, I

[17]apologize because you haven't brought these

[18]documents with you, and I brought it appears to be

[19]the wrong document. What values did you use what

[20]are your inputs in determining the growth rate?

[21]A. I looked very specifically at the

[22]median hourly earnings for health care support

[23]occupations, and I looked at the median hourly

[24]earnings for health care support occupations in each

[25]of the years from 2004 through 2014, and then I
Page 76

[1]calculated the change year-to-year in those median

[2]hourly earnings figures.

[3]Q. Okay. And are these real or nominal

[4]rates?

[5]A. These are nominal rates.

[6]Q. And just for anyone who might even

[7] **[*72]** bother to read this transcript, can you describe the

[8]difference between real and nominal rates?

[9]A. Generally when economists talk about

[10]real and nominal figures, the nominal figure, if

[11]we're talking about wages, for example, nominal wage

[12]rates reflect the wages that people were actually

[13]paid. They got a paycheck that said they were paid

[14]$ 10.00 an hour. When we talk about real wages we're

[15]talking about the purchasing power of wages, so

[16]were talking about how much -- how many more goods

[17]and services a nominal increase in your wage can

[18]buy. In other words, real wage rates have been

[19]adjusted for the effects of inflation.

[20]Q. Inflation. Okay. Thank you.

[21]Now, on page 8 and 9 you walk through

[22]some adjustments that you make to her gross earnings

[23]over the year, and on 9 you give a really nice

[24]summary of those different adjustments. I just want

[25]to walk through these really quickly.
Page 77

[1]The first one is that work life

[2]adjustment, and we had talked about that earlier.

[3]That's the difference between her statistical

[4]retirement age and her actual work life expectancy,

[5]correct? **[*73]**

[6]A. Yes.

[7]Q. And then you also include here an

[8]adjustment for unemployment, and can you explain why

[9]you think it's appropriate to include that type of

[10]adjustment?

[11]A. Sure. In this case, as I mentioned

[12]earlier, I certainly could not assume that absent

[13]her impairment Ms. Clinton would have worked

[14]uninterrupted for another 35.99 years. I had to

[15]take into account the probability that she may have

[16]missed work because she was ill or had a sick child

[17]to care for. I also had to take into account the

[18]fact that she may have missed work because she

[19]became unemployed; she was fired or she chose to

[20]leave one job and seek out another job. If she

[21]missed work for any of those reasons, she would not

[22]receive compensation, or in the case of

[23]unemployment, she would not receive full

[24]compensation. Some of her lost income would be

[25]replaced through unemployment benefits, but not all,
Page 78

[1]so it was necessary for me to make those two

[2]downward adjustments to take into account the fact

[3]that she likely would not have received full

[4]compensation all the way through her statistical

[5]dale of **[*74]** retirement.

[6]Q. But again, as you mentioned, you make

[7]adjustment for the fact that she would have made a

[8]little bit of money through unemployment?

[9]A. I do take into account, correct, that

[10]she would have received unemployment benefits during

[11]periods of unemployment.

[12]Q. Okay. And then walking through the

[13]summary again on page 9, you then take into account

[14]the fringe benefits, and we talked about those

[15]before, the 1.7 percent that you had calculated, and

[16]then you also take into consideration her tax

[17]liability, and does this include both federal and

[18]state tax liability?

[19]A. Yes.

[20]Q. Okay. And based on the amount of money

[21]that she was working, you calculated that to he

[22]about a 5 percent tax liability?

[23]A. Yes.

[24]Q. And again, that's an accumulation of

[25]her tax liability to the State of Missouri and her
Page 79

[1]tax liability to the federal government?

[2]A. Correct. It's an effective combined

[3]federal/state tax rate.

[4]Q. And then you also have something here

[5]where you talk about job maintenance expenses. Can

[6]you explain what that is?

[7] **[*75]** A. Sure. I also took into account the

[8]fact that in order for Ms. Clinton to maintain her

[9]employment she likely would have had job related

[10]expenses: Transportation to and from work, perhaps

[11]a cup of coffee in the morning, so I made a further

[12]deduction to my calculation of her earnings to take

[13]into account those expenses that she would have had

[14]to then pay.

[15]Q. So what you then come up with is an

[16]adjusted earnings factor of 71.17 percent. Is that

[17]correct?

[18]A. Yes.

[19]Q. So what that means is while she might

[20]have had gross earnings of, for example, $ 13,742.00

[21]in 2006, actually what's going to end up in her

[22]pocket is $ 9,780.00?

[23]A. Yes.

[24]Q. Okay. And so on page 10 you go then

[25]through years 2006 through 2016 using the growth
Page 80

[1]rates that you had calculated on page 7 or show on

[2]page 7 to increase her gross earnings over those

[3]10-year periods of time, and then you, you know,

[4]multiply those by that 71.17 percent to come up with

[5]those adjusted earnings for each of those years, and

[6]then you also subtracted out the actual earnings

[7]that she made in 2006 to come **[*76]** up with your total of

[8]$ 108,093.00, correct?

[9]A. Yes.

[10]Q. All right. So we're going to plow

[11]ahead, unless you need a break.

[12]A. No, that's fine. Thanks.

[13]Q. All right. Let's talk about future

[14]earnings. So as we talked about, the line in the

[15]sand is 2016. That's where we are now. We can look

[16]at what she would have made in the past, we just

[17]talked about that, but now we need to look at what

[18]she allegedly could have made in the future. And

[19]here you indicate that you used a 3.9 percent yearly

[20]increase to her gross earnings, and you said that's

[21]based on recent and expected wage growth economy

[22]wide?

[23]A. Yes.

[24]Q. Just taking a look at your original

[25]report and then your revised report, you cite the
Page 81

[1]very same sources for this information, and yet in

[2]your original report you used 3.8 percent, and in

[3]this report you used 3.9 percent.

[4]A. That is correct.

[5]Q. And what is that difference based on?

[6]A. That difference is based primarily on

[7]the fact that in my original report I am starting

[8]the increase in wages in future years in 2016, and

[9] **[*77]** in my revised report I begin the increase in wages

[10]in future years in 2017. The reason that's

[11]significant is because in my first report I have one

[12]more data point, if you will, from the board of

[13]trustees report. So it's the same sources, but I

[14]have one year difference. I'm picking up one

[15]slightly different projection from the board of

[16]trustees report.

[17]Q. Now, the first source that you cite

[18]here in coming up with this number are those pesky

[19]Bureau of Labor Statistics. Occupational Employment

[20]Statistics, median hourly earnings, but here you

[21]indicate that you used all occupations rather than

[22]the health care support occupations that we used in

[23]calculating the lost earnings. Why the difference

[24]in the input used here for this calculation?

[25]A. The projections for future wage growth
Page 82

[1]that are published in the board of trustees report,

[2]those projections are across all occupations. So in

[3]order to be consistent when we consider the two data

[4]sources, in this case I looked back in time at what

[5]the actual wage growth had been across all

[6]occupations as published by the U.S. Department of

[7] **[*78]** Labor.

[8]Q. So you wanted to make more of an apples

[9]and apples comparison in calculating that?

[10]A. Correct. Yes. And just to point out

[11]quickly for the record, it's an ever so subtle

[12]change, but what I was trying to describe earlier in

[13]terms of why the rate increased from 3.8 to 3.9

[14]percent, you'll see in the footnotes in these

[15]reports in Kucsma 5, page 9, you'll see that we

[16]assume 1.2 percent annual wage growth from 2015

[17]through 2017, and then in our new report we assume

[18]1.2 percent annual wage growth only for '16 and '17.

[19]So again, were picking up that one --

[20]Q. Different --

[21]A. -- year.

[22]Q. -- span of time.

[23]So I don't have to show you the median

[24]hourly earnings for all occupations, but I do have

[25]for you the table that you identified in the board
Page 83

[1]of trustees reports, and because I don't have the

[2]benefit of the calculations that you did to get to

[3]3.9 percent I was hoping you could just show me in

[4]this table what values you used as inputs to your

[5]calculations?

[6](Exhibit 11, Assumptions and Methods

[7]Table V.B1. - Principal Economic Assumptions, **[*79]** is

[8]marked for identification.)

[9]A. Sure, And I assume this is the

[10]2015 --

[11]Q. Yes.

[12]A. -- annual report?

[13]Q. Yes.

[14]A. Perfect. In order to calculate the

[15]3.9 percent if we look at the footnote on the bottom

[16]of page 11 in Kucsma 6, you'll see that I used 1.2

[17]percent annual wage growth from 2016 to 2017.

[18]Thereafter, starting in 2018 I relied upon the

[19]annual percentage change in average annual wage in

[20]covered employment, as published in the board of

[21]trustees report, and very specifically I used the

[22]intermediate figures. So for example, if you look

[23]at Kucsma 11, this is the annual percent change in

[24]average annual wages, and I went down here to the

[25]intermediate figures, and I picked then up starting
Page 84

[1]in 2018.

[2]Q. And why did you use the intermediate

[3]figures?

[4]A. The intermediate figures represent the

[5]set of assumptions that is neither -- or I should

[6]say that include neither high estimates of cost or

[7]low estimates of cost. If you read the annual

[8]report of the board of trustees, they talk about the

[9]fact they present these three different **[*80]** scenarios.

[10]Q. And then so taking these numbers as

[11]they're listed here, what did you do with these

[12]various data points then to come up with the 3.9

[13]percent?

[14]A. What I did technically was create what

[15]we call an index. So in other words, I started with

[16]a dollar in 2016, I assumed it would grow by 1.2

[17]percent through 2017, and then thereafter I assumed

[18]it would continue growing at these rates through

[19]2040. Once I had done that -- so I started with a

[20]dollar in 2016. I computed what that dollar would

[21]be worth in 2040. I then took those two end points,

[22]and I calculated the compound annual growth rate

[23]between those two figures, and that's how I arrived

[24]at an average annual rate of, in this case, 3.9

[25]percent.
Page 85

[1]Q. And again, you anticipated my next

[2]question. The 3.9 percent is a compound growth

[3]rate, --

[4]A. Yes.

[5]Q. -- correct?

[6]A. And it's a compound average figure.

[7]That's correct.

[8]Q. And what that does is kind of

[9]normalizes truly the growth over this period of time

[10]and takes into account that there could be cycles

[11]and spikes and dips, **[*81]** but it just kind of averages it

[12]out to suggest that it's kind of a 3 percent every

[13]year to her retirement?

[14]A. That's one way of thinking of it, yes.

[15]In fact. I would expect in some years wage growth to

[16]be lower than that, and in other years I would

[17]expect it to be greater than that. Yes.

[18]Q. And if you take those kind of peaks and

[19]valleys into account, you were able to calculate the

[20]compound to be 3.9 percent?

[21]A. Yes.

[22]Q. Now, you've mentioned, I just want to

[23]take a look at the chart quickly, on page 12 you

[24]note that you assumed 1.2 annual wage growth for

[25]2016 to 2017 and then used these figures on Exhibit
Page 86

[1]11 thereafter, but if you take a look at page 12,

[2]and again, maybe my math is wrong, but if you take a

[3]look at the gross earnings from 2016 to 2017 does

[4]that represent a 1.2 percent wage growth, or is

[5]that, in fact, a 3.9 percent?

[6]A. That's 3.9.

[7]Q. Okay.

[8]A. And that's precisely because of what

[9]you just described a moment ago, that while I did

[10]assume that dollar only grew by 1.2 percent from '16

[11]to '17, when we look at the board of **[*82]** trustees report

[12]we see that in subsequent years that dollar would

[13]have grown in excess of 4 percent. Again, I took

[14]the 2016 dollar, went all the way to 2040, and

[15]calculated the average increase.

[16]Q. So even though we know information --

[17]is this information assumed, the 1.2 percent, or is

[18]that information that you have available to you?

[19]A. No, that is estimated.

[20]Q. Okay.

[21]A. So as of the time I prepared the

[22]revised report, the 2015 wage data was not yet

[23]available. It is available now, so I actually will

[24]be able to go back and calculate how much, in fact,

[25]wages increased in that year. Obviously, we're not
Page 87

[1]done with 2016 yet, so we don't know in fact how

[2]much wages will increase over this year.

[3]Q. So in fact by the time we get to trial

[4]in this matter things are going to change a little

[5]bit because 2016 will become part of what she earned

[6]in the past, and 2017 might be where you draw the

[7]line to figure out future earnings, correct?

[8]A. Could be, depending on when we go to

[9]trial. That's correct.

[10]Q. Okay. And is it fair to say, or maybe

[11]it's **[*83]** not, whether or not if you looked at the growth

[12]rates that you had calculated on page 7. If you were

[13]to do an annual compound growth rate of those 10 to

[14]11 years would you come up with anything close to

[15]3.8 percent?

[16]A. I did not calculate the compound

[17]growth rate for that period. It probably would be

[18]less than 3.9 percent for that period.

[19]Q. Given the growth rates that you have

[20]listed there?

[21]A. Yes.

[22]Q. Now, as we talked about at the

[23]beginning of your deposition, part of your role as a

[24]forensic economist is to come up with a present

[25]value of all of these future earnings that she would
Page 88

[1]have, and in order to do that you need to come up

[2]with a discount value which approximates what she

[3]would be able to get if she were to invest this

[4]money today; what kind of a return on her investment

[5]she would get. Is that fair?

[6]A. Yes.

[7]Q. Now, how do you come up with

[8]determining a reasonable discount rate?

[9]A. In this case I considered the yields,

[10]the interest rate on fixed income securities, and I

[11]started by looking at, for example, the yields on

[12] **[*84]** high grade municipal bonds, U.S. Treasury

[13]securities, and I started by looking at what we call

[14]current spot rates. In other words, I started by

looking at what those interest rates are right now,

and looked specifically at 30-year securities, and

that's because, of course, I'm projecting my losses

out into the future, and a future that is

approximately 24 years.

In addition to considering the current

spot rates, because interest rates now are very low,

I also took into account that as an economist it

would not be reasonable for me to assume that

interest rates are going to stay as low as they are

now for the next 10, 20, 30 years, so I also look
Page 89

back historically at what yields have been in the

past on, again, municipal bonds, U.S. Treasury

securities, and so on, and based on my review of

those two sources, current spot rates and historical

yields, I determined that, on average, any lump sum

of money Ms. Clinton may receive in this matter

invested in some sort of fixed income security she

would earn, on average, 4 percent each year.

Q. So you mentioned that in this case

[*85] because the loss was over 24 years you thought it

was appropriate to take a look at some 30-year

securities. Is it fair to say that say if

Ms. Clinton was 70 years old today, and so that her

future earnings wouldn't go 24 years into the

future, would you then look at different securities,

maybe 10-year securities or others in determining

what a fair discount rate might be?

A. Yes.

[19]Q. Okay. So one of your considerations

[20]really is how far out into the future is this income

[21]stream?

[22]A. That is one of them. The discount

[23]rates that I use will generally be a function of two

[24]things. One, as you just mentioned, the duration of

[25]future losses, and two, when I prepared my report.
Page 90

[1]So for example, when I first started preparing

[2]appraisals of economic loss like this back in early

[3]2008 I was using higher discount rates than I'm

[4]using in today's.

[5]Q. And that was legitimate based on the

[6]types of interest rates we were seeing at that time?

[7]A. That is correct.

[8]Q. All right. So again we'll just talk

[9]really quickly about what you have on page 12 up to

[10]page 13, **[*86]** which is your calculations of her future

[11]earnings, and again, what you've done here is you've

[12]taken the gross earnings each year, you've

[13]multiplied that by the 3.9 percent annual compound

[14]growth rate that you have, but then you've also

[15]adjusted it by that 71.17 percent that you had

[16]calculated before, and then you discounted that to

[17]get to the present value then. Is that correct?

[18]A. Yes.

[19]Q. And you've done that for every year

[20]through her statistical retirement in 2040 to get

[21]$ 282,435.00?

[22]A. Yes.

[23]Q. All right. And I just want to talk

[24]very briefly about the cost of health care

[25]insurance. You mentioned that Ms. Clinton was
Page 91

[1]married up through 2012, and so at the time that she

[2]was employed at Parkland she had opted out of their

[3]health insurance program, but you also made a

[4]comment about the prospective nature of health

[5]insurance making it difficult to determine the cost

[6]of health insurance from 2012 to 2015, so instead

[7]you started your calculations at 2015. Can you

[8]explain what you mean by that, about the prospective

[9]nature of health insurance making it difficult **[*87]** for

[10]you to make that calculation?

[11]A. Yes. I'll certainly be happy to

[12]explain that. I just want to check and make sure --

[13]yes.

[14]If you look at page 5 of our report,

[15]you'll see that we do state, you're correct, in

[16]paragraph 11, "Due to the prospective nature of

[17]health insurance, we limit its valuation to future

[18]years." We do that, though, not because it's

[19]difficult to calculate the value of health insurance

[20]in past years, but because from an economic

[21]perspective health insurance in and of itself has no

[22]value in the past. So for example, if someone had

[23]no health insurance for the past five years, and

[24]nothing happened to them, they would have no loss.

[25]Q. Right.
Page 92

[1]A. If they had had no health insurance

[2]for the last five years and something had happened,

[3]and they had out-of-pocket expenses, then those

[4]out-of-pocket expenses would represent a legitimate

[5]component of economic damages.

[6]Going forward, however, health

[7]insurance has value simply because of the fact that

[8]we do not know what may or may not be needed going

[9]forward. So it's our standard practice **[*88]** not to value

[10]health insurance in past years unless there was some

[11]out-of-pocket expense either for treatment, medical

[12]care, or if a person did, in fact, go out, pay for

[13]health insurance, and we know what their premiums

[14]were.

[15]Q. And for Ms. Clinton you haven't

[16]calculated any sort of out-of-pocket expense from

[17]2012 to 2015?

[18]A. That's correct.

[19]Q. And you indicate that you come up with

[20]a value of $ 5,147.00, which you said was an average

[21]for annual health premiums for companies in the

[22]midwest. Is that correct?

[23]A. Yes.

[24]Q. And what was the source of that

[25]information?

Page 93

[1]A. That comes from an annual survey, an

[2]annual report published by the Kaiser Foundation.

[3]Q. And what is the Kaiser Foundation?

[4]A. The Kaiser Foundation is a private

[5]foundation that for years, I believe at least two

[6]decades, has been collecting data on employer and

[7]employee benefits, and part of the survey consists

[8]of collecting information from employers about the

[9]total cost of premiums on various types of health

[10]insurance policies, the average employer

[11]contribution **[*89]** to those premiums, the average employee

[12]contribution to those premiums. They publish this

[13]data for different regions of the United States.

[14]Q. And you mentioned that you then take

[15]that $ 5,147.00, and you apply a 5 percent growth

[16]raw to that to reflect average yearly increases to

[17]health insurance premiums. Can you explain to me,

[18]and I will mark as an exhibit for you the chart that

[19]you've noted as your source, I'm going to mark that

[20]as Exhibit 12, how you calculated that 5 percent

[21]growth rate?

[22](Exhibit 12, Exhibit 1.11 of EHBS 2015

[23]- Section One: Cost of Health Insurance -- 8775 from

[24]The Henry J. Kaiser Family Foundation, is marked for

[25]identification.)

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[1]A. Yes. In fact, I get a 7.2 percent

[2]growth rate over the period 1999 to 2015. What I

[3]did, though, is I calculated the average compound

[4]growth rate. I took the figure of $ 6,251.00, which

[5]represents the premium for single coverage in 2015,

[6]divided it by $ 2,196.00, which represents the

[7]average premium for single coverage in 1999. I then

[8]raised that to the I divided by 15th power, 15

[9]because we're looking at a 15-year **[*90]** period, --

[10]Q. Um-hum.

[11]A. -- and then subtract 1 from that, and

[12]that will give us the compound average annual

[13]increase.

[14]Q. Okay. And what was your decision in

[15]using the years 1999 through 2015 to come up with

[16]that annual growth rate?

[17]A. I didn't use just that time period.

[18]What I mean by that is I have looked at the compound

[19]average annual growth rate over various periods, but

[20]specifically what I considered in this case was I

[21]considered the fact that over ibis period the

[22]compound average annual increase bad been in excess

[23]of 7 percent a year, but I considered the fact that

[24]in recent years the average increase each year has

[25]been somewhat lower.
Page 95

[1]Q. Has been lower?

[2]A. Yes.

[3]Q. And that was where I was getting at in

[4]looking at just the years from say, for example,

[5]when Ms. Clinton was divorced and was going to now

[6]have to take on health insurance on her own from

[7]2012 to 2015, that average growth rate has been less

[8]than 5 percent, correct?

[9]A. That's correct.

[10]Q. And one last question on the health

[11]insurance calculations that **[*91]** you performed. What, if

[12]any, impact would ObamaCare have on any of these

[13]calculations?

[14]A. That question implies that ObamaCare

[15]is not reflected in these statistics, but the

[16]Affordable Care Act had been in forte for several

[17]years before the end of this data set, so in other

[18]words, by the time we reached 2014 we already had

[19]data from at least several years in which we were

[20]operating under the Affordable Care Act. So number

[21]one, it is reflected in this data. Number two,

[22]there are indications in publications by the Board

[23]of Trustees of Medicare and Medicaid as well as some

[24]other qualitative publications that have come out

[25]recently indicating that there will be significant
Page 96

[1]increases in insurance premiums in the near future.

[2]But again, I suppose part of the answer to the

[3]question is to the extent that the average annual

[4]increase in recent years has slowed, that is

[5]reflected in my analysis, and that's precisely why I

[6]did not use an average annual increase of 7 percent

[7]each year.

[8]Q. So I could be thinking about this

[9]completely wrong, but in part of the calculations

[10]that **[*92]** you performed on the lost earnings you look

[11]into account the fact that, you know, she might be

[12]unemployed over the years, but then you made a

[13]little bit of an adjustment for the fact that she

[14]would have received some unemployment income. Is a

[15]similar adjustment not lair in health insurance when

[16]Ms. Clinton is now eligible for Medicare or

[17]potentially free health insurance through the

[18]Affordable Care Act?

[19]A. I'm not sure I follow that question.

[20]Sorry.

[21]Q. Okay. Well, you mentioned that this is

[22]a loss to her, the fact that she now doesn't have

[23]health insurance through her employer, but now she

[24]does have available means to get health insurance.

[25]So how does this then become a loss to her that she
Page 97

[1]doesn't have health insurance through her employer,

[2]but she has health insurance through other means?

[3]A. I have not considered in my analysis

[4]any collateral sources of income or benefits.

[5]Q. Okay.

[6]A. So to the extent that she may or may

[7]not be eligible for some benefits as a result of her

[8]disability, her impairment, I have not taken any of

[9]that into account in **[*93]** my analysis.

[10]Q. Other than, as we discussed, the

[11]unemployment, the couple/$ 300.00 a week she may have

[12]earned in that unemployment adjustment that you

[13]made?

[14]A. Correct. But the unemployment

[15]adjustment that I made is part of a but for scenario

[16]she hadn't been impaired.

[17]Q. Right. I understand that.

[18]Okay. Moving on to the final topic of

[19]your report, which is the household services, can

[20]you describe for me what the loss of household

[21]services represents?

[22]A. Sure. The loss of household services

[23]takes into account the fact that based on

[24]information provided to us by Ms. Clinton, there are

[25]certain things around the house that she was doing
Page 98

[1]before her impairment that she is either no longer

[2]capable of doing at all, she can do them in only

[3]some partial capacity, or in some cases she can do

[4]them but it takes her much longer to perform them

[5]compared to what she used to be able to do before

[6]her injury. In each one or those cases, whether

[7]she's no longer doing the services, it takes her

[8]longer to perform them, some of them are going

[9]undone, they're getting **[*94]** partially done, each one of

[10]those represents a loss, or at least a reduction in

[11]household services.

[12]Q. In economic terms who does it represent

[13]a loss for?

[14]A. I'm calculating the value of the

[15]services that Ms. Clinton was performing for herself

[16]that she is no longer able to perform for herself.

[17]Prior to 2015 the loss of household services

[18]represented not only services that she was

[19]performing for herself, but for other members of her

[20]family.

[21]Q. Now, you mention in your report that

[22]you use 2015 because of her youngest son. Is that

[23]correct?

[24]A. Yes.

[25]Q. So you make an assumption that the
Page 99

[1]youngest son is living with her until he turns 18,

[2]and so she's doing certain services on his behalf

[3]until he turns 18, correct?

[4]A. Yes and no. And I say that simply

[5]because I certainly did base my calculations on the

[6]fact that until her youngest child turned age 18 she

[7]would be providing them with services. Not all of

[8]those services were necessarily being provided in

[9]the household. For example, driving the kids to and

[10]from sporting events, school events, **[*95]** and so on.

[11]Q. And is there anything that you reviewed

[12]that would support your assumption that her son was

[13]living with her until he turned 18?

[14]A. When I reviewed the fact-finding

[15]questionnaire, that indicated that Suede was living

[16]in the same town, I don't have a street address,

[17]but that did indicate that both Suede and

[18]Ms. Clinton were living in Bismark, Missouri, and

[19]then there was reference on pages 9 and 10 of the

[20]fact-finding questionnaire that Ms. Clinton had been

[21]involved in parent/teacher organizations, sporting

[22]events for the boys, school functions and

[23]activities.

[24]Q. Sure. And taking a look at Exhibit 4

[25]on page 10, it doesn't note the years in which she
Page 100

[1]was doing those, does it?

[2]A. That is correct. It does not

[3]specifically note the years.

[4]Q. Okay.

[5]A. Yes.

[6]Q. So if, in fact, Ms. Clinton did not

[7]have custody of her son following her divorce in

[8]2012 and actually did not live with him after 2012,

[9]that would change your calculations, correct?

[10]A. Possibly, but not necessarily.

[11]Q. So you would assume, even though --

[12] **[*96]** let's talk about that though. You looked at once he

[13]turned 18 she went from working 1,872 hours yearly

[14]performing household services to 794 hours. Is that

[15]correct?

[16]A. Yes.

[17]Q. Now but you're saying that if in 2012

[18]her son wasn't living with her anymore there's still

[19]the potential that she was performing 1,872 hours

[20]yearly of household services?

[21]A. Possibly. And I say that really for

[22]at least two reasons. Number one, it isn't clear to

[23]me that if Ms. Clinton's ex-husband had custody of

[24]the children that they would not be staying with

[25]their mother, and if they were staying with her,
Page 101

[1]then certainly at least some, if not many, of the

[2]household services would benefit them while they

[3]were with her.

[4]In addition to that, as I mentioned

[5]before, many of the services that she indicated she

[6]was providing to her children did not necessitate

[7]her children living with her, attending school

[8]functions and so on. So it isn't clear to me, based

[9]upon the information that has been provided to me,

[10]that there would be any significant reduction in the

[11]number of household services **[*97]** benefiting her children

[12]even if they did not live with her.

[13]Q. But again, you mentioned that some of

[14]the tasks or activities that she mentioned she

[15]didn't give years for when she was performing those.

[16]A. That is correct.

[17]Q. But you still stand by your calculation

[18]of 1,872 hours of yearly household services without

[19]having any information of whether or not she had

[20]children in the home following 2012?

[21]A. Based on the information provided to

[22]me, yes.

[23]Q. But if you were provided information to

[24]confirm that she had no children living with her

[25]after 2012, would that require you to have to look
Page 102

[1]at these numbers again?

[2]A. As I indicated a moment ago, not

[3]necessarily. I have assumed, based on the

[4]information provided to me, that Ms. Clinton was

[5]providing the services she described in the

[6]fact-finding questionnaire to her children until the

[7]youngest child turned age 18.

[8]Q. And then after 18 years you instead

[9]used a data source representing what a single female

[10]who would work full-time with no dependent children

[1]would perform in terms of household **[*98]** services. Is

[12]that correct?

[13]A. Yes.

[14]Q. And why did you decide to use that

[15]figure rather than any information from Ms. Clinton

[16]herself?

[17]A. Well, the statistical data is

[18]consistent with information reported in the

[19]fact-finding questionnaire. So I certainly

[20]considered information in the fact-finding

[21]questionnaire, but since that information did

[22]include a fairly detailed description of services

[23]provided to her children, I felt it was necessary to

[24]adjust that figure downward once the children were

[25]over the age of 18.
Page 103

[1]Q. And this number that you indicated, 36

[2]hours per week, that was taken from Ms. Clinton's

[3]fact-finding questionnaire?

[4]A. Yes.

[5]Q. And there was nothing that you did

[6]independently to confirm that number that she

[7]provided to you?

[8]A. I again reviewed the benchmark

[9]statistical data referenced in my report, but I did

[10]not speak with Ms. Clinton.

[11]Q. And how does 36 hours a week compare to

[12]some of those benchmark numbers?

[13]A. I don't recall specifically. It is

[14]consistent with many of the figures, and it is

[15] **[*99]** higher than some of the figures.

[16]Q. Now, as between your original report

[17]and your revised report, you changed slightly when

[18]the toss of services began. In your original report

[19]you had them beginning in 2007. In your revised

[20]report you have them beginning in July 1, 2005. My

[21]question to you is why the change in the assumption?

[22]A. In our first report we did not have

[23]the employment records, and I believe the employment

[24]records allowed us to determine when it appeared she

[25]had begun to experience some pain and difficulty
Page 104

[1]working.

[2]Q. On page 6 of your revised report you

[3]note that "Furthermore, plaintiff reports she began

[4]experiencing problems approximately six to eight

[5]months after the initial surgery," and you note the

[6]source of that information being her plaintiff fact

[7]sheet, and that is something that you would have had

[8]available to you at the time you wrote your original

[9]report. Is that correct?

[10]A. We're looking at my revised report or

[11]my --

[12]Q. Yes.

[13]A. -- original report?

[14]Q. Your revised report. Page 6 of your

[15]revised.

[16]A. I **[*100]** don't believe that we had the fact

[17]sheet originally.

[18]Q. If you take a look --

[19]A. Oh, yes, we did. I'm sorry. We did

[20]have the fact sheet originally. Yes. You're

[21]correct.

[22]Q. So do you know what prompted that

[23]change from the original to the revised in light of

[24]the fact that you did have this information

[25]available to you in the original report?
Page 105

[1]A. It may simply be that I re-reviewed

[2]that fact sheet when I got the new employment

[3]documents.

[4]Q. According to Andrea Clinton's

[5]fact-finding questionnaire she notes on page 3 of

[6]that report that her earnings loss began the week of

[7]August 22, 2005. So what prompted the use of July

[8]1, 2005, for your begin date of a loss of services?

[9]A. Well, as I mentioned, and as you

[10]pointed out, on page 6 of my revised report we did

[11]note after once again reviewing the fact sheet that

[12]the plaintiff reports she began experiencing

[13]problems approximately six to eight months after the

[14]initial surgery. About seven months after the

[15]original surgery would put us at July 1, 2005.

[16]Q. So rather than using actual dates you

[17] **[*101]** may have from the fact-finding sheet or some medical

[18]records you just used the average of six to eight

[19]months?

[20]A. Well, the six to eight months of

[21]course did come from a document, and as far as the

[22]date that you just referenced from the fact-finding

[23]questionnaire, that date very specifically was the

[24]date at which the earnings loss begins. In this

[25]case the earnings loss, according to Ms. Clinton,
Page 106

[1]began in August of 2005, but she began to experience

[2]problems, according to the six to eight months.

[3]prior to that

[4]Q. So again, July 1 is your number based

[5]on the six to eight months that she notes here?

[6]A. That's correct. Yes. It is not

[7]coming from her reported date of the commencement of

[8]the lost earnings in the questionnaire.

[9]Q. Or any medical records that you have

[10]looked at?

[11]A. That's correct. I don't believe that

[12]that date is in any of the medical records.

[13]Q. You then go on to estimate a range of

[14]loss between 70 percent and 90 percent, so as you

[15]mentioned earlier in your deposition you haven't

[16]assumed that she's completely unable to do household

[17] **[*102]** work; you've just indicated that she's now impaired

[18]from what she was doing previously. How did you get

[19]this 70 to 90 percent range?

[20]A. The 70 to 90 percent range is provided

[21]primarily for illustrative purposes, and what I mean

[22]by that is I'm not a medical doctor, I'm not a

[23]vocational expert, I'm not here to offer an opinion

[24]about specifically what her diminution in ability

[25]is, but f did select that range based on information
Page 107

[1]reported by her in the fact-finding questionnaire in

[2]terms of what she could do prior to the impairment

[3]relative to what she could do following the

[4]impairment.

[5]Q. Sure. So then it would be, in your

[6]mind, the jury's responsibility to take a look at

[7]the numbers that you have calculated for 70 percent

[8]impairment and 90 percent impairment, and if they

[9]decided no, she's actually 20 percent impaired, they

[10]could use your calculations for a loss of household

[11]services and multiply it by 20 percent to be able to

[12]come up with their own value?

[13]A. Correct. And if you look at the table

[14]on page 21, that's very specifically why we provide

[15]that table to **[*103]** the trier of fact. As you just noted,

[16]the trier of fact could take the two figures in the

[17]far left-hand column and multiply that by any

[18]percentage that they felt was most appropriate to

[19]represent the reduction in ability.

[20]Q. And again, we've talked before, you're

[21]not the fact-finder here, so if Ms. Clinton were to

[22]testify that she was able to resume performing

[23]household chores, all of them or more than what is

[24]indicated here, the 70 to 90 percent, that's

[25]something the fact-finder can take into account in
Page 108

[1]adjusting these values accordingly?

[2]A. I assume so, sure.

[3]Q. Just one more further thing on the loss

[4]of household services. What is the economic theory

[5]behind the recovery of the value of lost household

[6]services for a single woman without children?

[7]A. What do you mean?

[8]Q. Looking at my situation, if I were now

[9]unable to do certain household services that means

[10]other members of my household are able to do them.

[11]so the value to me is actually -- this would be a

[12]windfall if you gave me money for the fact that I no

[13]longer have to do the dishes because **[*104]** now my husband

[14]gets to do the dishes for me. So what is the theory

[15]behind giving a single person, who as her

[16]fact-finding questionnaire indicates lives with

[17]another person, money for the fact that she now no

[18]longer has to perform household services?

[19]A. Well, I guess the trouble I'm having

[20]with your question is that economic theory is not

[21]about whether people should be given money or not.

[22]From an economic perspective any household services

[23]that are performed by individuals -- in other words,

[24]from an economic perspective, all of the things that

[25]we do around the household, either for ourselves or
Page 109

[1]for others, have economic value. And I know they

[2]have economic value because I could, if I wanted to,

[3]go out into the marketplace and hire someone to

[4]perform those services. My job as an economist is

[5]simply to calculate the economic value of the

[6]services that you, in this example, can no longer

[7]perform for yourself. That's the economic theory

[8]behind this.

[9]Q. And what is the theory behind awarding

[10]Ms. Clinton this value of money for the services she

[11]no longer can perform?

[12] **[*105]** A. Ms. Clinton is incapable of doing

[13]certain things around the house. They represent

[14]legitimate productive economic activity, and they

[15]have monetary value. And that's what I present in

[16]my analysis here.

[17]Q. Just for housekeeping purposes, and

[18]whether we want to do this --

[19]A. Sure.

[20]Q. -- officially --

[21]A. Mark the file.

[22]Q. I was going to say I can officially

[23]mark your file with a sticker, and now we know for

[24]all times that this is Exhibit 13.

[25](Exhibit 13, File of Kristin K.
Page 110

[1]Kucsma, M.A., is marked for identification.)

[2]Q. And then as we discussed off the

[3]record, if you could just work to make a copy of

[4]this record?

[5]A. Sure.

[6]Q. And either work through Doug or

[7]directly to get me a copy, I would appreciate it.

[8]A. Great.

[9]Q. And on that note. I think I am out of

[10]questions.

[11]MS. BUNCE: So Doug, unless you have

[12]questions, I am done here.

[13]MR. KREIS: I don't have any

[14]questions.

[15]MS. BUNCE: All right.

[16]MR. KREIS: I appreciate your time,

[17]Kristin, and appreciate your allowance at the

[18]beginning **[*106]** of this deposition for our delay.

[19]THE WITNESS: Sure. No. I thank you

[20]all.

[21]MS. BUNCE: No worries. We're good.

[22]Thanks so much.

[23]THE REPORTER: Mr. Kreis, I just need

[24]you to state on the record whether you wish to

[25]purchase a copy of the transcript.
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[1]MR. KREIS: We'll get an ASCII and

[2]like a regular transcript like we order from

[3]Veritext typically. So I'm not sure if we have a

[4]standing order or not with Veritext, but I believe

[5]we do, and we'll just get -- there's no rush.

[6](Deposition concluded at 6:05 p.m.)

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[1]C E R T I F I C A T E

[2]

[3]I, MARGARET VOLLMUTH-CORSON, a Certified

[4]Court Reporter and Notary Public of the State of New

[5]Jersey, DO HEREBY CERTIFY that, prior to the

[6]commencement of the examination, KRISTEN K. KUCSMA,

[7]M.A., was duly sworn by me to testify to the truth,

[8]the whole truth, and nothing but the truth.

[9]I DO FURTHER CERTIFY that the foregoing is a

[10]true and accurate transcript of the testimony as

[11]taken stenographically by and before me at **[*107]** the time

[12]and place and an the date hereinbefore set forth.

[13]I DO FURTHER CERTIFY that I am neither a

[14]relative nor employee nor attorney nor counsel of

[15]any of the parties to this action and that I sin

[16]neither a relative nor employee of such attorney or

[17]counsel and that I am not financially interested in

[18]this action.

[19]

[20]

[21]/s/ [Signature]

[22]MARGARET VOLLMUTH-CORSON, C.C.R. 30X100158400
Notary Public No. 2035720

[23]

[24]This transcript was prepared in accordance with N.J.A.C. 13:43-5.9.

[25]
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[12]I, KRISTIN K. KUCSMA, M.A., hereby certify

[13]that I have read the transcript of my testimony

[14]taken under oath on the 1st day of July, 2016, and

[15]that the transcript is a true and complete record of

[16]the deposition as given by me, except as noted in

[17]the errata sheet.

[19]KRISTIN K. KUCSMA, M.A.

[20]

[21]

[22]

[23]

[24]

[25]

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