

1 SUPREME COURT OF THE STATE OF NEW YORK.  
2 COUNTY OF BRONX: CIVIL TERM: PART 1A-8

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3 ROBERTO HERNANDEZ and YISEL URENA,

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Plaintiffs,

5

-against-

Index No: 24386/2016E

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THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY,  
7 NEW WTC RETAIL OWNER LLC, WTC RETAIL LLC, WESTFIELD CORPORATION,  
8 WESTFIELD WTC HOLDING LLC, APPLE, INC., SAJO, INC.,  
PRECISION-AIRE INC., and O'KANE ENTERPRISE LTD, CENTRE STREET  
SYSTEMS, INC., and FIRE KING SECURITY PRODUCTS, LLC,

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**TRIAL**

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Defendants.

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Bronx Supreme Court  
851 Grand Concourse  
Bronx, New York 10451  
February 4, 2026

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**B E F O R E:**

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HONORABLE BIANKA PEREZ,  
Justice of the Supreme Court

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AMANDA ALVAREZ  
Senior Court Reporter

1 \* \* \* M O R N I N G S E S S I O N \* \* \*

2 (Whereupon, demonstrative blowup was marked as  
3 Plaintiff's Exhibit 92.1 for Identification.)

4 THE COURT: Just for the record, the blow up of the  
5 chart -- can we call it a chart?

6 MR. CAFARO: I would say the summary analysis.

7 THE COURT: Blowup of Ms. Kucsma's summary  
8 analysis, ID only, Number 92, for demonstrative purposes  
9 only.

10 MR. LANGHOLZ: Your Honor, I am fine with it being  
11 up there, as long she is talking about it. I just don't  
12 want it sitting up there the whole time.

13 THE COURT: Okay. So we will put it up when she is  
14 ready to testify about it. Just leave the easel there,  
15 close by.

16 You can bring the jurors down.

17 Anything else?

18 MR. DOLEJSI: No.

19 THE COURT: You can bring the jurors in.

20 COURT OFFICER: All rise. Jurors entering.

21 (Whereupon, the sworn jurors enter the courtroom  
22 and take their respective seat.)

23 THE COURT: Good morning, everyone.

24 THE JURY: Morning.

25 THE COURT: Okay. Everyone may be seated.

1 Plaintiff, you may call your next witness.

2 MR. CAFARO: The plaintiffs call Kristin Kucsma.

3 THE COURT: Ms. Kucsma, you may take the witness,  
4 remain standing so the officer can swear you in. Watch the  
5 wires and the easels.

6 COURT OFFICER: Just raise your right hand.

7 Do you solemnly swear or affirm the testimony you  
8 give today will be the truth under penalty of perjury?

9 THE WITNESS: I do.

10 K R I S T I N K U C S M A, a witness called by  
11 and on behalf of the Plaintiff, upon being duly sworn, took  
12 the witness stand and testified as follows:

13 COURT OFFICER: Please be seated. Please state  
14 your name and business address for the record.

15 THE WITNESS: My name Kristin Kucsma,  
16 K-R-I-S-T-I-N, K-U-C-S-M-A. My business address is 290 west  
17 Mount Pleasant Avenue, Suite 2305, Livingston, New Jersey,  
18 07039.

19 DIRECT EXAMINATION

20 BY MR. CAFARO:

21 Q Good morning, Ms. Kucsma.

22 A Good morning.

23 Q What is your profession?

24 A I am a economist. At the present time, I am the  
25 managing director and chief economist of the Sobel Tinari

1 Economics Group.

2 Q Would you give us a brief summary of your  
3 qualifications.

4 THE COURT: Will you please spell the name of your  
5 company.

6 THE WITNESS: Sure, S-O-B-E-L, T-I-N-A-R-I,  
7 Economics Group.

8 THE COURT: You may inquire.

9 Q Would you give the jury a brief summary of your  
10 qualifications in field of economics.

11 A Yes. I have a bachelor of arts degree in economics  
12 that I received from Seton Hall University, where I was  
13 graduated with highest honors. I have master of arts degree in  
14 economic that I received from Rutgers University. And in  
15 addition to my master of arts degree in economics, I was  
16 enrolled in the PhD program in economics at Rutgers. I  
17 completed all of my course work in that program, passed my  
18 qualifying examinations, but did not have a chance to complete  
19 my dissertation.

20 While in graduate school, I started what I like to  
21 refer to as my first career, which was a colleague professor. I  
22 was a member of the full-time faculty at Seton Hall University,  
23 and Drew University, and I was an adjunct professor at Rutgers  
24 University, and what was, at the time, Saint Peter's College,  
25 now Saint Peter's University. I taught primarily in the

1 department of economics at the graduate and undergraduate level.  
2 On occasion, I taught finance and statistics, and I did that --  
3 taught at the university level for about 14 years.

4 I then spent about a year doing some limited consulting  
5 work before I joined the the Sobel Tinari Economics Group on  
6 January 2nd, of 2008, and I have been with that group ever  
7 since.

8 Q So if you had finished -- the only thing that's  
9 standing between you and your PhD is the dissertation?

10 A Yes.

11 Q Now, would you explain to the ladies and gentlemen of  
12 the jury what you do in forensic economics, in very basic terms,  
13 to project an economic loss, the pre-injury loss versus the  
14 post-injury loss?

15 A Sure. When we talk about forensic economics, we are  
16 talking about the using the generally accepted methods and tools  
17 and techniques of economics for a specific purpose, and that  
18 purpose is to evaluate the economic damages that have resulted  
19 from some particular incident. The sort of general framework  
20 that we use when are evaluating economic damages is the start,  
21 with what we call the but-force scenario. So if this incident  
22 hadn't happened, what would the plaintiff's employment have  
23 been, how much would he have continued to earn, what he could  
24 continue to do around the household, and so on. That's kind of  
25 our starting point, what would he have been able to do

1 employment-wise, around the house, and so on, if he hadn't been  
2 injured.

3           And then I simply go to compare that to what he likely  
4 will be able to earn going forward with his injuries, and what  
5 he likely will be able to do around the house with his injuries.  
6 Then the difference between what we call the pre-injury, what he  
7 was doing the before he as injured and what I assume he would  
8 have continued to do if he hadn't been injured, compare that to  
9 the post-injury, what he is able to do now, and the difference  
10 between those two will represent the economic loss or the  
11 economic damages.

12           THE COURT: If you can just slow down.

13           THE WITNESS: Yes. I'm sorry, Your Honor.

14           Q Fair to say that all of these numbers at -- not only  
15 that you do, but that every economist does, are projections?

16           A For the most part, yes. In this case -- in some cases,  
17 we do have some historical data that allows us to examine what  
18 has occurred, but much of the analysis does involve a  
19 projection, again, of what the plaintiff's employment would have  
20 been.

21           Q Right. The question was poorly phrased on my part.

22           When we are talking about past losses, you are able to  
23 quantify that, with certainty, in some cases?

24           A For the most part, yes.

25           Q Fair to say that, in this case, you are able to

1 quantify the past losses with a high degree of certainty?

2 A Yes.

3 Q Now, all future losses, that yourself and every  
4 economist projects, involve a little bit more uncertainty  
5 because they haven't happened yet, fair?

6 A That is correct.

7 Q So I'm going to ask you to give any projections to a  
8 reasonable degree of economic certainty, so we stay on that  
9 page, okay?

10 A Yes.

11 Q Now -- and as you give any projections, you will  
12 obviously give the ladies and gentlemen of the jury the basis  
13 for your assumptions?

14 A Yes, I will.

15 Q Now, in most cases, injury cases, we are talking about  
16 the post-injury, meaning -- excuse me. If we can do it this  
17 way. I like to think of it this way for simplicity.

18 The X being the pre-injury employment, what would have  
19 happened had the injury had not occurred, why being what the --  
20 what we call the post-injury or mitigation income will be, or  
21 has been, and Z being the loss. So X minus Y equals Z gives us  
22 the loss. Is that --

23 MR. LANGHOLZ: Objection to the form. This is his  
24 witness. This is direct.

25 MR. CAFARO: Withdrawn. I will rephrase.

1 Q Would you be able to give us a basic formula using the  
2 letters X, Y, Z to sum up what we are talking about here?

3 A Yes. We could think of the pre-injury earnings and  
4 services as X. Again, that being a reflection of what the  
5 plaintiff would have earned, and what he would have been able to  
6 do if he hadn't been injured. We can think of the post-injury  
7 earnings and services as what the plaintiff likely will be able  
8 to earn and do with his injuries. And then X minus Y would give  
9 us Z. Z would represent the economic loss or the economic  
10 damages.

11 Q Now, in most case, Y represents some job that the  
12 plaintiff is likely to get or might get in the future, correct?

13 A In some cases. In many cases on which I work, Y is  
14 actually zero, because I do work on many classes in which a  
15 plaintiff has been injured to the extent that he or she is not  
16 capable of returning to any sort of gainful employment.

17 Q And in a case where a plaintiff already has a job, a  
18 post-injury job, then Y -- it is being projected with much less  
19 certainty; is that fair?

20 MR. LANGHOLZ: Objection to the form. Ask him not  
21 to lead the witness, please.

22 MR. CAFARO: I will happily rephrase.

23 Q Would you be able to make any comment, with respect to  
24 Y, in terms of this analysis, where the plaintiff already has a  
25 job, instead of a projection from a vocational counselor as to

1 what job the plaintiff might be able to do?

2 A Obviously, if the plaintiff has a job, then I do know,  
3 with certainty, what that job is, how much he is earning in  
4 compensation from that job, and so on.

5 Q All right. Now, you did, in this case -- no.

6 The plaintiff worked as a sheet metal mechanic as a  
7 member of Local 28, correct?

8 A Yes.

9 Q And that is what you have used, for the most part, in  
10 projecting the pre-injury loss, correct?

11 A Yes.

12 Q Now, I am going to ask you to assume that the  
13 plaintiff's treating orthopedic surgeon, Dr. Andrew Sands, has  
14 testified that he is physically unable to do the work of a sheet  
15 metal mechanic, okay?

16 A Yes.

17 Q You have, in fact, used that assumption in your  
18 analysis; is that correct?

19 A Yes, I have.

20 Q And you have relied on what other information in doing  
21 this analysis?

22 A Well, in order to calculate what the plaintiff would  
23 have earned, had he not been injured, and had he been able to  
24 continue his union employment, I relied upon a variety of  
25 documents that included W-2 wage and tax statements for the

1 plaintiff, as well as what we call wage and benefit schedules,  
2 published by the union.

3 I also reviewed a summary plan description of some of  
4 the benefits that the plaintiff also received, in addition to  
5 his paycheck as a member of that union. And that's most of the  
6 union information that I used to calculate what the plaintiff's  
7 compensation would have continued to be if he had not been  
8 injured and he had been able to continue his union employment.

9 Q All right. Other than the financial documents that  
10 you've just described, the tax returns, the W-2s, and the  
11 documents from the union showing the number of hours that he  
12 worked, and the summary plan description, and the various union  
13 agreements, and things like that, were there any other documents  
14 that you relied upon in doing this analysis?

15 A In order to calculate the post-incident, so what the  
16 plaintiff has been able to earn after the incident, as well as  
17 information about his current job and his current level of  
18 compensation, I also reviewed W-2 wage and tax statements, and  
19 then some additional information, the form of what I will call  
20 an offer letter, about his current employment. Again, that  
21 allowed me to examine what he has earned in various jobs up to  
22 the present time, and it also allowed me to have an  
23 understanding of what he will earn going forward in the job that  
24 he has at the present time.

25 Q And you're referring to the current documentation that

1 we have received and put in evidence from Vibrant, correct?

2 A Yes.

3 Q Other than the documents you referred to up to this  
4 point, is there anything that you relied upon in doing this  
5 analysis?

6 A The only other information that comes to mind is I also  
7 did review a wage verification report issued by the Workers'  
8 Compensation Board. I also have been provided with some  
9 information about a future surgery that, according to Dr. Sands,  
10 the plaintiff will need. And I also reviewed some testimony of  
11 the plaintiff as it relates to the impact that his injuries have  
12 had on his ability to continue to perform household services.

13 Q Okay. Now, did you, in fact, conduct an analysis, in  
14 this case, as to what the plaintiff's economic loss is?

15 A Yes, I did.

16 Q Now, before you explain how you went through that  
17 calculation, have you prepared a summary of what those economic  
18 losses are?

19 A Yes, I have.

20 MR. CAFARO: Okay. Your Honor, may I display the  
21 summary chart to the jury, which is not in evidence, but is  
22 marked for identification as 92.1.

23 THE COURT: Yes, you may.

24 Q Now, before you go through how you've arrived at these  
25 figures, would you be able to explain to the jury what the

1 various summary figures mean, in a condensed kind of way.

2 A Yes. I started by calculating what I called the  
3 adjusted earnings in past years, where I simply looked at the  
4 difference between what the plaintiff would have earned if he  
5 continued his union employment, and what he has, in fact, earned  
6 through the present time. So when I'm talking about the past  
7 years, I'm looking at the period of time that starts in 2016, at  
8 the time of the incident, and continues through the present  
9 time, 2026.

10 I then calculated the pre-injury adjusted earnings in  
11 future years. In other words, how much the plaintiff would have  
12 continued to earn if he had been able to continue working as a  
13 union member from the present time until he retired. After I  
14 did that, I calculated what the plaintiff likely will earn going  
15 forward from the present time until he retires in his current  
16 employment. Those are the post-injury adjusted earnings, and  
17 those are are parentheses because I am going to subtract them.

18 THE COURT: Just talk slowly.

19 A Then I considered the benefits that the plaintiff was  
20 receiving through his union employment, and that he would have  
21 continued to receive through his union employment.  
22 Specifically, I calculated the pension benefits. Through his  
23 union membership, the plaintiff was entitled to pension benefits  
24 through two different pension funds.

25 And for those of you who are not familiar with pension

1 benefits, these are retirement benefits that the plaintiff would  
2 begin to receive once he retired, and then he would get them for  
3 the rest of his lifetime. The pension benefits are determined  
4 by a formula. The formula is established by -- really through  
5 the summary plan description. And the formula you will see in a  
6 few minutes, among other things, depends on the number of hours  
7 that a union member works. So the union plugs some things into  
8 this formula, and determines what the size of the retirement  
9 check will be once the plaintiff retires.

10 In addition to that, he also received health insurance  
11 benefits, for himself and his family, as a union member. I  
12 mentioned before, the surgery that, according to Dr. Sands, the  
13 plaintiff will need. And then lastly, I also calculated the  
14 monetary value of the impact that these injuries have had on the  
15 plaintiff's ability to continue to perform various household  
16 services, repairs around the house, helping out with some of the  
17 chores, shoveling snow in the winter time, and so on.

18 MR. CAFARO: Okay. We can take that down now.

19 Thank you, Officer.

20 Q I would like, now, for you to go through and explain to  
21 the ladies and gentlemen of the jury how you arrived -- how you  
22 calculated these numbers, and let's begin with the loss of  
23 earnings in past years.

24 That would be the lost earnings between April 4th,  
25 2016, and today, correct?

1           A     Yes.

2           Q     Please explain to the ladies and gentlemen of the jury  
3 how you calculated that loss.

4           A     I started by reviewing the W-2 wage and tax statements  
5 provided to me, and that allowed me to examine how much money  
6 the plaintiff had been earning in the years leading up to 2016,  
7 and also, how much he had earned through the union through April  
8 of 2016. While I was reviewing those W-2 wage and tax  
9 statements, I did take into account the fact that the plaintiff  
10 had joined the union in 2008, and had completed a five-year  
11 apprenticeship program, which is fairly common in some of these  
12 unions, which means the plaintiff had completed his  
13 apprenticeship program and had been a journeyman sometime in or  
14 around 2013.

15                     That was important information for me because I wanted  
16 to make sure when I examined the W-2 wage and tax statements,  
17 that I was looking at what would be the best representation of  
18 the plaintiff's earning capacity at or around the time he was  
19 injured. Clearly, looking at what he earned when he was an  
20 apprentice would not be a good representation of what he would  
21 have earned going forward because he had become a full  
22 journeyman a couple of years before he was injured. And, in  
23 fact, he also had become mechanic lead man. He actually, on  
24 certain occasions, was performing the responsibilities of a  
25 foreman on some of those jobs.

1           In addition to that, I also learned that through April  
2 of 2016, the plaintiff had earned about \$33,251. And again,  
3 that also was important information for me because what it  
4 showed me was that in the first one quarter of the year, the  
5 plaintiff had earned \$33,251, which means he was on track to  
6 earn, approximately, \$127,000 for the full year. In addition to  
7 that, I also reviewed a wage verification report that had been  
8 filed by the employers as part of a Workers' Compensation --

9           Q     Let's call it --

10           THE COURT: One second, Counsel.

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

12           (Whereupon, the sworn jurors exit the courtroom.)

13           THE COURT: We can bring the jurors back.

14           COURT OFFICER: All rise. Jurors entering.

15           (Whereupon, the sworn jurors enter the courtroom  
16 and take their respective seat.)

17           THE COURT: Everyone may be seated.

18           Q     Ms. Kucsma, you have prepared, in the documents you  
19 brought with me -- brought with you, an explanation of the  
20 computations you have done and the assumptions that you have  
21 used in doing this analysis; is that correct?

22           A     I brought all of my calculations with me. Yes, that is  
23 correct.

24           Q     Just before you do that, will you explain to the ladies  
25 and gentlemen of the jury what economists mean when they say

1 assumptions, and what they mean when they say scenarios, so  
2 everybody knows what we are talking about.

3 A Sure. Part of an economist's job, in this case, does  
4 require that we make certain assumptions. I do not have a  
5 crystal ball, so I do not know, with 100 percent certainty, what  
6 Mr. Hernandez's life would have been like if he wasn't injured,  
7 but, when I do make assumptions, they are going to be based on  
8 scientific or economic research, so they are not going to be  
9 assumptions I just sort of pluck out of air, but to the extent,  
10 for example, I don't know, specifically -- none of us know,  
11 specifically, how much earnings will increase year over year  
12 going forward. I do need to make an assumption before that, and  
13 you will hear my tell you in a few minutes, specifically, how I  
14 arrived at those assumptions.

15 Q And assumptions also deal with the facts of case,  
16 correct?

17 A Yes. There are other -- yes. I mean, there certainly  
18 are other assumptions I've made. For example, I assumed Mr.  
19 Hernandez was born on October 28th, 1982. Yes, so there are  
20 some facts -- specific assumptions I made based on information I  
21 reviewed.

22 Q Economists do not have anything to do with who might  
23 not have fault, the economist do not have anything to do with  
24 what kind of work the plaintiff physically can or can't be able  
25 to do, things like that, correct?

1           A     Correct.  Those types of things are well outside of my  
2 area of expertise as an economist.

3           Q     So whether the economist would be retained by the  
4 plaintiff or by the defendant, they are just making the  
5 assumptions that either the attorneys have told them to make or  
6 have been received in evidence; is that fair?

7                     MR. LANGHOLZ:  Objection.  Again, I would ask if  
8 the plaintiff would stop all leading questions.

9                     THE COURT:  I get it.  Sustained as to leading.

10          Q     Would you please explain to the jury how factual  
11 assumptions work in the context of litigation, where you get  
12 them.

13          A     Yes.  Generally, when I am obtained, either by  
14 plaintiff's counsel or defense counsel, I am provided with a set  
15 of facts, a set of information about the case.  Those facts  
16 would include things like the date of birth of the plaintiff,  
17 the date on which the incident occurred, information about the  
18 plaintiff's highest level of education.  I am typically also  
19 provided with at least a basic understanding of the claims in  
20 the case, the plaintiff's claims or the defense claims, as to  
21 what happened and what caused that to happen.

22                     But that sort of information, again, whether I am  
23 working with plaintiff's attorneys or defense attorney, is of no  
24 use to me because I am not member of the jury.  I am not the  
25 trier of fact.  So what I do is I look very specifically at the

1 facts that I will need to perform my function as an economist,  
2 again, dates of birth, information about a person's job, and so  
3 on.

4 MR. CAFARO: Please display page one.

5 Q What you have in front of you --

6 MR. CAFARO: We would ask this be deemed marked as  
7 93.1, the first one being marked as --

8 THE COURT: 92.2 is the next one.

9 MR. CAFARO: 92.2 it is then. So for the purpose  
10 of -- for the purpose of going forward, page 1 will be 92.2,  
11 so we would just add one decimal point to each page number  
12 to arrive at the correct exhibit for identification, okay?

13 THE COURT: Okay. You don't know how many pages  
14 yet, right?

15 MR. CAFARO: You know, I do. I'm going to at least  
16 display all of them momentarily, and there will be, in  
17 addition to -- there are 32 pages, one of which has already  
18 been displayed. I intend to go through them quickly, but I  
19 do intend to display them.

20 THE COURT: So it's going to be for identification  
21 purposes only, 92.2 through 92.34 -- 33?

22 MR. CAFARO: Actually, 32 because 92.1 is page 32.  
23 We already covered one of them.

24 THE COURT: 92.32. Okay.

25 MR. CAFARO: Yes, Your Honor.

1 THE COURT: Got it.

2 MR. CAFARO: Display page 1, please.

3 Q Explain to us, very briefly -- most of this is obvious,  
4 but just explain to us statistical retirement age and work-life  
5 expectancy?

6 A In order to calculate how much money Mr. Hernandez  
7 would have earned if he had not been injured and how much he  
8 likely will earn in his current job, I needed to determine for  
9 how many more years he was likely to work. In order to do that,  
10 I relied upon US Government data, and I looked at the actual  
11 experience of roughly 33 -- 34 year-old males who had as their  
12 highest level of education, some college, but no degree. And  
13 when I looked at the actual experience of men in that category,  
14 I learned that, at the median, they retire at the age of 66.5  
15 years.

16 In addition to that, when I reviewed that data, I also  
17 learned that 33, 34 year-old males who have some college, but no  
18 degree, typically do not work of every day of every week of  
19 every year until they retire, but typically, they'll miss work  
20 now and then for reason that would included injury, illness,  
21 they may get the flue, they may sprain an ankle, they may need  
22 to take time off to care for a sick child, for example.

23 Based on my review of the US Government data, I learned  
24 that males in that category typically spend 84.9 percent of the  
25 time actually working until they retire, which means

1 alternatively, they spend, on average, 15.1 percent of the time  
2 not working because they need to take time off to care for a  
3 sick child, they get the flu, and so on.

4 I did assume, for purposes of my analysis, that if the  
5 plaintiff missed work for any of those reasons, he would not get  
6 paid during those periods of missed work. So what you will see  
7 is I am going to make a downward adjustment each and every year  
8 when I calculate the earnings of 15.1 percent to take into  
9 account those periods of missed work, assuming that Mr.  
10 Hernandez would not have been paid during those periods.

11 Q Now, there are -- the union that he works for, Local  
12 28?

13 A Yes.

14 Q They have to file certain tax returns in connection  
15 with the pension fund; is that correct?

16 A The pension fund, yes. They file a tax return.

17 Q And is that called the 5500?

18 A Yes. They have to file a form 5500 with the IRS each  
19 year.

20 Q Have you reviewed the 5500s for 2018, 2019, and 2020,  
21 for the Local 28 pension fund in connection with this case?

22 A Yes, I have.

23 Q Now, there are documents filed with those --

24 MR. CAFARO: And, Your Honor, I am referring now to  
25 Exhibits 68, 69 and 70 in evidence.

1 Q There are documents filed with those 5500s called the  
2 Segal report; is that right?

3 A Yes.

4 Q Are you familiar with those?

5 A Yes, I am.

6 Q Now, utilizing the Segal report, some other economists  
7 would come up with a lower statistical retirement age; is that  
8 accurate?

9 A That would technically not be a statistical retirement  
10 age, but it would -- there is, in the Segal report, frequently  
11 reference to a weighted average retirement. And the reason I  
12 say it's not a statistical retirement age, is it's not based on  
13 any sort of robust statistical analysis over time that allows us  
14 to examine how it may change over time, doesn't allow us to  
15 examine retirement rates of the function of a person's level of  
16 education and age, but yes. Many Segal reports do have, as I  
17 said, a calculation of what they typically refer to as a  
18 weighted average retirement age.

19 Sometime, you will see multiple retirement ages,  
20 depending on whether somebody is an active participant or not,  
21 but that is information that appear in the Segal report  
22 frequently.

23 Q Now, the Segal report was referred to in the 5500s in  
24 evidence that we just asked you about; is that right?

25 A I believe so, yes.

1 Q Is the Segal report a government document?

2 A No, it is not. The Segal report is a proprietary  
3 document. It's prepared by a firm. Really no different than  
4 the report I prepared here. There is a firm that reviews union  
5 information, and prepares and provides Segal reports to pension  
6 fund, and they then use the Segal report when they file their  
7 form 5500 with the IRS.

8 Q Now, the Segal report, for what purpose is that being  
9 used by the union when they file that report?

10 A There is information requested when you file out a form  
11 5500, just like when we file out our own 1040s, there's  
12 information that is requested there. Part of the point is to  
13 develop an analysis of the solvency of the pension funds, so to  
14 have an understanding of how many people will start collecting  
15 pension benefits at what point in time, looking at the rate of  
16 return that whoever is managing the pension fund has been able  
17 to generate on the assets of the fund, really to have an  
18 understanding of whether there will be enough money in the  
19 pension fund to pay out the retirement benefits.

20 There's certain information that is helpful when filing  
21 the form 5500, and understanding that, and some of that, again,  
22 is information that is compiled and summarized in the Segal  
23 report.

24 Q Is it fair to say that the union is using the Segal  
25 report to demonstrate to the government that the pension fund is

1 solvent, in term of its future obligations?

2 MR. LANGHOLZ: Objection.

3 THE COURT: There's an objection.

4 Q What is the purpose of the Local 28 in submitting that  
5 form to the government -- the Segal report to the government?

6 A Well, as I mentioned a moment ago, it's sort of like a  
7 -- it's sort of like what you sometimes see with private  
8 companies, when they file something about a statement of  
9 financial condition. Again, you can have an understanding of  
10 whether a company is doing well, whether they are likely to go  
11 bankrupt, and so on. So again, it really allows to you examine  
12 whether or not the pension fund is what we call solvent or not.  
13 And again, whether or not they will have the ability to really  
14 honor the commitments. And what I mean by that is will they  
15 have ability to send out all those pension checks to all of  
16 people that earned those pensions checks --

17 THE COURT: Just slow down.

18 THE WITNESS: Sorry, Your Honor. I apologize.

19 (Whereupon, the Court Reporter read back the  
20 requested testimony.)

21 A -- through their union employment.

22 Q All right. So, would the Local 28 have an incentive in  
23 this -- according to this analysis you have just given to us, to  
24 maximize or minimize its future pension obligations?

25 MR. LANGHOLZ: Objection. Leading.

1 MR. DOLEJSI: Objection. Foundation.

2 THE COURT: What was the question, again?

3 MR. CAFARO: I will rephrase.

4 Q Can you tell us anything about the motivation of what  
5 Local 28 would be, in connection of making its presentation to  
6 the government, with respect to its future pension obligations.

7 MR. DOLEJSI: Objection. Foundation.

8 THE COURT: Can we discuss this in the back?

9 (Whereupon, the following discussion takes place at  
10 sidebar among the Court and Counsel, outside the hearing of  
11 the witness and sworn jurors.)

12 THE COURT: On the record.

13 MR. DOLEJSI: The objection to foundation is  
14 specific to the question that was asked.

15 It was asking Ms. Kucsma what the pensions  
16 motivation is for filing these various records.

17 Ms. Kucsma has never worked for the pension and  
18 doesn't know what their motivation is for filing those  
19 things.

20 That's the basis for that objection.

21 MR. CAFARO: The basis is -- the logical answer is  
22 that the pension has to be justified to the government that  
23 they are solvent. In order to do that, he -- they list  
24 their present assets.

25 THE COURT: I know all of that.

1 MR. CAFARO: Okay.

2 THE COURT: How is she qualified to testify  
3 regarding this?

4 MR. CAFARO: She is just testifying to with regard  
5 to the motivation they would have in the scenario because --

6 THE COURT: She can't. I agree with, counsel. The  
7 objection is sustained.

8 She can't testify regarding the union's motivation  
9 to do something, Counsel.

10 MR. CAFARO: Okay.

11 THE COURT: Move on.

12 MR. DOLEJSI: Thank you.

13 THE COURT: You are welcome.

14 (Whereupon, the following takes place in open  
15 court, in the presence of the witness and the sworn jury.)

16 THE COURT: Objection sustained.

17 Q You've studied Segal reports over a significant period  
18 of time now?

19 A I have reviewed many Segal reports throughout my  
20 career. Having said that though, it is not my standard  
21 practice, nor is it the standard practice of most forensic  
22 economists to rely upon the Segal report. I'm an active  
23 contributing member of the National Association of Forensic  
24 Economics--

25 MR. LANGHOLZ: Objection. She's completed her

1 answer to the question.

2 THE COURT: So your objection is as to  
3 nonresponsive?

4 MR. LANGHOLZ: Correct.

5 THE COURT: Sustained. The portion as  
6 nonresponsive is stricken from record.

7 Q What were you going to say before the objection?

8 MR. LANGHOLZ: Objection to form.

9 THE COURT: I just sustained the objection as  
10 nonresponsive.

11 MR. CAFARO: Okay. I am sorry. I didn't mean to  
12 be impertinent.

13 Q Will you please tell us, is the Segal report a  
14 peer-reviewed document that you think should be relied upon, in  
15 terms of sound economic analysis?

16 A It is not a peer-reviewed document. Also, as an active  
17 contributing member of the National Association of Forensic --

18 MR. LANGHOLZ: Again, nonresponsive. She answered  
19 the question. Now, she's --

20 Q Do have any further qualification that would enable you  
21 to answer that question, Ms. Kucsma?

22 MR. LANGHOLZ: Objection. She answered --

23 THE COURT: Counsel, the object is sustained.  
24 Since she testified it is not peer-reviewed, she can't  
25 testify regarding the document.

1 MR. CAFARO: Okay.

2 Q Regardless of the motivation of what the union is in  
3 submitting -- withdrawn.

4 The union can hire or fire the people that prepare the  
5 Segal report at their own pleasure; is that correct?

6 MR. LANGHOLZ: Objection. Leading. Objection.

7 Form. Objection. Foundation as to what the union can do.

8 THE COURT: Sustained.

9 Counsel, I told to you move on.

10 MR. CAFARO: Well, Your Honor, this is -- can I  
11 call her as a rebuttal witness then after the --

12 THE COURT: Let's go to the back. How is that? I  
13 have to explain to you what she just testified to? She just  
14 said it's not peer reviewed. She can't talk about it.

15 MR. CAFARO: All right. Let's move on. Let's go  
16 to page 2.

17 Q Okay. Explain to the jury what's up here.

18 A What we are looking at here is a summary of the number  
19 of hours that Mr. Hernandez worked through Local 28, and also a  
20 summary of how much money he was, in fact, paid, not only for  
21 the work he did for Local 28 through the time of injury, but  
22 also money he was paid for other jobs following the injury.

23 And, specifically, as I mentioned earlier, we see a  
24 summary of the number of hours that Mr. Hernandez worked in  
25 2010, 2011, 2012, and 2013 while he was finishing the

1 apprenticeship program, and then we also see a summary of the  
2 number of hours he worked, and what he earned as a journeyman  
3 starting in or around 2014, and continuing through April of  
4 2016, when he was injured.

5 MR. CAFARO: Let's go to page 3.

6 Q Please explain to the jury the significance of these  
7 numbers, with respect to the computation of the wage and fringe  
8 benefits.

9 A In order to calculate how much money Mr. Hernandez  
10 likely would have continued to earn if he had been able to  
11 continue in his union employment, I did use, as my starting  
12 point, the figure of \$87,035, and that is based on the W-2 wage  
13 and tax statement that Mr. Hernandez received for the year 2015.  
14 So that's a reflexion of how much he was actually paid for the  
15 union work that he did as a journeyman, as a lead, in 2015.

16 What we see below that is just a summary of all of the  
17 information that is provided by the union in what is called a  
18 wage and fringe benefits schedule. So what you are looking at  
19 there, when you see all of those numbers, is a summary of the  
20 hourly wage rate. So when an employer hires a union worker,  
21 they have pay a hourly wage rate. They have to pay additional  
22 money into the vacation fund. They have to pay additional money  
23 into the annuity fund. So for every hour that a union worker  
24 works, the employers have to make these various payments to  
25 cover the totality of his compensation, his paycheck, and all of

1 the fringe benefits that he receives as a union member.

2 Q Now, you have at the top, 1,701 hours per year. Where  
3 did that figure come from?

4 A That also is based on the plaintiff's employment in  
5 2015, so that's a reflexion of the actual numbers of hours that  
6 he performed work through the union in 2015.

7 Q And these figures, are they computed based on pay or  
8 hours worked, according to the union record?

9 A The figure of \$87,035 is right off of his W-2 and wage  
10 tax statement. There was no need for me to recreate that  
11 number. That was provided on the W-2 wage and tax statement  
12 issued by his employer, so we know -- actually, by his  
13 employers. So we know that that is, in fact, how much money he  
14 was paid for the work he did in 2015.

15 Q So these benefits are computed based on what he is paid  
16 or computed based on a number of hours worked?

17 A The benefits are a function of the number of hours that  
18 Mr. Hernandez worked. Obviously, so was his pay. So the figure  
19 that appears on his W-2 wage and tax statement is also a  
20 reflexion of the hourly rate that is determined by -- or  
21 through, I should say, collective bargaining by the union.

22 MR. CAFARO: Let's go the next page.

23 Q Weighted wage and fringe -- what do you mean by  
24 weighted, here?

25 A I simply had to take into account the fact that,

1 according to the collective bargaining agreements, the change in  
2 the wage and benefit rates frequently occurs midyear, so if you  
3 went back to the previous slide, you would see, for example,  
4 that there is a change in the wage rates and the benefit rates  
5 --

6 THE COURT: One second. Sorry. I have to listen  
7 to you, but I am focused over here.

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

9 THE COURT: You may continue.

10 Q Could we simplify this by saying that if the wage rate  
11 changed during the year, you just adjusted it for the portion of  
12 the year, according to what the rate was before and after the  
13 change?

14 A That is correct.

15 MR. CAFARO: All right. Can we go to page 5,  
16 please.

17 Q Can you tell us what this means.

18 A This table shows my calculations of how much money Mr.  
19 Hernandez would have earned each year, from 2016, when he was  
20 injured, through the present time. I used that figure of  
21 \$87,035 as my starting point, and then I simply applied the  
22 yearly increases that were determined in the wage and benefit  
23 schedules issued by the union. So we are looking here at how  
24 Mr. Hernandez's earnings would have increased year over year,  
25 pursuant to the wage increases in the collective bargaining

1 agreement.

2 Q Now, I want to show you this document, which in  
3 evidence as Exhibit 49. Let's just refer to it as the  
4 employer's statement of wage earnings.

5 Now, you testified that you use \$85,035 as the gross  
6 earning in 2015, and that is in terms of 2015 dollars, correct?

7 A Yes.

8 Q If we did that terms of today's dollars, it would  
9 certainly be more than that, right?

10 A It would specifically be \$110,465.

11 Q Okay. And the Exhibit 49 that I showed you, what's the  
12 number on that?

13 A \$107,829.51, for 52 weeks ending in -- or on March  
14 30th, of 2016.

15 Q So that would be the one year exactly before the  
16 accident happened, correct?

17 A Yes.

18 Q And that obviously is 2016 dollars?

19 A Yes.

20 Q Now, if that figure were in 2026 dollars, what would it  
21 be?

22 A I don't know specifically, but that figure --

23 Q About.

24 A Approximately, 24 percent higher than the figure that I  
25 used as my starting point.

1 Q Now, you indicated before that his 2016 earnings from  
2 January 1st, 2016, up to the date of the accident, were,  
3 approximately, how much?

4 A \$33,251.

5 Q And you annualized that figure. Explain to us what  
6 annualized means.

7 A That represents how much money Mr. Hernandez made for  
8 the first one quarter of the year, January, February and March,  
9 if he had worked for the full year, for four quarters, instead  
10 of one quarter, he would have earned \$127,888, just \$33,251  
11 times four.

12 Q Fair to say then that the number you've used is very  
13 conservative compared to those other two?

14 A It is, yes.

15 Q All right. And we will come back to the affect it  
16 might have on the total when we are done.

17 MR. CAFARO: Can we go to page 6, please.

18 Q Can you explain the fringe benefit calculation, please.

19 A Again, I am just working with the information provided  
20 in the wage and benefit schedule to determine proportionately  
21 how much extra money the plaintiff would have received in the  
22 form of annuity benefits. So for every hour that the plaintiff  
23 would have worked, in addition to getting a paycheck, his  
24 employers would have put money into an annuity fund. An annuity  
25 fund is like a 401(k) plan. So this is money that would have

1 gone into the annuity fund, and then that pool of money would  
2 have been available for Mr. Hernandez once he's retired.

3 MR. CAFARO: Go to page 7, please.

4 Q Now, the pre-injury earnings were adjusted to take care  
5 of certain economic factors that you find across the board in  
6 many cases, correct?

7 A Yes.

8 Q All right. Explain what those factors are, and explain  
9 what sources you used to get the numbers for these adjustments,  
10 please.

11 A I made four adjustments when I calculated how much  
12 money the plaintiff would have earned through the union. I just  
13 mentioned the first one. I added -- I made an addition to take  
14 into account the annuity benefits, the extra money that would  
15 have gone into this annuity fund. And then I made three  
16 downward adjustments. The first downward adjustment I mentioned  
17 earlier, I made a downward adjustment of 15.1 percent each year  
18 to account for periods of time Mr. Hernandez may have missed  
19 work because he had the flu, he had to take care of his child,  
20 and so on, and that was based on the US Government data I  
21 mentioned earlier.

22 I also made a second downward adjustment each year in  
23 the amount of 2.5 percent to take into account periods of  
24 unemployment, to take into account that there may have been  
25 additional periods of time, whether it just wasn't as much work

1 available. That is based on several sources of information.

2           Number one, I looked at historical unemployment rate  
3 data for males of the same ages that Mr. Hernandez was, and  
4 continued to be, until he retires.

5           In addition to that, though, I took into account the  
6 fact that if Mr. Hernandez became unemployed, because there  
7 wasn't work available, even though he would not have gotten a  
8 paycheck, he would not have been completely without any income  
9 coming in. For one thing, he would have been eligible for  
10 unemployment benefits through the State of New York. And number  
11 two, the union in which he was a member also has a supplemental  
12 unemployment benefit fund. So when I considered all of those  
13 sources of information, I determined that I needed to make  
14 another downward adjustment each and every year in the amount of  
15 2.5 percent.

16           Lastly, I made a third downward adjustment each and  
17 every year in the amount of 10 percent of Mr. Hernandez's  
18 earnings. That was to take into account what we refer to as  
19 job-related or job-maintenance expenses. So that would take  
20 into account the fact, if he continued working through the  
21 union, he would have spent a portion of his paycheck on things  
22 like union dues, transporting to and from a job site, a cup of  
23 coffee in the morning, a hotdog for lunch. And again, I  
24 estimated that at 10 percent, based on my review of various  
25 union documents, and data published by the US Department of

1 Labor through something called the consumer expenditure survey.

2 Q So that 10 percent would include things like gas, wear  
3 and tear on your car, and driving to work, and things like that?

4 A Yes.

5 Q All right. And if somebody has to, like, buy a  
6 uniform, let's say a nurse or a police officer, that would be  
7 involved in the job-maintenance expenses?

8 A Possibly. If it wasn't -- I mean, some police officers  
9 get uniform allowance, but some don't. So yes, in some cases,  
10 that would be included.

11 MR. CAFARO: Let's go to page 8, please.

12 Q Okay. Adjusted earnings in past years, would you  
13 explain the significance of this.

14 A This is really just my calculations of how much money  
15 Mr. Hernandez would have earned from 2016 through the present  
16 time. I should say how much additional money he would have  
17 earned if he has been able to maintain his union employment. So  
18 I started in Column 3, by considering how much he would have  
19 earned before adjustments, using his W-2, taking into account  
20 the contractual yearly increases. I subtracted then any money  
21 he actually earned from 2016 through the present time. I  
22 subtracted those numbers, and then I made the one upward  
23 adjustment for the annuity benefits, and three downward  
24 adjustments I mentioned earlier.

25 That allowed me to determine, to a reasonable degree of

1 economic certainty, that if Mr. Hernandez had not been injured  
2 in April of 2016, he had maintained his employment through Local  
3 28, he would have earned an additional \$813,536 at the present  
4 time.

5 Q Okay. So that would represent the earnings he's lost  
6 between the date of the accident and today?

7 A Yes.

8 MR. CAFARO: Let's go to page 9.

9 Q Now, explain how these calculations were done.

10 A I then extended my calculations into future years. I  
11 am going to continue my calculations year over year until Mr.  
12 Hernandez's statistical retirement, at the age of 66.5. I  
13 really just used the same method I just described before. I  
14 needed to take into account the fact that if Mr. Hernandez had  
15 been able to continue his union employment, from the present  
16 time going forward, his earnings would have continued to  
17 increase year over year.

18 In order for me to determine, on average, how much his  
19 earnings would have increased each year going forward, I  
20 considered two basic sources of information. I first looked  
21 back historically at how much earnings have increased year over  
22 year in the past. I looked both at statistical data published  
23 through the US Department of Labor for individuals employed in  
24 the construction industry. I also, of course, rereviewed the  
25 yearly increases pursuant to the wage and benefit schedules that

1 I had reviewed earlier.

2 In addition to that, though, I did not rely only on  
3 historical data. That's not a generally accepted practice of  
4 economists to assume the next 20 years, for example, will look  
5 exactly like the last 20 years. It's simply not a statistically  
6 supported. So in addition to looking back historically, I also  
7 looked at projections of future wage growth. Those projections  
8 are published by the US Government. For example, by the Social  
9 Security Administration, by the Congressional Budget Office, and  
10 that allows me to examine current economic conditions,  
11 anticipated changes in economic conditions going forward, and  
12 how those changing economic conditions will likely impact labor  
13 markets, and therefore, how much earnings increase, on average,  
14 going forward.

15 Q So what rate of increase did you use?

16 A An average yearly increase of 3.7 percent, which means  
17 in some years, I would expect the increase to be less than that,  
18 and in other years, greater than that.

19 Q All right. Would you explain your selection of --  
20 withdrawn.

21 You had to calculate that from a certain period of  
22 time, is that correct, the 3.7?

23 A That is the average yearly increase I used starting in  
24 2027, and continuing through the plaintiff's statistical data  
25 retirement in 2049.

1 Q Okay. And would you explain how the affect, if any, on  
2 inflation and supply and demand in the labor market in the  
3 selection of that figure -- or in the calculation of that  
4 figure.

5 A Yes. That was one of the reasons why it is important  
6 for economists to consider these projections of future wage  
7 growth, because they do take into account labor market  
8 conditions that include the supply and demand for labor.

9 If there are more construction projects that need to be  
10 done, more sheet metal work that needs to be done, that pushes  
11 up the demand for those services, and all other things held  
12 constant. Those services become more valuable, and their wages  
13 go up.

14 Likewise, if the supply of labor, for whatever reason,  
15 decreases, and there is an expectation that that will happen  
16 because of a continuing declining labor force participation  
17 rate, for example. If the supply of labor for a particular type  
18 of job decreases, that makes that labor more scarce, more  
19 available, and that also pushes up crisis. So that is one of  
20 the reasons, as I said, why it is important to consider not only  
21 historical data, but look at the current state of economy, and  
22 look at anticipated changes, specifically, for purposes of this  
23 discussion in labor markets.

24 MR. CAFARO: Go to the next page, please.

25 Q All right. Would you tell us the figure you have got

1 here, and what that figure means, in terms of your have summary  
2 analysis?

3 A This figure of \$3,659,979 represents how much money Mr.  
4 Hernandez would have earned, from the present time through 2049,  
5 when he turns 66.5 years of age. If he had not been injured in  
6 2016, he would have been able to maintain his union employment.  
7 This does include the extra money going into the annuity fund,  
8 and it also reflects those three downward adjustments we  
9 discussed before.

10 Q Okay. And does it reflect the pension?

11 A No, the pension has to be calculated separately.

12 Q This has nothing to do with -- this would have been  
13 from what point until today? From today until his retirement?

14 THE COURT: She said future loss wages.

15 MR. CAFARO: Yes. I'm sorry. I was just  
16 clarifying, Your Honor.

17 Q Now, explain the significance of this.

18 MR. CAFARO: We are on 11, which will be 93.12, I  
19 believe.

20 THE COURT: I lost count. Were you telling the  
21 court reporter the numbers?

22 MR. CAFARO: Yes, I believe it's 93.12.

23 Q Go ahead.

24 A What we're looking at here is a summary of some of the  
25 background information I used to calculate how much money the

1 plaintiff likely will earn going forward. He has a job, and I  
2 have information about how much he is earning presently through  
3 that job, and information about how much his earnings will  
4 likely change in the near future. For example, I used, as my  
5 starting point, a figure of \$24,960. That's based on a 20-hour  
6 workweek, earning \$24 per hour.

7 I assumed that the plaintiff will pass his evaluation  
8 -- so basically, as long as he passes an evaluation, he will  
9 then increase his hours to 40 hours per week. I did assume that  
10 by July 1 of this year, he will pass his evaluation. At which  
11 point, his earnings will go up to \$49,920 on a yearly basis.

12 In addition to that, when I reviewed the information  
13 about his current job, I also learned that he is doing a good  
14 job. After he passes his evaluation, that he will receive a  
15 raise from \$24 to \$26 per hour. So by January 1, of 2027, I  
16 expect he will be earning \$54,080, full time, at \$26 an hour.

17 I then made the same adjustments. The only thing you  
18 don't see here is an annuity because that is not a benefit that  
19 Mr. Hernandez presently receives through this non-union  
20 employment he has. But again, I took into the account the  
21 probability that he may miss work now and again going forward.  
22 He may become unemployed, and I did also assume he will have job  
23 maintenance expenses.

24 You'll see in his case, I estimated the job-maintenance  
25 expenses at 5 percent of his earning, not 10. And that, again,

1 is because his current employment is non-union, so he doesn't  
2 have union dues, and tools, and other things that he would need  
3 to pay for for his current employment.

4 Q So in our previous analogy of X minus Y, this  
5 represents Y, correct?

6 A That is correct.

7 Q And did you use the same downward adjustments to  
8 compute Y, as you did to compute X?

9 MR. LANGHOLZ: Objection. Asked and answered. She  
10 just answered that question.

11 MR. CAFARO: I am just summarizing it, Your Honor.  
12 Withdrawn. I'll withdraw it. Let's go to the next page.

13 Q Okay. Now, post-injury adjusted earnings in future  
14 years, again, we are talking about Y here, as opposed to X,  
15 obviously?

16 A Yes.

17 MR. CAFARO: And go to the next page.

18 Q That would be the summary of this computation. Please  
19 explain to the jury --

20 A Sure.

21 Q -- how you did this computation.

22 A I used the same method, basically, that I described  
23 earlier. I checked the information from his current employment,  
24 and established how much he would earn once he starts working  
25 full time, gets that raise. I then assumed that his earnings

1 will continue to increase, on average, year over year, going  
2 forward. And that's really based largely on the same sources of  
3 information that I mentioned earlier, projections of future  
4 growth published by the US Social Security Administration and  
5 the Congressional Budget Office and historical data, as well as  
6 his offer letter.

7 I made three downward adjustments for injury, illness,  
8 caring for his sick child, unemployment, job-related expenses,  
9 and I calculated how much money Mr. Hernandez likely will earn  
10 through his retirement age of 66.5, a \$1,469,487.

11 Q That figure has to be subtracted, correct?

12 A Yes, that would be subtracted.

13 MR. CAFARO: Go to page 14, please.

14 Q Now, tell us about the computation involving the  
15 pension benefits.

16 A There are two pensions, but the computations are  
17 similar in one respect. The annuity benefit, as I mentioned  
18 before, is like a 401(k). So your employers put in X percent of  
19 your earnings, and you get that money -- whatever was put into  
20 that pot, you get when you retire. Pension benefits do not work  
21 that way. For every hour that a union member works, the  
22 employer does need to put money into a big pension pot, but how  
23 much you get, as a union member, from that big pot when you  
24 retire, is actually determined by a formula. So it's not a  
25 little pot for Mr. Hernandez when it comes to the pension.

1 There's a giant pot that is used to pay out pension benefits for  
2 all the union members. How much they get depends on the  
3 formula.

4           You can see up there, it's probably a little small, but  
5 for this particular pension, the local pension, the amount of  
6 money that the plaintiff will get depends on the number of  
7 accumulated future service credits, which depends on, basically,  
8 how many hours he works each year, multiplied by a benefit rate.  
9 So he retires, the union take a look at how many hours he worked  
10 on average each year, determines the number of credits he  
11 accumulates, multiply it by a benefit rate, and that will tell  
12 us how much his pension check will be once he retires.

13           Q     Okay. And this is computed from the number of hours  
14 that he worked or would work the union; is that correct?

15           A     Yes. The number of service credits that you plug into  
16 this equation does depend on the number of hours that the  
17 plaintiff would have worked. In order to calculate the number  
18 of hours that he likely would have worked, I used, as my  
19 starting point, that figure of 1,701 hours, which is the number  
20 of hours he work as a journeyman in 2015.

21                     But I then reduced that to take into account the fact  
22 that going forward, he may have missed work and not worked as  
23 many hours because he took time to care for his child, got the  
24 flu, and then I also made a downward adjust to take into account  
25 the fact that there might not be work available sometimes.

1           Ultimately, to calculate the local pension benefits, I  
2 used a figure of 1,382 hours per year. You will see then, once  
3 that determines the number of credits, and then that gets  
4 multiplied by a benefit rate. And what is particularly  
5 important to note in this particular pension is that the benefit  
6 rate actually has been consistently increasing over time.

7           So, for example, affective January 1, 2017, for any  
8 credit earned after January 1, 2013, the benefit rate was \$4.50.  
9 Affective April 1st, 2021, the benefit rate was \$7 for the  
10 service accrued before and after January 1, 2013. That's  
11 important for my analysis because I did assume that if Mr.  
12 Hernandez had not been injured, if he had stayed in the union  
13 until he retired in 2049, that rate would have continued to  
14 increase. It would not have stayed stuck at where it was in  
15 2016, or even in 2021.

16           MR. CAFARO: Page 15, please.

17           Q     Now, by doing what you just said, you got to the  
18 projected monthly benefit, right?

19           A     Yes.

20           Q     All right. Explain to the ladies and gentlemen of the  
21 jury how you got there, and the significance of it.

22           A     Based on the adjusted number of hours that I determined  
23 Mr. Hernandez would have worked, 1,382 hours per year, I  
24 determined that if he had continued to work through his  
25 retirement at 66.5, he would have received or would have accrued

1 a total of 432 credits. That included the credits that he did  
2 accrue up until the time he was injured, and the credits he  
3 would have accrued until he was retired.

4 I then just applied the formula. I took the number  
5 credits he would have accumulated, multiplied it by the benefit  
6 rate, which, in my professional opinion, would be much higher  
7 than \$7 an hour because it would have continued to increase from  
8 2021 through 2049, at least on average. And I calculated a  
9 monthly benefit, based on that formula, in the amount of \$7,844.

10 Having said that, in this particular pension, there's  
11 actually a cap on the monthly benefit. So I calculated that the  
12 maximum monthly benefit, regardless of what he had actually  
13 accrued, according to the formula, the maximum he could have  
14 collected would be \$4,843. So if Mr. Hernandez had not been  
15 injured in 2016, continued his union employment until he retired  
16 at age 66.5, he would have started to get a monthly pension  
17 benefit through the local of \$4,843 or \$58,116 per year.

18 Because Mr. Hernandez had vested in the pension,  
19 basically, if you complete a certain number of hours and receive  
20 a certain number of credits, five years' worth of credits, you  
21 become what's called vested in the plan, which means even if  
22 you're not able to continue working, once you reach normal  
23 retirement age, you will get the vested pension benefits, so he  
24 will be entitled to pension benefits in the amount of \$6,552 per  
25 year, in this case, once he reaches his normal retirement age.

1           So again, I am going to look at what his pension  
2 benefits would have been if he had continuing working, minus the  
3 pension benefits he is actually entitled to for the union work  
4 he did through April of 2016.

5           Q     So he is going to get that lower pension any way,  
6 right --

7           A     Yes.

8           Q     -- because he is already vested?

9                     So again, if we would put it in terms of X minus Y, how  
10 would you state this?

11          A     X equals \$58,116 per year, what he would have gotten if  
12 he had continued his union employment. Y is \$6,552 per year,  
13 the benefit he will get once he turns age 65. He earned that.  
14 And then Z, of course, is just the lost pension benefits, the  
15 additional pension benefits he would have gotten once he retired  
16 over and above the \$6,552 per year that he will, in fact,  
17 receive.

18                     MR. CAFARO: Go to 16, please.

19          Q     Go ahead.

20          A     There we go. I skipped to next page, here. So, once I  
21 performed that analysis, I did not include any cost-of-living  
22 adjustment. I did not see any indication that these pension  
23 benefits would increase over time. When I compared the pension  
24 benefits that Mr. Hernandez would have received, starting at age  
25 66.5, to what he will receive, starting at age 65, I calculated

1 the loss of these Local 28 pension benefits in the amount of  
2 \$579,549. That reflects the additional money he would have  
3 received in retirement if he had continued his union employment  
4 through age 66.5.

5 Q Fair to say then that \$579,000-number is the -- from  
6 the local pension?

7 A Yes, that is correct.

8 MR. CAFARO: Go to page 17, please.

9 Q Now, this is the national, right, the other pension?

10 A Yes.

11 Q Please, explain.

12 A This really works the same way. I mean, there's a  
13 formula. It's a different formula because, now, we are looking  
14 at the national pension fund instead of the local pension fund,  
15 but once again, you will see that the pension benefits that Mr.  
16 Hernandez would have received, and will receive, are based on a  
17 formula that is based on a benefit rate. And in this case,  
18 specifically, based on the contribution hours, the number of  
19 hours that Mr. Hernandez would have worked.

20 What you see, there, in the table, is a calculation of  
21 the accrued benefits from 20 -- for 2008, when Mr. Hernandez  
22 first joined the union. And then through 20 -- oops -- through  
23 2013, there. And we're simply looking at a calculation of what  
24 pension benefits he had accrued during that time period. If you  
25 look -- and the reason I am looking at that time period is

1 because the formula is based on three different time periods.  
2 This formula is very messy.

3           You start out by looking at the benefits accrued  
4 through December 31, 2013. That's A in the pension formula.  
5 You add to that B, which reflects the number of hours accrued  
6 from January 1, 2014, through April 4th, 2016. And the reason  
7 there's an A and B for the national pension is because they  
8 changed the formula. So now, the formula is a function of the  
9 number of hours, the contribution rate, and what is called a  
10 variable benefit accrual rate, which is basically another  
11 percentage that depends really on how well the pension fund is  
12 performing.

13           So what the pension fund will do is they will look, and  
14 if the assets are growing, and they're doing well, and  
15 generating a good return, and the pot is getting bigger faster,  
16 then the variable benefit accrual rate will be higher. If the  
17 pension fund isn't being managed quite as well or maybe the  
18 economy is just not doing as well, and the pot's not growing as  
19 quickly, then the variable benefit accrual rate will be lower.  
20 So it is kind of a way for the pension to adjust, if you will,  
21 the pension benefits, depending on the performance of the  
22 pension fund.

23           So I performed those calculations for each year in  
24 order to determine the benefits that Mr. Hernandez, in fact,  
25 accrued through April of 2016.

1 I'm sorry. I should have asked you to advance the  
2 slide.

3 Q Yes. My bad.

4 A If you go to the next slide, you will see reference to  
5 the B up there. That's where you see the variable benefit  
6 accrual rate, depending on the market value of the investment  
7 return of the pension.

8 If you go to the next page -- yup. If we go to the  
9 next one, page 19 -- I'm sorry, 20. 19 and 20.

10 Now, you will see I am calculating the benefits that he  
11 would have continued to accrue, if he continued working from  
12 April of 2016, until he retired at the age of 66.5.

13 MR. CAFARO: Go to the next page.

14 Q Okay. Now, we are on his vested benefit from the  
15 national, right?

16 A This is kind of a meat and potatoes. When we go  
17 through all of those other calculations for the different time  
18 periods, the changing formula adopted by pension, we were  
19 allowed -- or I was able to calculate his vested pension  
20 benefit. So, once again, he did have enough years of service,  
21 he had worked enough number of hours, and he will begin to  
22 receive a yearly benefit of \$10,688.25, once he reaches his  
23 normal retirement age, once he reaches age 65.

24 If he had continued working through the pension -- or  
25 through the union until he retired, he would have received an

1 annual amount of \$83,994.76 in pension benefits. I did not  
2 adopt any cost-of-living adjustment. So again, my calculation  
3 is what would he have received if he had continued his  
4 employment, minus what he will receive in the form of these  
5 vested pension benefits. If you go the next page, page 22, you  
6 will see those calculations.

7           So, based on my analysis then, I determined if Mr.  
8 Hernandez had continued working through the union, through his  
9 statistical retirement age, and then started collecting pension  
10 benefits, he would have received an additional \$821,861.

11           Q     So this would be the Z, with respect to the national  
12 pension?

13           A     Yes.

14           MR. CAFARO: Go to the next page, please.

15           Q     Now, the next component of this is health insurance,  
16 correct?

17           A     Yes.

18           Q     I would like to you explain to the jury how you  
19 computed the health insurance loss in connection with this case.

20           A     As a union member, Mr. Hernandez received health  
21 insurance benefits for himself and his family. I was able to  
22 establish the value of those health insurance benefits by  
23 reviewing data published through the Keiser Institute. And,  
24 specifically, based on my review, I learned that the average  
25 premium for family health insurance benefits in the northeast in

1 2025 was \$28,673. So that reflects the value of that benefit,  
2 the value of not having to pay for the family health insurance  
3 benefits because they were being provided to Mr. Hernandez and  
4 his family through the union.

5 Health insurance premiums have increased year over  
6 year, and in my professional opinion, will continue to increase  
7 year over year. I estimated the value of family health  
8 insurance in 2026 at \$30,107. That reflects a 5 percent  
9 increase in the premiums over the past year.

10 Q Can you explain the relationship, historically, between  
11 the rate of increase and health insurance coverage, as opposed  
12 to the rate of increase as to other items in the economy, in  
13 general?

14 A Historically, health insurance premiums, at least on  
15 average, have increased much more rapidly than say, for example,  
16 the general consumer price index.

17 Q Now, you have -- you are aware that with Vibrant, with  
18 this current employer, health insurance coverage is available to  
19 him?

20 A It is available to him, but there -- number one, he  
21 would have to pay fully. My understanding is he would have to  
22 pay the entire cost of coverage for his wife and child. And, in  
23 addition to that, he would have to pay for much of his own  
24 premiums. So unlike the family health insurance he was  
25 receiving through the union, which was fully paid for by the

1 union, he would, as I said, have to pay -- my understanding is  
2 he would have to pay out of pocket for health insurance benefits  
3 for his wife and spouse, and that would make up a considerable  
4 portion of his actual earnings through Vibrant.

5 Q What was the basis of that understanding?

6 A The offer letter that I reviewed from his employer --  
7 his current employer.

8 Q All right. There was a limit in that as to how much of  
9 his pay could be deducted for his own health insurance,  
10 accurate?

11 A Yes, that is correct.

12 Q Okay. Was there, in your review of those documents,  
13 any limit on what could be deducted for the health insurance of  
14 his dependants?

15 A No. My understanding, based on my review of that  
16 letter, is that he would need to pay the full premium. I did  
17 not see any indication that his current employer would  
18 contribute anything towards the premiums for health insurance  
19 for Mr. Hernandez's wife and child.

20 Q All right. So was it possible to compute the cost of  
21 what health insurance would have been through his current  
22 employer, Vibrant?

23 A No, that was not a calculation that I could perform.  
24 There simply wasn't enough information available. I would need  
25 to know, for example, specifically, how much he would need to

1 pay out of the marketplace if he went out to get coverage right  
2 now for his wife and for his child. That was not information I  
3 had available to me.

4 In addition to that, it was not clear to me that the  
5 coverage that he might receive through Vibrant, albeit for a  
6 substantial payment by him, would be comparable to the health  
7 insurance benefits that he was receiving through the union. So  
8 for that reason, my analysis does not included any sort of  
9 deduction or offset for any employer contributions towards the  
10 cost of his health insurance that he may receive through  
11 Vibrant.

12 Q From the Vibrant documents that you reviewed, was  
13 there, if you know, any provision for employer contribution to  
14 the health issuance at all?

15 A No, not specifically. I did not see any specific  
16 indication that the employer, for example, would contribute  
17 X-percent of the premium or would pay X-number of dollars  
18 towards the health insurance.

19 Q Okay. So that is unknown, whether it would exist or  
20 not; is that fair?

21 A Yes. At least to my knowledge, yes.

22 MR. CAFARO: Can we go to the next page, please.

23 Q Okay. And this is a computation of what you just told  
24 us, correct?

25 A Yes. This is a calculation of the value of that

1 benefit if Mr. Hernandez had continued his union employment,  
2 continued to receive family health insurance coverage through  
3 the union for himself and his family, from today's date, until  
4 he retired in 2049, taking into account yearly increases and  
5 health insurance premiums, I calculated the value of that  
6 benefit at \$1,274,531.

7 MR. CAFARO: Page 25, please.

8 Q Now, explain the significance of the cost of lifetime  
9 care. And before we go to that, the cost of lifetime care was  
10 -- came from one item in Dr. Sands' testimony, correct?

11 A Yes.

12 Q And that was the \$75,000 for the future surgery?

13 A Yes.

14 Q All right. Please explain how, from his testimony on  
15 the \$75,000 in future surgery, to be done at some point, 10 to  
16 15 years from now, you arrived at this calculation.

17 A My job, in this case, is relatively simple. I am not a  
18 medical doctor, so the only thing I needed to do was take into  
19 account the effects of inflation. The fact that if it costs  
20 \$75,000 to get this surgery in 2025, it will cost more than  
21 \$75,000 to get that surgery 10 to 15 years from now. Based on  
22 my research, I was able to establish that the cost of hospital  
23 services, which would include surgery, have increased in recent  
24 years at 5.75 percent on a yearly basis.

25 So I started by taking the \$75,000 cost in 2025,

1 increased it by 5.75 percent -- and actually, if you go to the  
2 next page, you will see this -- and I determined that that same  
3 surgery this year, in 2026, it would be \$79,313.

4           According to Dr. Sands, though, Mr. Hernandez will need  
5 this surgery in 10 to 15 years, so I assumed that Mr. Hernandez  
6 will receive this surgery in 2038, 12 and a half years from now,  
7 taking into account continued inflation, specifically in the  
8 amount of 5.5 percent, on average, each year, I calculated the  
9 cost of that surgery in 2038 at \$150,790.

10           And I was able to determine these yearly increases by  
11 looking back, historically, reviewing consumer price index data  
12 published by the US Department of Labor, and then also taking  
13 into account projections of future inflation, current market  
14 conditions, and factors that will likely have an impact on  
15 medical costs going forward.

16           MR. CAFARO: 27, please.

17           Q       Explain to the ladies and gentlemen of the jury what's  
18 meant by putting a dollar value on household services.

19           A       The last part of my analysis involves my analysis of  
20 the monetary value of the impact that Mr. Hernandez's injuries  
21 have had on his ability to perform household services.

22           In order to calculate the monetary value, I used what  
23 is the generally accepted method among economists. And this is  
24 the method that is not only used by economist when they evaluate  
25 economic damages, but it is the same method that is used by the

1 911 Victim Compensation Fund, the Bureau of Economic and --

2 MR. LANGHOLZ: Objection, Your Honor. Again,  
3 beyond the scope of the question. Lack of foundation.  
4 Irrelevant as to what else it's used for. We just need her  
5 testimony as to what she said.

6 MR. CAFARO: And --

7 MR. LANGHOLZ: What else -- what else the analysis  
8 is used for has no bearing on this case.

9 MR. CAFARO: It shows the legitimacy --

10 THE COURT: What was the question?

11 MR. CAFARO: The question was --

12 THE COURT: How did she arrive at the -- at her  
13 analysis? Right.

14 MR. CAFARO: The dollar value was placed on  
15 household services, and she is --

16 THE COURT: Was all this information disclosed,  
17 Counsel, on how she arrived at her analysis? The substance  
18 of --

19 MR. CAFARO: I've got to see if it's in her  
20 3101(d).

21 THE COURT: Yeah, we are going to take a break.

22 We will resume after lunch, 2:00 p.m., and we'll  
23 deal with it.

24 MR. CAFARO: Okay.

25 COURT OFFICER: All rise, jurors exiting.

1 (Whereupon, the sworn jurors exit the courtroom.)

2 THE COURT: You may be seated.

3 What are we doing, Counsel?

4 MR. CAFARO: About what?

5 THE COURT: I need her to step down.

6 MR. CAFARO: Oh, okay.

7 THE COURT: You may step down because we can't  
8 discuss your testimony with you on the witness stand.

9 THE WITNESS: May I leave the courtroom, Your  
10 Honor?

11 THE COURT: Yes, you may. You may wait outside.  
12 Thank you.

13 (Whereupon, the witness was excused from the  
14 stand.)

15 THE COURT: Okay. So previously -- let's talk  
16 about the Segal report, right? The Segal report, when you  
17 asked her, was it a peer reviewed, she said no. She can't  
18 rely on it if he --

19 MR. CAFARO: I got it.

20 THE COURT: You got it. Okay. Good, because  
21 sometimes, it upsets me when I am the only one understanding  
22 what's going on here, and I know you are seasoned attorney,  
23 and I just don't understand why --

24 MR. CAFARO: Point taken.

25 THE COURT: Okay. Now, as to the 911 Compensation

1 Fund analysis that she relied on, I need to know if you  
2 disclosed this to defense counsel. I don't know all the  
3 objections he made. He just doesn't want it to go into  
4 evidence, but the real objection should be about disclosure.

5 MR. CAFARO: You are asking, was the household  
6 expense claim disclosed in her report?

7 THE COURT: No.

8 MR. CAFARO: You are asking the particular sources  
9 that she mentioned, were they disclosed?

10 THE COURT: Correct.

11 MR. CAFARO: Honestly, I have to review the 3101(d)  
12 to address it, so I got your ruling. If it's not in the  
13 3101(d), I can't ask about it. If it is, I can.

14 THE COURT: Got it.

15 MR. LANGHOLZ: If I can just say one more thing.  
16 What she is doing is bootstrapping, so she's trying to --  
17 instead of just saying what analysis she made, she's talking  
18 about how that same analysis is used in other instances. In  
19 this case, 911 or whatever else she said.

20 THE COURT: I know, Counsel.

21 MR. LANGHOLZ: It's not relevant here. It's  
22 completely not relevant.

23 THE COURT: If she disclosed it, then we will  
24 discuss the relevancy, but I think we should first discuss  
25 the issue of disclosure because I don't have to go into the

1 issue of relevancy if it was not disclosed.

2 I quickly went through the 3101 that I found on  
3 NYSCEF. I didn't see it.

4 MR. CAFARO: And it may not be, but we shouldn't  
5 spend time addressing more of Mr. Langholz's objections than  
6 we have to.

7 THE COURT: Right. The less, the better for me  
8 because my brain is fried.

9 Really, Counsel? You're doing that in my  
10 courtroom? You're putting a middle finger up at counsel in  
11 my courtroom?

12 MR. LANGHOLZ: I apologize, Counsel.

13 He is smiling and winking at me.

14 THE COURT: 2:00 p.m., and I will think about what  
15 to do after lunch with you.

16 (Whereupon, a lunch recess was taken.)

17 \* \* A F T E R N O O N S E S S I O N \* \* \*

18 COURT OFFICER: All rise. Come to order.

19 THE COURT: Good afternoon, everyone. You may be  
20 seated.

21 Okay. Just for the record, Counsel, throughout the  
22 trial, you have been speaking -- Mr. Langholz, yes, you've  
23 spoken out of turn, you've spoken above me. I did offer to  
24 lower my voice, as long as you did not speak over me. It's  
25 continued throughout the trial, and today, you took out your

1 middle finger at plaintiff's counsel. I don't even know  
2 what plaintiff's counsel said, but I don't allow that in my  
3 courtroom. And if it happens again, you have been warned.

4 MR. LANGHOLZ: Thank you, Your Honor. I apologize.

5 THE COURT: Anything else we need to discuss on the  
6 record before bringing the jurors down?

7 MR. CAFARO: No, Your Honor. Just give me one  
8 second.

9 I told the witness to resume the stand.

10 THE COURT: Oh, yes, you may.

11 THE WITNESS: Thank you, Your Honor.

12 THE COURT: You can bring the jurors down.

13 You were supposed to get me your disclosure  
14 information. Was I correct?

15 MR. CAFARO: You were correct that it did not  
16 include the 911 Fund, but it included plenty of other stuff.

17 She has her report. The report was exchanged, and  
18 I am going to try to get through this very quickly because I  
19 want to make sure she finishes today.

20 THE COURT: Okay. The objection is sustained.

21 MR. CAFARO: Yes, I understand.

22 THE COURT: So objection sustained. The  
23 nonresponsive portion of her testimony was stricken from the  
24 record.

25 MR. CAFARO: Sure.

1 COURT OFFICER: All rise. Jurors entering.

2 (Whereupon, the sworn jurors enter the courtroom  
3 and take their respective seat.)

4 THE COURT: Everyone may be seated. The objection  
5 earlier is sustained. The nonresponsive portion of your  
6 testimony is stricken from the record.

7 You may proceed, Counsel.

8 MR. CAFARO: Thank you, Your Honor.

9 Q You were telling us about assigning a dollar value to  
10 household services, Ms. Kucsma.

11 Would you indicate if this is an accepted practice  
12 amongst forensic economist. And if so, what sources do you rely  
13 on for making such a projection or calculation?

14 A Yes, it is an accepted method. And I relied upon some  
15 information that I learned, specifically about the family, the  
16 plaintiff and his family, and then I also relied upon data  
17 published by the US Department of Labor, data published in a  
18 document called the Dollar Value of a Day, which is a document  
19 that contains data published by the US Department of Labor, as  
20 well as data published through the American Time Use Survey,  
21 also a US Government survey. I also reviewed upon some  
22 information and data provided in various Genworth surveys,  
23 yearly surveys conducted by Genworth.

24 Q Are those evaluations accepted among practicing  
25 forensic economists?

1           A     Yes, they are.

2           Q     All right.  Would you basically give a brief  
3 explanation of how you go about assessing the value to household  
4 services.

5           A     Sure.  To calculate the monetary value of household  
6 services that family members typically provide free of charge,  
7 the generally accepted method of economists is relatively  
8 simple.

9                     I started by determining, on average, the number hours  
10 Mr. Hernandez would have spent performing household services,  
11 helping with the laundry, the groceries, picking things up from  
12 Costco, and so on.  I -- then once I established, on average,  
13 the number of hours he would spend each week performing these  
14 types of services, in order to objectively value them, I simply  
15 considered what one would pay a stranger in the marketplace to  
16 perform those type of services, what would you pay a  
17 housekeeper, a handyman, and so on.

18                     And then once I determined that hourly rate, and I  
19 looked very specifically at what you would pay someone in New  
20 York to perform those types of services, then my analysis was  
21 relatively simple.  How much do you pay someone per hour, times  
22 the number of hours, and that would give me, obviously, the  
23 monetary value of those services.

24                     I also took into account the effects of inflation, took  
25 into account the fact that the length that you would pay to hire

1 people to perform these services have increased year over year  
2 in the past, then, in my opinion, will continue to increase year  
3 over year in the future. The only other thing I should mention  
4 is I also made some downward adjustments to the number of hours  
5 that I used.

6 For one thing, I reduced the number of hours that I  
7 valued by 15 percent, specifically, to take into the account the  
8 fact that Mr. Hernandez and his family live in an apartment, so  
9 there are certain thing that, as an apartment dweller, he  
10 probably wouldn't do any way, as opposed to someone that lives  
11 in a home.

12 And I also made two further downward adjustments to the  
13 number of hours, at Mr. Hernandez's age 65 and 75, to take into  
14 account the fact that, regardless of this incident, as he got  
15 older, he likely would have cut back and not done as many things  
16 around the house as he had done, or the apartment, in his  
17 younger years, and these adjustments are based, again, on US  
18 Government data.

19 Q Now, I'd like to go back to your summary, and this  
20 assumes, right, certain values for household services, correct?

21 A Yes. The total value there does included some  
22 calculation of the value of the household services.

23 Q As an economist, you don't make any determination as to  
24 the level of household service, do you?

25 A Correct. I am not qualified to offer an opinion about

1 what Mr. Hernandez may or may not be able to do around the  
2 household.

3 Q So, these percentages of household services lost, that  
4 is, basically, a decision that's left to the jury; is that  
5 correct?

6 A Yes.

7 Q All right. Now, you have already explained to us these  
8 values. Would you tell us, for the record, what the totals of  
9 these losses would be, assuming a 20 percent loss of use of  
10 service.

11 A Yes. Assuming a 20 percent reduced ability to perform  
12 household services, I calculated the total value of economic  
13 loss at \$6,148,601.

14 Q At 30 percent?

15 A \$6,307,522.

16 Q And at 40 percent?

17 A \$6,466,443.

18 Q Now, in the X minus Y equals Z scenario or analogy that  
19 we used before, would you tell us what letter those numbers  
20 correspond to, out of X, Y, and Z.

21 A Yes, the figures I just read into the record would be  
22 Z.

23 Q Okay. Now, you had previously done an economic  
24 analysis in this case that made different assumptions; is that  
25 correct?

1 A Yes.

2 Q What different assumption did the previous analysis  
3 make? There were a couple difference, if you remember what they  
4 are.

5 A Sure. The two main differences were my previous  
6 reports, number one, included an assumption that the plaintiff  
7 may resume employment, and specifically resume employment as a  
8 teacher. So my original analysis was based on the assumption  
9 that the plaintiff would have gone back to school, completed a  
10 bachelor's degree, and then become a teacher. Obviously, my  
11 testimony today takes into account the employment that he, in  
12 fact, has, so that was one difference.

13 And then my previous analysis also had additional costs  
14 of lifetime care that have been excluded from the analysis I  
15 presented here today.

16 Q And by cost of lifetime care, that means future medical  
17 expenses?

18 A Yes.

19 Q And why did you exclude those from this analysis?

20 A I was asked to simply included the surgery, provided  
21 for by for Dr. Sands, and not to present the other costs of  
22 lifetime care to the jury, so I removed them from my analysis  
23 and my presentation here today.

24 Q Okay. Now, going back to X minus Y equals Z, in the  
25 first analysis you did, was the X the same or was it different?

1           A       X always remains the same because X is what he -- Mr.  
2 Hernandez would have continued to do, had he not been injured.  
3 X was always based on my assumption that he would have continued  
4 to do the same type of work he had previously been doing.

5           Q       Was Y any different in your previous analysis?  If so,  
6 explain how.

7           A       Yes.  Y changed, because in my previous analysis, my  
8 calculation of Y was based on the assumption, as I said, that  
9 Mr. Hernandez would have gone back to school, gotten a  
10 bachelor's degree, then began working, at some point, as a  
11 teacher.  Now, Y, of course, is based simply on the job that we  
12 know he has, and the compensation we know he is receiving, and  
13 according to his offer letter, will receive going forward.

14          Q       Have you reviewed the report of Dr. Kelly in this case?

15          A       Yes, I have.

16          Q       Do you agree with the conclusions in that report?

17          A       No, I do not.

18          Q       All right.  Are there any assumptions in that report  
19 that you feel are not valid, as a matter of sound economic  
20 principles?

21          A       Yes, there are several.  For one thing, Dr. Kelly does  
22 use -- she uses a different growth rate than I do, a different  
23 yearly increase.  The yearly increase she adopts is based solely  
24 on historical data, and does not take into account any current  
25 economic conditions or anticipated changes in economic

1 conditions going forward.

2           She also uses a different retirement age than I do.  
3 She uses one that is slightly lower. I believe, based on the  
4 Segal report that we discussed earlier, I think probably the two  
5 biggest differences are, number one, I reviewed several reports  
6 prepared by Dr. Kelly, and she originally used a methodology  
7 that was somewhat similar to what I was doing. Meaning she  
8 originally considered Mr. Hernandez's W-2 earnings, and she  
9 looked specifically at the years 2013 through 2025. He was  
10 still an apprentice in 2013, but none the less, she did examine  
11 the W-2s in her first report.

12           In her subsequent report, she abandoned that. And for  
13 some reason, shifted her methodology, and calculated his  
14 earnings, based on an average number of hours, times a wage  
15 rate, but she starts off with a figure that we know is less than  
16 what he actually earned, according to his W-2 wage and tax  
17 statements. I just didn't understand that.

18           And I suppose the only other comment I had is it wasn't  
19 really clear to me -- I disagreed with her bottom-line figures  
20 about things like the loss of pension benefits, but she didn't  
21 present in her report, specifically, how she got to those  
22 numbers. So she didn't present, for example, what Mr.  
23 Hernandez's pension benefits would have been if he hadn't been  
24 injured.

25           So it was really impossible, quite frankly, for me to

1 actually determine what she did, but I do know that her  
2 bottom-line figures are different than mine, and I have to  
3 assume that the assumptions and some of the calculations she  
4 performed are, obviously, inconsistent with my opinions.

5 Q Did you do all of these calculations yourself, that you  
6 told the jury about?

7 A I did. I'm a numbers nerd, so yes, I did.

8 Q So if I were to give a calculator with functions on it,  
9 and an Excel spreadsheet, you would be able to duplicate all of  
10 these calculations right now?

11 A It would be faster and more efficient in an Excel  
12 spreadsheet, but I could do it with a calculator, if need be, as  
13 well.

14 Q All right. But you could do it with an Excel  
15 spreadsheet without a problem?

16 A I could, yes.

17 Q Okay. Did you rely, in the projections that you've  
18 given today, in any way, on any opinions or documents from  
19 Daniel Wolfstein?

20 A No, I did not.

21 Q Did you rely, in the calculations or projections you've  
22 given us today, in any way, on anything from a Dr. Barry Root?

23 A No, I did not. Only Dr. Sands.

24 Q Okay. All the opinions you've given us today have been  
25 to a reasonable degree of economic certainty?

1 A Yes, they have.

2 Q By the way, we had talked about some maybe other  
3 documents, might or might not have been peer reviewed, have you  
4 authored any peer-reviewed publications?

5 A Yes, I have several peer-reviewed publications.

6 I have one article that was published in the Journal of  
7 Forensic Economics. That's an article that talks specifically  
8 about how economist devaluate economic damages in personal  
9 injuries and wrongful death matters.

10 I have several other publications in peer-reviewed  
11 documents that specifically talk about how economists calculate  
12 the monetary value of various services that family member  
13 provide to one another, free of charge.

14 I actually do have one article published in the  
15 peer-reviewed publication, that specifically talks about how  
16 economists calculate the value of household services. And those  
17 are some of my peer-reviewed publications.

18 Q Okay. Any awards that you've gotten?

19 A I have been very privileged throughout both of my  
20 careers. When I was professor years ago, I was named professor  
21 of the year several years in the row. I had received various  
22 teaching accommodations based on evaluations of my performance  
23 by my students and colleagues.

24 I also have been named the number one economic expert  
25 in New York for a -- over 10 years. I don't remember the number

1 of years.

2 And I've also been privileged to receive a few awards  
3 in New Jersey for being one of the top 50 business women in New  
4 Jersey. And those are some of the awards I received.

5 Q Have you been compensated for your time here today?

6 A My firm has been, yes.

7 Q Okay. In what amount?

8 A I believe we received payment of approximately \$6,000,  
9 and that was for time that I spent preparing for my appearance  
10 today, my time here today, as well as preparation of the  
11 demonstrative aids.

12 Q All right.

13 Have you testified in any cases before where I have  
14 represented the plaintiff?

15 A I believe so. One that I recall. It's possible there  
16 was one other, but yes.

17 Q I think there were two, I'm not sure, but it's at least  
18 one.

19 MR. LANGHOLZ: Objection.

20 THE COURT: Basis?

21 Did everybody get my trial part rules?

22 I just want to know -- because my law clerk said  
23 she gave the trial part rules to everyone.

24 And if you didn't read them, I think you should go  
25 over them again.

1 Yes, Counsel?

2 MR. LANGHOLZ: Counsel is testifying. That's my  
3 objection.

4 MR. CAFARO: I'll withdraw the question.

5 THE COURT: Okay. Thank you.

6 Q Okay.

7 How many times have you testified in court before?

8 A To date, I've testified over federal and state courts  
9 around the country over 500 times.

10 Q Okay.

11 Has any court ever refused to accept you as an expert  
12 in the fields of economics?

13 A Not to my knowledge, no.

14 MR. CAFARO: I don't have any further questions,  
15 Your Honor.

16 THE WITNESS: Thank you.

17 THE COURT: Thank you, Counsel.

18 You may proceed with cross examination.

19 MR. DOLEJSI: Thank you, Your Honor.

20 CROSS-EXAMINATION

21 BY MR. DOLEJSI:

22 Q Good afternoon.

23 A Good afternoon.

24 Q So, you have worked at Sobel Tinari since 2018, right?

25 A 2008.

1 Q Excuse me.

2 A So, it's been 18 years now, but yeah, since January  
3 '08.

4 Q So, it's 18 years that you've worked there, correct?

5 A Yes.

6 Q And the majority of your work at Sobel Tinari is acting  
7 as an expert witness, right?

8 A Most of the work I do, yes, involves working with  
9 attorneys.

10 Q And in any lawsuit, just like this one, there's at  
11 least one plaintiff and at least one defendant, right?

12 A Yes, there typically is.

13 Q Yeah. And in the expert witness work that you have  
14 performed, is the majority of that work been representing  
15 plaintiffs?

16 A Yeah. I don't represent anybody but about 30 percent  
17 of the cases I review each year are at the request of defense  
18 counsel, which means about 70 percent of the cases that I review  
19 are at the request of plaintiff's counsels.

20 Q Okay, thank you.

21 So, I want to talk just generally about the make up and  
22 your opinion to what you've been testifying to this morning.

23 So, one of the things you tried -- well, you did do was  
24 estimate the amount of money that Mr. Hernandez may have made  
25 had he stayed in sheet metal worker union until retirement,

1 right?

2 A Yes.

3 Q And another thing you tried to do was estimate the  
4 amount of money Mr. Hernandez may make in the future now that he  
5 is no longer a sheet worker, correct?

6 A Yes.

7 Q And you agree that both of those numbers, at least at  
8 this point, are hypothetical, right?

9 A Going forward -- the future hasn't happened yet, so  
10 they are projections.

11 Q Yeah. That's exactly my point. They are projections.  
12 We don't know precisely what will happen in the future, but in  
13 your report, you were attempting to predict that, right?

14 A I have provided projections in my report.

15 Q And In order to make those projections, you relied on a  
16 number of assumptions, right?

17 A Yes, I did.

18 Q Okay. And do you agree that had you relied on  
19 different assumptions, that may have changed your ultimate  
20 opinion in this case, which is the amount of economic damages?

21 A Certainly is possible, yes. That if I had made  
22 different assumptions, my calculations would be different, of  
23 course.

24 Q Certainly.

25 So, if you change one of those assumptions that you

1 made for this report, that could either increase or decrease the  
2 amount of economic losses that you were opining upon, right?

3 A Certainly is possible, yes.

4 Q Okay. So, I want to look at some of those assumption  
5 that your opinion relies upon. And as I understand it, one of  
6 those assumptions is that your opinion states that, had this  
7 incident never occurred, Mr. Hernandez would have worked as a  
8 sheet metal worker until he was 66 and a half years old, right?

9 A Yes.

10 Q Okay. You agree that we obviously do not know when Mr.  
11 Hernandez would have retired as a sheet metal worker because, of  
12 course, that hasn't happened -- the timeframes that we are  
13 talking about have not occurred yet, right?

14 A Yes, and he's obviously no longer working as a sheet  
15 metal worker. Yes.

16 Q Yes.

17 And that assumed retirement age of 66 and a half years  
18 old, in your opinion -- I understand that you relied upon the  
19 publication named quote, Markov model of years to final  
20 separation from labor force 2012 to 2017, unquote.

21 Is that correct?

22 A That is -- yes, the source that I relied upon  
23 specifically for the retirement age.

24 Q So, that's where that 66-and-a-half-years-old number  
25 comes from, right?

1 A That is correct.

2 Q And if I read that publication correctly, it sets out  
3 the median and average retirement ages based upon data from all  
4 jobs and professions.

5 Is that your understanding as well?

6 A Yes. It is based on gender, age, level of education,  
7 and labor-force activity, but not occupation.

8 Q Sure.

9 So that 66 and half years old retirement age, that  
10 would include bank tellers, receptionists, taxi drivers,  
11 journalists, business owners, a whole host of other jobs and  
12 professions, right?

13 A It would include other jobs, but not any jobs that  
14 require education beyond some college but no degree.

15 Q Any job that you can get without four-year-college  
16 degree would include those jobs, right?

17 A And without a two-year degree. So, again, I would look  
18 at people who had some college, but did not receive any college  
19 degree -- no associate's degree, no bachelor's degree.

20 Q Yeah, but nonetheless, it's a lot of different jobs,  
21 right? We can agree on that?

22 A Yeah. It's not occupation specific. That is correct.

23 Q The data lumps all those jobs together and finds out  
24 what the median and retirement age of all those different jobs  
25 are, right?

1 A Among other things, yes. That is correct.

2 Q And do you agree that there are certain professions  
3 where, on average, workers retire at a younger age than the  
4 general population?

5 A That may be true, yes.

6 Q Yeah. We can agree on that, right?

7 For instance, someone who's working at a very physical  
8 job at an offshore oil rig, they may, on average, retire earlier  
9 than someone who is a banker, right, on average?

10 That's something we may agree on?

11 A They may. The only reason I'm hesitating is that  
12 there's no really reasonably reliable analysis like the Markov  
13 model analysis you referenced, according to those specific  
14 occupations.

15 Q Yeah, but common sense can guide us a little bit to  
16 think that someone working a very physical job may retire  
17 earlier than someone who is not, right?

18 A My opinions, sir, do have to be reasonable degree of  
19 economic certainty, which means I do need to make sure my  
20 opinions are based on reasonably reliable data and scientific  
21 methods.

22 So, I didn't disagree with you, but from an economic  
23 perspective, I cannot say to a reasonable degree of economic  
24 certainty what the retirement age be -- may be for those  
25 specific occupations.

1 Q And then you're unwilling to testify as to what the  
2 common sense response may be and that's fine if it is. I'm  
3 trying to clarify --

4 A Well, no, I didn't disagree with you before. I said  
5 that's probably. But again, I can't offer an expert opinion to  
6 what that age may be.

7 Q Okay. Fair enough.

8 Do you agree that heavy physical labor construction  
9 work is one of those jobs that typically have a younger  
10 retirement age than jobs that do not have a heavy physical  
11 labor?

12 A I don't necessarily agree with that. One of the  
13 reasons I don't agree with that is it is not uncommon  
14 particularly for members of a union, as they gain seniority in  
15 the union, they frequently do less of the physical labor and  
16 more of, say, a shop steward or a foreman role, which is more of  
17 a supervisory role.

18 Q Okay. And you've testified as an expert in many other  
19 cases, involving the plaintiff who is a union worker, correct?

20 A Yes, I have.

21 Q And do you agree that unions sometimes track when their  
22 members retire?

23 A They record that information, yes, but I've never seen  
24 a reasonably reliability statistical analysis of that data over  
25 time. But yes, of course they track it.

1 Q I am not asking about statistical analysis. But they  
2 track when their union members retire, right? They know that  
3 information?

4 A Obviously, so they know when to start paying out  
5 pension benefits, of course.

6 Q And unions also keep track of the numbers of credits  
7 it's members are earning in how old they are when they are  
8 earning those credits, right?

9 A Yes, they do.

10 Q Yeah. Because that's information the union needs to  
11 know in order to calculate what its future responsibility is to  
12 pay pensions once those people retire, right?

13 A Well, yes. We discussed that before in reference to  
14 the form 5500. That is correct, correct.

15 Q That's information they need to know in order to  
16 balance their own books, correct?

17 A They need to know -- I don't know if I can comment on  
18 specifically what they do with the information, but they  
19 certainly do need to know, among other things, when a person  
20 will start collecting a pension. And that will be based on  
21 their retirement.

22 Q Sure. And that information about the ages of union  
23 members as they are collecting credits and when they retire,  
24 that information is publicly available, right? We can go look  
25 at it?

1           A     No, it's not.  It's -- it is frequently provided in the  
2 Segal report, but not all Segal reports are publically  
3 available.  A Segal report, in general, is a report like mine.  
4 It's prepared by a private company based on some proprietary  
5 information.  And not every Segal report is publically  
6 available.

7           Q     Sure --

8           A     Some of them are filed with form 5500s.  Some pension  
9 forms may perform 5500s available online.

10                  So, there are some instances in which you can find a  
11 Segal report online, but it is not what would be considered a  
12 publicly available document and the underlying data is not  
13 publicly available.

14           Q     All right.  And there may have been syntax or grammar  
15 issues on my part, the way I asked the question.

16                  We can agree that there are Segal reports relating to  
17 the sheet metal workers union that you can access online --  
18 maybe not all of them, but some of them are available online.

19                  We can agree on that, can we?

20           A     That's probably true.  The Segal reports I reviewed in  
21 connection with this matter were actually provided to me by  
22 counsel.  But it's possible that there are some of these reports  
23 that are available online.

24           Q     So, you don't know if they're available online or not?

25           A     These specifically, no, not as I sit here today.

1 Q And you didn't go out and try to find those reports as  
2 a part of your opinion?

3 A No, I did not.

4 Q Okay. You instead relied upon that Markov model  
5 publication for a retirement age, correct?

6 A That is the specific data, yes, I relied upon for the  
7 retirement.

8 Q Yeah. And as a general proposition, do you think it's  
9 more likely that a sheet metal worker would retire at the time  
10 when an average sheet metal worker retires, or when the average  
11 person working any profession would retire?

12 A As I mentioned earlier, the reason I don't rely upon  
13 the information in the Segal reports.

14 MR. DOLEJSI: Objection, non-responsive.

15 MR. CAFARO: I beg to differ.

16 THE COURT: What was the question?

17 MR. DOLEJSI: I asked if she thought it's more  
18 likely that a sheet metal worker would retire at the time of  
19 the average sheet metal worker, or when the average person  
20 working any profession retires.

21 THE COURT: What was the response?

22 (Whereupon, the requested testimony was read back  
23 by the Court Reporter.)

24 THE COURT: Sustained.

25 The non-responsive portion of the testimony is

1 stricken from record.

2 You can ask the question again.

3 MR. DOLEJSI: Certainty.

4 Q Do you think it's more likely that a sheet metal worker  
5 would retire at the time when the average sheet metal worker  
6 retires, or when the average person working any profession would  
7 retire?

8 A I mean, the question is predicated on, quote, the  
9 average retirement age of a sheet metal worker, unquote, which,  
10 of course, comes from the Segal report. I really -- I don't  
11 know how -- I really don't know how to answer that question.

12 I can explain my answer, but I don't think I can really  
13 answer it answer yes or no.

14 Q So, you don't know?

15 A I'd be happy to explain to you why I can't answer the  
16 question yes or no.

17 I mean I do know because I read the Segal reports. So,  
18 I think I know what you're getting at but --

19 Q I am not really getting at anything. My question  
20 didn't reference the Segal report. I am just asking a general  
21 proposition, do you think a sheet metal worker would retire --  
22 or it's more likely a sheet metal worker would retire when an  
23 average sheet metal worker retires, or when the average person  
24 working any profession would retire?

25 A I don't know what the -- I don't know of a reasonably

1 reliable basis for the average retirement age of a sheet metal  
2 worker. So -- I just don't know.

3 From an economic perspective, some sheet metal workers  
4 probably -- well, not probably. Some sheet metal workers do  
5 work beyond the average retirement age indicated the Segal  
6 report. And we know that - -

7 MR. DOLEJSI: Objection, non-responsive.

8 THE COURT: Look. She said she can't answer the  
9 question, so let's move on.

10 MR. DOLEJSI: I am trying to move on.

11 THE COURT: Sustained. Stricken from the record.

12 Q All right, so you're -- one of the basis of your  
13 opinion is the 66 and half year old retirement age, right?

14 A Yes.

15 Q Okay. And I'm not asking you to agree with the  
16 retirement age at 55 years old, okay?

17 But I do want to look at how that might impact your  
18 opinions if Mr. Hernandez were to retire at the age of 55,  
19 instead of 66 and a half, okay?

20 There's no question pending there but --

21 MR. CAFARO: Objection. No basis for the  
22 hypothetical 55.

23 THE COURT: I'll allow it.

24 MR. DOLEJSI: I'm happy to give you my response,  
25 but it sounds like you allowed it but --

1 THE COURT: Yeah, I allowed it.

2 Q Let's assume Mr. Hernandez would retire at the age of  
3 55 instead of 66 and a half.

4 MR. DOLEJSI: Would you please turn to page nine of  
5 the demonstrative which is ID number 82?

6 Q And page nine going into page ten, the way I understand  
7 it, this is your projections of the future wages Mr. Hernandez  
8 would earn as a sheet metal worker; is that right?

9 A Yes.

10 Q Okay. And if we set the retirement age at 55 instead  
11 of 66 and a half, do you know how much that would decrease the  
12 future wages?

13 A I have not performed that calculation, so I don't know  
14 specifically know.

15 Q And I have. It's more than \$2 million. Does that  
16 sounds fairly accurate to you?

17 A I don't know. Because as I said, I haven't performed  
18 that analysis. So, I don't know one way or the other.

19 Q Right. But if it were \$2 million, would that surprise  
20 you or would that be inconsistent with your understanding of  
21 your opinion?

22 A I really don't know. As I said, I didn't conduct my  
23 analysis, I didn't calculate the pension benefits, or the  
24 earnings based on the retirement age of 55. So, I don't know  
25 overall how the bottom line would be affected.

1 Q But you do agree if there was a retirement age of 55  
2 rather than 66 and a half, it would significantly decrease the  
3 amount of expected future wages in your opinion?

4 You do agree if you change the retirement age from 66  
5 and a half years to 55 years, it would significantly reduce the  
6 amount of expected future wages in your opinion?

7 A All other things held constant, if I calculated the  
8 union wages only to age 55, of course, mathematically the lost  
9 earnings from that union employment would be lower.

10 Q Okay.

11 MR. DOLEJSI: Mr. Duran, would you please turn to  
12 page 20 in the demonstrative? Thank you.

13 Q On this page, you are calculating potential monthly  
14 pension benefits to the national pension fund; is that right?

15 A I believe so, yes.

16 Q Okay. And again, similarly, if the retirement age were  
17 reduced to 55 instead of 66 and a half, that would significantly  
18 impact the amount of pension Mr. Hernandez would earn upon  
19 retirement, right?

20 A Well, mathematically, yes, all other things held  
21 constant if I calculated the pension benefits based on a  
22 retirement of age 55. While the pension benefits would begin  
23 earlier, the amount would be lower, yes.

24 Q Right. And if I said the pension benefit per month  
25 would be about \$2,600 a less, is that your consistent with the

1 understanding of your opinion?

2 A I have not performed these calculations, so I don't  
3 know one way or the other.

4 Q But they would -- I understand you're on the stand  
5 right now and you probably don't have a calculator in front of  
6 now, but those calculations would be fairly easy to do, right?

7 It would be just to take off the last 11 and a half  
8 years, and then subtract the last 11 and a half years from  
9 6,108?

10 A We can do that, yes.

11 Q Yeah. And that's per month, correct, the 6,108?

12 A The figures -- yes. That's a projected monthly  
13 benefit, yes.

14 Q So, if that were reduced by \$2,600 per month, that  
15 would be about \$31,000 per year, right?

16 A Mathematically, that sounds correct, yes.

17 Q All right. And you have Mr. Hernandez's collecting  
18 pension for about 12 years in your opinion, right?

19 A In my analysis, yes, he collects pension benefits -- he  
20 would've collected pension benefits from 2049 through his  
21 statistical date of death in 2060.

22 Q So, that's 12 years of \$31,000 less -- talking about  
23 \$370,000 less, right?

24 A Again, mathematically, that sounds about correct, yes.

25 Q And if you would please turn to page 24 of that same

1 demonstrative. And the way I understand this chart, it is your  
2 projection of the chart of future health insurance; is that  
3 accurate?

4 A Yes.

5 Q If the retirement age was 55 rather than 66 and a half,  
6 that would reduce the cost of future health insurance by over  
7 \$700,000; does that sound generally accurate?

8 A I have not performed those calculations based on the  
9 retirement age of 55, so I don't specifically know.

10 Q That would be simple to do. You just take off 11 and a  
11 half years and subtract the last 11 and a half years from that  
12 \$1.274 million number, right?

13 A Yes, we can do that.

14 Q So, you can agree with me though if the retirement age  
15 were changed to 55 instead of 66 and a half, that would  
16 significantly reduce the amount of economic damages in your  
17 opinion, right?

18 A I actually wouldn't agree with that statement  
19 altogether. I'd be happy to tell you why, if you'd like me to.

20 Q Well, just based on these charts and what we went  
21 through, would it sound correct that changing retirement from 66  
22 and half to 55 would reduce it by \$3 million or more?

23 A Well, again, I haven't performed that analysis.

24 There are at least two reasons though why I would not  
25 agree with your statement globally. One is -- well, there's three.

1           Number one, I am not aware of Mr. Hernandez's plan to  
2 retire at age 55. That was not my understanding of what his  
3 retirement plans are.

4           Number two, I believe he would 55 years of age in 2037,  
5 I believe, which is before -- if I am doing the math correctly  
6 in my head, before his daughter would be 26. So, it isn't clear  
7 to me why he would stop working when has comprehensive health  
8 insurance benefits for his daughter before she turns 26.

9           Q     Sure, but as you said, you don't know when Mr.  
10 Hernandez would have retired, right?

11          A     Correct.

12          Q     Yeah, okay. I also want to talk about some of the  
13 assumptions you made about future benefits from the national and  
14 local pension funds, okay?

15          A     Yes.

16          Q     And starting with Local 28, your opinion assumes that  
17 had Mr. Hernandez worked as a sheet metal worker until 66 and a  
18 half years old, he would make \$4,843 in monthly pension benefits  
19 from the Local 28; is that right?

20          A     Yes.

21          Q     Okay. But the Local 28 has had a maximum monthly  
22 benefit of \$2,100 for a number of years, hasn't it?

23          A     Oh, I believe so. Not forever though. Just like some  
24 of the benefit rates were steady for a number of years and then  
25 increased thereafter.

1 Q But that \$2,100 monthly cap on benefits has been in  
2 place since the year 2000, hasn't it?

3 A I don't recall specifically when it was first  
4 instituted.

5 MR. DOLEJSI: Mr. Duran, you will please pull up  
6 Exhibit 52. It's Bates number 2293.

7 Q Ms. Kucsma, I don't know if you can tell from just  
8 looking at this one page where it comes from. I would be happy  
9 to ask Mr. Duran to go to the first page to see it to understand  
10 your bearings of what you're looking at.

11 A I actually can't see at all from here.

12 THE COURT: If I may? If I may?

13 MR. DOLEJSI: Yes.

14 THE COURT: Which exhibit is it.

15 MR. DOLEJSI: Exhibit 52.

16 THE COURT: You have show her the exhibit if you  
17 want her to testify.

18 MR. DOLEJSI: Of course.

19 THE COURT: You have a copy?

20 MR. DOLEJSI: She does up there.

21 MR. CAFARO: Here (handing).

22 MR. DOLEJSI: Thank you, Bill.

23 A Okay. Got it.

24 Q And that's a document you've seen before, isn't it?

25 A Yes. I believe it's the summary plan description.

1 Q Yeah.

2 A Yes it is.

3 Q And that's one of the documents you reviewed in coming  
4 to your opinions in this case, right?

5 A I believe so. If this is the summary plan description  
6 from 2016, I believe so.

7 Q Okay. If you would please turn to page 2293. It's the  
8 Bates in the bottom middle, not the actual page number.

9 A Yes, I see it.

10 Q So, you'll see there's a heading, accrual of future  
11 service credits. And then it says beginning in January 1, 2000.  
12 Do you see that?

13 A Yes, I do.

14 Q And then if you go to the bottom of that same section,  
15 it's in parenthesis, and it states that, as of at least January  
16 1, that \$2,100 monthly cap was in place.

17 A That is correct, yes.

18 Q So, that cap on monthly benefits of \$2,100, that has  
19 been in place for the last 26 years, right?

20 A I believe it is currently in place, yes.

21 Q Okay. And it has been in place for the last 26, as far  
22 as we know, right?

23 A I believe so, yes.

24 Q Okay. But in your opinion, you were assuming that  
25 monthly cap that's been in place for 26 years will more than

1 double in the next 24 years, correct?

2 A Yes. Based on recent inflation rates and current  
3 economic conditions, yes.

4 Q Okay. But those inflation rates and current economic  
5 conditions, although they might be different, they still existed  
6 in some form over the last 26 years, right?

7 A No. Actually for the overwhelming majority of those 26  
8 years, we had very, very low inflation rates. Which is why we  
9 did see a period of time where unions did not have as much  
10 bargaining power as they had had in previous years.

11 When inflation rates are low, the bargaining power  
12 usually shifts to the employers, and the employers are able to  
13 keep things like increases in benefit rates, increase in wage  
14 rates low. What we've seen more recently, as a result of the  
15 recent high rates of inflation, new contracts are being  
16 negotiated and now the bargaining power is shifting to the union  
17 members and they're now able to get more increases and benefits  
18 and wages. So, in my opinion, most of these years represent a  
19 low inflation rate environment.

20 Q Sure. But inflation existed in some form over the last  
21 26 years, right? We can agree on that?

22 A Well, we have inflation in nearly every year in the  
23 history of this country, but the magnitude of the inflation was  
24 very low for most of the last 20 years. And it wasn't until  
25 2021, 2022, that we started once again see double-digit

1 inflation like we had seen in the late seventies and early  
2 eighties.

3 Q Sure. But inflation existed -- and you said economic  
4 conditions. There were economic conditions over the last 26  
5 years, weren't there?

6 A Yes. Not the same economic conditions we have today,  
7 of course, but yes. And one of those economic conditions were  
8 conditions that lead to very low rates of inflation.

9 Q Sure. But 26 years, that's a fairly large sample size.  
10 You can draw some reliable data from that timeframe,  
11 can't you?

12 A I -- for purposes of this discussion, what's most  
13 important is to take into account the fact that this contract  
14 and this summary plan description was negotiated during a low  
15 inflation rate environment.

16 And right now, more recently, inflation rates have been  
17 higher and they are expected to continue to be relatively high  
18 going forward.

19 Q Sure. But that monthly cap of \$2,100, that has not  
20 changed, right?

21 A That's correct. It does appear that's been in place  
22 since 2000. That is correct.

23 Q And it's still in place, right?

24 A As far as I know, yes.

25 Q Okay. And if that \$2,100 monthly cap, that cap that's

1 been in place for the last 26 years -- if that cap does not  
2 change in the next 24 years, you agree that your opinion  
3 overstates Mr. Hernandez's economic loss from the Local 28  
4 pension by more than 200 percent?

5 A If for whatever reason I had used that \$2,100 cap and  
6 not taken into the account the affects of inflation, then all  
7 other things held constant, my calculations would be lower.

8 Q Yeah. If the cap stays in place, you overstate the  
9 loss by more than 200 percent, correct?

10 A Well, I didn't perform that analysis. But as I said,  
11 mathematically, yes. If for whatever reason I used the \$2,100  
12 cap instead of taking into account the affects of inflation,  
13 yes, all other things held constant, my calculations would be  
14 lower.

15 Q Yeah, and I'm not trying to be difficult. You say the  
16 benefit will be \$4,843. That's more than twice as much as  
17 \$2,100, right?

18 A That's correct.

19 Q It's a fairly simple calculation.

20 All right. I want to move to different assumption.

21 So, your opinion also applies to annual growth rate of  
22 3.7 percent to Mr. Hernandez's hypothetical future wages, had he  
23 continued as a sheet metal work, right?

24 A Yes.

25 Q Okay. And that 3.7 percent growth rate, that's one of

1 the differences you've mentioned between your analysis and Dr.  
2 Kelly's analysis, right?

3 A Yes.

4 Q Okay. And the wage rates paid to union workers, such  
5 as Mr. Hernandez, those are usually determined by collective  
6 bargaining agreements; you agree with that?

7 A Of course, yes.

8 Q And collective bargaining agreements, those are written  
9 contracts that set out the wages to be paid to workers and  
10 benefits to be received by workers, right?

11 A After the negotiating process, yes, that's correct.

12 Q There are two sides that negotiate, come to an  
13 agreement. It's written down that's a collective bargaining  
14 agreement, in simple terms at least, correct?

15 A That is correct.

16 Q All right. And Mr. Hernandez, his wages were also  
17 determined by a collective bargaining agreement when he was a  
18 sheet metal worker, correct?

19 A Yes, they were.

20 Q So, one can look at the collective bargaining  
21 agreements or the union's wage and benefit scales or schedules,  
22 and determine how much a sheet metal worker made per hour in any  
23 given year in the past, correct?

24 A That is correct, yes.

25 Q That's something you actually did as a part of your

1 opinion, right?

2 A I did, yes.

3 Q Okay.

4 MR. DOLEJSI: If you could please turn to page five  
5 of that demonstrative, Mr. Duran.

6 THE COURT: Page five of?

7 MR. DOLEJSI: It's 92, but I think it's 96 because  
8 the numbering got wonky.

9 MR. CAFARO: That sounds right.

10 Q Let me know when you are there, Ms. Kucsma.

11 A I am there.

12 Q On page five, you have the wage indication rate for  
13 each year between 2015 and 2016 for a sheet metal worker, right?

14 A That is correct.

15 Q Okay. And you also calculated the yearly increase,  
16 year after year, for each of those years, right?

17 A Yes.

18 Q Okay. And between 2015 and 2016, a sheet metal  
19 workers' hourly wage grew at annual rate between 1.59 percent  
20 and 2.66; is that also correct?

21 A I calculated the yearly increase at 2.2 percent.

22 Q That's the average? Is that what you saying?

23 A Did you say between 2015 and -- what years did you just  
24 say?

25 Q 2015 to 2026.

1           A     Sorry, I misunderstood you. I have not calculated that  
2 average.

3           Q     I wasn't asking you about the average. I was just  
4 saying the highest growth rate is 2.66 percent during that  
5 timeframe, right?

6           A     Yes.

7           Q     And the lowest growth rate is 1.59 percent, right?

8           A     Yes.

9           Q     Okay. And there was never a year during that 11 year  
10 period, where the wages grew by more than 2.66 percent, right?

11          A     That is correct, yes.

12          Q     And there were two years where it grew less than two  
13 percent, right?

14          A     Yes, that is correct.

15          Q     Despite the fact that wages only grew between 1.59  
16 percent and 2.66 percent over the past 11 years, you applied the  
17 3.7 annual growth rate to Mr. Hernandez's wages as a sheet metal  
18 worker in the future, right?

19          A     Yes. These contracts were all negotiated again during  
20 a low inflation rate environment.

21          Q     Okay. So, during the last 11 years, wages never grew  
22 by 2.66 percent, yet, you grow his future hypothetical wages by  
23 3.7 percent every year in the feature; is that correct?

24          A     On average, that is correct.

25          Q     Well, it's not on average. You applied 3.7 percent

1 every single year.

2 A Well, as I explained in my direct testimony, what I  
3 would expect in some years, the wage rates would grow by more  
4 than 3.7 percent, in other years by less, but on average, 3.7  
5 percent.

6 Q And you would agree that a 3.7 percent growth rate in  
7 the future is a much higher growth rate than it was in the past  
8 11 years?

9 A Yes. That certainly would exceed what the union was  
10 able to negotiate during a low inflation rate environment.

11 Q And because you used a 3.7 annual growth rate, your  
12 estimate assumes that Mr. Hernandez would be making more than  
13 \$250,000 per year when he retired as a sheet metal worker,  
14 correct?

15 A That may be correct. Yes, that's approximately  
16 correct.

17 Q Okay. And had you used a lower annual growth rate,  
18 something like two percent, you agree that it would reduce the  
19 amount of economic losses, in your opinion?

20 A In my opinion, there's no basis whatsoever for using a  
21 two percent growth rate.

22 Having said that, mathematically, yes, if I used a  
23 lower growth rate, all other things held constant, my  
24 calculations would be lower.

25 Q And your opinion also includes more than \$1.2 million

1 for the cost of future health insurance, right?

2 A Yes.

3 Q Okay. And your opinion assumes Mr. Hernandez would pay  
4 full price for family health insurance every year from now until  
5 2049, right?

6 A No. I assumed that had Mr. Hernandez been able to  
7 continue his union employment, he would've continued to receive  
8 family health insurance benefits through that employment. And  
9 that's the value of that compensation.

10 Q Right. So, stated in another way, your economic loss  
11 calculation includes the full cost for family health insurance  
12 on a year over year basis, right?

13 A It includes the full value of that benefit that Mr.  
14 Hernandez would have continued to receive if he had been able to  
15 continue his union employment.

16 Q And the way you valued that benefit was comparing what  
17 it would cost in the open market, correct?

18 A Specifically, I relied upon data published through the  
19 Keiser Institute, and that specifically looks at insurance plans  
20 that are provided through employers or unions.

21 Q Okay. Your opinion also assumes that the value of that  
22 family health insurance policy would be \$90,000 per year as he  
23 approaches retirement age, correct?

24 A Yes.

25 Q Okay. Your opinion also assumes that Mr. Hernandez

1 will continue to work at Vibrant until he reaches retirement  
2 age, correct?

3 A I have used -- yes, his current employment and  
4 earnings, and assumed he would continue to receive that going  
5 forward.

6 Q Okay. And you testified about it somewhat earlier  
7 today, but you've reviewed Mr. Hernandez's employments documents  
8 from Vibrant, correct?

9 A Yes.

10 MR. DOLEJSI: Mr. Hernandez -- excuse me.

11 Mr. Duran, can you turn to 2334.

12 MR. CAFARO: He's not the plaintiff.

13 THE COURT: That's part of my problem. You didn't  
14 read my part rules. We are going to have to start following  
15 my part rules moving forward.

16 MR. CAFARO: I apologize.

17 THE COURT: The same exhibit?

18 MR. DOLEJSI: Different exhibit. Exhibit 53, Your  
19 Honor.

20 Q Ms. Kucsma, do you have that in front of you?

21 A Yes, I do.

22 Q Okay. And this is a letter from Vibrant to Mr.  
23 Hernandez explaining some of its benefits, correct?

24 A Yes.

25 Q And you will see there, the underlined portion states,

1 to provide affordable access to the medical plan, contributions  
2 for the employee's portion of the insurance be capped at 9.02  
3 percent of your income?

4 A For coverage for the employee, yes.

5 Q Yeah. So you said that earlier in your direct, that  
6 it's your understanding that this is just covered for the  
7 employee. Now, that understanding you had, that's based solely  
8 on reading this document, right?

9 A Yes.

10 Q You haven't spoken to anyone at Vibrant, correct?

11 A That is correct.

12 Q You haven't spoken to Mr. Hernandez as to what his  
13 benefit may be to him as an employee, right?

14 A I have not discussed this with him, that is correct.

15 Q Okay. So, you're assuming that it doesn't cover the  
16 rest of the family based upon your reading of this letter?

17 A Yes, based upon the statement, additionally benefits  
18 for your dependants are available, with the understanding that  
19 you will be responsible for covering their portion of the  
20 premium.

21 Q And I think you also testified earlier today that you  
22 were unsure how the coverage provided by Vibrant may compare to  
23 the coverage provided by the sheet metal workers union?

24 A That's correct.

25 MR. DOLEJSI: Mr. Duran, would you please turn to

1 page 2333 of the same exhibit, Exhibit 53.

2 Q As you were preparing your report, did you have the  
3 opportunity to review this page?

4 A I don't recall.

5 Q Okay. But you will agree that this page sets out the  
6 three different options you would have for healthcare plans,  
7 right?

8 A It does, yes.

9 Q And as you read here it here today, you don't know how  
10 these healthcare plans compare to the plan provided by the sheet  
11 metal workers union, correct?

12 A No, which is what I said earlier today. That's  
13 correct.

14 Q Fair enough.

15 Now, if Mr. Hernandez has access to subsidized health  
16 insurance through his employer, you agree it would be  
17 unreasonable for him to pay additional costs for full cost  
18 health insurance on the private market?

19 A I don't understand that question, because that's not  
20 part --

21 Q It was poorly worded question. Withdrawn.

22 If the health insurance plan provided by Vibrant  
23 provides similar coverage at a lower cost, do you think it would  
24 be reasonable --

25 THE COURT: No one can talk. Only the attorney and

1 the witness. Start again.

2 Q If Mr. Hernandez has access to health insurance through  
3 his employer at a lower costs than the costs set out in your  
4 report, you think it would be reasonable for him to purchase  
5 that lower cost health insurance option?

6 A The question doesn't make any sense because that's not  
7 what my analysis is. My analysis is the analysis of the value  
8 of the benefit that Mr. Hernandez would have continued to  
9 receive through his union employment if he were able to continue  
10 that union employment. My understanding is he made no  
11 contribution towards that, whatsoever.

12 To the extent that he now has to pay for health  
13 insurance, that obviously would be an added cost.

14 But my analysis is, is an analysis of the value of the  
15 total compensatio package he would have received had he been  
16 able to continue his union employment.

17 Q Sure. But in your opinion, you're still attaching a  
18 dollar amount for each year of health insurance premiums,  
19 correct?

20 A Because that's part of the compensation --

21 Q Yes. I'm just trying to get to the point here.

22 So, yes, correct, you attach a dollar amount for each  
23 year for health insurance premiums; that's correct, isn't it?

24 A No. I attach a dollar amount each year to separate  
25 value of the benefits package that Mr. Hernandez received

1 through his union employment.

2 Q Sure. But there's still a dollar amount attached for  
3 each year, right?

4 A Oh, of course. Yes.

5 Q And similar to your opinion where you use Mr.  
6 Hernandez's future wages to reduce the amount of economic loss,  
7 shouldn't you also be using lower cost healthcare insurance to  
8 reduce the amount of full cost health insurance, in your  
9 opinion?

10 A I guess I'm struggling with the, quote on quote, lower  
11 cost. He didn't pay anything as a union member. He's not  
12 getting lower cost health insurance now. If anything, he is now  
13 paying for health insurance where previously he received health  
14 insurance fully funded by the union.

15 Q Right. And maybe we're just in a disagreement here at  
16 this point.

17 But regardless of how you label that yearly health  
18 insurance cost, in your report, you attach a dollar value to it  
19 every year, right?

20 A Yes.

21 Q And that dollar value is meant to represent health  
22 insurance for that year, right?

23 A Specifically, it's meant to represent that part of the  
24 benefit package which was health insurance that Mr. Hernandez  
25 received through his union membership. That's specifically why

1 it's in my report specifically. Because we cannot have a full  
2 understanding of the loss of the full compensation from the  
3 union without considering those benefits.

4 Q Sure. But if he has an option for cheaper health  
5 insurance providing similar coverage, it would be reasonable for  
6 him to purchase that health insurance, right?

7 A But he paid nothing before. I'm not trying to  
8 difficult. He is not getting anything, quote, unquote, cheaper.  
9 He was provided with comprehensive health insurance benefits  
10 through the union free of charge. He now may have the ability  
11 to obtain health insurance, at least for himself, but he is  
12 going to have to pay for it.

13 Q Let me ask in a different way one more time. This  
14 might be helpful.

15 MR. DOLEJSI: Let's pull up that page of the  
16 demonstrative. 24 please, 92.25.

17 Q Are you there?

18 A Yes.

19 Q You have \$31,612 for the cost of health insurance,  
20 correct?

21 A Yes.

22 Q But if his actual cost of health insurance is five  
23 thousand dollars, you agree that that \$31,612 for 2017 should be  
24 reduced to 5,000?

25 A I would not agree with that, again, because this is the

1 value of the benefits that Mr. Hernandez received through the  
2 union.

3 Q Sure. You may not agree, but you understand the logic  
4 in that, don't you?

5 A If the jury feels it appropriate to make some sort of  
6 adjustment, but it would not be appropriate for me to make that  
7 adjustment.

8 Q Okay. Well, if Mr. Hernandez were faced with an option  
9 of paying \$31,000 for health insurance or \$5,000 for health  
10 insurance, which one do you think would be the more prudent  
11 financial decision for him to make?

12 A Without reviewing the health insurance plans, knowing  
13 the needs of Hernandez family, I understand that they have a  
14 child who is on the spectrum with autism. I would assume that  
15 there are higher than average medical needs and expenses. So,  
16 that's just not a question I can answer.

17 Q Let's assume it's the same coverage -- same coverage  
18 provided by both. One cost \$31,000 and one costs 5,000. What  
19 do you think the more prudent financial decision would be as far  
20 as which one to purchase?

21 A I suppose if they were exactly the same -- if you could  
22 get family coverage as comprehensive as the union coverage then  
23 you would chose the one that costs \$5,000, of course.

24 Q I agree. Thank you.

25 Ms. Kucsma, what are fringe benefits?

1           A     Fringe benefits, in this context, include the  
2 retirement benefits, the annuity benefits, the pension benefits,  
3 and the health insurance benefits that Mr. Hernandez received  
4 through the union. And they could also refer to retirement  
5 benefits and health insurance benefits that may be available  
6 through some other employment.

7           Q     Sure. And fringe benefits, those include time paid  
8 off, don't they?

9           A     Frequently, yes.

10          Q     Okay. Fringe benefits also include retirement  
11 benefits?

12          A     Yes. 401(k) plans, pension benefits, annuity benefits.  
13 Sometimes life insurance benefits. Sometimes tuition  
14 reimbursement. Sometimes use of a car. So, there are many  
15 other fringe benefits. The predominant ones are the retirement  
16 benefits and the health insurance benefits.

17          Q     Right. And again, you've reviewed the Vibrant  
18 documents. I won't pull them up unless you'd like me to. But  
19 you agree Mr. Hernandez does receive time paid off at his  
20 current job at Vibrant, right?

21          A     That's my understanding, yes.

22          Q     He also has access to at least some portion of  
23 subsidized health insurance , right?

24          A     Again, my understanding is yes, he could obtain health  
25 insurance for himself, albeit, with a contribution from him for

1 the premium.

2 Q Okay. And he also has access to a 401(k) plan, right?

3 A I believe so.

4 THE COURT: Was this covered on direct?

5 MR. DOLEJSI: This exhibit did.

6 THE COURT: This exhibit did? Okay.

7 A Yes, there is reference to a 401(k) plan in the offer  
8 letter.

9 MR. DOLEJSI: Please turn to page eleven of ID 92.

10 I guess that specific page is ID 92.12.

11 Q Ms. Kucsma, if I understand your opinion correctly,  
12 this is the adjustments that you made to Mr. Hernandez  
13 post-injury earnings, right?

14 A That is correct, yes.

15 Q And you have some deductions here, like for work-life  
16 adjustment, which you explained, and job maintenance expenses,  
17 which you explained, right?

18 A Yes.

19 Q Okay. But unlike the pre-injury earnings where you  
20 added back in fringe benefits, you did not add back in fringe  
21 benefits for his post earnings -- post-injury earnings, correct?

22 A I did not see any indication that there was an employer  
23 match to the 401(k).

24 Q Sure. But he gets paid time off, that's a fringe  
25 benefits?

1           A     Paid time off is included in his earnings. That's not  
2 -- you don't get that on top of your earnings. You just don't  
3 go do work that day, and instead of losing a day's worth of pay,  
4 they continue to pay you for that pay.

5           Q     But he has access to subsidized health care. That's a  
6 fringe benefit, correct?

7           A     We already discussed that. Health insurance is  
8 something I would value independently, as I did in this  
9 particular case, and I did not value that for Mr. Hernandez's  
10 Vibrant employment, really for the reasons that I mentioned  
11 before.

12                   My understanding -- my interpretation of that document  
13 is that he could get individual health insurance benefits for  
14 himself, although he would have to pay for that. But that if he  
15 wanted health insurance benefits for his wife and daughter, he  
16 would be responsible for the premium.

17           Q     But you agree, though, had you included that fringe  
18 benefit in your analysis, it would've decreased the amount of  
19 your economic losses?

20           A     I see no basis for doing so, but certainly if I had  
21 included some employer match for example to a 401(k), then yes,  
22 mathematically, these figures would be slightly higher, which  
23 means my loss figures would be slightly lower.

24           Q     And your opinion also includes money for loss of  
25 household services, right?

1 A Yes.

2 Q Okay. And household services, those includes things  
3 like cooking, cleaning, going grocery shopping, right? You  
4 testified to that earlier.

5 A Correct. Moving furniture, vacuuming, doing laundry,  
6 yes.

7 Q Okay. And you've never been to Mr. Hernandez's home,  
8 have you?

9 A No, I have not.

10 Q Okay. You don't know what Mr. Hernandez does and  
11 doesn't do around the house, correct?

12 A Well, my understanding is that he is no longer able to  
13 assist with things that require lifting. So, he is no longer  
14 able to assist with carrying the groceries, carrying the  
15 laundry, carrying the water from Costco, and so on. Things like  
16 that.

17 Q If Mr. Hernandez testifies that he did not do cleaning  
18 around the house before the incident, you agree there should be  
19 no loss of household services -- for the loss of cleaning  
20 services, right?

21 A Well, my analysis doesn't include a loss of cleaning  
22 services. The reason I looked very specifically at a low range  
23 of loss was because I took into account the fact that Mr.  
24 Hernandez had been doing just some things, carrying the  
25 groceries, the laundry, and so on, and it's those things he's no

1 longer able to do.

2 My analysis does not include any loss in his ability --  
3 willingness ability to do cleaning, for example.

4 Q So, what if, post incident, the amount of household  
5 services he performed actually increased from pre-incident, what  
6 would that do to your analysis?

7 A I am not sure I follow your question. I am not aware  
8 of him doing more household services.

9 Q But if he did do more household services post-incident  
10 than he did pre-incident, it would be no loss of household  
11 services, right?

12 A I don't know. My understanding is there were things he  
13 was doing before he was injured that he is not doing now. And  
14 that alone, establishes the basis for loss of household services  
15 and a reduction in his ability to perform the full menu of  
16 household services.

17 Q What's the hourly rate you attached to household  
18 services, in your opinion?

19 A Based on my research, I established an hourly rate of  
20 \$34.79 in the current year in New York.

21 Q And that's more money than Mr. Hernandez is making per  
22 hour at Vibrant, right?

23 A It probably -- oh yes, it is.

24 Q Okay. And that \$35 per hour of household services,  
25 that includes a 30 percent up charge, correct?

1           A       That's a reflection of what consumers pay in the retail  
2 marketplace.  So, for example, if we called Merry Maids or we  
3 called a handyman, those are the rates that we would pay in the  
4 marketplace.

5                   The 30 percent you're referring to, is a 30 percent  
6 adjustment to the wages that those agencies actually pay their  
7 employees.  So, if we hire somebody through Mary Maids, for  
8 example, Merry Maids pays a wage to the people who work for  
9 them, but there's retail rate that we pay as a consumer on the  
10 marketplace, and that's the appropriate rate to use for  
11 valuing --

12                   THE COURT:  We are going to take a five-minute  
13 break.

14                   COURT OFFICER:  All rise.  Jurors exiting.

15                   (Whereupon, the sworn jurors exit the courtroom.)

16                   THE COURT:  You can step down if you wish or you  
17 can step down.

18                   (Whereupon, a short recess was taken.)

19                   THE COURT:  You can bring the jurors back.

20                   (Whereupon, the sworn jurors enter the courtroom  
21 and take their respective seat.)

22                   COURT OFFICER:  All rise.  Jurors entering.

23                   (Whereupon, the sworn jurors enter the courtroom  
24 and take their respective seat.)

25                   THE COURT:  How is the jury room?  Is it still hot

1 up there?

2 THE JURY: It's better.

3 THE COURT: Okay. You may be seated.

4 Do you remember where you left off?

5 Do you remember where you left off?

6 MR. DOLEJSI: I do, yes.

7 May I inquire?

8 THE COURT: You may inquire.

9 MR. DOLEJSI: Thank you, Your Honor.

10 Q Before we took a break, I believe you said the 30  
11 percent -- Ms. Kucsma, before we took a break, we were  
12 discussing that 30 percent up charge to the household services  
13 hourly rate. And I believe you said you included that because  
14 that's what it would cost if you went out and purchased it from  
15 a third party, right?

16 A Yes. There is a difference between the rate that  
17 consumers pay in the retail marketplace, we would pay to hire  
18 someone, compared to the wage rate that the employers pay that  
19 person. And that's what that 30 percent --which is  
20 conservative, but that's what that reflects.

21 Q Okay. Is it your understanding that Mr. Hernandez did  
22 not work for four years following the incident?

23 A That he did not work for four years following the  
24 incident? Was that your question?

25 Q It was, yes.

1           A     I believe -- yes, that is correct. He began employment  
2 with Dom's Auto Body in 2020.

3           Q     Yeah, and then he stopped working at Dom's in a  
4 part-time position in November 2025, right?

5           A     Yes.

6           Q     And you do not have opinion as to whether Mr. Hernandez  
7 was physically able to join the work force in a full time  
8 capacity prior to November 2025, do you?

9           A     That is well outside my area of expertise as an  
10 economist. I can offer no expert opinion in that regard.

11          Q     But if Mr. Hernandez had rejoined the work force in a  
12 full-time capacity sooner than he did, that would lower your  
13 ultimate opinion of economic loss damages, correct?

14          A     But he didn't.

15          Q     I know.

16          A     So, my analysis wouldn't change at all because we know  
17 he didn't. I mean, if he had, and I had different numbers of  
18 what he had earned in past years, then yes, my analysis would be  
19 different.

20          Q     Different in the sense, likely in the lower, right?

21          A     Probably if there -- if he had actually earned some  
22 more in addition to what I subtracted, then yes, all other  
23 things held constant, my numbers would be lower.

24                   MR. DOLEJSI: I have no further questions.

25                   Thank you.

1 THE COURT: Thank you.

2 MR. AVILES: No questions for me, Your Honor.

3 MR. WHITFORD: No questions for me, Your Honor.

4 THE COURT: Thank you.

5 You may proceed Mr. Langholz.

6 MR. LANGHOLZ: Thank you.

7 CROSS EXAMINATION

8 BY MR. LANGHOLZ:

9 Q How are you?

10 A Good. How are you?

11 Q Good.

12 So, I take a slightly different approach to asking  
13 question. So I am going to be asking you all questions that  
14 only have yes or no answers involved.

15 But I will expect if you cannot answer the question yes  
16 or no, just let me know, and I will either rephrase or move on.

17 Is that okay?

18 A Sure.

19 Q Okay, great. If you don't hear my question, instead of  
20 repeating what you think you heard back to me, let me know and I  
21 will either repeat it or I will have -- I will ask the reporter  
22 to read it back to you.

23 Are you okay with that?

24 A Yes. Thank you.

25 Q Okay, great. So, I would like to start off by -- you

1 testified on direct exam that you prepared two separate reports  
2 in this case, correct?

3 A Yes, I actually believe I prepared three reports in  
4 this case.

5 Q Okay. So, I don't mean to harp on everything but  
6 again, just yes or no. If you can't answer yes or no, just say  
7 that you can't yes or no. Right there, I asked you a yes or no  
8 question, and you went beyond yes or no.

9 Do understand?

10 A Yes.

11 Q Okay. So, did you prepare a report in 2024 on this  
12 case?

13 A Yes.

14 Q And in that report, you did an analysis -- an economic  
15 analysis, similar but different in the way you already described  
16 to the one you already talked about with the jury in 2025,  
17 correct?

18 A Yes.

19 Q Okay. And in that report, you relied upon the reports  
20 of a vocational rehabilitation therapist named Dan Wolstein,  
21 correct?

22 A Yes.

23 Q In that report you relied upon the report of a  
24 physician, Barry Root, MD; is that correct?

25 A I believe so, yes.

1 Q And in furtherance of that report, in 2024, you also  
2 relied upon information that you received from Dr. Wolstein that  
3 plaintiff was in the process of obtaining his bachelor's degree  
4 and going into teaching, correct?

5 MR. CAFARO: Objection, Your Honor.

6 THE COURT: Basis?

7 MR. CAFARO: The basis is he's asking about  
8 documents that are not in evidence.

9 COURT OFFICER: The mic.

10 THE COURT: Overruled. I'll allow it.

11 They were exchanged?

12 MR. CAFARO: Yes, they were.

13 THE COURT: It's the disclosure. It never goes in.

14 Q Do you need the question repeated or do you remember  
15 it?

16 A I think I remember it but I don't want to answer it  
17 incorrectly.

18 Q Sure. I'll rephrase it. Actually, I'll repeat it, not  
19 rephrase it.

20 You relied upon the report of Dr. Wolstein in which he  
21 conducted an interview with plaintiff, correct?

22 A I believe he did, yes.

23 Q And during that interview that he had with Dr.  
24 Wolstein, he told Dr. Wolstein that he was going back to school  
25 to get his degree and become a teacher, correct?

1 A I believe he had --

2 Q Ma'am? Ma'am, yes or no only, please.

3 A I can't answer that yes or no.

4 Q That's fine. That's fine.

5 Did you come to learn that Mr. Hernandez at the time of  
6 his accident in 2016, was 15 credits short of his bachelor's  
7 degree?

8 A No, that wasn't my understanding.

9 MR. LANGHOLZ: Tom, what page is that in the  
10 transcript? The Bate stamp, do you have it?

11 MR. CAFARO: Objection to this deposition  
12 transcript.

13 THE COURT: I was waiting. Objection sustained.

14 Q I want you to assume for the purposes of this question,  
15 that Mr. Hernandez testified at his deposition that he was 15  
16 credits shy of getting his college degree at the time of his  
17 accident --

18 MR. CAFARO: Same objection.

19 THE COURT: What was the objection?

20 MR. CAFARO: The objection is that it doesn't  
21 matter what he testified to in his deposition. What's in  
22 evidence is before the court in his testimony.

23 THE COURT: Yeah.

24 MR. CAFARO: Mr. Langholz has the daily copy, he  
25 can refer to that.

1                   But whatever it was --

2                   THE COURT: Counsel?

3                   MR. CAFARO: Yeah?

4                   THE COURT: Did you read my part rules? Do you  
5 want to make a record? We can go to the back and make a  
6 record -- I'll allow a hypothetical. Overruled.

7                   The trial record speaks for itself. And if it's  
8 wrong, we will so advise the jury.

9                   You may continue. Overruled.

10                  I'll allow a hypothetical. The assumptions --

11                  MR. LANGHOLZ: He interrupted me before I got to  
12 the question. So, I have to start again.

13                  THE COURT: You may start again, Counsel.

14                  Q     I want you to assume for the purposes of this question  
15 that plaintiff testified that he was 15 credits shy of his  
16 college degree at the time of his accident.

17                  Do you have an opinion as to whether or not that would  
18 have impacted your economic analysis?

19                  A     Whether what would have impacted?

20                  Q     If he had completed his college degree.

21                  A     That would have no impact on the analysis that I  
22 performed here.

23                  Q     Is it accurate, yes or no, that a person who has a  
24 college degree has higher earning capacity potential? Just yes  
25 or no.

1 A In the context of this case --

2 Q Ma'am --

3 A I can't answer yes or no.

4 Q That's fine, and I'll move on.

5 In your career, you've testified that you sometimes  
6 deal with people who have not gone back to work at all, correct?

7 A Yes.

8 Q They're unable to do anything in the employment field;  
9 is that correct?

10 A Yes.

11 Q And you are not competent to say whether they can go  
12 back to work or not? That's not your thing --that's not your  
13 field of expertise, correct? Yes or no.

14 A That is outside of my area that's --

15 Q And in those cases -- in a lot of cases, you rely upon  
16 a person who is hired to make that assessment, like a vocational  
17 rehab expert, correct?

18 A Only in some cases.

19 Q Okay. And Dr. Wolstein, you've seen his reports  
20 before, and you've seen them in this case, correct?

21 A I did review a report he prepared in this case, yes.

22 Q And you've seen him in other cases, correct? I'm sure.

23 A He's one of -- yes, many --

24 Q He's on the circuit, correct?

25 A He is one of many vocational experts I've seen, yes.

1 Q And you're on the circuit, correct?

2 A I don't really know what you mean by that.

3 Q You're a regular in testifying in the construction site  
4 accident cases; is that fair to say?

5 A I would not agree with that statement as is.

6 I do testify regularly, but I would not say that I work  
7 primarily on construction cases, no.

8 Q Ms. Kucsma, I'm just going to ask you one last time.  
9 If you cannot answer my question yes or no, please just let me  
10 know. There's no need on any one of my questions to ever go  
11 beyond yes or no. Can we agree on that?

12 A I'll do my best --

13 THE COURT: Yes. If I may?

14 He prefers yes or no. If you cannot answer yes or  
15 no, just let the Court know, you cannot answer yes or no and  
16 he will try to rephrase it or move on.

17 THE WITNESS: Okay. Yes, Your Honor.

18 THE COURT: Okay, great. Thank you.

19 Q And in this case -- and it's outside of your purview to  
20 assess when a person's earning potential is outside -- for  
21 example, in this case, Mr. Hernandez, we know he was a  
22 construction worker, correct, a tin knocker?

23 A We know he's a construction worker, yes.

24 You asked a compound question that's why I wanted to  
25 careful.

1 Q And you don't have the capacity to say what his earning  
2 capacity -- what he is capable of doing outside of that field;  
3 is that fair?

4 A I am not sure I can answer that yes or no.

5 Q Okay. Is part of your field of economics, would that  
6 include an analysis of what jobs that Mr. Hernandez is able to  
7 do if he is not able to be a construction worker?

8 A No.

9 Q Okay. That is something that's relied upon -- you have  
10 to rely upon a person such as Dr. Wolstein, who is going to give  
11 you that guidance so you can then draft your report, correct?

12 A I cannot answer that question yes or no.

13 Q Fair enough. Fair enough.

14 When you did your second report, you did not rely on  
15 the report of Dr. Wolstein, is what your testimony was on direct  
16 examination; is that correct?

17 A Correct. Yes, that's correct.

18 Q So, at no point did you rely on Dr. Wolstein's report  
19 in creating that second 2025 report; is that accurate?

20 A That was actually my third report but other than that,  
21 yes, that is correct.

22 Q Okay. Can you go to page five of your report?

23 A Of which report.

24 Q Is the December 15, 2025, your latest report?

25 A Yes.

1 Q Okay. Can you turn to page five of that?

2 A Yes.

3 Q Can you go to the third paragraph down to the sentence  
4 that says, it is reported that plaintiff left his employment as  
5 a paint mixer in or around --

6 THE COURT: You can't read from the document.

7 It's not in evidence, Counsel.

8 MR. LANGHOLZ: Okay.

9 Q Do you see that sentence that I'm talking about?  
10 Yes or no?

11 A I see what I think is the sentence you were referring  
12 to, yes.

13 Q And in each of those sentences you put a source,  
14 correct?

15 Just yes or no.

16 A For each paragraph, yes, I have sources.

17 Q And the source that you put there, source, notice of  
18 expert witness, Daniel Wolstein, PhD, dated May 25, 2022.

19 Is that in your report, ma'am?

20 A Yes.

21 Q So, when you testified on direct examination that you  
22 did not rely on Dr. Wolstein's report, that was inaccurate; is  
23 that fair?

24 A Per my testimony here today --

25 Q Sir -- ma'am, yes or no; was that inaccurate?

1           If you can't answer yes or no, just let me know.

2           A     It was correct.

3           Q     So, it's in your report that you said that you used the  
4 source of Dr. Wolstein, correct?

5           A     No. My testimony earlier was for that purposes of the  
6 analysis that I presented --

7           Q     Ma'am -- Ma'am, just yes or no.

8           A     I can't answer it yes or no.

9           Q     That's fine. That's fine.

10           Can you look through your report -- your first report  
11 we also relied -- and we've already talked about the report of  
12 Dr. Barry Root, correct?

13           A     The 2024 report?

14           Q     Correct.

15           A     I believe --

16           Q     You already answered it, so I can tell you that you  
17 did.

18           A     Yes, I did.

19           Q     Okay. And as a result of that report, you opined --  
20 are you with me or are you reading?

21           A     Yeah. I'm following you. Thank you.

22           Q     Okay. In your first report in 2024 -- actually, I  
23 don't know if it was your first, second, or third, but the 2024  
24 report -- your report, you used Dr. Root as a source and you  
25 opined that Mr. Hernandez was going to have \$1.2 million of

1 future medical care; is that correct?

2 A I calculated the cost of lifetime care at  
3 approximately --

4 Q Ma'am, yes or no.

5 A Again, I can't quite answer the question the way you  
6 asked.

7 Q Can you go to your report from 2024 and go to the life  
8 care plan part?

9 A I can.

10 Q Thank you. Then please do.

11 Are you there?

12 A I am.

13 Q Can you go to that black -- the darkened number? The  
14 darkened number where you approximate what Mr. Hernandez is  
15 going to need for future life care plan --

16 A What --

17 Q No.

18 A I can't answer that question yes or no.

19 Q I didn't ask you a question. I said, can you go to the  
20 part where there's a darken number? Your final number, can you  
21 go to that? Yes or --

22 A I'm there.

23 Q Okay. Can you tell the jury what that number is?

24 A Sure \$1,271,610.

25 Q Thank you. And your opinion on that has changed in one

1 year, correct?

2 A No.

3 Q Ma'am, did -- in your report in your testimony today,  
4 did you give a number for future medical needs for Mr.  
5 Hernandez? Yes or no.

6 A Based on Dr. Sands, yes.

7 Q Ma'am, did you give an opinion on future medical care?  
8 Yes or no.

9 MR. CAFARO: Objection.

10 THE COURT: Yes, Counsel?

11 MR. CAFARO: I object to his tone.

12 THE COURT: Let's try to keep our voices at a fair  
13 minimum here.

14 MR. LANGHOLZ: Then I would just ask Your Honor to  
15 once again, direct the witness. I'm only asking yes or no  
16 questions. These are not difficult. I'm not trying to  
17 trick her or anything.

18 I am asking for Your Honor's help to control the  
19 witness.

20 THE COURT: I'm trying.

21 Ms. Kucsma, if can you try to just answer yes or  
22 no, or just again, your third response would be, I cannot  
23 answer yes or no to that question. Okay?

24 THE WITNESS: Yes, Your Honor.

25 THE COURT: Thank you.

1 Q In you were report of 2024, you gave a number that you  
2 just read to the jury of \$1.2 something million dollars,  
3 correct?

4 A Yes.

5 Q And your testimony today with Mr. Cafaro, you gave an  
6 opinion that his future life care plan -- future medical needs  
7 would be about 100 and something -- between \$150,000 and  
8 \$250,000; is that correct?

9 A Yes.

10 Q So, your opinion has changed from 2024 to 2025; isn't  
11 is that accurate?

12 A No.

13 Q In 2024, you provided an opinion with respect to his  
14 future loss earnings, his future fringe benefit, his future  
15 pension, his future healthcare, that was based upon the  
16 assumption that he was going to be a teacher, correct?

17 A Yes.

18 Q And we can agree that teachers make more than what he's  
19 earning at Vibrant, correct? Just yes or no.

20 A I can't answer that general question yes or no.

21 Q Thank you. Thank you for saying that. I will move on.  
22 You see how good that worked?

23 A Yes.

24 THE COURT: Let's also keep the same rule as to  
25 counsel. Questions only. Refrain from commenting to the

1 witness.

2 MR. LANGHOLZ: Okay. I apologize.

3 Q So, at that time, your loss of earnings was the overall  
4 the Y, as Mr. Cafaro called it, was lower because the  
5 replacement value, the teaching salary, was going to be higher,  
6 correct? Yes or no.

7 A Can you repeat your question? I want to make sure I  
8 heard it correctly. You said the Y would be lower?

9 Q His teaching salary would have been higher than what  
10 he's making at Vibrant, correct?

11 A Based on the report I prepared in 2024, yes.

12 Q Okay. And so, the amount of lost earnings and the  
13 fringe benefits and all that stuff that he lost, would have been  
14 lower, correct?

15 A All other things held constant --

16 Q Ma'am, just yes or no.

17 A Then I can't answer it without all the other things  
18 head constant.

19 Q That's fine. That's fine.

20 And that report in a year has changed, correct?

21 Just yes or no.

22 A My analysis changed, yes.

23 Q Okay. Things change in life, right? Correct?

24 A Generally speaking, yes.

25 Q And -- there's no guarantee that Mr. Hernandez --

1 strike that.

2 Can you agree that the country has got an economic  
3 system, right? It's an ecosystem, the economy, correct?

4 A We do have an economy and an economic system, yes.

5 Q I mean, as we go down the line, like a state has their  
6 own economy, correct?

7 A Yes and no. I wouldn't say their own, as if it's  
8 independent from the national economy, but yes, we do talk about  
9 the economy of the state.

10 Q And that goes all the way down the family unit. So,  
11 every family unit has its own economic ecosystem, correct?

12 A That is correct, definitely.

13 Q I can take it even further. I can take it down to the  
14 individual, right?

15 A Generally, we look at family units and households --

16 Q Ma'am, please just say yes or no. If you can't --

17 A I can't answer that question yes or no.

18 Q Okay. And as an economist, there are all kinds of  
19 things that are outside the area and the field of economy that  
20 goes into a family unit economy, correct?

21 A I don't know what that question means.

22 Q From an economic standpoint -- just purely an economic  
23 standpoint, does every person have the duty to maximize the  
24 economic income? Just yes or no.

25 A Do they have a duty to do that, no.

1 Q From an economic standpoint?

2 A No.

3 Q So, a person is -- from an economic standpoint, is it  
4 okay that a for a person to chose a job that makes less money to  
5 do something that they like? Yes or no.

6 A Many people do that.

7 Q I'm not asking you that.

8 From an economic standpoint, is that the best economic  
9 decision?

10 A It depends on their full set of preferences.

11 Q Ma'am, yes or no --

12 A Yes, it is in many cases.

13 Q Okay. You did -- you projected in your most recent  
14 report a -- this is the last portion of counsel's questioning --  
15 a monetary evaluation for loss of household services, correct?

16 A Yes, I did.

17 Q Can you turn -- I think it's the second to last page --  
18 sorry. It's the third to last page of your report from 2025.

19 A Which page?

20 Q It's -- on your report it's page 48. Your numbering.

21 A Got it.

22 Q And on the low end, you're saying that Mr. Hernandez's  
23 family suffered a loss of his household services of 317,000 and  
24 change, correct?

25 A Yes.

1 Q At the high end, \$635,000, correct?

2 A Yes.

3 Q So -- and we can agree he's got about a 30 year life,  
4 give or take, roughly a 30 year life expectancy going forward?

5 A He --

6 Q Just 35 -- whatever.

7 A It's 44.5.

8 Q Is that from the date of loss or from now?

9 A That's from the date of loss.

10 Q Okay. That's why I said from today.

11 A I apologize. My calculations go back to the date of  
12 loss.

13 Q So, you have approximately -- at the high end, just yes  
14 or no, you're asking the jury to consider awarding him \$20,000 a  
15 year for loss of his household services, for not being able to  
16 go to Costco? Just yes or no.

17 A That's incorrect.

18 Q Okay.

19 MR. LANGHOLZ: Thank you, Your Honor.

20 THE COURT: Thank you, Counsel.

21 Redirect?

22 MR. CAFARO: Is that it?

23 Oh, okay.

24 REDIRECT EXAMINATION

25 BY MR. CAFARO:

1 Q Now, you were asked by Mr. Langholz if your opinion  
2 changed on the future medicals of over a million dollars?

3 A Yes.

4 Q All right. Now, it is correct -- you don't have to  
5 answer me yes or no.

6 Now, it is correct that between the prior report that  
7 he referred to and the projections today, that these medicals --  
8 the future medicals have gone down significantly; is that  
9 correct?

10 A Yes.

11 Q Can you tell us why?

12 A My original calculation was based on the expert  
13 opinions of Dr. Barry Root. I was asked, for purposes of my  
14 testimony today, to include only the expert opinion of  
15 Dr. Sands. So, my analysis didn't change at all, but the  
16 underlying medical opinions were changed -- or I was asked to  
17 consider another medical opinion.

18 So, I applied the same method to a different medical  
19 opinion and got a different cost.

20 Q Is it fair to say that the projections of future  
21 medicals went down because Dr. Root indicated more medical  
22 treatment was necessary than his treating doctors?

23 A Yes.

24 Q Now, we've talked about the rate of increase on  
25 earnings. I want to ask you to assume that the plaintiff

1 testified that as a lead man, that he is entitled to -- or he  
2 has many more opportunities to get overtime through his  
3 employment -- at least he did before the accident occurred,  
4 okay?

5 I am asking you to assume there's been testimony to  
6 this trial to that effect?

7 A Yeah, and that's also consistent with his earnings and  
8 his hours worked in the first quarter of 2016.

9 Q Okay. Taking that into consideration, what effect, if  
10 any, would being a lead man have on the rate of increase of his  
11 earnings?

12 A As I indicated in my direct testimony, if I had  
13 analyzed his earnings in 2016, he was on track to earn \$127,888.

14 If I considered that figure -- that figure is about 24  
15 percent higher than the figure I used when I calculated Mr.  
16 Hernandez's earning.

17 Q Which was?

18 A About -- it was \$87,035.

19 Q All right. Now, if you took -- from the wage statement  
20 that we talked about before that, that would be between 107 and  
21 \$108,000?

22 A Yes.

23 Q Let's call it \$107,000 to be more conservative.

24 The 87,000 you took from the W-2's for his two  
25 employers for 2015, correct?

1 A Yes.

2 Q You worked for two different employers, Power Sheet  
3 Metal and PB Vents in 2015, correct?

4 A Yes.

5 Q Now, let's say -- let's look at that figure you took as  
6 opposed to the \$107,000 that he actually earned in the one-year  
7 period immediately proceeding the date of the accident. What is  
8 the percent increase between 87,000 and 107,000?

9 A Well, I actually misspoke before. The difference  
10 between \$87,035 and \$107,829, that difference is 24 percent.  
11 Because one quarter of 80,000 is about 20,000. That's how we  
12 get up to the 108. The difference between the \$87,035 figure  
13 and the \$127,888 figure would be about 45 percent. Because  
14 about 50 percent of 87,000 would give you 45,000. Add those two  
15 numbers together and you would get roughly 127,888.

16 Q Now, if you had used the \$107,000 at the beginning of  
17 your analysis for his last year's earning -- and there have been  
18 other cases where you have done that , correct?

19 A Yes.

20 Q And if you had -- that was all the information you had,  
21 you would've used it, right?

22 A Yes.

23 Q And that would have been a valid economic analysis,  
24 correct?

25 A Yes.

1 Q Now, if you had used the \$107,000 as the starting point  
2 in this case, how much more would his loss earnings be over the  
3 period that you've calculated in your projections?

4 A His loss earnings in past years would have increased  
5 from \$813,536 to \$1,023,634.

6 And his earnings in future years as a union member  
7 would have increased from \$3,659,979 to \$4,534,426. So, it's  
8 about a 25 percent increase in those figures.

9 Q So, it would have increased a million six, and a  
10 million seven?

11 A About -- approximately \$1.2 million.

12 Q Okay. Let's talk about if you had used the 127,000,  
13 which would be the annualized figure from the partial year in  
14 which he was injured.

15 If you had used the 127,000 annualized figure from his  
16 actual 2016 W-2 from PB Ventilating, how much would that have  
17 increased his economic loss as opposed to the \$87,000 that you  
18 actually used?

19 A The loss earnings in past years would have been  
20 approximately \$1.2 million instead of 813,000. And the earnings  
21 as a union member in future years would have been approximately  
22 -- approximately \$5.4 million.

23 Q And that would have raised the total analysis by how  
24 much?

25 A By approximately, as I said before, 45 percent, give or

1 take.

2 Q All right. And what would be that in dollars, roughly?

3 A I didn't write those figures done. I don't have the  
4 bottom-line figures.

5 Q If it was .45 then by the total loss that you are  
6 projecting, how much would it increase, that number?

7 A If the --

8 Q Do you want a calculator?

9 A Either that or a pen, actually. Oh thank you.  
10 A calculator might make things go quicker.

11 MR. CAFARO: May I approach the witness, Your  
12 Honor?

13 THE COURT: How much more do you have, Counselor?

14 MR. CAFARO: I am going to be finished in two  
15 questions. (Handing).

16 A Give me one minute. Assuming 20 percent reduction in  
17 Mr. Hernandez's ability to perform household services, the total  
18 value of economic loss would be approximately \$8,275,000.

19 Q Okay. Now, you indicated that you didn't subtract  
20 anything for future benefits for a 401(k), correct?

21 A That is correct.

22 Q Is that consistent with no employer contribution to the  
23 401(k)?

24 A Yes. On Exhibit 2336, there is an e-mail from the HR  
25 supervisor at Vibrant --

1 THE COURT: That's not the exhibit. That's the  
2 document number.

3 What's the exhibit she's looking at?

4 MR. CAFARO: It is Exhibit 53, Your Honor.

5 THE COURT: Okay.

6 Q Go ahead.

7 A There's an e-mail from the HR supervisor to Mr.  
8 Hernandez; he was inquiring about the 401(k) plan. And the  
9 supervisor states, quote, regarding the 401(k) plan, all  
10 eligible employees who have been employed with Vibrant ABA for  
11 more than six months are automatically enrolled. Vibrant does  
12 not make employer contributions to the 401(k) plan at this time.

13 Q That would indicate that the 401(k) as a fringe benefit  
14 has no value; is that correct?

15 A Correct.

16 Q Now, Mr. Dolejsi asked you many questions about  
17 subsidized health insurance.

18 Is there any evidence that Vibrant has or subsidizes  
19 health insurance at all from what we have in evidence?

20 MR. DOLEJSI: Objection. Foundation.

21 THE COURT: From what she reviewed as -- sustained.

22 MR. CAFARO: Okay.

23 Q Do you have any information from any source as to  
24 whether Vibrant subsidizes the health insurance benefits it  
25 gives to its employees?

1           A     I don't see any indication that they would cover any of  
2 the costs for the family. It does appear to be -- well, the  
3 statement really is that the employee could contribute towards  
4 the cost of health insurance for himself. And that's the only  
5 information I have.

6           Q     Okay. So, if the cost of the individual's health  
7 insurance exceeded the nine percent or whatever that cap is,  
8 there might be a contribution to the extent of that  
9 differential; is that fair?

10          A     Yes.

11          Q     But as to the balance as to what he has to pay in order  
12 to get his coverage for his dependants, there's no indication of  
13 any subsidy whatsoever, is there?

14          A     That is correct. There is not.

15                MR. CAFARO: I don't have any further questions for  
16 the witness.

17                THE COURT: Any re-cross limited to the redirect?

18                MR. DOLEJSI: None from SAJO.

19                MR. LANGHOLZ: Me either.

20                THE COURT: Okay.

21                That concludes your testimony. You may step down.

22                THE WITNESS: Thank you, Your Honor.

23                THE COURT: You're welcome.

24                (Whereupon, the witness was excused from the  
25 stand.)

1 THE COURT: What are we doing tomorrow? 9:30?

2 MR. CAFARO: We will be here.

3 THE COURT: My understanding is we are taking  
4 witnesses out of turn on the defense case tomorrow morning;  
5 is that correct?

6 MR. CAFARO: Well, we will have witnesses we would  
7 like to proceed with in the morning and we can resume with  
8 Mr. Collins -- but actually, you have experts right?

9 MR. COGBILL: Yes.

10 MR. CAFARO: We will work with them to make sure  
11 that their experts get on and done tomorrow.

12 THE COURT: Okay.

13 MR. CAFARO: We would like to finish our case but  
14 who should I coordinate with for the scheduling?

15 THE COURT: 9:30 tomorrow morning?

16 MR. CAFARO: Yes.

17 THE COURT: You can talk later.

18 Have a good afternoon.

19 COURT OFFICER: All rise. Jurors exiting.

20 (Whereupon, the sworn jurors exit the courtroom.)

21 THE COURT: You may be seated.

22 I did have my law clerk my principal law clerk send  
23 out an e-mail to remind you regarding my part rules that  
24 specifically state counsel should not address each other,  
25 they should only speak to the court.

1           When there's an objection, you speak to the Court.  
2           You don't speak to each other. That means you didn't read  
3           my rules.

4           MR. DOLEJSI: I spoke to the court.

5           THE COURT: I'm sorry?

6           MR. DOLEJSI: I guess I don't know what you're  
7           referring to.

8           THE COURT: My trial part rules.

9           I'm not pointing to anyone.

10          Number two, the objections you make one, two, three  
11          words. If you require more than that, just ask me and we  
12          will go to the back and we will excuse the jurors.

13          My third point, I did ask for the proposed verdict  
14          sheets and request to charge at the beginning of the trial.

15          My law clerk has not received an e-mail from  
16          anyone. She is going through all the e-mails now, but did  
17          anyone send them?

18          MR. PIVONAR: We did not yet, Judge. We are very  
19          close to getting it to it.

20          THE COURT: My law clerk, her last date is Friday.  
21          I would like to get them before she leaves. Just proposed.

22          MR. CAFARO: I will try.

23          MR. COGBILL: We already have drafts and we'll  
24          ensure they are submitted to the court well in advance of  
25          the Friday deadline.

1 MR. CAFARO: Let's see if we --

2 THE COURT: There's no Friday deadline. She sent  
3 out an e-mail end of business today, by the way, because  
4 they were due at the beginning of trial.

5 MR. CAFARO: We will try to see to what extent we  
6 can agree on it. I mean obviously that would be best for  
7 everyone, to the extent we can agree.

8 MR. PIVONAR: I can probably get ours done tomorrow  
9 evening.

10 THE COURT: Off the record.

11 (Whereupon, the proceedings are adjourned to  
12 February 5, 2026, at 9:30 a.m.)

13

14 \* \* \* \* \*

15 CERTIFICATION

16 I, AMANDA ALVAREZ, do hereby certify that the  
17 within proceedings are a true and accurate transcript of the  
18 original stenographic record.

19

20 Amanda Alvarez

21 Amanda Alvarez  
22 Senior Court Reporter

23

24

25



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