

FITZGERALD/FOR THE PLAINTIFF/DIRECT

1 (April 29, 2015, 10:18 A.M. in court, attorneys and plaintiff
2 present.)

3 THE COURT: Good morning, everybody.

4 MR. BAGEN: Good morning, Your Honor.

5 MS. JACOBS: Good morning.

6 THE COURT: We are here to continue the nonjury
7 trial of Finney versus Morton, and I believe at this point
8 in time the plaintiff is going to be calling an economist.

9 MR. BAGEN: I am, sir.

10 THE COURT: Would you like to call him at this
11 time?

12 MR. BAGEN: Mr. Thomas Fitzgerald.

13 THOMAS FITZGERALD, called as a witness on behalf
14 of the plaintiff, having been duly sworn by the Court, was
15 examined and testified as follows:

16 THE COURT: Please come in and have a seat. Good
17 morning.

18 THE WITNESS: Good morning, Your Honor.

19 THE COURT: Once you are situated and have the
20 microphone close to you, if you could state your name for
21 the record.

22 THE WITNESS: My name is Thomas Fitzgerald,
23 F-I-T-Z-G-E-R-A-L-D.

24 THE COURT: You may proceed.

25 MR. BAGEN: Thank you, Your Honor.

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1 DIRECT EXAMINATION

2 BY MR. BAGEN:

3 Q. Dr. Fitzgerald, first, tell the Court about your
4 educational and professional background.

5 A. Yes. I have a bachelor's degree in economics from
6 Boston College, and a Ph.D. in economics from Rutgers
7 University.

8 Before getting my Ph.D., I worked for three years as an
9 Assistant Professor of economics at Western Kentucky University.

10 I then finished up my degree and worked for two years
11 as Assistant Professor of economics at Fordham University in the
12 Bronx.

13 Following that, I joined a company, National Economic
14 Research Associates, which is an economic consulting firm. At
15 the time I was involved in three primary areas of work, foremost
16 was evaluating economic cost and benefits associated with
17 various pollution control regulations and equipment. I was also
18 involved in analyzing corporate hiring and pay practices for
19 evidence of sex- and race-related disparities. And finally
20 while I was there, I got involved in doing evaluations of
21 economic losses in personal injury and wrongful death cases, in
22 giving occasional testimony in those evaluations and developing
23 some methodology for working up these types of estimates.

24 I left there, after four years, joined Insurance
25 Services Office, essentially as Director of Economic Research,

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1 primarily involved in the study of profit cycles in various
2 property casualty insurance lines. I was there for about a year
3 and a half.

4 And after leaving there, I became self-employed, where
5 I specialized in doing evaluations of economic losses in
6 personal injury and wrongful death cases, occasional
7 employment-related cases, sex and race complaints, occasional
8 marital issues, evaluating earning capacity, things of that
9 sort, and I have been doing that for the last 30 plus years.

10 Q. Thank you, Doctor.

11 A. You're welcome.

12 Q. Did there come a time when I retained you to consult
13 with me regarding Mr. Finney's passing?

14 A. You did.

15 Q. What did I ask you to do?

16 A. You asked me to do an evaluation of the economic losses
17 sustained by Mrs. Finney as a result of her husband's death.

18 Q. And what materials were you provided in order to do
19 that evaluation?

20 A. I was provided with some earnings information, some
21 description of the type of work that was being done, and some
22 information pertaining to his benefits as an employee of
23 Sclafani Petroleum, I think the company was, and also basic
24 biographical information pertaining to dates of birth and also
25 information pertaining to his wife's date of birth, her

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1 employment, her income, as well.

2 Q. And did you, based upon your review of those materials,
3 come to an opinion with a reasonable degree of economic
4 certainty as to what Mrs. Finney's losses were?

5 A. I did.

6 Q. And what were your conclusions, Doctor?

7 A. I concluded that the loss sustained as a result of the
8 injury to Ms. Finney was \$1,522,667.

9 Q. Thank you, Doctor. And will you now explain how you
10 reached that conclusion.

11 A. Yes. First of all, I examined three categories of
12 economic loss. First and foremost, the loss from earnings. I
13 also considered the loss associated with the benefit that Mr.
14 Finney had at his employment, which was health insurance for
15 which his employer paid the major share of the cost. And,
16 finally, I measured the loss sustained by Mrs. Finney as a
17 result of not having her husband around to perform a variety of
18 household services typical for a husband in a two-person
19 household.

20 Now, as I say, first and foremost, I looked at the loss
21 of earnings, but I am going to qualify that by changing the
22 preposition from of to from, and that's because in a wrongful
23 death matter in New York we're concerned with the loss, what's
24 referred to as pecuniary loss, to the survivors.

25 And in this case pecuniary loss is defined basically as

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1 the loss not of earnings but from earnings, how much of Mr.
2 Finney's earnings would have been received in effect by his
3 wife, and that is the measure of earnings that I am aiming to
4 come up with here.

5 Now, in order to do that, we have to first look at Mr.
6 Finney's employment and how much he was earning and how much he
7 projected -- I would project he would have earned had he
8 continued to be employed in that capacity.

9 However, at the same time I have to look to Mrs.
10 Finney's situation, because I'm looking again, once again, to
11 figure, of his earnings, how much would she have received in
12 effect.

13 And the way in which I am defining the loss in this
14 case is measuring how much he would have earned, less how much
15 he would have spent on himself. And to do that, in my view,
16 it's necessary to look, since his wife was working, to look at
17 both how much he was earning and how much his wife was earning,
18 because obviously the more income there is in the household, the
19 more each individual in the household is able to spend on
20 themselves.

21 So first I look at his situation. He was working as a
22 diesel mechanic at a company called Sclafani Petroleum.

23 THE COURT: How do we spell Sclafani?

24 MR. BAGEN: S-C-L-A-F-A-N-I.

25 THE COURT: Thank you.

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1 MR. BAGEN: And the W-2 for the year he passed is
2 in evidence.

3 THE COURT: I have it.

4 A. At the time of his death, Mr. Finney had been working
5 there for approximately almost a full year, a little over 11
6 months.

7 I took the amount of money that he had earned in that
8 period of time, annualized it, by which I mean I took, in
9 effect, if he worked 11 months and made so much, I could figure
10 out how much he made per month and multiply that by 12 and we
11 would get a measure of how much he would have earned during the
12 course of an entire year, and that amount was \$58,974.

13 I then took that amount and projected it forward from
14 2012. I took that as what his base earnings were and projected
15 that forward at a rate of 2.55 percent per annum.

16 Now, that rate was derived from Bureau of Labor
17 Statistics data on average hourly earnings in a particular
18 retail industry, specifically those establishments that directly
19 sell to consumers, and again we are talking about a petroleum
20 company that was selling directly oil to the customers.

21 And I looked at data from 1993 to 2012 into 2014 and
22 came up with, through statistical analyses, came up with the
23 2.55 percent. That's a measure of the average annual rate of
24 growth in the average hourly earnings of workers in that
25 industry or in those related industries.

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1 And I projected his earnings then, starting at \$58,974,
2 forward until age 67, which I took to be the terminal date of
3 his employment. Sixty-seven being, for people born after 1959,
4 what is referred to as the normal retirement age. That is the
5 age at which they can retire with full social security benefits.

6 Mrs. Finney was working as a secretary at the time and
7 she was earning, in 2012, \$22,800 and change. I have her W-2s
8 from 2012, 2013, 2014. So I used those going forward from 2012.
9 Going forward after 2014, I projected her earnings out,
10 coincidentally also at 2.55 percent per annum, and that is based
11 on a statistical analysis of the median weekly earnings of
12 people working as secretaries, full-time as secretaries or
13 administrative assistants, between 2000 and 2014. So I am
14 looking at a data series from 2000 to 2014 and I come up with
15 essentially the same average annual rate of growth of 2.55
16 percent per annum.

17 So I have now the earnings of both husband and wife,
18 earnings projected out over the remainder of their work lives,
19 and I'm assuming that Mrs. Finney would have worked as long as
20 her husband worked, essentially to her husband's 67th birthday.

21 Now, again, I have a projection of what his earnings
22 would have been, a projection of what her earnings would have
23 been.

24 THE COURT: And they are the same age, right?

25 THE WITNESS: Essentially, yes. They were both

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1 born in 1966, I think it is, yes.

2 THE COURT: Thank you.

3 THE WITNESS: Yes, Your Honor.

4 A. Okay. Now, in order to establish how much of those
5 earnings Mr. Finney would have spent on himself, I, first of
6 all, go to a data source, which is again compiled by the Bureau
7 of Labor Statistics, that is the United States Bureau of Labor
8 Statistics, and this is what is called a Consumer Expenditure
9 Survey which is done more or less every year or every other
10 year. The current one is for 2012/2013 and I am using that.
11 That tells me for families of different sizes, different income
12 levels, what the average amount of consumer expenditures is,
13 what is the current consumption.

14 So it will tell me for a two-person family, by income
15 brackets, what the average current consumption is in that income
16 bracket.

17 THE COURT: Can I just -- I hate to stop you
18 again, but I think you haven't actually qualified him as an
19 expert.

20 Are you asking that I find he is an expert in this
21 area?

22 MR. BAGEN: Yes, Your Honor. It is not really
23 necessary to ask anymore, once we have given his
24 qualifications, unless there is an objection.

25 THE COURT: Well, I am just saying how I generally

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1 do it. You are asking to have him qualified?

2 MR. BAGEN: Yes.

3 THE COURT: Do you have any objection to that?

4 MS. JACOBS: No, Judge.

5 THE COURT: So, for the record, I am qualifying
6 Dr. Fitzgerald as an expert in the field of economics. Is
7 that your expertise, economics?

8 THE WITNESS: Yes. In this instance it is
9 evaluating economic losses in these types of cases.

10 THE COURT: You're found to be an expert in that
11 area.

12 THE WITNESS: Yes, many times.

13 THE COURT: Go ahead. Thank you. Sorry to cut
14 you off.

15 THE WITNESS: No problem.

16 A. Okay. So now what -- again, I have this data, at
17 various income levels, what a two-person household on average
18 would spend on personal consumption.

19 Now I have to establish what portion of that
20 expenditure I can attribute to Mr. Finney and the remainder I
21 would attribute to the household; and then once establishing
22 what his personal expenses would be, how much he would have
23 spent on himself, I subtract that out of his earnings.

24 Now, for that purpose I used some Bureau of Labor
25 Statistics data, which are basically called Equivalent Income

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1 Indexes.

2 Basically the idea is that if we have a two-person
3 household that spends, on average, let's say \$10,000 a year, how
4 much would a one-person household need in order to maintain the
5 same standard of living as that two-person household.

6 And using the old adage that two people can live
7 cheaper than one, typically you are going to come up with a
8 figure, let's say, two-thirds of that amount, three-quarters of
9 that amount.

10 So a two-person household can spend \$10,000 a year and
11 establish a certain standard of living. A one-person household
12 may need \$6,000 to \$7500 a year in expenditures to maintain the
13 same standard of living.

14 So what I'm saying, then, is I have these indexes and
15 this tells me that if the two-person household needs this much
16 and the one-person household needs two-thirds of that, let's
17 say, then the difference is what I would attribute to the
18 expenditures of the second person in the household.

19 So to make it as simple as possible, if we have the
20 two-person household that requires \$10,000 a year to maintain a
21 certain standard of living, and I take one person out of that
22 household, as we did in the case of Mr. Finney's death, and the
23 surviving member requires now \$7,000 of that consumption to be
24 on the same standard of living, then the amount of the
25 consumption I attribute to the person I took out of the

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1 two-person household is \$3,000, and I then subtract that amount
2 from his earnings to come up with the residual that I refer to
3 as the economic loss associated with that particular year.

4 Now, again, when I figure out how much would have been
5 spent, I am looking at how much would have been spent out of the
6 combined income of Mr. and Mrs. Finney by Mr. Finney and I'm
7 subtracting that amount out of his earnings.

8 Now, with that in mind, I come up basically with
9 figures that range roughly between 20 and 26 percent, let's say,
10 that his personal consumption would be 20 to 26 percent of the
11 household earnings in that period of time, and the remainder
12 would then be attributed to the loss associated with his death.

13 And, again, in that situation, I'm presenting the
14 estimate in two time periods. One is the past, which I measured
15 from his date of death, and the next time period is the future,
16 which I measured from actually yesterday because I expected to
17 testify yesterday, to the end of his projected work life. And I
18 come up with a figure of \$114,068 for the past loss from Mr.
19 Finney's earnings, and \$951,602 for the future loss from his
20 earnings.

21 And I should also point out, for the record --

22 THE COURT: What was the second number, please?

23 THE WITNESS: \$951,602, Your Honor.

24 THE COURT: Thank you.

25 THE WITNESS: You're welcome.

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1 A. That projection is over, the future loss is over, a
2 period of 17.89 years, which would be the length of time from
3 yesterday to the time that Mr. Finney would have reached age 67.
4 Now, the total of those figures is 1,065,670.

5 Now, the second category question is medical insurance.
6 Now, as an employee of Sclafani Petroleum, Mr. Finney received
7 medical insurance coverage for him and his wife. This coverage
8 was not free on his part. He had to pay, my understanding from
9 his W-2s and so forth, \$40 per week for the coverage for him and
10 his wife.

11 That coverage -- you have various numbers explaining
12 how much the company was paying for that coverage, but I am
13 looking at that information as well as information on the New
14 York State website for the market insurance -- insurance
15 marketplace in looking at what are called bronze and silver
16 policies. And I'm figuring that policy, a policy roughly in the
17 vicinity of \$420 a month, at what the Finneys were paying was
18 about \$40 every paycheck. So I am reckoning that at \$420 a
19 month for coverage.

20 Now, the coverage we are talking about is strictly for
21 Mrs. Finney now, because that's what she has lost is that
22 coverage. At \$20 a month, minus roughly \$85 a month that they
23 were putting in, that would be about \$335 as what the current
24 net cost of such coverage would be for Mrs. Finney to replace
25 what she had.

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1 THE COURT: Let me stop you one more second. When
2 you're describing the medical insurance payment by Mr.
3 Finney while he was employed by Sclafani, I think you said
4 \$40 a week. Did you mean \$40 per pay period?

5 THE WITNESS: Yes.

6 THE COURT: Does he get paid every two weeks?

7 THE WITNESS: No, I had it per week.

8 THE COURT: You just mentioned \$85 a month?

9 THE WITNESS: No, no, but that was for two,
10 though, Your Honor. It was \$40 for two, two family
11 members. Now I am considering with one family member out
12 of the picture, the cost is now in half, \$20 a week, and
13 that would come out to \$85 a month roughly, 86 and change a
14 month.

15 THE COURT: Okay.

16 A. The premium cost for one person, which is roughly, I
17 put it at \$420 a month, so 335 is the net cost per month is what
18 I'm using here.

19 Now, first of all, two things. From the date of the
20 accident to present, I made no measure whatsoever of any loss.
21 I have held the opinion for many, many years now that it is very
22 difficult to put a value on lost insurance coverage when we are
23 talking about what happened in the past. The only way or the
24 best way that that can be done is -- would be to bring to
25 evidence money that had been spent either paying for claims that

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1 previously would have been insured or going out and purchasing
2 replacement coverage.

3 I have no records of any such expenses, out-of-pocket
4 expenses, so I don't put any value on the past loss of medical
5 insurance coverage.

6 The future loss, however, is different, and going
7 forward now, at this time only to age 65, because I'm taking the
8 position that at 65 Ms. Finney would have been eligible for
9 Medicare, and we can basically not consider the last two years
10 in this calculation. So we are only going up to age 65 here,
11 and the loss is \$87,239.

12 I should point out the basic cost of coverage I'm
13 assuming increases every year at 3.85 percent per year. That is
14 based upon, again going back to the Bureau of Labor Statistics,
15 this time to their Consumer Price Index data on the Consumer
16 Price Index for medical care. Over time, and we are looking at
17 a period from 1993 to 2014, a statistical analysis of that index
18 suggests -- the trend in that index suggests an average annual
19 rate of change of about 3.85 percent.

20 So I am assuming that the premiums that we are talking
21 about here increase over the period of time at 3.85 percent.
22 Total loss, again, is 87,000.

23 THE COURT: How did you get to 87,000 again?

24 THE WITNESS: Again, that is starting today, going
25 forward to Mr. Finney's 65th birthday.

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1 THE COURT: What is the monthly payment that you
2 are premising that on?

3 THE WITNESS: Well, I'm premising, at this point,
4 \$335 in current dollars as the monthly -- net monthly
5 premium for one-person coverage.

6 THE COURT: And that -- I mean I assume you have
7 -- you talked about how you deducted the 85 from the 420 to
8 get to 335.

9 THE WITNESS: Yes.

10 THE COURT: Is that also what the cost would be
11 for a similar type of -- did you describe it as a bronze
12 program?

13 THE WITNESS: More of a silver program.

14 THE COURT: Okay. So is that silver program also
15 \$335 a month when you go to the marketplace and find out
16 what the actual cost to Ms. Finney is going to be when she
17 goes out and buys the insurance?

18 THE WITNESS: Well, the price that I came up with
19 from my review of the data was \$420 was what the gross cost
20 of that coverage would have been.

21 THE COURT: The family coverage?

22 THE WITNESS: No, no, this is now for a single
23 individual. The family coverage would have been basically
24 twice --

25 THE COURT: Okay, I am confused. I thought that

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1 420 was the cost that Sclafani incurred in obtaining that
2 family coverage for the two of them.

3 THE WITNESS: No, that is not correct. I don't
4 think I said that, but if I did, I certainly didn't mean
5 that.

6 THE COURT: Okay.

7 THE WITNESS: Basically Sclafani's cost was, for
8 two-person coverage, was basically twice, I am not going to
9 say twice 420, but it is in the vicinity --

10 THE COURT: Gotcha.

11 THE WITNESS: -- of \$700, \$800.

12 THE COURT: So the 420 was your estimate of what a
13 silver program would cost in the marketplace today?

14 THE WITNESS: Mrs. Finney in the marketplace
15 today, the gross cost --

16 THE COURT: Right.

17 THE WITNESS: -- from which I took what she would
18 have paid --

19 THE COURT: Got you. I'm with you.

20 THE WITNESS: Okay. And, again, over the period
21 to age 65, \$87,239.

22 A. Now, the final category I looked at is household
23 services, the fact that what we're talking about here is family
24 members in a home typically provide services that are of benefit
25 to the people in the home. These can range from simple things

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1 from walking the dog to painting rooms or fixing plumbing or
2 anything of that sort. We don't have specific information on
3 the Finney family, and what we're doing here is measuring this
4 in terms of what studies have shown average households of
5 certain characteristics, estimates of what the value of their
6 services in the home are.

7 What I'm producing here is a gross value situation of
8 the services provided in a two-person household, with members of
9 the household of a certain age, and what these studies have
10 shown to be, I estimated the average value of the services to
11 be, and then taken those values and updated them to current
12 levels using changes in the average hourly earnings of selected
13 service industry workers.

14 And what I have come up with, based on a study that was
15 done sometime ago at the Cornell University, again for
16 two-person households, members of a certain age in that
17 household, what the average annual value of those services are.

18 I measured grossly what, arguably, Mr. Finney, the
19 value of his services in total to the household would have been,
20 and I come up with a figure, past loss of \$16,309, and a future
21 loss of \$353,449, for a total value of \$369,758.

22 Now, again, so that we understand, again I'm bringing
23 this data from this study up to 2014 using changes in average
24 hourly earnings of workers in selected service industries.

25 Beyond 2014, I am increasing the value of these

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1 services at 2.9 percent per year, based, again, on statistical
2 analyses of the trends in the average hourly earnings of workers
3 in these industries. I'm projecting these services over the
4 life expectancy of Mr. Finney, measured from the date of his
5 death.

6 That life expectancy, and that's based upon U.S.
7 government tables, life tables, at the date of his death were
8 30.14 years. So that number is based, again, upon age at the
9 date of death, race, sex, drawn from these tables.

10 And, again, the number is 30.14 years -- I am sorry.
11 When I say 30.14 years, let me take that back. I misstated
12 that. That figure is not -- that is measured from, again, the
13 date of analysis, 30.14 years. From the date of death is closer
14 to 32 years and change.

15 But from the date of analysis, which again was
16 yesterday, it would be 30.14 years into the future. And, again,
17 that loss, future loss, is \$353,449. The total loss is
18 \$369,758.

19 So basically what I have come up with here, as I said
20 before, was a total loss of \$1,522,667.

21 THE COURT: Give me that number again.

22 THE WITNESS: \$1,522,667.

23 A. And that consists of past losses of \$130,377 and future
24 losses of \$1,392,290.

25 THE COURT: I will need those again.

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1 THE WITNESS: 130,377, Your Honor, and 1,392,290.

2 A. I should also point out, in measuring the loss of
3 household services, that after -- beginning in 2037, after which
4 Mr. Finney would have reached -- the year after he would have
5 reached the age of 70, I assumed that the services indicated in
6 this study that I have used would have been -- the value of the
7 services would have been reduced by one-third.

8 And, again, this measure of household services is a
9 gross measure. It doesn't include any estimate of what --
10 amount of his services he might have consumed by himself for
11 himself.

12 MR. BAGEN: Thank you, Doctor.

13 THE WITNESS: You're welcome.

14 THE COURT: Cross-examination.

15 CROSS-EXAMINATION

16 BY MS. JACOBS:

17 Q. When you were given this assignment by Mr. Bagen, were
18 you told anything about the finances, besides their date of
19 birth, their ages, and their employment?

20 A. I mean I may have. I certainly don't recall it. I
21 can't recall anything in particular other than specifics that I
22 would be using for this matter.

23 Q. So the numbers that you have calculated are for typical
24 families, correct?

25 A. The numbers with respect to household services, yes.

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1 Q. Okay. Now, do these numbers change at all once you
2 learn that the plaintiff was a two packs of cigarettes a day
3 smoker?

4 A. They don't insofar as I am unable to process that type
5 of information. It's outside of my realm, shall I say.

6 Q. Are you saying that you don't know that there is a
7 reduction in life expectancy when the individual is a smoker?

8 A. Yes, I suspect that there is a reduction in life
9 expectancy, but I can't say how much.

10 Q. It is 13 to 14 years --

11 MR. BAGEN: Objection, Your Honor. She is
12 testifying.

13 THE COURT: Sustained.

14 Q. According to the Center For Disease Control and
15 Prevention, they say that on average smokers die 13 to 14 years
16 earlier. Do you agree with that?

17 A. I can't agree or disagree. Life expectancy numbers,
18 however, have to be dealt with carefully, because the life
19 expectancy of an individual who is 60 years old and an
20 individual who is ten years old can be very different --

21 Q. Of course.

22 A. -- but I mean in terms of how long they are going to
23 live to, what age they are going to live.

24 So you have to be careful in talking about just broad
25 numbers of "X" percent reduction. But, again, it is outside of

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1 my realm of expertise.

2 So if you're asking me whether heavy smoking is
3 deleterious to your health, I would say almost certainly,
4 because personally I have smoked, and I know that it's not the
5 best thing you can do for yourself.

6 But I can say -- what I would say qualitatively, I can
7 say does it affect life expectancy? Yes, it does so in the
8 negative way. Quantitatively, however, I can't say how it
9 affects in terms of numbers; and if we are talking about a
10 40-year-old, what is the effect versus a 60-year-old, I can't
11 say.

12 Q. Wouldn't you also agree that buying two packs of
13 cigarettes a day, let's assume it is \$10 a pack, so \$20 a day on
14 cigarettes, isn't that a huge expenditure to attach to this?

15 A. Yeah. I don't know about huge, but it is certainly a
16 measurable amount.

17 Q. Were you given the information that the surviving
18 spouse, Mrs. Finney, has an illness?

19 A. Not that I recall.

20 Q. And that her work life changed drastically when she
21 found out that she had this illness?

22 A. I don't recall that information.

23 Q. Is there any information about her receiving any type
24 of disability insurance?

25 A. I have no information on that.

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1 Q. And when an individual dies, they receive a social
2 security benefit, correct?

3 A. You're going to have to rephrase that question. It
4 doesn't make sense to me.

5 Q. Were you advised that Mrs. Finney received \$255 as a
6 death benefit?

7 A. Oh, yes, that goes with the death, yes, and that is not
8 a specifically large amount of money. So I don't really
9 consider that, and I don't consider social security in what I'm
10 doing anyway.

11 Q. Well, wouldn't she be receiving death benefits once she
12 reached appropriate age as well?

13 A. It would depend.

14 Q. At the age of 60?

15 A. I don't think you receive death benefits till --
16 possibly 60, I think 62, but I don't have enough information to
17 tell you whether she would be receiving a survivor benefit which
18 is what you are referring to.

19 Q. Okay.

20 A. And, again, this is not part of my testimony.

21 Q. But your job is to project what the loss would be to
22 Mrs. Finney, correct?

23 A. Not in terms of my trial testimony, it's not, the
24 post-trial matter.

25 Q. So that's something to -- once we try to reduce this to

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1 present day value?

2 A. No, it has nothing to do with present day value.

3 Q. Well, that's the post-trial motion or post-hearing?

4 A. Right, but present day value is a slippery term because
5 it connotes the present value, and that's not something that I
6 am talking about here.

7 Q. And this is not a present day value calculation that
8 you give; is that correct?

9 A. It is not.

10 Q. Okay. When you came to your work history of Mr. Finney
11 working to the age, approximately, of 67, did you take into
12 account the type of work he was doing?

13 A. As to whether or not that might affect his work life
14 expectancy?

15 Q. Exactly.

16 A. No.

17 Q. It is a demanding job being a mechanic, I would assume,
18 correct?

19 A. I don't think I can answer that question.

20 Q. Okay. When you came to your calculations, did you take
21 into account the decedent's education?

22 A. No, not -- I mean, I know what his education is, but I
23 didn't really factor that in.

24 Q. In addition to the W-2 that you were given, were you
25 given tax returns as well?

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1 A. I did see some tax returns, yes.

2 Q. Were you aware that, for 49 weeks between the year of
3 2010 and 2011, that Mr. Finney was unemployed?

4 A. I'm not sure I remember the exact time interval, but
5 yes, I was aware of the fact that he was unemployed for a period
6 of time during roughly that interval, I mean that time period.

7 Q. And he was unemployed before he got the job at Sclafani
8 as well, correct?

9 A. Yes, I think so.

10 Q. Okay. And your calculations are based on the
11 assumption that if Mr. Finney had survived, he would have worked
12 continuously, correct?

13 A. That's correct.

14 Q. I want to talk a little bit about the job that
15 Mrs. Finney had as a secretary.

16 You indicated in your analysis that, for a full-time
17 secretary, that her wages would increase on average of 2.55
18 percent? Did I misunderstand what you said?

19 A. No. That was accurate, yes.

20 Q. But she is a part-time secretary. So wouldn't that
21 number be different?

22 A. Well, perhaps, but I mean, you know, the data is not so
23 abundant that one can factor every little detail into it. I
24 have to do the best I can with what is out there.

25 Q. Okay. So the best is the full-time, though she is

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1 working part-time?

2 A. Yes.

3 Q. And, again, that doesn't take into account the fact
4 that she has an illness, correct, her work expectancy?

5 A. Nothing of that nature was factored into that, that's
6 correct.

7 Q. I want to talk now a little bit about the household
8 services because you kind of gave us a lump number of 16,309 for
9 past.

10 Can you tell me, if you can, on a monthly basis or a
11 yearly basis how that would break down.

12 A. Well, we are talking about what, roughly a couple
13 years? So, you know, we are looking at figures in the vicinity
14 of, you know, \$4,000 or so a year. So a little bit over \$4,000
15 a year.

16 Q. And then you said that that number was reduced in your
17 calculation once Mr. Finney would have reached the age of 70; is
18 that correct?

19 A. A year after he turned 70, but the number doesn't
20 remain constant because it typically, when people stop working,
21 they tend to do more work around the house, the data tends to
22 show that, and the number is not held constant throughout.

23 Again, it is based upon studies that look at factors
24 such, as I said, the ages of the household members and the
25 number of people in the household. And so at various age

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1 intervals there will be a change in the value that is used.

2 And, again, as I say, typically when people stop
3 working, the data tends to show that there is, at least early
4 on, there is more work done at home.

5 Q. Were you given any information before you began your
6 analysis about what the Finneys did in their home?

7 A. No.

8 Q. Okay.

9 A. Again, as I said, we don't do -- we don't have the
10 resources to study each individual case as to what people do; we
11 are just basing it on what the average household purportedly
12 does.

13 Q. So if a family is a very hands-on family and does all
14 of the household chores, this number would be reduced; is that
15 correct?

16 A. If the family were a very hands-on family and did a lot
17 of work around this house, this number would be underestimating
18 the true value, I think; and the opposite would be the case if
19 the family didn't do anything, never lifted a finger and went
20 out to eat every night and hired people to do all the basic work
21 around the house, then this value would be grossly exaggerating
22 the case.

23 Q. Okay. So in my mind I have it backwards?

24 A. I think so.

25 Q. Okay. So the more you do in the house, the higher the

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1 number is?

2 A. The higher the number should be. But, again, this is
3 not a -- these surveys do not look at the ambitious household or
4 the lazy household; they look at, presumably, the average
5 household.

6 Q. The median, the mean?

7 A. The mean, median, whatever.

8 MS. JACOBS: Can I see the pay stub that is in
9 evidence, Judge?

10 THE COURT: Sure.

11 MR. BAGEN: You mean the W-2?

12 MS. JACOBS: Whatever it is.

13 THE COURT: Here is everything.

14 MS. JACOBS: Thank you.

15 MR. BAGEN: I have the pay stub if you want to put
16 it in evidence.

17 MS. JACOBS: Oh, thank you.

18 THE COURT: Mark it.

19 (Whereupon, Defendant's Exhibit D, pay stub, was
20 received in Evidence.)

21 Q. Just let me know when you are done looking at this,
22 please.

23 A. Oh, I am supposed to be looking at this?

24 (Off the record discussion.)

25 A. When I am finished looking at it? Okay.

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1 Q. Thank you.

2 A. Yes, I think I am basically there.

3 Q. Thank you. Is that a copy of a pay stub that you were
4 given in this case?

5 A. Yes, it is.

6 Q. And that indicates that there is \$40 a week taken out
7 of the plaintiff's paycheck at that time, correct?

8 A. It does, yes.

9 Q. Do you know what percentage of insurance that was? In
10 other words, is he paying half of his medical coverage, a third?

11 A. My -- the information that I received suggested that
12 the cost of the combined coverage was somewhere in the vicinity
13 of roughly \$800, \$840, a month.

14 Q. According to Mr. Sclafani it is an 80/20 split.

15 A. I can't give you a percentage on that, but \$40, \$40
16 every paycheck is a thousand -- 1,480, is it, I think, 2,080,
17 I'm sorry, that would be the amount that would be deducted from
18 the Finneys -- from Mr. Finney's paycheck over the course of a
19 year, roughly \$2,080, divided by 12, is 173 a month.

20 If it was 840 that they were paying total, that would
21 be about 20 percent that the family was covering, roughly 20
22 percent of the cost.

23 MS. JACOBS: Okay. Thank you. I have no further
24 questions.

25 THE COURT: Redirect, Mr. Bagen.

FITZGERALD/FOR THE PLAINTIFF/REDIRECT

1 REDIRECT EXAMINATION

2 BY MR. BAGEN:

3 Q. Dr. Fitzgerald, you used 67 as the projected time that
4 Mr. Finney would have continued to work, correct?

5 A. Yes.

6 Q. For a person of moderate means such as the Finneys,
7 what is the likelihood he would work beyond 67?

8 MS. JACOBS: Objection.

9 THE COURT: Sustained.

10 Q. Are there any statistics that you use that would assist
11 us in understanding whether the 67 is the most likely date that
12 he would have ceased working or that he would have worked beyond
13 that?

14 A. My answer to that question is, first of all, I have
15 assumed 67 is the work date based, again, upon the normal
16 retirement age for people in the social security system born
17 after the year 1959.

18 I have no data on what, you know, the likelihood of
19 people working of any particular age, race, sex, occupation, the
20 likelihood that they would work beyond age 67 or how many years
21 they might work beyond age 67. I have no information on that
22 whatsoever.

23 MR. BAGEN: Thank you, Doctor. Nothing further.

24 THE COURT: Anything on recross?

25 MS. JACOBS: No, Judge.

COLLOQUY

1 THE COURT: Doctor, thank you very much. You may
2 step down.

3 THE WITNESS: My pleasure. Thank you, Your Honor.
4 (Witness excused.)

5 THE COURT: Mr. Bagen, does the plaintiff rest at
6 this time?

7 MR. BAGEN: I just want to cite a case before I
8 do.

9 THE COURT: Sure.

10 MR. BAGEN: This is Crum versus Green Island
11 Construction Company, 249 AD 2d 730, a Third Department
12 case from 1998.

13 THE COURT: 249...?

14 MR. BAGEN: AD 2d 730. Dealing with whether
15 social security widow's benefits would be an offset.

16 MS. JACOBS: Objection. As the witness has
17 stated, this is a post-trial issue. It is not something
18 that is discussed during trial.

19 MR. BAGEN: I am doing this before I rested.

20 MS. JACOBS: It has no bearing on this case.

21 THE COURT: Your argument, Ms. Jacobs, is that
22 this doesn't apply?

23 MS. JACOBS: Correct, to this proceeding. It is
24 not calculated in the economist's testimony and it is
25 something that is done postverdict.

COLLOQUY

1 THE COURT: I think that is what your witness has
2 testified to. Right?

3 MR. BAGEN: On cross-examination defense counsel
4 indicated that there would be an offset for social security
5 benefits and this case indicates there was not. That was
6 all I was bringing up.

7 THE COURT: Okay.

8 MR. BAGEN: Plaintiff rests.

9 THE COURT: Plaintiff rests. Ms. Jacobs, does the
10 defendant wish to call any witnesses?

11 MS. JACOBS: No, Judge.

12 THE COURT: Let's take, it's about ten after
13 11:00, let's take ten minutes. It will be ten after 11:00.
14 See you in ten minutes.

15 (11:10 A.M. recess.)

16 (11:28 A.M. in court, attorneys present.)

17 THE COURT: Okay. Your client does not want to be
18 present for this?

19 MR. BAGEN: She really can't handle listening
20 about the accident details. I don't blame her.

21 THE COURT: Off the record.

22 (Off the record discussion.)

23 THE COURT: We are back on the record. We are
24 about to take closing arguments. Ms. Jacobs wants to place
25 something on the record regarding the offer.