

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

SUPREME COURT : NASSAU COUNTY  
E X C E R P T  
-----X  
AMADOR PADRON, Index No.  
605234-15  
Plaintiff,  
-against-  
KEVIN O'BRIEN and ROBYN O'BRIEN,  
Defendants.  
-----X  
JENNIFER LOPEZ, Index No.  
605146-15  
Plaintiff,  
-against-  
KEVIN O'BRIEN and ROBYN O'BRIEN,  
Defendants.  
-----X  
Mineola, New York  
September 28, 2017  
B E F O R E:  
HONORABLE DENISE L. SHER,  
Justice, and a jury  
A P P E A R A N C E S:  
FOR THE PLAINTIFF AMADOR PADRON:  
SCHWARTZAPFEL LAWYERS, P.C.  
600 Old Country Road  
Garden City, New York 11530  
BY: MICHAEL R. REINER, ESQ.  
FOR THE PLAINTIFF JENNIFER LOPEZ:  
ROBERT K. YOUNG & ASSOCIATES, P.C.  
2284 Babylon Turnpike  
Merrick, New York 11566  
BY: GARY J. YOUNG, ESQ. And  
NICOLE CHAN, ESQ.  
FOR THE DEFENDANTS:  
PICCIANO & SCAHILL  
1065 Stewart Avenue  
Bethpage, New York 11714  
BY: GILBERT J. HARDY, ESQ.  
W I T N E S S:  
DEBRA DWYER  
KRISTIN YOUNG, RPR  
Official Court Reporter

1 THE COURT: Are we ready for the jury?

2 MR. HARDY: Yes.

3 (Whereupon, the jury entered the courtroom.)

4 THE COURT: Members of the jury, I hope you had a  
5 good evening.

6 Welcome back.

7 Thank you for your patience.

8 We had some legal issues, I don't want you to  
9 think when I tell you to come early I keep you waiting but  
10 there are certain things that come up all time that you  
11 cannot participate in, so that's the reason.

12 We are now continuing with Plaintiff Padron's  
13 case, Mr. Reiner.

14 MR. REINER: At this time Plaintiff Padron calls  
15 Debra Dwyer.

16 D E B R A D W Y E R,  
17 a witness called on behalf of the Plaintiff Padron, after being  
18 duly sworn, took the witness stand and testified as follows:

19 THE CLERK: State your name and address for the  
20 record.

21 THE WITNESS: Debra - Dwyer D-W-Y-E-R, 17  
22 Springbriar Lane, Springbriar one word and that's in  
23 Centereach 11720.

24 THE COURT: Just a couple of admonitions. If you  
25 hear an objection and you will, if I overrule it, you can

1 answer the question. If it's sustained, you can't.

2 I'll help you as you go along.

3 If you can keep your voice up so the last juror  
4 can hear you.

5 DIRECT EXAMINATION

6 BY MR. REINER:

7 Q Good morning, Professor Dwyer.

8 A Good morning.

9 Q Tell us what you do for a living?

10 A I'm a faculty member and now a Dean at Stonybrook  
11 University.

12 I'm an economist, so I have appointments in the  
13 economics department. I have an affiliation to the health  
14 sciences center because I'm a health economist and I also have  
15 an affiliation in the college of engineering where I teach  
16 economics and public policy to engineers.

17 Q Can you tell us about your educational background?

18 A I got my bachelor's degree from Queens College in  
19 Flushing, that was in English literature, and economics I went  
20 on to get my Master's and my PhD from Cornell University and  
21 from there I did a post doctoral fellowship at Syracuse  
22 University in the Center For Policy Research where I wrote a  
23 book chapter in collaboration with others comparing health  
24 systems and disability systems internationally.

25 Q Professor, can you tell us about your professional

1 background other than your current employment?

2 A I spent a couple of years working in Washington, D.C.  
3 for the Social Security Administration in the division of  
4 economic research where I continued my research in the areas of  
5 labor and health commission for economics, so I studied  
6 basically how health effects work, the interaction between  
7 health and labor and then I came to Stonybrook University. I've  
8 been there for about 19 years so I started off as an assistant  
9 professor in the economics department, I grew into a position of  
10 chairperson in health sciences and now I'm an assistant Dean for  
11 strategic planning and research for the University, that means I  
12 spent a lot of my time on finance and budget kind of issues and  
13 strategic planning for the university while I continue to mentor  
14 PhD students. I mentor students from high school to the PhD  
15 level and I do some economics and public policy.

16 Q How long ago did you become a Dean?

17 A Only a couple of months, as of July.

18 Q Congratulations.

19 A Thank you.

20 Q Do you have any professional affiliations in the field  
21 of economics?

22 A I do.

23 Q Can you tell us about those?

24 A You mean professional organizations?

25 Q Organizations?

1           A       The American Economic Association the Society for  
2 Labor Economists and Eastern Economics Association.

3           Q       And in addition to your professional background, do  
4 you do legal consulting work like you're doing here today?

5           A       Yes, I do.

6           Q       And if you had to put a percentage on it the amount of  
7 time that you spend on your job at Stonybrook mentoring students  
8 and your legal consulting work, would you be able to put a  
9 percentage?

10          A       I would say less than five percent consulting most of  
11 my time is spent at the university.

12          Q       But you have testified as an expert in the field of  
13 economics before, correct?

14          A       Correct.

15          Q       And where have you testified?

16          A       I've testified in the Bronx, Queens, Brooklyn,  
17 Westchester, Nassau County, Suffolk County.

18          Q       Approximately how many times have you testified  
19 before?

20          A       I started this in 2012. I probably average about one  
21 a month of testifying so it was about 60. 65 maybe.

22          Q       And have you ever been denied qualifications as an  
23 expert in the field of economics before?

24          A       No.

25          Q       My office retained you as an expert in this case,

1 correct?

2 A Yes.

3 Q How much have you been compensated for your time?

4 A \$4,400.

5 Q And if you were not here in court today where would  
6 you be?

7 A At the university in the Dean's Office.

8 MR. REINER: Judge, at this time, I proffer  
9 Professor Dwyer in the field of economics.

10 THE COURT: Any objection?

11 MR. HARDY: Other than the standing that it's not  
12 proper in state court, but that's fine.

13 THE COURT: So qualified.

14 Q Professor Dwyer, are you familiar with life care  
15 plans?

16 A Yes.

17 Q Can you tell the jury what those are?

18 A A life care plan is put out by a medical expert, a  
19 medical professional that determines the future health care  
20 needs, so what health care services, how often for how many  
21 years of people who are in need of health care services, so it's  
22 a plan.

23 Q And can life care plans help guide you in your  
24 analysis of the costs of future health care?

25 A Sure.

1 I'm not a medical doctor so I have no way of knowing  
2 what type of services the value of those services, I would have  
3 to rely on a medical expert. I -- my expertise comes in what do  
4 I think is going to happen to the prices for those services, how  
5 long do I think this person is going to live for, how many years  
6 do I have to project what those costs are going to be so that I  
7 can come up with a total value of the loss.

8 Q And in this particular case, there came a time again  
9 where my office retained your services to give us an opinion  
10 regarding the cost of you future health care for Amador Padron?

11 A Yes.

12 Q What records did you review in connection with many  
13 Mr. Padron's case?

14 A I looked at the November 2016 report of Dr. Edwin  
15 Richter.

16 Q And following your review of Dr. Richter's report, did  
17 you calculate the future cost of health care for Mr. Padron  
18 based upon the date, date that was provided by Dr. Richter?

19 A Yes.

20 Q Can you explain to the jury generally how you come up  
21 with those calculations?

22 A Basically Dr. Richter's life care plan provides me  
23 with the categories of medical services that Mr. Padron would  
24 need, so for example if the pain specialist is one of the  
25 physicians that he recommends that he would need for the rest of

1 his life, he would say how often he would have to see that  
2 doctor, he also gives me the current price, the value of that  
3 service. The prices vary for different doctors' visits  
4 depending on the intensity of the treatment need.

5 As an economist, I don't know that intensity. He  
6 gives me the starting value of the services today, how often he  
7 would have to go within a year and then what I do is take those  
8 numbers and I project them over the rest of my -- for Mr.  
9 Padron's life what the cost would be and I sum them up.

10 Q Did you take into account Mr. Padron's age when  
11 calculating your numbers?

12 A Yes, I did.

13 Q And did you also then take into consideration Mr.  
14 Padron's life expectancy?

15 A Yes.

16 Q And how do you do that?

17 A So I rely on statistics, medical statistics to project  
18 how long somebody is going to live. There is a lot of  
19 uncertainty when you're projecting into the future. I have to  
20 make assumptions, which is something we as economists get  
21 criticized for.

22 I'm an expert in the area. These assumptions are  
23 based on my expertise knowing what is going to happen in the  
24 markets and also historical trends using federal statistics when  
25 it comes to the life expectancy the National Center of Health



1 Statistics gives a lot of data based on your gender and the year  
2 you were born, what your life expectancy is going to be.

3 I rely on those sources. I came up with a life  
4 expectancy of Mr. Padron of 77.9 that is based on Pattern Jury  
5 Instructions, what is used in the Courts.

6 Q When you come up with your calculations, Professor  
7 Dwyer, do you look forward in terms of the growth rate?

8 A Yes.

9 Q Do you also look backward for the history?

10 A Yes, I have to look backwards so basically the way we  
11 make our projections or the assumptions on what is going to  
12 happen in the future is based on what happened in the past and  
13 it has been reliable, pretty consistent so what I did for health  
14 care growth rates what I'm looking for is if physical therapy  
15 costs \$130 today, what is that same visits going to cost ten  
16 years from now. We know it's going to be higher like the price  
17 of gas is going to be higher today and the price of a metro ride  
18 is higher than today. I look back at the things I have to  
19 decide when I look back is how far back I do have to go. I go  
20 far enough back to capture what I refer to is a business cycle  
21 or a period of time that represents the remainder of  
22 Mr. Padron's life and so it's 25 years that I go back for health  
23 care.

24 I look at the averages overall so on average health  
25 care prices have been rising by four percent per year over the

1 last 25 years. Some categories it's been higher, so health  
2 insurance prices have been rising faster than four percent  
3 something like physical therapy rising at 2.5 percent.

4 The Bureau of Labor Statistics breaks this down by sub  
5 categories of medicine and I use those sub categories to project  
6 what is going to happen to prices in the future.

7 Q Do you also consult with government data for  
8 statistics?

9 A Yes.

10 Q Based upon the records that you reviewed as well as  
11 the applicable data that you also reviewed did you make a  
12 calculation as to Mr. Padron's future health care costs?

13 A I did.

14 Q And did you put your findings in some sort of a chart?

15 A Yes.

16 MR. REINER: I'm going to ask that this be marked  
17 for identification.

18 (Whereupon, Plaintiff Padron's Exhibit was marked  
19 for identification, 4.)

20 Q I ask that you take a look at what has been marked as  
21 Plaintiff's Exhibit 4, do you recognize that?

22 A Yes.

23 Q What is that?

24 A That is the report that I produced summarizing my  
25 findings on the future health care cost for Mr. Padron.

1 Q That a fair and accurate copy of the original chart  
2 that you prepared?

3 A Yes.

4 Q I'm going to ask at this time if Professor Dwyer can  
5 step down and utilize the projector to explain to the jury her  
6 findings?

7 THE COURT: Okay.

8 Q Professor Dwyer, I want you to assume that Mr.  
9 Padron's date of birth is August 21st, 1963, okay.

10 And I want you to assume that the testimony of  
11 Dr. Richter, who also prepared that report, is his testimony  
12 being in accordance with his report.

13 And are you able to form an opinion as to the future  
14 medical care costs for Mr. Padron to a reasonable degree of  
15 economic certainty?

16 A Yes.

17 Q Can you please discuss your findings regarding the  
18 cost of future medical care to the jury?

19 A Sure.

20 So I'm just going to go through category by category  
21 I'm going to read every single number so you're bored out of  
22 your mind, but what I will do is explain in more detail explain  
23 the first column and the same procedure for all of the others.  
24 So in the category of pain specialist, Dr. Richter, according to  
25 his report said that Mr. Padron should visit a pain specialist

1 five times per year at \$155 per year that comes out to \$775 per  
2 year.

3 I start the losses October 1st, 2017.

4 Future health care loss means starting into the  
5 future. So I only add in a portion of this a quarter of this  
6 number, but I put the full amount so you see what the annual  
7 cost would be, so it's \$775 worth of pain specialist visit and  
8 2017 beginning in October 1st.

9 So the first full year of the loss would be 2018 and  
10 you see the number's higher, that's what I was explaining. The  
11 \$798 means the same five visits are going to cost \$798 next  
12 year. That's a projection. I don't have a crystal ball, but I  
13 am very confident in these numbers.

14 So I use the three percent growth rate for doctor  
15 visits like pain specialists that is based on the Bureau of  
16 Labor Statistics over the last 25 years, that is what has been  
17 happening with prices. I have no reason to believe it wouldn't  
18 go up by three percent for next year and the year after that so  
19 the reason these numbers are going up is because they're all  
20 rising by three percent per year, so if we go down to the bottom  
21 we see that by the year 2040 the same five visits are going to  
22 cost \$1,530.

23 The last year is only a partial year because I said  
24 before that his life expectancy is 77.9, that is what I used.  
25 So based on his birthday that brings us into the year 2041, but

1 only half way through the year is when he's expected to pass.

2 The total cost over the remainder of his life for  
3 those pain specialist visits is \$26,887.

4 So now I'm going to do the same thing for every other  
5 category. And just tell you what the starting point is the  
6 growth rates and the total.

7 So the second category, physical therapy in the report  
8 Dr. Richter said 30 visits per year at \$130 per visit my  
9 understanding based on a conversation with Mr. Reiner this  
10 morning is that he said because that included physical therapy  
11 for the wrist, we're going to take off 20 percent from that.

12 So it's actually 24 visits per year at \$130, so these  
13 numbers are going to be slightly higher.

14 I did do the calculation instead of \$3,900 per year  
15 we're going to start at \$3,120 per year the growth rate that I  
16 used for physical therapy is 2.5 percent. As I said, the prices  
17 for what I said not primary care doctor visits, things like  
18 occupational therapy or physical therapy, the growth rate has  
19 been 2.5 percent slower than the general rate of inflation that  
20 \$3,120 over the remainder of his life would end up with a total  
21 cost of physical therapy for the remainder of his life of  
22 \$106,930.

23 Next category are the medications, the prescription  
24 painkillers that he's been prescribed. Medicine as you probably  
25 have heard pharmaceutical prices rise higher than the general

1 rate of inflation. I'm using a conservative system of  
2 3.8 percent for the growth of pharmaceuticals, the total annual  
3 cost for medication is \$3,480 and if I total that over the  
4 remainder of his life rather than taking time to keep forward  
5 and I'm going to read it to you, the total cost is for  
6 medication is \$134,216 over the remainder of his life.

7 Next category are the MRIs. And he would need three  
8 every four years or so \$1,600 split over 4 years, 3 times comes  
9 out to an annual cost of \$1,200 so I annualized all of them.

10 And MRI we use a growth rate of three percent and if  
11 you grow that over the remainder of his life the total cost for  
12 those MRIs would be \$41,631.

13 The last two columns as you can see have mostly  
14 dashes. Those are surgeries so the total cost of the surgeries  
15 Dr. Richter gave me a range 47,000 to some higher number what I  
16 use is the midpoint of that range which is \$56,000.

17 Now he says that these surgeries would be needed 10 to  
18 15 years out, so I took the midpoint of that as well and I had  
19 them in the 12th year so what matters is which year because that  
20 is how for how long I have to grow the price.

21 So if it costs \$56,000 in 2017 for a knee replacement  
22 in 12 years in the year 2029 that same surgery is going to cost  
23 \$89,658.

24 Dr. Richter estimated that both the right knee and the  
25 left knee would cost the same, which makes sense so the two

1 surgeries each are \$89,658 and that is the total for lifetime  
2 since he's only going to have it once.

3 So I can give you the total loss which is a little bit  
4 different than the one that is on the chart anyway since I took  
5 out the 20 percent from the physical therapy.

6 The total health care loss commencing October 1st  
7 would be \$488,980, that's for all of his medical services or for  
8 over the remainder of his life related to this for his injury.

9 Q All the opinions you just gave regarding the numbers  
10 are those to a reasonable degree of economic certainty?

11 A Yes.

12 Q The witness can take the stand.

13 Professor, when you're making these calculations, why  
14 not just calculate the number of treatment by the cost and just  
15 add up the years?

16 A That's something you could have done.

17 What would end up happening is Mr. Padron would not  
18 have enough so cover all of the experiences since we know prices  
19 go up so if you don't grow those prices, the number of physical  
20 therapy visits he could have 50 years from now is less than  
21 five.

22 Q So within a reasonable degree of economic certainty,  
23 do you have an opinion whether those costs will remain the same  
24 over the next 30 or so years?

25 A I have no reason to believe they would stay the same

1 so given my expertise, they're going to go up. I'll leave it at  
2 that.

3 Q And you're not a medical doctor, correct?

4 A Yes.

5 Q And that's why you rely on Dr. Edwin Richter's report?

6 A Yes.

7 Q And if Dr. Richter's numbers are off, fair to say,  
8 that you would have a different opinion, true?

9 A Yes.

10 Q And if Mr. Padron would need more medical care than  
11 Dr. Richter suggests, your numbers would actually go up, right?

12 A Yes.

13 Q And on the other side of that, if you needed less,  
14 your numbers would go down?

15 A Yes.

16 Q And if the growth rate was lower, it would be less of  
17 a cost, correct?

18 A Yes.

19 Q And if the growth rate was higher, he would have a  
20 higher cost?

21 A Yes.

22 MR. REINER: Thank you, Professor Dwyer.

23 I appreciate your time.

24 THE COURT: Could I ask a question?

25 What date of birth did you use?



1 THE WITNESS: August 21st, 1963.

2 THE COURT: Cross.

3 MR. HARDY: Yes.

4 CROSS-EXAMINATION

5 BY MR. HARDY:

6 Q Good morning, Dr. Dwyer.

7 My name is Gil Hardy. I represent the defendants.

8 I have a couple of questions for you.

9 The -- so the report that you generated in connection  
10 with this litigation when was that?

11 What is the date of that report?

12 A September 23rd, 2017.

13 Q And was there a report prepared in November of 2016?

14 A Yes, there was.

15 Q And who -- so there are two reports?

16 A Yes.

17 Q And the second report, what does that consist of, just  
18 a chart?

19 A Yes.

20 Q So the first report is actually a written report  
21 consisting of three pages, right, and then charts in the back?

22 A Yes.

23 THE COURT: Meaning first September?

24 Q No, November 16, 2016, report?

25 THE COURT: Okay.

1 Q And who -- your name is on that report, correct?

2 A Correct.

3 Q And as well as who?

4 A Dr. Allen Leiken.

5 Q Dr. Leiken.

6 Dr. Leiken actually prepared that report, is that  
7 correct?

8 A Yes.

9 Q And did you ever review that report before coming here  
10 today?

11 A Yes.

12 Q When did you review that report?

13 A We consult when it first comes up and then again  
14 recently.

15 Q Recently.

16 And everything that he wrote in here you think is  
17 accurate?

18 A So that report had been updated based on updated  
19 information.

20 But given the information that he had at the time, yes  
21 that was accurate.

22 Q And included in that report were was what -- what were  
23 you making, what were you figuring out in that report, what  
24 categories?

25 MR. REINER: Just again the same objection as

1           yesterday, which you sustained regarding certain claims  
2           that have been withdrawn.

3                   THE COURT:   Mr. Hardy.

4                   MR. HARDY:   I'm going to cross-examine her on the  
5           report.

6                   I can't cross-examine her on the report?

7                   THE COURT:   You can, but I'm going to restrict  
8           you from going into certain areas.

9           Q       So what was included in that report, what areas?

10                   MR. REINER:   Judge, the answer to that question  
11           is going to cross right into --

12                   THE COURT:   I'm going to allow a little leeway.

13                   Do you know what was included in that report?

14                   THE WITNESS:   Besides just future health care  
15           loss, it also included a loss in earnings.

16           Q       And loss of Social Security retirement income?

17           A       Yes.

18           Q       And that's been eliminated now?

19           A       Yes.

20           Q       Did a new report get drafted at some point?

21           A       No, all we did is update the chart.

22           Q       So several columns were removed from the chart?

23           A       Yes.

24           Q       Okay.

25                   And so we were talking about -- I'm sorry for another

1 second here.

2 Doctor, Dr. Leiken, is he on the faculty at  
3 Stonybrook?

4 A He just retired.

5 Q He just retired.

6 Does he testify in court also?

7 A Yes.

8 Q He's testified over 500 time in the past?

9 A I don't know how many times, that's probably fair  
10 enough.

11 Q Was there a period of time when you both worked  
12 together at Stonybrook?

13 A Yes.

14 Q And isn't it a fact, ma'am, that you would sort of be  
15 in charge of his scheduling for his classes?

16 A Yes.

17 Q So isn't it true, ma'am, that in the past you made  
18 sure that his scheduling for trial testimony didn't conflict  
19 with his duties at the school is that true?

20 MR. REINER: I'm going to object.

21 Professor Leiken is not on the stand right now.

22 THE COURT: Overruled.

23 A So if I recall the question what you said was that I  
24 scheduled him based on his consulting work?

25 Q Yes, based on his need to testify in court?

1 A Absolutely not.

2 Q And now you've been testifying for how long?

3 A Since 2012, so about five years.

4 Q And under the first line of the report under future  
5 cost of health care you wrote or it is written -- you didn't  
6 write it, this paragraph?

7 A No, he wrote it first.

8 Q He wrote it.

9 You agree with everything he wrote?

10 A Yes.

11 I didn't catch anything.

12 Q And it's for -- it states Mr. Padron requires health  
13 care?

14 A Yes.

15 Q And you agree with that?

16 A Yes.

17 Q And that's not your call, that's the call of a doctor,  
18 right?

19 A Correct, based on Dr. Richter, a medical expert.

20 Q And if he doesn't require health care, then the  
21 report, there is no need for the report?

22 A Yes.

23 Q Are you aware of whether or not he was actually  
24 receiving health care at the time of this report was written?

25 A I was not.

1 Q You don't know either way, right?

2 A It's not relevant for my work.

3 Q Of course.

4 Okay.

5 By the way, the various categories here and I'm  
6 looking at the paragraph that says future cost of health care  
7 that includes the cost of medications, that goes up?

8 A Yes.

9 Q Cost of physical therapy?

10 A Yes.

11 Q Cost of surgeries?

12 A Yes.

13 Q And then the other costs are increased by the way,  
14 what is other costs?

15 A That would be everything that grows at the rate of  
16 three percent because a lot of things grew at three percent that  
17 would be the pain specialist, any MRI, any diagnostic.

18 Q So isn't it true that you obtained these from the  
19 Bureau of Labor and Statistics?

20 A Yes.

21 Q And the cost of really almost all consumer goods  
22 including medical care services you can look that up on the  
23 website?

24 A Yes, you can.

25 Q And the government keeps track of past prices and

1 their increases, right?

2 A Yes.

3 Q And on all sorts of goods and services everything from  
4 bananas to doctor services, right?

5 A Yes.

6 Q And so that is what for -- that was the source that  
7 you used to come up with or that Dr. Leiken used to come up with  
8 these figures?

9 A So the actual growth rates is keeping track of growth  
10 rates is what I do, so Dr. Leiken wrote the first report but we  
11 consult on a regular basis on what is going on with growth rates  
12 and because I use them in my research and in the classroom, for  
13 us it's common knowledge. We're using what is standard and  
14 practice.

15 Q Okay.

16 Well, did you for this particular matter did you  
17 consult with -- do you know if Dr. Leiken got these numbers from  
18 using those figures from the National Bureau of Statistics?

19 A Labor statistics.

20 Q That is where he got them from?

21 A We do that together, yes.

22 Q When you do that, there are categories that are for  
23 medical care, correct?

24 A Correct.

25 Q And if you just looked at medical care overall, you

1 can actually look at that figure, it kind of groups them all  
2 into one, aggregates them?

3 A Yes.

4 Q And I believe in the report that you indicated the  
5 cost of medical care has been increasing by 4.2 percent?

6 A Yes.

7 Q On average?

8 Do you have the customer price index with you?

9 A I do.

10 Q If we looked at the -- and by the way when we're  
11 looking at the consumer price index, you can look at urban  
12 centers or rural, is that correct?

13 A Yes.

14 Q And in this case obviously we're looking at urban?

15 A Correct.

16 Q And if you take a look at the medical care in U.S.  
17 city and the U.S. cities and you go back to, well I suppose  
18 25 years you go back to 1992?

19 A Yes.

20 Q So from 1993 for 92 to 2016 is the average growth rate  
21 actually 3.93 percent?

22 A So the one I --

23 Q Instead of 4.2 percent?

24 A The one that I brought with me is exactly the same  
25 table you're talking about, but I calculated it from 1988 so



1 it's 4.4 percent that I have here.

2 But if you go back to 1991, it's in the 4 to 4.2  
3 range. This particular set of numbers that you're looking at  
4 it's possible it came out to 3.9 percent.

5 Q And back in the 80s and 90s isn't it true that the  
6 prices were going up at a much higher rate than they are today?

7 A Absolutely.

8 Q And in fact on your report there is a little graph at  
9 the bottom, is that right?

10 A Yes.

11 Q And do we have a spare copy of the report, I just want  
12 to mark the graph?

13 A I don't.

14 Q You don't have your report, ma'am?

15 A I don't.

16 I grabbed what I was using for today.

17 MR. HARDY: Oh, you don't -- I put a circle on  
18 this.

19 Can I mark this page?

20 MR. REINER: You're just marking for ID, you're  
21 not trying to move it into evidence?

22 MR. HARDY: No. No. No.

23 THE COURT: So it's Defendant's J.

24 (Whereupon, Defendant's Exhibit was marked for  
25 identification, J.)

1 THE COURT: It's a page of the November 16, 2016,  
2 report of Dr. --

3 MR. HARDY: L-E-I-K-E-N.

4 Q Do you recognize the chart on the bottom that's under  
5 future health care costs?

6 A Yes.

7 Q Do you recognize the chart at the bottom.

8 A Yes.

9 Q Is that accurate?

10 A Yes.

11 Q Does that show an overall downward trend in the  
12 fluctuation of prices for the medical care services?

13 A It shows ups and downs that you're right from the  
14 1980s where we had double digit inflation in medical care.

15 It has come down and never gone back up to that level.

16 I think that is what you're trying to say.

17 Q Very good.

18 I'll take that back.

19 THE COURT: Mr. Hardy, can you hold that thought  
20 for a second.

21 MR. HARDY: Sure.

22 (Whereupon, a recess was taken.)

23 THE COURT: Sorry.

24 Q Back to the overall increased cost of medical care  
25 would it be accurate to say over the last five years the cost

1 has gone up three percent on average?

2 A Yes.

3 Q Okay.

4 And over the last ten years, it's been -- what has it  
5 been over the last ten years, the increase?

6 A So there is 4s and 3s and so I would still say about  
7 three percent.

8 Q And would it be more accurate predictor of the future  
9 increase in cost of medical care to look back ten years instead  
10 of all the way back to the 80s, like you say?

11 A No.

12 Q It wouldn't.

13 So as far as prescription drugs, I believe you  
14 indicated that the growth rate is going to be about 3.8 percent?

15 A Yes.

16 Q And do you have the consumer price index for  
17 prescription drugs there?

18 A I didn't bring all of the categories.

19 Q You didn't bring all the categories?

20 A Just the general medical care I used the prescription  
21 drugs for the analysis, but what I brought in my file is just  
22 the general.

23 MR. HARDY: Okay, well can I have this marked for  
24 ID.

25 (Whereupon, Defendant's Exhibit was marked for

1 identification, K.)

2 THE COURT: It's being shown to the witness.

3 MR. HARDY: Yes.

4 Q Dr. Dwyer, does that appear to be a print out from the  
5 Bureau of Labor Statistics with respect to the annual increase  
6 in prescription drug costs in urban cities?

7 A Yes.

8 Q And isn't it not true that over the last four years  
9 the price has averaged an increase of 3.44 percent?

10 A Yes.

11 Q And in fact in 2013 the price of prescription  
12 medication only went up .6 percent?

13 A That is correct.

14 Q And in fact the only time that I -- if you look from  
15 92 to 2001, the increase is about 4.1 percent, correct?

16 A That is -- that sounds about right.

17 Q And ever since then the amount of change has steadily  
18 declined except for maybe a pump in 2010, 2011?

19 A Well and it's going up again.

20 Q And the cost of physical therapy, would that be under  
21 the category of services by other medical professionals in the  
22 consumer price index?

23 A Yes.

24 Q And do you have that with you, by the way?

25 A No.

1 MR. HARDY: Officer.

2 (Whereupon, Defendant's Exhibit was marked for  
3 identification, L.)

4 Q Does that appear to be a printout from the Bureau of  
5 Labor Statistics with respect to services by other medical  
6 professionals?

7 A Yes.

8 Q And the let's say in 2000, in your report you  
9 indicated it was going to increase by 2.5 percent a year on  
10 average?

11 A Yes.

12 Q Isn't it true that in 2016 it increased by 1.2  
13 percent?

14 15, 2.8 percent?

15 A Yes.

16 Q And it increased for the last five years only about  
17 1.2 percent?

18 A Yes.

19 Q And over the last ten years, maybe 2 to 3 percent  
20 increase?

21 A Right.

22 Q And the highest increase in the last 25 years was in  
23 2008 in 4.1 percent?

24 A Yes.

25 Q So in the last five years the increase was about

1 1.22 percent?

2 A That is correct.

3 Q And that is about half of the 2.5 percent for the  
4 entire 25 year period you looked at?

5 A Slower recovery from the recession, correct.

6 Q And I didn't ask for the reason, but thank you.

7 Last and I just want to ask you about the physician  
8 services and when Dr. Lichen reports speaks to the average cost  
9 of surgeries.

10 And you in your chart say that that is pain  
11 specialist, is that the same thing or not the same thing?

12 A Surgery is not the same thing as pain specialist.

13 Q The report says surgeries or we are concerned about  
14 that?

15 A We are concerned.

16 They are two separate categories.

17 Surgery is four percent growth rate and pain  
18 specialist is more like a medical doctor, that is three percent.

19 Q So if I looked on the consumer price index would I  
20 look at physician services to correlate with pain specialist?

21 A Yes.

22 Q And isn't it true, do you have that index?

23 A I do not.

24 MR. HARDY: One more.

25 (Whereupon, Defendant's Exhibit was marked for

1 identification, M.)

2 Q What is the growth rate that you had applied to the  
3 increase for pain specialists every year?

4 A Three percent.

5 Q Three percent.

6 Isn't it true, by the way, what you're being shown is  
7 that a period also from the Bureau of Labor Statistics?

8 A Yes.

9 Q And over the last five years, was the increase about  
10 2.14 percent?

11 A Yes.

12 Q And if you want to calculate it, we have -- you have a  
13 calculator, I assume on your phone, if you need it, do it.

14 I don't want anyone to guess.

15 And the increase between 92 and 2001 that was high,  
16 that was four percent, correct?

17 A Yes.

18 Q And wouldn't it be more accurate to look at a recent  
19 history like a ten-year period instead of going all the way back  
20 to the 80s when you're looking at these growth rates?

21 A Definitely not.

22 Q As far as the need for surgeries, that is obviously  
23 not up to you, correct?

24 A Right.

25 Q And did you ever speak to Mr. Padron?

1           A     I have not.

2           Q     Did you find out who he is seeing presently, what kind  
3 of doctors?

4           A     I did not.

5           Q     Did you ever speak to Dr. Richter?

6           A     I did not.

7           Q     And did you ever meet with Dr. Richter?

8           A     No.

9           Q     Are you aware that there is no claim in this case for  
10 past medical expenses?

11          A     I didn't calculate them.

12                   MR. REINER:  Objection to the form.

13                   None -- I don't know what he means by that.

14                   No claim for that.

15          Q     Do you know if Mr. Padron has spent any money out of  
16 his pocket for medical care?

17          A     I don't know that.

18          Q     Would that change your opinion as far as future health  
19 care costs hypothetically speaking that he hasn't spent a dollar  
20 out of his own pocket yet?

21                   MR. REINER:  I'm objecting for obvious reasons.

22                   THE COURT:  Sustained as to form.

23          Q     Now you weren't provided with any documents when you  
24 came up with this chart, right?

25                   Other than from Dr. Richter?



1 A Correct.

2 Q And in fact Dr. Richter's report was given to  
3 Dr. Leiken correct?

4 A Originally, yes.

5 Q Did you conduct any sort of independent analysis  
6 outside of what Dr. Leiken did as far as these growth rates are  
7 concerned?

8 A I always do them simultaneous, so I do them separately  
9 and we bring them together, yes.

10 Q So the growth rates you've given us so far you were  
11 just kind of -- you just remembered them?

12 A No, I have them in my files and on my computer at  
13 home.

14 Q But you're sitting here testifying about them, but you  
15 said you didn't have the report in front of them so you remember  
16 them?

17 A I do remember them.

18 I know them.

19 Q And --

20 MR. HARDY: That's all I have.

21 I do have one other question.

22 Q If we looked at these growth rates and we said well  
23 maybe the last ten years is more accurate, that would certainly  
24 change the numbers in your chart, right?

25 A I would never say that, but yes if I relied on the

1 last ten years it would change them dramatically. If I relied  
2 on the last 30 years, it would change them dramatically. So I  
3 picked the years that I look back carefully.

4 Q And 25 years, you're telling us is the better  
5 predictor for the future than the last ten years?

6 A Absolutely.

7 MR. HARDY: Thank you, doctor.

8 MR. REINER: Just a couple, Judge.

9 THE COURT: Redirect.

10 REDIRECT EXAMINATION

11 BY MR. REINER:

12 Q Professor Dwyer, can you explain to the jury why you  
13 go back to the 80s when calculating these numbers?

14 A I don't go back to the 80s.

15 If I went back to the 80s, these would be much higher  
16 because we had double digit inflation in the 80s.

17 Q So why do you go back as far as you do?

18 A I go back 25 years, in my expert opinion that captures  
19 in a good way within a reasonable degree of certainty what is  
20 going to happen in the future.

21 The last ten years we've experienced a recession,  
22 we've experienced policy changes and so if I try to rely on an  
23 outlier year, I mentioned a business cycle.

24 Business cycle is a period of time when we experience  
25 peaks and troughs. If you took any economic, you probably heard

1 any for those terms highs and lows, if you pick just one point  
2 in time when there is a low, you're not going to capture what is  
3 going to happen over a business cycle, which is what we  
4 anticipate, we know is going to happen in the next 10 or  
5 20 years.

6 If I went back only ten years or God forbid only two  
7 years, I would definitely be projecting way too low.

8 If I went back 30 years, I would include the double  
9 digits which I hope we never get back to and I would project too  
10 high.

11 I would -- I capture the amount of time that given my  
12 expert opinion and it's not just a matter of looking at federal  
13 statistics, but working in this area for a long period of time  
14 just knowing how to predict what is going to happen in the  
15 future, that is how I decide.

16 Q And Professor, speaking of just picking the low  
17 numbers, I know that Mr. Hardy on his cross-examination  
18 highlighted some of those low trends.

19 Can you take a look at what has been marked as  
20 Defendant's K, which is the prescription drug CPI?

21 A Yes.

22 Q This is physician services --

23 MR. REINER: I'm sorry then.

24 A This is M.

25 MR. REINER: Defendant's K.

1 Q Professor, in looking at Defendant's K, can you please  
2 describe for the jury what the rate has done since 2014?

3 A It has been going up.

4 Q Different from the numbers that Mr. Hardy talked to  
5 you about in 2013 where it went down substantially, correct?

6 A We had a real outlier year in 2013 in a growth rate of  
7 only .6 percent, kind of a lag of what was happening from the  
8 recession, but jumped to 3.6 percent and currently is in the 4.8  
9 to 5 percent range again.

10 Q So we're on an upward trend?

11 A Yes.

12 MR. REINER: Thank you, Professor.

13 THE COURT: Any recross?

14 MR. HARDY: Yes, please.

15 Just a moment.

16 RECROSS-EXAMINATION

17 BY MR. HARDY:

18 Q If we look at like 92, 93 for that or really any of  
19 the other ones, which one do you have up there?

20 A I have prescription drugs and physician services.

21 And I have the medical care for my own.

22 Q So the greatest swing in the entire last 25 years was  
23 those first two years of the 25 for physician services?

24 In other words, 1992 was a 6.3 increase and 93 was a  
25 5.6 increase?

1           A       That was not the biggest year, though if you go back  
2 to 1989 to 1990, we went from 11 percent.

3           Q       I'm confused.

4                    You didn't use those numbers?

5           A       Correct.

6           Q       But we're saying the ones you did use, let's not use  
7 the ones you didn't use.

8                    So 92 was the highest increase at 6.3 percent?

9           A       Yes.

10          Q       93 was the second highest increase at 5.6 percent?

11          A       Yes.

12          Q       And 94 was the next highest increase, 4.4 percent and  
13 95 was the next highest at 4.5 percent in the last 25 years?

14          A       For physician services, yes.

15          Q       If you eliminated those years 92, 93, 94, 95, the  
16 percentage would go down, correct?

17          A       Correct.

18          Q       And up didn't have any swings above 4.0 percent from  
19 97 to 2016?

20          A       We had swings, but not above four percent and if you  
21 look at the prescription drugs it's a different story, but yes.

22          Q       That's fine.

23                    Do you have the medical care one, overall medical  
24 care?

25          A       Yes.

1 Q And isn't it true, also in those early years, 92, the  
2 increase was 7.4 percent, 93 the increase 5.9 percent?

3 A Correct and the increase --

4 Q I didn't ask you that, please.

5 In 1994 the increase was 4.8 percent, right?

6 A Yes.

7 Q And then it never again increased by 4.8 percent or  
8 anything more than that, correct?

9 A 2002 was 4.7 percent.

10 Q 4.7, so that was maybe an aberration also?

11 A No, because it was 4.6 range, 4.5 range.

12 Q So from 02 to the present, it didn't increase by 4.7  
13 again or more, did it?

14 A No.

15 Q Last I'll make the point with respect to services by  
16 other medical professionals, does the same hold true that the  
17 greatest swings, the greatest increases were in 92, 93, 94?

18 A I have to say no to that. Only the tables you're  
19 showing me, there is a reason why I started in 92 and not 88.

20 You're asking me were the highest swings in 92, no.

21 Q The highest swings in the last 25 years?

22 A Yes.

23 Q And in 92, 93, 94, correct?

24 A Yes.

25 MR. HARDY: Thank you.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

MR. REINER: Nothing further.

THE COURT: Can I see counsel for a moment.

(Whereupon, at this time, there was a side bar  
conference held, off the record.)

(Whereupon, at this time, the proceedings  
continued.)

\*\*\*\*\*

CERTIFIED THAT THE FOREGOING IS A TRUE AND ACCURATE EXCERPT OF  
THE ORIGINAL STENOGRAPHIC MINUTES IN THIS CASE.

---

KRISTIN YOUNG, RPR  
Senior Court Reporter