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MR. MICKUS: Moving into evidence
40277 E, F , G, H and I. Then F 2039 A
which is the inspection of the photo.

All those are admitted, your Honor?

THE COURT: Yes, they are admitted.
F 2067 B, which is the police report, we'll
work on a redacted version.

(Whereupon, Defendant's Exhibit 40277
E,F,G,H,I, and F 2039 A were marked in
evidence, as of this date.)

(Whereupon, the jury enters the
Courtroom.)

MR. RYAN: Plaintiff calls Conrad
Berenson.

C O N R A D B E R E N S O N, called as a
witness, having been first duly sworn, was
examined, and testified, as follows:

THE CLERK: Please be seated.

Give us your name and business
address in a loud voice.

THE WITNESS: Conrad Berenson, 18
Orchard Drive, Woodbury, New York.

THE COURT: You may proceed.

DIRECT EXAMINATION

BY MR. RYAN:

1 Q. Thank you, your Honor.

2 Dr. Berenson, would you please tell the
3 jury your educational background.

4 A. I have a Bachelor's degree in Chemical
5 Engineering from the City College of New York, a
6 Masters in Chemical Engineering from Columbia
7 University, MBA in marketing and statistics from
8 New York University and PhD in economics,
9 marketing management and labor relations from New
10 York University.

11 Q. Have you held any teaching positions in
12 your career, sir?

13 A. Yes, I am now Professor Emeritus at the
14 Graduate School of Business at the City University
15 of New York where I taught for approximately 36
16 years.

17 During that period of time I had both
18 administrative and teaching responsibilities. As
19 to the teaching over the years, I have taught
20 courses such as economics, job analysis,
21 production planning, market planning, product
22 planning, a whole bunch of courses in the area of
23 business and economics.

24 In addition to that, I have had several
25 administrative positions. I served first for five

1 years as director of the City University Research
2 Foundation and in that position was responsible
3 for research programs in most of the nineteen
4 colleges of the CUNY system.

5 Subsequent to that, I served for five
6 years also as director of the PhD program in
7 business and in that role was responsible for the
8 PhD work in economics and finance, accounting,
9 taxation, statistics, public policy, behavioral
10 science, marketing and management.

11 After that, for fifteen years as
12 chairman for the Department of Marketing.

13 Have you been qualified as an expert to
14 testify in Courts on any subject matter relative
15 to this case?

16 A. Yes.

17 Q. Please explain to the jury your
18 expertise in that area?

19 A. Well, for nearly forty years now I have
20 been testifying in cases involving wrongful death,
21 personal injury, occasionally business losses or
22 divorce cases, and it's my job to analyze the
23 economic aspects of a case, whether it be to set
24 forth the cost of future medical care or to
25 project the value of the work that somebody might

1 have done after, had he or she not been injured or
2 deceased.

3 Q. In addition to testifying for people
4 such as I represent is individuals, have you done
5 work on behalf of corporations?

6 A. Oh, over the years I have been a
7 consultant to such firms as General Foods, Proctor
8 & Gamble, Dumont, ATT, Bell Telephone and others.

9 Q. Are you published, sir?

10 A. Yes.

11 Q. Would you please tell the jury about
12 your background in publishing?

13 A. Well, I have five books that have been
14 published. I have contributed chapters to five or
15 so additional books which have also been
16 published, and I have approximately 200 published
17 papers.

18 Q. Are you a member of any organization
19 within your field?

20 A. The National Association of Forensic
21 Economists and the American Economic Association.

22 MR. RYAN: Your Honor, we offer Dr.
23 Berenson as an expert in the field of
24 economics to discuss the laws to the
25 various parts of this case.

RA1710

Berenson - direct - Bell

1710

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THE COURT: Voir dire at this time?

MR. CECALA: Not at this time, your Honor.

THE COURT: Jurors, Dr. Berenson is competent to testify and give opinion testimony in the field of economics and valuations.

You may proceed.

BY MR. RYAN:

Q. Doctor, I want to move through some preliminaries. Have you ever testified for me before in any case?

A. One time I believe.

Q. Have you ever done any work for my firm Kelner and Kelner?

A. Sure.

Q. You've also been asked, as I understand it, and I will be the only one asking you questions, to not only evaluate the law as to my deceased client Steven, but also by Mr. Rothenberg's firm to discuss various laws regarding Gary Motelson and Evan Motelson's life, correct?

A. Yes.

Q. As far as that goes, Mr. Rothenberg's

1 firm, have you ever testified for them in a court
2 before?

3 A. I don't believe so.

4 Q. You are being compensated for your
5 time?

6 A. Yes.

7 Q. Would you tell the jury how you are
8 being compensated so they know right up front?

9 A. Well, the fee for my trial appearance
10 for the individual who you are representing is
11 \$3000 and it's an additional \$3000 for Mr.
12 Rothenberg's clients.

13 Q. Now, Doctor, did I ask you to make a
14 projection of the economic loss arising from the
15 death of Steven Motelson?

16 A. Yes.

17 Q. Would you please tell the Court and the
18 jury what information you were provided in order
19 to perform the analysis requested?

20 A. I received his date of birth, date of
21 death, date of birth of his wife, his income tax
22 returns, and essentially that's it.

23 Q. Okay.

24 Now, based upon the information, the
25 economic information provided to you, the dates of

1 birth and the dates of death, and your analysis,
2 do you have an opinion, based on a reasonable
3 degree of economic certainty, as to the value of
4 the loss?

5 A. Yes.

6 Q. Would you please tell us how you
7 arrived at your opinion, and explain just what it
8 is.

9 I will put it all into one question.

10 MR. RYAN: And with your permission,
11 your Honor, it may be easier --

12 THE COURT: You may explain and you
13 may put numbers on the board.

14 THE WITNESS: Thank you, your
15 Honor.

16 A. I will first put down some headings
17 which will represent the framework for this
18 analysis. As I put some numbers within each
19 category represented by a caption, I will explain
20 where I got the numbers from or what they
21 represent.

22 A. If you look at the period of time for
23 which this analysis is made, it is divided into
24 two portions. The past period which runs in this
25 instance from the date of death to the time of the

1 analysis which was last June, that is a period of
2 6.83 years, and the future period which represents
3 the balance of his work life, that is an
4 additional 5.43 years for a total of 11.86 years
5 from date of death until the date that it's been
6 assumed that he normally would have left the work
7 force at age 72.

8 During this time, I have calculated the
9 income that he might have received -- and that's
10 the income here -- the sum of his wages as paid to
11 him in a W-2 as well as additional earnings from
12 the businesses or his business.

13 I have been given the tax returns which
14 permit me to project what it might have been had
15 he not died. So, for example, his average income
16 for 1995 through 1999 was a little over \$102,112.
17 The U.S. government publishes indexes which permit
18 one to track how the earnings of individuals
19 working in different sectors of the lane or force
20 will change over time.

21 For that purpose, for example, there is
22 a construction wage index. So, if you are a
23 construction worker, you can track the wage rates
24 or, rather, the wage changes of the average
25 construction worker over a period of time.

1 In this instance it was an index which
2 dealt with executive, administrative, managerial
3 and management, et cetera, members of the work
4 force.

5 By using that, I have been able to
6 calculate based upon what his average earnings had
7 been in the five years prior to his death, that he
8 continued to work, the income that he might have
9 earned would have been \$876,248 in the past
10 period.

11 In the future period, using a technique
12 which we call a flat projection, that is freezing
13 the wages at the end of the past period, which by
14 then might have grown, according to the indexes,
15 to a little over \$144,000 a year, and assuming
16 that for the next five and a fraction years that
17 would be constant, no change over that \$144,000.
18 The total therefore would be \$712,379 in this flat
19 projection as I call it for the future for an
20 overall total of \$1,588,627.

21 Now, in addition to considering the
22 income which the decedent might have earned, I
23 have to take into account the fact that he
24 continue to live and to work, some of his earnings
25 would have been spent upon his own consumption,

1 what we call personal consumption expenses, food,
2 clothing, literally everything that he would spend
3 money on, from toothpaste to telephone calls.

4 The U.S. Department of Labor
5 periodically publishes what they call personal
6 consumption, personal consumption expenditure
7 statistics which are embodied in massive tables of
8 hundreds of pages, and that permits someone to
9 enter the tables and look for a family of a
10 certain size with a certain level of gross income
11 to calculate what the typical expenditure patterns
12 are.

13 I have done that and I have calculated
14 that the -- I will abbreviate this. We'll call it
15 MCE for personal consumption expenses.

16 That is a deduction from income in the
17 past \$160,487 and in the future \$135,352, for a
18 total past and future of \$301,839.

19 So, if we deduct the personal
20 consumption expenses of the decedent from the
21 income, we get three measures of the loss.

22 First is a what we call a flat
23 projection of loss. Again, subtracting the
24 160,000 et cetera from the \$876,000, just rounding
25 it off, get \$709,761.

1 Doing the same for the future period,
2 the remainder is \$577,027. The total, therefore,
3 of past and future periods losses is \$1,286,788.
4 Now, so far I have not considered any increases in
5 either income or personal expenses beyond the 6.83
6 year period.

7 The next two columns will address that
8 and the title is "Loss" when future earnings and
9 costs increase yearly at 2.4 percent and 3.4
10 percent.

11 I have chosen these two levels of
12 prospective increase in earnings as well as costs
13 based upon the statistics that the government has,
14 as to what kinds of wage increases people in the
15 decedent's work sector have received, going back
16 five years from the date of this analysis, since I
17 have to look ahead five years, and there has to be
18 a certain -- it's like a see saw.

19 There has to be a certain balance here.
20 If you have want to look back, look forward ten
21 years, you might look back ten years.

22 In this case, a five year examination
23 of the data for income gained in his work category
24 showed that the average was 2.9 percent a year.
25 That is historical.

1 The actual, going forward, may be
2 somewhat different. So, when half a percent below
3 it, 22.4 percent, half a percent above it to
4 increase for the future period both the income and
5 the expenses, the effect of that is only
6 demonstrated in the future.

7 The past is behind us. We can't change
8 that. Still \$709,761 in either column, with the
9 impact for future of changing these base numbers
10 like 2.4 percent a year and 2.4 percent the next
11 year and so forth, shows a future loss in the 2.4
12 percent column of \$605,662, and a future loss in
13 the 3.4 percent column of \$618,006. The totals in
14 each column are respectively \$1,315,423 to
15 \$1,327,767 for the 2.4 percent and 3.4 percent
16 columns.

17 These figures are set forth within what
18 we call a reasonable degree of economic certainty.
19 This is not nuclear physics. You can't be
20 absolutely certain. Conditions change all the
21 time.

22 So, getting a range of loss of earnings
23 as \$1,315,000 to 1,327,000, the odd numbers are
24 insignificant.

25 There is one other element of the

1 analysis -- I will take another chart for that --
2 that is what we call the Household Services that
3 might have been produced by the decedent, home
4 maintenance repair, helping with the shopping,
5 heavy cleaning and the like.

6 The U.S. government, again, has tables
7 which set forth for families of different size and
8 individuals of different ages what they are likely
9 to do in the way of work around the household and
10 they set a value on that.

11 I was able to apply those statistics to
12 this case and these calculations go to the end of
13 the decedent's life expectancy which at the time
14 that he died was 19.9. Let me get those figures.

15 We'll call this Household Services.

16 There is a zero percent projection,
17 that is the flat. One in there is one in which
18 the increase is 2.4 percent a year, and the other
19 3.4 percent per year.

20 If we take the loss of a household
21 service without any future increases, that is a
22 zero percent rate of increase, the value of the
23 loss is \$148,672, it should be pointed out that
24 the way this is analyzed is calculate, and this is
25 incidentally based on a sample of close to 40,000

1 households, so there is a large, substantial and
2 good sample.

3 It is based upon the premise that in
4 the absence of an individual such as Mr. Motelson,
5 to do these services, someone would have to be
6 brought in from the local labor market and paid.

7 So, use the local costs and the
8 analysis, tailor it to his age, work, life
9 expectancy, his family size, et cetera.

10 If the costs gross at 2.4 percent a
11 year, total is \$166,286 at 3.4 percent a year it
12 is \$174,599.

13 Once again, these figures are set forth
14 within a reasonable degree of economic certainty.

15 The total loss that I projected is
16 equal to the sum of these household services costs
17 and the earnings loss. Thank you.

18 Q. Doctor, just one last question with
19 regard to Mr. Motelson.

20 As an economist, you use statistical
21 averages, so you come up with this 5.3 based on
22 what?

23 A. 5.03, the assumptions I was asked to
24 assume, that he would have worked until age 72 had
25 he not died which represents, really, 11.86 more

1 years beyond the date of his death.

2 Q. If there is testimony in this trial
3 later on from witnesses that he intended to work
4 past the age of 72 and, in fact, had started a
5 business rather late in life at 47 and just bought
6 a brand new building that he closed on two weeks
7 before he died, these numbers for future, past
8 wouldn't change, correct?

9 A. The past would not change.

10 Q. But the future would increase, given
11 the reasonable amount of years added to this
12 particular number, right?

13 A. Sure.

14 Q. The 5.03.

15 Okay, thank you, let's take a moment
16 out to discuss Gary Motelson and Evan Motelson, if
17 you will, okay?

18 Q. Doctor, you can stay down here if you
19 want. Come around. Let me ask you some
20 questions.

21 Were you asked, sir, to make a
22 projection with regard to the costs of future
23 medications for Gary Motelson?

24 A. Yes.

25 Q. I want you to assume, sir, that a

1 doctor, a physician, a medical doctor, has
2 testified in this case that Gary Motelson's
3 medications run \$5000 a year, okay?

4 A. Sure.

5 Q. Accepting that to be the testimony,
6 Doctor, have you, within a reasonable degree of
7 economic certainty, prepared an analysis as to the
8 future costs of Gary Motelson's medication?

9 A. Yes.

10 Q. Would you please explain to the jury
11 what your analysis is?

12 A. Okay.

13 Well, once again the government comes
14 to the rescue. They publish statistics on various
15 elements of medical care increase.

16 They have a data series, for example,
17 on what has happened to the cost of prescriptions
18 going back to the 1930s. I use that to determine
19 what the prescription costs would be based upon
20 \$5000 a year.

21 So, let me put several columns here.
22 First is the item, then we have the current cost
23 in dollars per year.

24 Then we have what we call a flat
25 projection which means that to the end of Gary's

1 life expectancy, which is from the date of this
2 analysis, which was about eight days ago, his life
3 expectancy then was 43.86 years, which is obtained
4 from the U.S. Tables of Life Expectancy, and for
5 the prescriptions, based on \$5000 a year, current
6 cost, dollars per year.

7 If that 5000 is multiplied by the
8 number of years, 43.86, we get without any
9 increases, \$219,300.

10 If, however, the cost of prescriptions
11 goes up at 3.7 7 percent a year, we'll call that
12 low, there is a low percent increase and a high
13 percent.

14 For the prescriptions, it is 3.7 to
15 4.7. That being the case, the cost of \$529,922 to
16 \$910,220. The psychiatrist --

17 Q. Doctor, let me just ask you because I
18 know we've asked you to do these numbers so you
19 have them.

20 I want you to assume that there's been
21 testimony from a medical doctor that because the
22 cost of psychiatric future visits will be \$300 a
23 week times 48 weeks to create an annual number?

24 A. That annual number is \$14,400.

25 Q. Assuming that to be true, doctor, do

1 you have an opinion within a reasonable degree of
2 economic certainty as to the expense of future
3 psychiatric care for Gary Motelson?

4 A. Sure.

5 Q. Would you please explain it to the
6 Court and jury?

7 A. Again, simply projecting flat, that is
8 43.86 years times 14,400, it is \$631,584 for a
9 total past and future of \$850,884.

10 If the increases range from five
11 percent to seven percent, we have for the
12 psychiatrist a total of \$2,160,028 to \$3,795,165,
13 and again the rates of increase are different
14 because the first, the top level was for
15 prescriptions and this is for physician services.

16 It is different, and the government
17 provides different statistics for the different
18 items.

19 The totals in these two columns,
20 \$2,689,950 to \$4,705,385. Once again, these
21 figures are set forth within a reasonable degree
22 of economic certainty.

23 I want to emphasize one thing, that
24 none of the past costs are included here. This
25 begins now or last week and runs forward until the

1 end of his life expectancy.

2 Q. I made a little mistake, not a big
3 mistake but I should have pointed this out.

4 Going back to Steven, I believe you
5 testified this number is \$577,027? It should say
6 027.

7 (Pause.)

8 Q. Now, why don't you grab another board,
9 if you would, Doctor. I will grab it for you, and
10 we want to talk about Evan Motelson, okay?

11 If you address that, while you are
12 doing that, I want you to assume that a physician
13 has testified that Evan Motelson's medications
14 cost \$9000 per year, okay?

15 Assuming that to be the case, Doctor,
16 do you have an opinion, within a reasonable degree
17 of economic certainty, as to the future costs of
18 Evan Motelson's medications?

19 A. Sure. Again, we have the zero percent
20 increase and that's \$565,200 and then at the low
21 and high ends of the probable range the numbers
22 run from \$1,558,440 to \$3,521,652.

23 Q. What percentage is this?

24 A. This increase here, 2.9 percent to 4.9
25 percent. This is for the prescriptions.

1 Then we have the psychiatrist --

2 Q. Let me ask you to assume that a
3 psychiatrist has testified, a medical doctor, that
4 the costs per visit for Evan Motelson is \$225 a
5 visit times again 48 weeks, because there will be
6 time off where he won't see them.

7 So, we figured it that way, only 48 out
8 of 52 weeks.

9 Do you have an opinion, within a
10 reasonable degree of economic certainty, as to the
11 future costs of psychiatric visits for Evan
12 Motelson?

13 A. Sure.

14 Q. Would you please tell the Court and
15 jury what it is?

16 A. The base now is 10,800 a year with a
17 zero percent rate of increase at \$678,240 and from
18 the load, the high end of the range, \$4,707,940
19 to --

20 Q. Can I just stop you there, Doctor?

21 A. Sure.

22 Q. When you are discussing Evan Motelson,
23 you told us about Gary's life expectancy..

24 Do the tables that you referred to as
25 an expert in economics give you any information

1 about Evan's life expectancy?

2 A. Sure, and based upon this his current
3 age, the life expectancy of this individual, 612.8
4 years from last week.

5 Q. Could you continue your analysis,
6 please?

7 A. Okay. The low, the high end of the
8 range for the psychiatrist is \$3,149,500 though
9 \$7,442,681, so that the totals are at the low end
10 range for both the prescriptions and psychiatrist,
11 \$4,707,940, and at the high end of the range,
12 \$10,964,333, and that was the other projections.
13 These are set forth within a reasonable degree of
14 economic certainty.

15 Let me ask you this, when it comes to
16 the psychiatrist value over 62.8 years, did you
17 use some different projections?

18 A. Here it's 4.2 percent on a low end and
19 6.2 percent on the high end, different from the
20 prior projections, because we are talking about a
21 different number of years here.

22 Q. If you we compare Gary's at 47.3,
23 compare Gary's at 47 point whatever to Evan's at
24 62?

25 A. Right.

1 MR. RYAN: Thank you, Dr. Berenson.
2 I appreciate it. I have no further
3 questions at this time.

4 CROSS-EXAMINATION

5 BY MR. CECALA:

6 Q. Good afternoon, Mr. Berenson, how are
7 you?

8 A. Good afternoon.

9 Q. Could you do me a favor, just very
10 quickly. Can you come up to the board and write
11 out for the jury the income that Steven Motelson
12 earned in the tax returns that you received from
13 1995 through 1999, please?

14 Break it down as it is on his tax
15 returns by salary and then profits from his
16 business as a shareholder, please, per year.

17 MR. RYAN: I am going to object.

18 Let me approach here.

19 (A side bar discussion was held off
20 the record.)

21 THE COURT: You may proceed.

22 Q. You can do it just to 99. Just so we
23 can save time, if this remains the same, you don't
24 have to draw it out. Write a line.

25 (Pause.)

1 Q. 1999.

2 (A side bar discussion was held off
3 the record.)

4 Q. Thank you, Dr. Berenson.

5 You can return to the stand, thank you.

6 (Witness resumes the stand.)

7 MR. RYAN: Your Honor, I am going
8 to object. I think he's earned a PhD and
9 deserves to be referred to as Dr. Berenson.

10 MR. CECALA: That's fine. I didn't
11 mean it as a sign of disrespect.

12 Q. Dr. Berenson, you can agree with me
13 you're here today to estimate for this jury the
14 economic loss suffered for their portion for
15 Steven Motelson to his estate because of his death
16 on July 1, 2000; correct?

17 A. Right.

18 Q. You agree with me that the last thing
19 you would want to do is give this family a
20 windfall for items that he would not have earned
21 had he stayed alive and worked his statistical
22 lifespan, true?

23 MR. RYAN: Objection.

24 A. Correct.

25 THE COURT: Overruled.

1 Q. Part of what you do in arriving at all
2 these numbers that you put up is first you rely on
3 statistics from books, correct?

4 A. Well, books, reports, whatever.

5 Q. Governmental reports.

6 First, in your reports you told us on
7 direct that for the life expectancy of Steven
8 Motelson, you came up with a statistical lifespan
9 of 19.9 years, correct?

10 A. Yes.

11 Q. And statistically that just means a
12 person in Steven Motelson's income level and his
13 raise statistically would live 19.9 years?

14 A. No, sir.

15 Q. What does it mean? Tell us.

16 A. You put an income level. Life
17 expectancy tables are a function of sex, race and
18 age. It has nothing to do with income.

19 Q. You just fit him into where he fits in
20 on that table and you come up with the statistical
21 lifespan of 19.9 years?

22 A. Why, well I don't have to come up with
23 it, the government tables do. It is an average,
24 based upon the population in the U.S., and
25 obviously some people will not live as long as

1 average. Some people will live longer but that is
2 the average.

3 Q. For the purposes here today, you are
4 relying upon that for his life expectancy, 19.9
5 years?

6 A. Correct.

7 Q. Oh, all right.

8 Now, for his wages, though, you did
9 something a little bit different, didn't you?

10 A. I did not use the table. Okay.

11 Now let's get into that a little bit.

12 A. Sure.

13 Q. You have Mr. Motelson working 11.86
14 years from his age of 60 years old on the date of
15 the subsequent, July 1, 2000, correct?

16 A. Right.

17 Q. Statistical work like tables for
18 someone like Steven Motelson would only have him
19 to working five years to age 67, correct?

20 A. Approximately.

21 Q. So, can I borrow your marker for a
22 second?

23 (Pause.)

24 Q. What you did immediately right off the
25 bat is instead of referring Steven Motelson to

1 statistical tables that you use for other parts of
2 your calculations, that would have given you a
3 work life of five years for him and that would
4 have brought him to age 65, correct?

5 A. If I may interject, it was not quote
6 right off the bat as you say, unquote. It was
7 after giving due consideration to the
8 circumstances of the employment.

9 He was self employed. It was a
10 relatively new business with him, and in addition
11 to that I understand that he invested in
12 additional properties not too long before he died.

13 Now, there is no law that says you must
14 retire. I am far beyond that age, and I am still
15 working. If I had relied upon the tables, I'd be
16 retired for thirteen years already.

17 So, the fact of the matter is that you
18 have to -- you don't quite right off the bat take
19 the table. You have to say what does this table
20 really represent.

21 The vast majority of tables is based
22 upon a population which works for somebody else
23 and upon whom there is great pressure exerted by
24 employers, from social reasons, to retire at the
25 appropriate -- what they call an appropriate age.

1 To those of us who are self employed,
2 and again I cite myself an example, there is no
3 need to retire and, in fact, it is quite healthy
4 not to, in my opinion.

5 So, I didn't use the statistical table
6 because he doesn't fit statistical profile which
7 is imbedded in that table.

8 Q. Okay. Are you done?

9 So we can agree, going back to my
10 question now, that if you use the statistical work
11 life table for Steven Motelson, he would have
12 worked until age 65 based on that statistical work
13 life table, correct?

14 A. Approximately, yes.

15 Q. What you did, instead, was make an
16 assumption, correct?

17 Did you make an assumption, sir?

18 A. No, I was asked to assume based upon
19 his desires as stated from my recollection to his
20 family that he wasn't going to retire, he was
21 still active in the business, reinvesting in the
22 business and --

23 MR. CECALA: I think that's
24 hearsay. You asked him whether he assumed.
25 He was asked to assume as in the

1 hypothetical, but go ahead.

2 Q. I am just asking you, instead of
3 relying on statistical tables like you did in the
4 rest of your report, for other items what you did
5 for his work life expectancy is you didn't use
6 that and instead you made an assumption of 11.8
7 years to 12 years of age. Simple question.
8 Yes or no, correct?

9 A. My answer I think was given to you
10 before. I did not make an assumption. I looked
11 up all the facts provided to me and concluded that
12 age 62 was not an exaggeration, in my opinion.

13 THE COURT: You mean 72.

14 Q. Who asked you to assume age 72?

15 A. It was Mr. Ryan.

16 Q. That would be the attorney for the
17 estate of Steven Motelson, correct, asked you to
18 assume that?

19 A. Yes.

20 Q. Anyone else?

21 A. No, and it might also have been another
22 attorney in his office.

23 Q. Okay. So, that's your only basis for
24 that, sir?

25 A. That's the only basis for the

1 assumption of 11.8 years. I stated the other
2 bases for that assumption which was his, let's
3 say, late entry into the real estate business, his
4 more recent --

5 Q. I have to stop you there.

6 MR. RYAN: Objection. He asked him
7 the question and he doesn't like the
8 answer.

9 THE COURT: He will have to like
10 the answer.

11 MR. CECALA: I don't have a problem
12 with the answer.

13 THE COURT: Let him finish the last
14 one.

15 Q. Go ahead.

16 A. He had, as I understood it, entered
17 into the real estate business relatively late in
18 life, in his late forties, and not too long before
19 his death he invested significant sums in new
20 properties, and again he, I was informed further
21 that he enjoyed his business and had no intention
22 to retire.

23 Now, since he was president of the
24 company, it all made sense. He did not have to
25 retire.

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(Whereupon, Elizabeth Cruz was
relieved by Tammy Rodriguez, Official Court
Reporter.)

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RA1736

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1 Q As a general proposition if the
2 statistical tables you're using for Mr. Motelson
3 are wrong, and don't fit him, the figures that you
4 gave us for his lost income would be off as a
5 general proposition?

6 A I'm sorry would you repeat that
7 question again?

8 Q You used some statistical tables to
9 arrive at your calculations that you put up here?

10 A Sure.

11 Q All I'm saying is, if those are wrong
12 then your ultimate figures would also be wrong?

13 A Absolutely.

14 Q The same thing if the assumptions that
15 you're making such as Mr. Motelson working 11.8
16 years instead of five years from his death, if
17 that assumption is also wrong, then your ultimate
18 figures derived from that will also be wrong?

19 A He might have worked less or more.

20 Q And we don't know, correct, we don't
21 know?

22 A We can't be absolutely sure, but I
23 think the circumstances indicate that he was not
24 compelled to retire with what the table says for
25 the reasons cited by me several times already.

1 Q That's why since we can't be certain
2 that's why we use statistics?

3 A Only when they apply. Only when they
4 apply not blindly.

5 Q You can agree with me that if you use
6 this statistical table for someone of Steven
7 Motelson's age, 60 years old when he passed on,
8 and he was only going to work to age 65, that
9 would absolutely cut off your future loss wages
10 that you've calculated?

11 A Sure.

12 Q It would also cut off almost two years
13 of the past lost wages that you calculated,
14 correct, if he was only working five more years
15 and you're calculating 6.8?

16 A Right.

17 Q Now, you did something else aside from
18 making an assumption and not using the statistical
19 work life table for Mr. Motelson, what you did is
20 you started making assumptions about his income
21 going to the future, is that correct?

22 A I started making calculations not
23 assumptions.

24 Q You started making calculations?

25 A Based upon government data.

Proceedings

1 Q All right. We know the earnings that
2 Mr. Motelson made from his tax returns, right?

3 A In the past.

4 Q In the past. Now we know that as
5 president of Dome, he received an annual salary of
6 \$52,000. from 1995 through 1999, correct?

7 A Yes.

8 Q We also know, you know what type of
9 business Dome management was?

10 A Real estate.

11 Q You know it was a corporation?

12 A Sure.

13 Q He was a shareholder at the time and
14 derived profit from that at the end of each fiscal
15 year?

16 A That's right.

17 Q That was represented on his schedule C.
18 of business earnings, right?

19 A Right.

20 Q We have those listed and those vary
21 from his business. From a low of \$37,000. per
22 year to a high of \$64,000. in 1998, correct?

23 A Right.

24 Q Now, if you total them up his best year
25 working at Dome here he earned a \$116,000.

1 correct?

2 A That's right.

3 Q On his lowest year he earned \$89,000.
4 or \$90,000. pretty much the same range, correct?

5 A Right.

6 Q In 1995 and 1998, correct?

7 A Pretty much.

8 Q Now, what you did in addition to
9 increasing his work life expectancy by six years
10 over the statistical table, what you also did in
11 going out into his future earnings is you
12 increased his income, correct?

13 A By the statistical tables.

14 Q This statistical table is good though
15 the one we're using now to increase his profits,
16 correct?

17 MR. RYAN: Objection.

18 THE COURT: Sustained. Rephrase
19 the question.

20 Q At some point in time you start
21 estimating or using his income as \$135,000 don't
22 you?

23 A It was actually \$141,000.

24 Q When did you start estimating that?

25 A I assume that it would have been

1 beginning in July of 2000.

2 MR. RYAN: Your Honor, maybe we
3 shouldn't have defense counsel changing the
4 board that the doctor created.

5 MR. CECALA: This is the one I had
6 him create for me.

7 MR. RYAN: Sorry.

8 THE COURT: Let him finish.

9 A Starting with the increase again, I
10 calculated first what his wages might have been
11 for the full year in 2000.

12 Q That was what?

13 A One hundred fourteen and change and
14 increased them according.

15 THE COURT: Do you have another
16 board, Mr. Cecala?

17 These he created just for
18 evidentiary use the one that you're writing
19 on as a separate board.

20 Q All right. Go ahead, Doctor.

21 A Had his wages total earning increase
22 gradually over the 6.83 years of the future period
23 of the past period rather to \$141,000 just
24 rounding it off.

25 Q The hundred and 40 thousand is that

Proceedings

1 what you have him earning in that 11 year or more
2 in that 11 year?

3 A That's what I have him earning in the
4 11th year.

5 Q When did you have him start earning
6 that \$141,000?

7 A At the end of 6.83 years.

8 Q It's building up from 114 gradually to
9 140?

10 A Right.

11 Q We know that he derived his work income
12 that you base your projections on from Dome
13 Management?

14 A Yes, their records.

15 Q Nowhere did he ever earn \$140,000 in
16 any of the previous five years, did he?

17 A Not a bit.

18 Q Actually that's about \$25,000 or
19 \$30,000 more than he earned in his best year, fair
20 enough?

21 A That's right.

22 Q So again you made an assumption that
23 upped his income more than it ever did, based on
24 any of his previous tax returns?

25 A Every year wages go up for the average

1 person?

2 Q Correct, but Mr. Motelson is different
3 isn't he, you just told us that, correct?

4 A In terms of his work life expectancy he
5 has the ability to control that, and therefore in
6 my opinion your statistical table work life
7 expectancy, which you would like to use really
8 shouldn't be controlling. It's his ability.

9 When we use a life expectancy table we
10 can't control -- that life expectancy table will
11 have to be based upon the average of population in
12 terms of future earning, increases.

13 We would like to earn millions, but we
14 don't. We look at the government figures as to
15 what kind of increases we can reasonably
16 anticipate earning in the future that's what I
17 used.

18 Q Steven Motelson didn't work for a
19 corporation that gave out raises, did he?

20 A He had the ability to do so, but he
21 didn't.

22 Q He had the ability to do so based on
23 income his own business earned, correct?

24 A Yes.

25 Q That's laid out for us, correct?

Proceedings

1 A No.

2 Q Was he the president of the company?

3 A Yes.

4 Q Was he the one in charge of determining
5 how much money he made in any given year?

6 A Of course.

7 Q At no time did he ever give himself
8 more than \$116,000 based on the profits of the
9 business, correct?

10 A That's right.

11 Q His income is capped by how profitable
12 his business was in any given year, correct?

13 A Yes, and no because we did not value
14 the business here.

15 When you're president of a corporation
16 and you have business earnings and you are -- if
17 you're reinvesting money back into the business,
18 as I understand he did, then there would be a
19 growth and a value of the business, which I didn't
20 measure, because that's not my specialty, that
21 requires a real estate accountant.

22 But the business after reinvestment of
23 certain amount of monies, so that they can buy
24 more property and grow as a business then he got a
25 share of the profits that remained. That's what

1 the business earnings represent. What's left over
2 after reinvestment and growth.

3 Q At no time did it come anywhere near a
4 \$140,000 a year?

5 A That's right that portion of it.

6 Q Another assumption you made is that
7 again the loss to his estate -- You included all
8 of the income he got every year from the business
9 as a shareholder, correct?

10 A That's right.

11 Q After Mr. Motelson passed away?

12 MR. RYAN: Objection, your Honor.

13 THE COURT: Overruled.

14 Q You know what happened to the business,
15 don't you?

16 A Well, I believe it's still operating.

17 Q That's right. You know who Mr.
18 Motelson distributees are, don't you?

19 A No, I don't.

20 Q Well, you know he had a wife Enid?

21 A Yes.

22 Q A son, Michael, correct?

23 A I can't tell you that because I don't
24 know.

25 Q You never spoke to Michael?

Proceedings

1 A No.

2 Q Did you ever read his deposition?

3 A I don't think so.

4 Q Do you know he's currently president of
5 Dome Real Estate Management. He has Gary
6 Motelson?

7 A Correct.

8 Q And he has a daughter, Gayle, correct?

9 A Again, I don't know.

10 Q Do you know that after -- withdrawn.

11 When Mr. Steven Motelson was alive, you
12 know he's a 49 percent shareholder in Dome
13 Management, don't you?

14 A I would have to check, but it sounds
15 right.

16 Q After he passed on the other two
17 partners were bought out by the corporation, so
18 Dome Management then owned a hundred percent of
19 his shares, you know that, don't you?

20 A No, I don't.

21 Q Well, that would be important for you
22 to know in doing your calculations, wouldn't it?

23 A No, because I project on the basis of
24 what there was, not after some catastrophic
25 change.

1 Q But what you're saying is the estate
2 has a loss, which includes these profits from the
3 business, it's lost, gone, correct, that's your
4 opinion, true?

5 A What do you mean the estate has a loss?
6 This is the loss generated in part by the absence
7 of the decedent. He works for two elements of
8 compensation his wages, and his schedule C.
9 earnings.

10 Q The schedule C. earnings if they still
11 all go to the Motelson family it is not a loss,
12 correct?

13 MR. RYAN: Objection.

14 THE COURT: Overruled. He can
15 answer that.

16 A This is the -- I don't know the basis
17 on which they continue to get it or what they're
18 getting, but this is the loss derived from the
19 earnings that the decedent may have achieved had
20 he continued there it is.

21 He had two columns there, which
22 represent the pay for his efforts, his wages and
23 his ownership share.

24 Q Yes. What I'm asking you is this
25 column, the profits from the business, if that

1 still goes to the Motelson family it's not a loss,
2 correct?

3 A If they're getting it without doing
4 anything?

5 Q If he derived its profit from a
6 business, he got from being a shareholder,
7 correct?

8 A Yes.

9 Q If now when he passed away all of the
10 shares of his business went to his family, and
11 they are now a hundred percent shareholders.

12 The profits of the business, every
13 single year still go to the family. They are not
14 suffering these figured losses, correct?

15 A I don't know that because I would have
16 to see what the business is generating at this
17 point in the absence of the decedent.

18 Q You didn't do that?

19 A No, I didn't.

20 Q You didn't come here and tell this
21 jury, or do those calculations?

22 A No.

23 Q We can agree then as a general
24 proposition, sir, that if the family are the sole
25 shareholders of this business they're the ones

1 deriving the income from the business in this
2 column, correct?

3 MR. RYAN: Objection.

4 THE COURT: Overruled. He can
5 answer the question. There will be
6 redirect.

7 A Again, if there is income. This I
8 don't know.

9 Q Humor me. As a general proposition
10 whatever profits are left in the business on any
11 given year going forward, if the family is the
12 sole shareholders they're getting it, correct?

13 A The family of the decedent?

14 Q Correct?

15 A You're saying that they're getting it
16 anyhow.

17 Q Correct?

18 A Then it shouldn't be there.

19 Q Exactly right. You know in your
20 calculations, in addition to giving him an
21 additional six years of work life that
22 statistically didn't you also then did you give an
23 included income as a loss in your projections,
24 that's not actually a loss, correct?

25 MR. RYAN: Objection.

Proceedings

1 THE COURT: Overruled. He can
2 answer.

3 A It might be lateral source income, but
4 it's certainly a loss based here I don't know the
5 legality of what you're trying to imply here.

6 Q You do economics, don't you?

7 A I do economics constrained by what I
8 understand the rules to be.

9 Q As told to you by plaintiff's counsel?

10 MR. RYAN: Objection.

11 THE COURT: Sustained.

12 Q Sir, you made other assumptions in
13 coming up with some things such as when you
14 started to do -- Well let me ask you this, sir,
15 one last question on this topic. If this flat
16 rate projection loss of 1.2 million --

17 A I see.

18 Q -- you base your calculation on a
19 statistical work life of five years, then all
20 we're dealing with is this top line, correct for
21 his lost income, true?

22 A Well, that's more than five years.

23 Q We're going to get into that, but this
24 whole bottom line is gone?

25 A Based upon your assumption.

Proceedings

1 Q Yes. Based on the same assumption,
2 it's lopping off two years on this top line,
3 correct?

4 A Based upon your assumption.

5 Q Right. Then further is this portion if
6 it's not a loss to the estate, we have to take
7 that off on top of that, correct?

8 A I don't know what collateral source
9 rules apply here.

10 Q Now, another assumption you made is you
11 then, in addition to calculating a flat rate you
12 then increased it by 2.4 percent and 3.4 percent?

13 A That's right.

14 Q That's what you call a growth rate?

15 A Of expenses and income.

16 Q We saw that's just an assumption you're
17 making into the future. You don't know if it's
18 going to increase by 2.4 percent or not, correct?

19 A Well, based upon the history of this
20 segment of the labor force they are going back
21 five years. As I said earlier their increases
22 have been 2.5 percent a year, so half percent
23 below and above.

24 Q Based on the trends that are looking
25 forward from this month going forward, it looks

1 like we're heading into a recession, correct?

2 A No, we're not heading in it. We're
3 there.

4 Q Things are going to get worse going
5 into the foreseeable future, correct?

6 A I don't know about the foreseeable --
7 in the immediate, they'll get worse.

8 Q Just today the feds cut interest rates,
9 correct?

10 THE COURT: Sustained. Where are
11 we going with this? We're going to
12 introduce evidence through you.

13 MR. CECALA: I want to know if he
14 knows.

15 Q Do you know that?

16 MR. RYAN: Objection. It's a
17 presumptive fact by counsel.

18 MR. CECALA: If he knows if he
19 doesn't know I'll move on.

20 A I haven't looked at the paper today.
21 I've been sitting in the witness room.

22 Q Now, another component of damages that
23 you measured for Steven Motelson is his value of
24 household services?

25 A Right.

1 Q That's over his life span, statistical
2 life span of 19.9 years, correct?

3 A Yes.

4 Q I think you told the jury that that's
5 to compensate his estate for what they had to pay
6 out to have other people do what he did around the
7 house?

8 A No, that's not what I said. You're
9 distorting that.

10 Q What is it?

11 A I said the value of his services is
12 based upon what it would cost to bring someone
13 from the local labor market in to do those chores
14 which the decedent can no longer do.

15 I did not say that they did bring
16 someone in because you can let -- you can say,
17 well gee that wall needs painting, but Steve is
18 not around to do it. You can let it go.

19 There are many things that you let go
20 in the household when the one that might have done
21 it is no longer there, or other people pitch in.

22 It has nothing to do, however, with
23 from the value of the work, which the decedent
24 might have been doing had he been alive to do it.

25 Q How much does that come out to per

Proceedings

1 year, did you put a value on it?

2 A Seven thousand actually it's \$8,400 for
3 the future period it's \$8,498.

4 Q Now, again for the calculations that
5 you made for both Gary's bills and Evan's bills
6 again, you're basing that all on their life
7 expectancy of statistical life expectancy of 43
8 years approximately, and 62 years?

9 A 62.8.

10 Q Again, we don't know if they're
11 actually going to reach those marks or not?

12 A We know that he might live longer or
13 not as long, but if you have a crystal ball tell
14 us about the market two days from now.

15 Q I'll ask you this, Doctor, I'll ask you
16 straight forward stuff. You testified in court
17 before hundreds of times?

18 A Sure.

19 Q That's over 40 years you told us on
20 direct?

21 A No, I said about 36 or 7.

22 Q Okay. Thirty-six or thirty-seven. The
23 vast majority of times that you come into a
24 courtroom like this and testify it's on behalf of
25 plaintiffs, correct?

1 A Of course.

2 Q Okay. You told us that you already
3 charged \$6,000 to testify here today, correct?

4 A For my time today, yes.

5 Q You also charge for your analysis and
6 reports that you've done, true?

7 A That is right.

8 Q How much was that?

9 A The analysis total for the three
10 individuals probably about ten or eleven thousand
11 that covers the original reports done some years
12 ago and subsequent reports.

13 Q It's actually true for Evan and Gary,
14 you didn't even generate a formal report, did you?

15 A Not this time. Originally I did.

16 Q Is there any report that you've ever
17 generated for Gary and Evan in this case?

18 MR. ROTHENBERG: Objection, your
19 Honor. It's been exchanged.

20 THE COURT: I'm going to sustain.

21 MR. CECALA: Find it. I'll look at
22 it.

23 Q Let me ask you this. In addition to
24 extending his work life by six years, including
25 the shareholder profits, the growth rates that you

1 used in the past when you testified before jury's
2 like this, have also been proven erroneous,
3 correct?

4 A What do you mean erroneous.

5 Q You've been doing this for 36 or 37
6 years, correct?

7 A That's right.

8 Q You've been testifying in cases since
9 the 1970's?

10 A Early 70's, yes.

11 Q We have transcripts of what you
12 testified a growth rate would be from the 70's for
13 a particular profession and extrapolated to the
14 80's and 90's, and we had the ability to look back
15 to see if your projections actually came true?

16 A Of course.

17 Q Do you remember a Green case? Do you
18 remember that case?

19 A What year was that?

20 Q In 1970's?

21 A Oh, come on.

22 Q Do you remember in the 1970's in the
23 Green case, you testified a teacher was earning
24 \$24,000 at that point, do you remember that?

25 A No.

1 Q Do you remember you used an 8 percent
2 growth rate, at that time?

3 A You say it was the 70's, we're talking
4 30 years ago in one case out of many hundreds,
5 please I can't recollect.

6 Q Does an 8 percent growth rate sound
7 about right for that time period?

8 A I don't know the facts of the case. I
9 don't --

10 Q Let me ask you this. If you testified
11 in the Green case that in 1993 she would have been
12 earning as a school teacher \$120,000 in 1993 -- no
13 teacher ever made \$120,000 in 1993, as a base
14 salary, correct?

15 MR. RYAN: Objection, he's
16 testifying to facts not in evidence.

17 THE COURT: Sustained.

18 Q Well, do you remember that, sir?

19 A No. You're talking about 30 years ago,
20 and there have been hundreds and hundreds of cases
21 since.

22 Q Let me see if I can refresh your
23 recollection?

24 A Believe me I won't recollect anything
25 from 30 years ago.

1 Q It's okay. This is from April of 2006
2 in this very courtroom before the same Judge
3 Flemming versus Staten Island University Hospital
4 case not that long ago. You were asked this
5 question --

6 A I don't remember.

7 Q I'll refresh your recollection.

8 MR. RYAN: Objection. If he's
9 going to show it to the witness to refresh
10 his recollection, but he can't read things
11 that are not in evidence.

12 THE COURT: He can ask the question
13 first then he can read.

14 Q All right.

15 "Question: Have you ever --

16 THE COURT: Ask him the question.
17 Then you can do the reading.

18 Q I asked him if he remembers. He says,
19 he can't remember.

20 MR. RYAN: Which trial?

21 MR. CECALA: Cindy Flemming versus
22 Staten Island University Hospital case
23 April 21, 2006, in this very courtroom.

24 MR. RYAN: Not the Green case.

25 MR. CECALA: It's talking about the

1 Green case.

2 MR. RYAN: I object. You either
3 have it, or you don't.

4 MR. CECALA: I have his testimony
5 in here about it.

6 THE COURT: He testified about the
7 Green case?

8 MR. CECALA: Yes.

9 THE COURT: Let me see this
10 transcript, please.

11 You can't do cross-examination on
12 cross-examination Mr. Cecala.

13 You can do utilize what he
14 testified to there as opposed to something
15 that someone else was trying to use for
16 impeachment purposes in a prior trial
17 without a transcript here of that trial.

18 That's the ruling. You can use
19 this transcript for what he testified to as
20 to Flemming, but not bootstrapping it with
21 reference to Green.

22 MR. RYAN: Thank you.

23 Q You agree with me, sir, that in the
24 past when you testified, your estimations about
25 future income for people have proven to be

Proceedings

1 erroneous over time, correct?

2 A I'm sure over hundreds of cases some of
3 them looking ahead -- when we try to look ahead
4 30, 40 years some were not in target.

5 Q Like you did here if your erroneous in
6 this case, then if this jury believes your figures
7 and you're wrong they're overcompensating the
8 Motelson family hundreds of thousands of dollars,
9 correct?

10 MR. RYAN: Objection.

11 THE COURT: Overruled.

12 A The rates of increase those are very
13 modest particularly for somebody in his own
14 business, very modest, 2.4 percent.

15 Q Now, isn't it true, Doctor, that judges
16 have ruled in cases that your testimony was
17 misrepresenting?

18 MR. RYAN: Objection.

19 THE COURT: Where are we going
20 here? We have transcript testimony?

21 MR. CECALA: Yes.

22 THE COURT: Let's take a side-bar.
23 Jury step out ten minutes, please.

24 Doctor step down.

25 (At this time, a discussion was

1 held on the record out of the presence of
2 the jury.)

3 THE COURT: You say judges have
4 ruled. What are you referring to here?

5 MR. CECALA: I'll read it to you.
6 In a case before your Honor --

7 THE COURT: Is this Flemming?

8 MR. CECALA: Yes, sir.

9 "Question: In one of the cases
10 that you testified in federal court before
11 Judge Leval, I think it's Pierre Leval, the
12 Judge ruled that you misrepresented your
13 testimony to a jury, and rejected your
14 report as misleading, correct? That's the
15 Red Star case.

16 Answer: I remember the case it was
17 1982, or something like that.

18 Question: But am I correct that --

19 Answer: No.

20 Question: Tell me that Judge
21 Pierre Leval said the report is to be
22 rejected, and you misled the jury, did he
23 say those two things in sum or substance?
24 If you don't recall look at the
25 transcripts.

Proceedings

1 Answer: It was approximately
2 that."

3 I can ask him that he admitted to it.

4 MR. RYAN: First of all, no.

5 THE COURT: What is the objection?

6 MR. RYAN: He's doing what he did
7 before. This is like double hearsay. The
8 fact that it's in a court transcript does
9 not make it not hearsay.

10 MR. CECALA: It's his testimony.

11 MR. RYAN: Something like that, not
12 that.

13 MR. CECALA: He said it was
14 approximately that not something like that.

15 MR. RYAN: Judge, we're going to
16 try this case that Judge Leval had now.

17 MR. BELL: It's been held that if a
18 judge makes a comment about something else,
19 you can't use that to impeach a witness.
20 It's universal. You can't use that.

21 MR. CECALA: Of course you can. It
22 was allowed in this courtroom.

23 MR. BELL: You can use that if he's
24 been --

25 MR. RYAN: Was it objected to?

Proceedings

1 MR. CECALA: No.

2 MR. RYAN: I'm objecting to it.

3 MR. CECALA: It's still proper. If
4 he said no, or no that's not true, I
5 wouldn't have asked the question. It was
6 approximately that.

7 Then another one in a Court of
8 Claims, there's another Judge that
9 concluded your calculations were over
10 inflated, inaccurate, and not
11 representative of the claim and total work
12 history, and you did not use on point
13 statistical data. That was Judge
14 Silverman, do you recall that?

15 Answer: Sure.

16 MR. RYAN: Without the transcripts.

17 MR. CECALA: I got the transcripts
18 right here from this witness.

19 THE COURT: You're bootstrapping a
20 prior transcript from a prior trial that
21 was used in this Court and now -- which you
22 don't have, and now you're using the
23 representations made of that trial here.
24 It's too remote.

25 MR. CECALA: The transcript was

1 never offered to him. The question was
2 asked, and he gave those responses.

3 It is not hearsay. It's not oh,
4 someone told me and he said yeah, that's
5 true.

6 THE COURT: Why don't you ask him
7 the same question. That's what I was
8 leading up to when I told you ask the
9 question rather than read the transcripts.

10 MR. CECALA: I'll read it verbatim.
11 That's fine.

12 THE COURT: The predicate is to ask
13 him the question.

14 MR. BELL: Judge, just because --

15 MR. CECALA: What's the question?

16 THE COURT: The question is the
17 question that was asked in the trial last
18 time.

19 MR. CECALA: Fine. No problem with
20 that.

21 MR. BELL: The objection goes
22 further than that.

23 If someone says didn't another
24 Judge say so. So how is that proof that
25 just because someone said that, how is that

1 proof of something?

2 THE COURT: The issue --

3 MR. RYAN: If a Judge said, Doctor,
4 you have given the best testimony and the
5 most crystal clear identification of losses
6 could I then say isn't it true, Judge Green
7 in the Bronx said he's the best witness he
8 ever heard.

9 Would Ford say that's proper? Of
10 course not because it's just as improper as
11 what they're trying to do.

12 It's two sides to this coin.

13 MR. BELL: You can't say did a
14 Judge criticize you in another case that's
15 not allowable?

16 MR. RYAN: And have it impact on
17 these jurors.

18 MR. ROTHENBERG: What did the jury
19 did with that testimony --

20 THE COURT: Defendant's verdict.

21 MR. RYAN: That's why I didn't ask.
22 The truth of the matter is, your Honor,
23 they can't do this just like I can't do the
24 other.

25 I don't really care what Judge

1 Leval said it's not germane to this
2 witness.

3 The fact that he said it doesn't
4 mean it's true.

5 So I don't care what he said,
6 frankly, with all due respect to the Judge.

7 MR. BELL: You can't ask is it true
8 that someone said you're a scoundrel. It's
9 true he said it. It's not proper cross to
10 prove he's a scoundrel.

11 MR. RYAN: Which is what they're
12 using it for.

13 It's highly improper and
14 prejudicial at least far more than it can
15 be probative of anything that's my
16 position.

17 THE COURT: Mr. Cecala.

18 MR. CECALA: Yes, Judge.

19 THE COURT: What else do you have
20 here?

21 MR. CECALA: That's my last two
22 questions.

23 THE COURT: Well, in the Flemming
24 trial you're right I don't think there was
25 an objection it came out and the witness

1 answered it.

2 Here you have some objections to
3 hearsay, and I might say it's good hearsay,
4 the predicate question is double hearsay.
5 Statements that people make in prior
6 transcripts that are contradictory to what
7 he said here as opposed to characterizing
8 the nature of his statements.

9 If you caught him and said, look
10 the valuation that you always give is nine
11 percent and here you got two percent.

12 I think he's correct in that two
13 and a half percent is a modest projection.

14 You're not going to object to that,
15 you agree?

16 MR. CECALA: I don't agree to
17 anything, Judge, but 2.4 percent is better
18 than his first interest rate that he was
19 using.

20 THE COURT: I think he's being
21 somewhat conservative. You made certain
22 points here. The issue on a percentage
23 point I think you're off mark.

24 MR. CECALA: It's not about that
25 it's about him misrepresenting statistical

1 data like he's doing here not using it on
2 certain things.

3 THE COURT: Impeach him as to what
4 he's done here. You made your point and
5 you can argue those.

6 MR. CECALA: If judges in other
7 cases are gate keepers for bad testimony --

8 THE COURT: If he was precluded
9 because he's a liar, or doesn't tell the
10 truth, well that's a different issue.

11 MR. CECALA: If a Judge is saying
12 that after hearing his testimony that is
13 relevant. That's not hearsay.

14 THE COURT: Judge Leval from the
15 southern district didn't like his
16 testimony, so be it. I don't know what
17 that testimony was. Maybe he was
18 stretching it.

19 MR. CECALA: It's relevant here to
20 assess his credibility.

21 THE COURT: You don't need that.
22 You're walking a tight rope here.

23 I don't think that you need that.

24 MR. CECALA: I think I do.

25 THE COURT: I don't think so. I'm

1 going to preclude the hearsay on hearsay.

2 The Judge's comments are just that,
3 and you're bootstrapping them. I don't
4 know what the exact comments were. I
5 forgot about this trial. Now that you
6 bring it up it was startling that there was
7 no objection.

8 MR. CECALA: Again, note my
9 exception. I think what other judges have
10 found his testimony to be as gates keepers
11 is highly relevant to this witness's
12 credibility and testimony.

13 THE COURT: We'll leave it at that.
14 Get the jury.

15 THE COURT OFFICER: Jury entering.

16 Q Isn't it true that your testimony has
17 been precluded in other cases?

18 MR. RYAN: Objection to the form.

19 THE COURT: Rephrase the question.

20 Q Has your testimony ever been precluded
21 in any case in New York?

22 A Not to my recollection.

23 MR. CECALA: No further questions.

24 THE COURT: Any redirect?

25 MR. RYAN: Very very quickly.

Proceedings

1 REDIRECT EXAMINATION

2 BY MR. RYAN:

3 Q Doctor, with regard to this board here,
4 and all the questions that you were asked, were
5 you asked, sir, about -- this was money that
6 Steven Motelson earned while he was alive?

7 A Yes.

8 Q Steven Motelson is now dead, so he
9 doesn't earn the money?

10 A Obviously not.

11 Q If other people in the family now have
12 to go work at Dome that didn't work there before
13 to try to keep the business going, isn't this
14 still a loss to his estate because it's money he
15 would have earned?

16 A The question to me did not say anything
17 about someone else doing the work.

18 Q Don't those people have a right to earn
19 money for their own work?

20 A Of course there are many families in
21 which more than one person works.

22 MR. RYAN: Thank you.

23 RECROSS-EXAMINATION

24 BY MR. CECALA:

25 Q You know the difference between salary

1 and shareholding, don't you?

2 A Yes.

3 Q Shareholder income you don't have to
4 work for it, do you?

5 A So far as I know this is essentially a
6 close corporation. It's a family company. He
7 worked for it. It was part of his income.

8 Q Sir, if the profits are still there,
9 and the family owns the shares, whether they work
10 for it or not, they get that profit of
11 shareholders, correct?

12 A I don't know what their understanding
13 is.

14 Q Generally, correct?

15 A Generally shareholder income is
16 independent of work.

17 Q You have no idea what they do here or
18 not because you didn't look into that, correct?

19 A I looked at what it was when he was
20 alive.

21 MR. CECALA: No further questions.

22 Thank you.

23 MR. RYAN: Thank you, your Honor.

24 THE COURT: Thank you. You may
25 step down.