

1 SHUNTA LEMAR BEST IN THE  
2 Plaintiff CIRCUIT COURT  
3 vs. FOR  
4 PRINCE GEORGE'S COUNTY, M.D., PRINCE GEORGE'S COUNTY  
5 et al. Case No.: CAL05-03798  
6 Defendants

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8 -----/

9 The deposition of JEROME S. PAIGE was held  
10 on Monday, April 17, 2006, commencing at 2:55 p.m., at  
11 the Law Offices of Joseph, Greenwald & Laake, 6404 Ivy  
12 Lane, Suite 400, Greenbelt, Maryland 20770, before  
13 Heather Avalos, a Notary Public.

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21 REPORTED BY: Heather Avalos

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Reporting & Video Co., Inc.

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1 APPEARANCES:

2 ON BEHALF OF THE PLAINTIFF SHUNTA LEMAR

3 BEST:

4 JEREMY FLACHS, ESQUIRE  
5 Law Offices of Jeremy Flachs  
6 Evergreen Office Park  
7 7006 Little River Turnpike, Suite G  
8 Annandale, VA 22003  
9 703-354-7700

8 ON BEHALF OF THE DEFENDANTS SUNNYBROOK  
9 PROPERTIES:

9 JENNIFER RYAN LAZENBY, ESQUIRE  
10 Whiteford, Taylor & Preston  
11 410 Court Towers  
12 210 West Pennsylvania Avenue  
13 Towson, MD 21204-4515

12 ON BEHALF OF THE DEFENDANTS AGGREGATE

DIRT SOLUTIONS:

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            Law Offices of John W. Sheldon  
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1           STIPULATION

2           It is stipulated and agreed by and between  
3 counsel for the respective parties that the filing of  
4 this deposition with the Clerk of Court be and the  
5 same are hereby waived.

6           - - - - -

7 Whereupon,

8 JEROME S. PAIGE

9 called as a witness, having been first duly sworn to  
10 tell the truth, the whole truth, and nothing but the  
11 truth, was examined and testified as follows:

12 EXAMINATION BY MRS. LAZENBY:

13 Q Dr. Paige, my name is Jennifer Lazenby. I  
14 introduced myself earlier. I represent one of the  
15 defendants, Sunnybrook. And we're here for your  
16 deposition today. I believe, looking at your resume,  
17 that you've been an expert witness many times before  
18 and therefore you understand this deposition  
19 procedure, correct?

20 A Uh-huh.

21 Q So is it fair to say you don't need any

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1 instructions today?

2 A That's fair to say, yeah.

3 (Paige Deposition Exhibit Number 1 was

4 marked for purposes of identification.)

5 Q I would like to start with what I marked

6 as Deposition Exhibit Number 1. This is the notice to

7 take your deposition.

8 A Yes.

9 Q Before the deposition, I asked that you

10 review it. Did you have an opportunity to read it?

11 A Yes.

12 Q On page -- on the second page -- second

13 page and third page it asks for essentially what is

14 your entire file. Have you skimmed the list and have

15 you produced to us everything that you have that fits

16 into the list?

17 A I believe I have. There are some things

18 that don't refer to --

19 Q Some things you may not have. But

20 everything that's asked that you do have, have you

21 already given to us?

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1 A Yes. I believe that's correct.

2 Q Did you bring your file today?

3 A Yes.

4 Q Do you mind if I take a quick look through

5 it?

6 A Yes.

7 (Paige Deposition Exhibit Number 2 was

8 marked for purposes of identification.)

9 Q Let me show you what I've marked as

10 Deposition Exhibit Number 2. This is -- the first

11 page is a photo, I guess, shortened resume for you,

12 and I believe the rest is your full resume. Is that

13 correct?

14 A Yes. I have a more -- in the file I have

15 a more --

16 Q So page two on would be the resume that

17 you produced in this case, correct?

18 A Restate that.

19 Q Page two on of Exhibit Number 2 --

20 A Well, the most recent one is here. It's

21 different from the one --

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1 MRS. LAZENBY: Okay. So we'll copy this

2 one as well.

3 Q I'm going to give you most of your file

4 back. I took out a couple pages that we don't have.

5 One would be your most current resume. The other

6 three pages appear to be a couple of e-mails.

7 A Right.

8 Q And then the last page appears to be

9 possibly a list of other cases you've served on.

10 A Testified. It's a list for federal court.

11 MRS. LAZENBY: I'm going to mark these.

12 Q Looking through your file, I replaced my

13 original Exhibit Number 2 with what now I've marked as

14 Exhibit Number 2.

15 A Correct.

16 Q And I believe this is your most recent,

17 most current CV. Is that correct?

18 A That's correct.

19 Q Tell me a little bit about your current

20 employment, please.

21 A Okay. I'm currently self-employed and I

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1 operate as Jerome S. Paige and Associates. I've been

2 self-employed since March of 2002. And what I -- I

3 have basically two or three lines of business. One is



4 forensic economics. And then I do some strategic  
5 planning and performance measurement and management  
6 consulting. And I also do some organizational  
7 development consulting.

8 Q Let's start in that first area. When you  
9 say forensic economic work, I assume you mean serve as  
10 an expert witness in litigation-type matters?

11 A Yes. That's correct.

12 Q What -- who is your typical client in that  
13 line of your work?

14 A Typical -- I do work both for plaintiffs  
15 and defense lawyers.

16 Q Can you give me a percentage on each side?

17 A In terms of -- probably last year I  
18 probably did about thirty percent defense work and  
19 seventy percent plaintiff's work.

20 Q Do you typically work in a personal injury  
21 type case or do you also get involved in other cases?

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1       A    Well, mainly personal injury, wrongful  
2 death, wrongful dismissal. Those are the three main  
3 areas. There are other -- from time to time -- cases  
4 that involve estimating economic damages. I did a  
5 county malpractice case last year. Depending on the  
6 particular case, it might require estimating damages.

7       Q    Who at your business provides economic  
8 forensic work? Is it solely you or anyone else as  
9 well?

10      A    Some of my other associates provide  
11 research.

12      Q    How many associates do you have?

13      A    Three.

14      Q    Is that your entire staff, the three plus  
15 you or do you have more staff?

16      A    Well, I don't have any staff in terms --  
17 what I do is pull together people on an as-needed  
18 basis so -- depending on the project and the skills  
19 that are needed.

20 Q Where is your -- do you have an office?

21 A I work out of my home.

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1 Q Can you give me that address?

2 A Sure. It's 1691 Tamarack Street,

3 T-A-M-A-R-A-C-K, Street, Northwest, Washington, D.C.

4 Q Do the three associates work in your home

5 as well or off site?

6 A Off site.

7 Q What is your hourly rate that you charge

8 for forensic work?

9 A Well, typically I charge a flat fee for

10 reports.

11 Q What's that?

12 A That's \$2,500. And it's an hourly rate of

13 \$300 per hour for depositions and trials, a minimum of

14 two hours.

15 Q You told me there are two other components

16 to your business. Both were consulting-type work.

17 A Yes.

18 Q Could you explain both to me, just

19 summarize?

20 A Sure. Strategic planning, that basically

21 helps organizations decide their direction. And to

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1 measure how they are meeting their goals and

2 objectives, the strategic planning and performance

3 measurement and management.

4 Q Would that include looking at budgets or

5 no?

6 A No. Mainly looking at performance

7 indicators around -- well, in terms of program

8 outcomes, the results, you know, if you have a -- if  
9 you're offering an energy-assistance program, are you  
10 getting the services, are you getting the right  
11 combination of services, those types of things,  
12 program outcomes.

13 Q And what about the third component?

14 A That's to help organizations improve the  
15 way employees relate to one another inside the  
16 organization.

17 Q Between the three components, what are the  
18 percentage that you spend in each?

19 A Probably sixty, twenty, twenty.

20 Q Sixty percent in the forensic economics?

21 A Right.

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1 Q In the two consulting-type areas, who are

2 your typical clients?

3 A Mainly District government agencies.

4 Q When you say District, you mean

5 Washington, D.C.?

6 A Washington, D.C. Or I should say more

7 broadly public sector organizations. I'm doing some

8 work for the Metropolitan Council of Governments.

9 Q Do you also do any teaching-type work?

10 A Part-time.

11 Q And are you still doing that now?

12 A Well, not now because -- until the fall,

13 fall semester.

14 Q And where will that be?

15 A The University -- I'm sorry. Syracuse

16 University. I teach a course in their School of

17 Information Studies program called applied economics

18 for information managers. I do that on-line. And

19 then George Washington University has a program called

20 Organizational Sciences. And I teach the managerial

21 economics course in that program.

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1 Q So that's two courses in the fall that

2 you'll be teaching?

3 A Yes.

4 Q But you're not currently teaching any

5 courses now?

6 A That's correct.

7 Q In your resume, Number 2, I believe it

8 states that you have twenty-five years of experience

9 as an expert witness. Is that correct?

10 A That's correct.

11 Q During that time, can you estimate how

12 many depositions you've testified in?

13 A No.

14 Q How about during the past year?

15 A Well, we have -- not -- well, last year,

16 last twelve months -- probably last year I did maybe

17 twelve, fourteen depositions.

18 (Paige Deposition Exhibit Number 7 was  
19 marked for purposes of identification.)

20 Q Deposition Exhibit Number 7, this was in  
21 your file. Can you tell me what that is?

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1 A Yes. This is through June of 2005. These  
2 are the depositions and trials I've appeared in since  
3 1999. I would say that's probably 99.5 percent  
4 complete.

5 Q Okay. It appears that you primarily work  
6 in Maryland State courts, D.C. courts?

7 A Yes.

8 Q And it actually appears that you've been  
9 retained by my firm, Tom Whiteford?

10 A Uh-huh.



11 Q Does that sound familiar?

12 A Well, let me see. No. These are the  
13 firms that were doing the deposing. But I have been  
14 retained by your firm. It didn't go to a deposition  
15 or trial. Your firm was the local counsel for a firm  
16 out of Florida. It was a couple years ago.

17 Q Have you ever worked with Jeremy Flachs  
18 before?

19 A No.

20 Q What about with this firm, Burt Kahn's  
21 firm?

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1 A Yes.

2 Q How many times? Do you know?

3 A I've been doing work probably for four or  
4 five years for the firm regularly, a couple cases a

5 year, maybe more. It's a regular client. The firm is  
6 a regular client.

7 Q During the past five years, can you tell  
8 me how many times you've testified in a trial?

9 A I can tell you -- through June, I can tell  
10 you. And probably since June of last year, maybe four  
11 times. You said since 2000?

12 Q Sure. 2000, if you can tell. When does  
13 this go back to, 1999?

14 A Yeah. These are depositions.

15 Q You can just tell me since 1999 is fine.

16 A Well --

17 Q Trials are on page one?

18 A No. This is just an update from March of  
19 2003 until June of 2005. I was in thirteen trials.

20 If you want -- these are listed trials and

21 depositions. I have to go through it and count them.

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1 Q No. That's okay. I can go through and  
2 count them some other time if I want.

3 I'm not going to go through in detail your  
4 educational background. I assume it's all in your CV  
5 and it's all correct and accurate?

6 A That's correct.

7 Q There were a couple things I wanted to ask  
8 you about. There was a course you were involved in  
9 called the far side of damages. Do you recall that?

10 A Yeah. That was a CLE panel I sat on.

11 Q Was it a CLE for attorneys?

12 A Yeah, for the D.C. bar.

13 Q Who was it geared towards? Was it geared  
14 more towards plaintiffs' bar, defense bar, or both?

15 A It was for the D.C. bar. It was one of  
16 the courses they gave. It had both plaintiff and  
17 defense folks there.

18 Q And what was your specific topic that you  
19 taught?

20 A Just to go over the elements of what goes

21 into a damages case.

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1 Q For the economic portion of it?

2 A I'm sorry. Yes. Economic damages.

3 Q There is also some -- and I don't have

4 this one in front of me -- but it looked like you had

5 done some work on some insurance matters.

6 A Yes.

7 Q Does it mostly relate to insurance rates?

8 A Yes.

9 Q Can you explain it just a little bit for

10 me?

11 A Sure. Well, most states have regulatory

12 bodies to oversee organizations like public utilities

13 and insurance companies. And depending on the state,

14 they have to file their applications for price

15 increases, what they're going to charge the clients.  
16 And in case of insurance -- well, in most of these  
17 cases, the administrative law bodies make provisions  
18 for people to challenge those filings. And for a  
19 couple of years I worked with a group in California  
20 that was challenging some of the rate increases being  
21 put forth by the insurance companies there.

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1 Q So did you just analyze the rate  
2 increases?

3 A Right. That's correct.

4 Q Focussing now on this case that we're here  
5 about today, the Best case. How is it that you  
6 learned facts about the underlying matter upon which  
7 you then made opinions?

8 A The major source is the report by the voc

9 rehab person, Mr. Peter Melberg.

10 Q Did you actually speak to Mr. Melberg as

11 well?

12 A No, I didn't.

13 Q Who gave you his report?

14 A I don't know whether he sent it to me

15 or -- I believe he sent it to me directly.

16 Q Was that by fax?

17 A Yes.

18 Q But you didn't have any telephone

19 communications with him?

20 A No, I didn't.

21 Q Who was it that retained you in this case?

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1 Was it Burt Kahn or Jeremy Flachs?

2 A Well, I got the initial call from Burt

3 Kahn.

4 Q Do you know when that was?

5 A No. I don't remember offhand.

6 Q Did Mr. Kahn give you background

7 information about the case?

8 A Yeah. He indicated the nature of the

9 injury. I do so much on cell phones these days, we

10 don't get to note things down. But I just talked

11 generally about the case and who the defendants were

12 just so there wasn't any conflict of interest.

13 Q Did he tell you anything about how the

14 accident occurred?

15 A Well, he mentioned that the plaintiff had

16 hit something and as a result of that an object went

17 through the windshield. But he didn't go into detail

18 as to the whys, the wheres.

19 Q Other than Mr. Melberg's report, were

20 there any other documents that you reviewed?

21 A For facts of the case?

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1 Q Correct.

2 A No.

3 Q Did you review any of the medical records?

4 A No, I did not.

5 Q Did you review the plaintiff's deposition  
6 transcript?

7 A No.

8 Q Who else did you speak to about the case  
9 other than that first phone call with Burt Kahn?

10 A I talked to Mr. Flachs.

11 Q Do you know how many times?

12 A Twice.

13 Q Do you know the dates of those  
14 conversations?

15 A One was today and one was on Friday, last  
16 Friday. That was the 14th.

17 Q Did you ever interview the plaintiff?



18 A No.

19 Q Did you ever speak with his family members  
20 or friends?

21 A No, I did not.

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1 Q Did you ever speak to any of the other  
2 witness experts who have been designated in this case?

3 A No.

4 Q How is it that you learned about the  
5 plaintiff's injuries? Was that solely from speaking  
6 to the attorneys in this case?

7 A Well, Mr. Kahn.

8 Q And he's the only one that told you about  
9 the plaintiff's injuries?

10 A Yes. I don't remember whether there was  
11 anything mentioned in the voc rehab report at all.

12 Q How is it that you learned about the  
13 plaintiff's current career and his, I guess, career  
14 plans for the future?

15 A From the -- Mr. Melberg's report and a  
16 conversation with Mr. Kahn.

17 Q What is it Mr. Kahn told you about  
18 Mr. Best's plans regarding his career?

19 A Well, it was very brief. But he indicated  
20 that it was his understanding that Mr. Best was  
21 planning to have a career in the military but because

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1 of the injury he was planning to leave sooner rather  
2 than later.

3 Q So is it your understanding, based on your  
4 communication with Mr. Kahn, that prior to the  
5 accident Mr. Best had intended to stay in the military

6 for some time?

7 A That's correct.

8 Q What is your understanding of specifically

9 how long he had intended to stay in the military?

10 A Oh, it was my sense -- I don't know

11 whether he said specifically but at least the sense I

12 came away with was that he was going to make a career

13 out of it.

14 Q A military career?

15 A That's correct.

16 Q Then is it your understanding that those

17 career plans changed once he suffered an injury in

18 this accident?

19 A That's my understanding.

20 Q And specifically what is your

21 understanding as to how those career plans changed?

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1       A    Well, that he couldn't -- because of the  
2 injury, he didn't think that he could continue to  
3 advance in the Marines or the particular service that  
4 he was in.

5       Q    So what is it that he intends to do, if  
6 you know?

7       A    I'm sorry?

8       Q    What is it that Mr. Best intends to do in  
9 the near future with regard to his career?

10      A    Oh, as a result -- in the near future,  
11 it's my understanding that he would be in the service  
12 until March, 2007 and after that he would have to  
13 find a job based on what Mr. Melberg indicated he  
14 could do once he is out of the service.

15      Q    Do you have any information about Mr. Best  
16 planning to attend college?

17      A    I don't have that information, no.

18      Q    Do you have any information about whether  
19 Mr. Best has actually obtained a job for March of  
20 2007?

21      A    No. I don't have any information to that

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1 effect.

2 Q Is it your understanding that Mr. Best  
3 remains in the military now and he intends to do so  
4 until March of 2007?

5 A That's my understanding.

6 MRS. LAZENBY: I have marked as  
7 Exhibits 3, 4, and 5 your three reports, respectively.  
8 Exhibit 3 is your report dated February 28, 2006.  
9 Exhibit 4 is your report dated March 1, 2006. And  
10 Exhibit 5 is your report -- I guess your revised  
11 report revised as of April 14, 2006.

12 THE WITNESS: That's correct.

13 (Paige Deposition Exhibit Numbers 3,  
14 4 & 5 were marked for purposes of identification.)

15 Q Are these the only three reports that you

16 have prepared in this case?

17 A Yes.

18 Q Can you explain to me why there are three

19 reports? More specifically, can you tell me what

20 changes from report one to two to three? And I guess

21 you can summarize, because I'll go through more in

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1 detail.

2 A Sure. From one to two is just basically

3 the clarification of some language relating to

4 Mr. Best's career plans.

5 Q More specifically, what do you mean?

6 A That -- indicating that -- it's basically

7 the -- this indicates when his earning losses would

8 begin in March 2007.

9 Q This is the updated, the later of the two,

10 correct?

11 A Yes.

12 Q This is when you realized -- I'm assuming  
13 that you realized that Mr. Best would be staying in  
14 the military and has been in the military since the  
15 accident --

16 A That's correct.

17 Q -- and that he would remain in the  
18 military until March 2007 and then that changed your  
19 calculation. Is that correct?

20 A It didn't change any calculations. It  
21 just clarified the language.

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1 Q Are the amounts --

2 A That's correct. Instead of the losses  
3 starting in 2006, they start in 2007 in this report.

4 Q Is it fair to say that Exhibit Number 4

5 supersedes Exhibit Number 3?

6 A That's correct.

7 Q Is it then fair to say that -- well,

8 strike that.

9 Tell me a little bit about Exhibit Number

10 5. How does this change Exhibit Number 4?

11 A Exhibit Number 5 corrects the earnings

12 losses for the two periods that are mentioned in

13 Exhibit Number 4 on the spreadsheets. I just copied

14 over the numbers for the wrong years and I realized

15 that when I was reviewing the report on Friday.

16 Q So it made one correction. Then it also

17 appears that you've added a work-life expectancy

18 column?

19 A That's in the original.

20 Q Okay. It must have been the -- pardon me.

21 It was the --

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1       A    Just to show the range of the earnings  
2 losses at various dates.

3       Q    At various ages?

4       A    At various ages. That's correct.

5       Q    And it appears that in Exhibit Number 5  
6 you add a column which calculates earnings losses  
7 through age seventy-one.

8       A    Well, what happened if you see here, these  
9 numbers are the same.

10      Q    Okay.

11      A    This was labeled. The numbers are the  
12 same. Instead of age sixty-seven, it should be age  
13 seventy-one.

14      Q    On Exhibit Number 4, the column should say  
15 age seventy-one instead of age seventy-seven on page  
16 104?

17      A    Right. So the age sixty-seven then  
18 becomes this number. And then the age fifty-six then

19 becomes this number.

20 Q So on Exhibit Number 5, you've inserted

21 one more column to show the true computation through

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1 age sixty-seven?

2 A That's correct.

3 Q And is it also fair to say that Exhibit

4 Number 5, your revised report as of April 14th,

5 supersedes Exhibit Number 4, your report as of

6 March 1?

7 A That's correct.

8 Q So along those same lines, is Exhibit

9 Number 5 your final report and the only report that

10 you intend to use in this case?

11 A It depends if new information comes up.

12 Q As of today's date?

13 A That's correct.

14 Q Let's focus on your current report, which  
15 is the revised April 14th report.

16 Looking through -- starting on page two of  
17 Exhibit Number 5, category number one, life  
18 expectancy. Can you explain to me what your life  
19 expectancy calculation means?

20 A Well, this is data that's provided by the  
21 federal government, Center for Disease Control. It's

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1 basically, as of 2002, given a person's age, how long  
2 could they expect to live.

3 Q So based on that research, you determined  
4 that Mr. Best should expect to live until age 71.8?

5 A That's correct.

6 Q And your life expectancy calculation,

7 which is shown on page one, the column -- actually, is

8 there a life expectancy calculation through age 71.8?

9 A Beg your pardon? Yes. Right. That

10 should be --

11 Q Is that the far-right column?

12 A That's correct.

13 Q The column that starts with age to receive

14 full Social Security benefits.

15 A Right.

16 Q So based on this calculation, the total

17 that you find in this calculation was \$644,781. Is

18 that correct?

19 A Present value of losses.

20 Q Present value of losses is that amount?

21 A That's correct.

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1 Q And this would be his losses through

2 his -- what is expected to be his death, correct?

3 A That's correct.

4 MR. FLACHS: Let me note an objection as

5 to an economist testifying when someone will die. I

6 think it's based on statistics.

7 MRS. LAZENBY: I agree.

8 Q Based on the research that you did and the

9 statistics that you pulled, Mr. Best is expected -- or

10 you have determined that Mr. Best can be expected to

11 live until 71.8 age?

12 MR. FLACHS: Let me note an objection.

13 Not being a medical person, not having reviewed any

14 medical records, and not knowing Mr. Best, I don't

15 think he can testify as to when Mr. Best will die.

16 Q Again, explain to me what the 71.8 means.

17 A Based on federal statistics, if someone

18 were Mr. Best's characteristics in terms of gender and

19 age who was looking forward, what would be his likely

20 life expectancy.

21 Q And you used that age, or the expected age

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1 at which he dies, to calculate in one of your  
2 calculations the present value of his lost earnings?

3 A Correct. If he continued to work through  
4 that period. That's correct.

5 Q So your calculation assumes -- strike  
6 that.

7 One of your calculations, the life  
8 expectancy calculation, assumes that Mr. Best will be  
9 paid throughout his lifetime -- strike that again.

10 MR. FLACHS: Throughout his statistical  
11 lifetime based on research by the federal government.

12 MRS. LAZENBY: No. That's not what I'm  
13 trying to ask.

14 Q What I'm asking is, your life expectancy  
15 calculation is determining Mr. Best's lost income  
16 through his statistical life expectancy?

17 A That's correct.

18 But if you're looking forward at age

19 twenty-four -- and we know that over time people are

20 living longer -- it's one of those kinds of things

21 that may change.

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1 Q But as of today's date, you determined

2 that statistically he should live until 71.8?

3 A Well, this is an average for people in a

4 group. The average age for people in this group. To

5 the extent that Mr. Best is representative of the

6 group, then that's what he would do.

7 Q Correct. You don't know exactly when he

8 will die, correct?

9 A That's correct.

10 Q Because you don't know that and no one

11 knows that, you have to rely on statistical data?

12 A That's correct.

13 Q And that statistical data tells you that

14 based on his age, race, he is expected to live until

15 age 71.8?

16 A At a minimum, yeah. Right.

17 Q And one of your calculations relies on

18 that life expectancy to pay him for lost wages until

19 71.8?

20 A That's correct.

21 Q Now, this life expectancy calculation,

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1 does this account for any interruption in Mr. Best's

2 career?

3 A No. It assumes that his career would not

4 be interrupted.



5 Q And it assumes that he will work  
6 consecutively from March of 2007 until he reaches age  
7 71.8?

8 A That's correct.

9 Q So does that calculation account for the  
10 possibility that Mr. Best could actually die prior to  
11 reaching age 71.8?

12 A No.

13 And it doesn't take into consideration  
14 that he might live beyond that either.

15 Q And does it -- does that calculation, the  
16 life expectancy calculation, take into account that  
17 Mr. Best may retire early?

18 A Retire prior to age seventy-one?

19 Q Correct.

20 A No, it doesn't. That's correct.

21 Q Does that --

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1       A    Or likewise it doesn't take into  
2    considering that if he's alive he'll work longer.

3       Q    Correct.

4            And does the life expectancy calculation  
5    take into consideration that Mr. Best could become ill  
6    and be out of the work force for a chunk of time  
7    before reaching age 71.8?

8       A    No, it does not.

9       Q    Is it fair to say that your life  
10   expectancy calculation compensates Mr. Best for wages  
11   from March of 2007 through reaching age 71.8?

12      A    Lost wages.

13      Q    Correct.

14      A    Right.

15           MR. FLACHS: Is this the 71.8 or just  
16   seventy-one?

17           THE WITNESS: Just seventy-one.

18      Q    So is this last column on Exhibit Number 5  
19   actually the life expectancy calculation or --

20 A It's to age seventy-one.

21 Q And you just round down?

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1 A Right. Yeah.

2 MR. FLACHS: Can we go off the record a  
3 second.

4 (A discussion was held off the record.)

5 Q During the questioning, I've assumed that  
6 life expectancy directly relates -- back up. That on  
7 page two of four your first paragraph called life  
8 expectancy directly correlates to one of the columns  
9 in your chart on page 104. Is that correct or  
10 incorrect?

11 A More directly, if you go to table two --

12 Q In Exhibit Number 5?

13 A Yes.

14           If you turn to the past page -- there are  
15 two pages in table two. So you'll see that the losses  
16 for -- if he continued to work out through age  
17 seventy-one are shown in the last row at the year  
18 2049.

19       Q    Right.

20       A    That shows -- if you go back to the  
21 previous page starting in 2007, it shows the losses

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1 out through a number of different possible scenarios.

2       Q    Right. It shows cumulative losses at  
3 present value through various ages, correct.

4       A    That's correct.

5       Q    Why is it you chose seventy-one? Is that  
6 because it's his life expectancy or is it some other  
7 number?

8 A It's to attempt to show that if he

9 continued to work beyond his age sixty-seven what the

10 losses would be.

11 Q So did you randomly choose age

12 seventy-one?

13 A Well, we couldn't take it beyond his life

14 expectancy.

15 Q So it is somewhat based on life

16 expectancy?

17 A Somewhat, yes.

18 Q Was I correct in assuming that this

19 present value total loss of \$544,119 is based upon his

20 life expectancy age?

21 A Well, based on it in a sense that he can't

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1 work beyond his -- what is considered his statistical

2 life expectancy.

3 Q Focusing on page two of four of Exhibit 5,  
4 paragraph number two, retirement age. Explain to me  
5 what this calculation is.

6 A Given his age, that would be the age he  
7 could be eligible to get full Social Security  
8 retirement based on designations by the Social  
9 Security Administration.

10 Q And which age is that?

11 A Sixty-seven.

12 Q So you have computed damages through age  
13 sixty-seven because many people retire at age  
14 sixty-seven when they can receive Social Security  
15 benefits?

16 A Full Social Security benefits. That's  
17 correct.

18 Q Now, does that calculation and the  
19 total -- I'm going to refer to page one of four. The  
20 middle column is titled age to receive full Social  
21 Security benefits, age sixty-seven. Is that the

1 column that calculates the total for the retirement

2 age calculation?

3 A That's correct.

4 Q And does this calculation assume that

5 Mr. Best will work consistently and uninterrupted from

6 March, 2007 until reaching age sixty-seven?

7 A That's correct.

8 Q Does this calculation account for possible

9 retirement prior to age sixty-seven?

10 A No, it doesn't.

11 Q Does this retirement-age calculation

12 account for illnesses that could take Mr. Best in and

13 out of the work force?

14 A No, it does not.

15 Q And does this Social Security calculation

16 account for the possibility that Mr. Best could die

17 before reaching age sixty-seven?

18 A No, it does not.

19 And likewise, it doesn't, you know, take  
20 into consideration that he would live beyond that or  
21 work beyond that as well.

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1 Q Moving on to paragraph number three on  
2 page two, work-life expectancy. Would you explain  
3 this to me, please?

4 A Again, that's another statistical concept  
5 which shows or attempts to measure the rate at which a  
6 group will be in the labor market.

7 Q And what was the statistic that you pulled  
8 for Mr. Best?

9 A Age fifty-six.

10 Q So in sum, does that mean that this  
11 statistic tells us that Mr. Best will work from March,



12 2007 for thirty-three years until age fifty-six?

13 A Well, it says that he would have earnings

14 for that period.

15 Q Until age fifty-six?

16 A That's correct.

17 Q And that comes down to about thirty-three

18 years, correct?

19 A That's correct.

20 Q Now, does this work-life expectancy

21 calculation also assume that Mr. Best would work

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1 uninterrupted from March, 2007 until age fifty-six?

2 A No.

3 Q Explain why it doesn't.

4 A Well, it takes into consideration

5 possibilities of not earning income over a period of

6 time.

7 Q If it takes into account those  
8 possibilities, it doesn't, though, alter the number of  
9 years. Is that correct? I mean it's still a straight  
10 uninterrupted thirty-three years that he would be  
11 getting paid?

12 A He would earn income over that  
13 thirty-three-year period.

14 Q But does the calculation make assumptions  
15 that he could come in and out of the work force during  
16 that time?

17 A Yes.

18 Q But is the calculation rigid in that it  
19 stops at age fifty-six?

20 A I don't understand what you mean by rigid.

21 Q If the calculation assumes that Mr. Best

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1 will work thirty-three years --

2 A He will earn over a thirty-three-year

3 period.

4 Q Okay. He will earn over a

5 thirty-three-year period, does the calculation assume

6 that that thirty-three years will be from March, 2007

7 through whatever year it is when he's fifty-six?

8 A Yes.

9 Q How does it then account for interruptions

10 in his career if we're looking at a straight

11 thirty-three-year period? And if there are

12 interruptions in there, shouldn't we look at him being

13 older when those thirty-three years have been earned?

14 A I guess I'm not following you.

15 Q Let me try to explain.

16 MR. FLACHS: Can we go off the record one

17 second?

18 (A discussion was held off the record.)

19 Q Let me try to explain my thoughts here.

20 The calculation we're looking at starts -- damages run

21 from March of 2007 for thirty-three years and then

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1 stop at his age fifty-six, correct?

2 A Correct.

3 Q And we would be paying him each year

4 consecutively under this calculation. Is that

5 correct?

6 A That statement is correct.

7 Q If the calculation however accounts for

8 interruptions, why is he paid during the straight

9 thirty-three years?

10 Do you want me to try to give you a

11 hypothetical?

12 A Yeah. I'm kind of lost with what you're

13 trying to say.

14 Q Under the calculation, it appears that

15 Mr. Best would begin working in March, 2007, would  
16 work for thirty-three years straight, and that would  
17 be --

18 A No. He would earn for thirty-three --  
19 over that thirty-three year period.

20 Q However, his working could exceed age  
21 fifty-six if he had been interrupted in the middle

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1 somewhere? Should I go back to my hypothetical?

2 MR. FLACHS: I don't understand.

3 MRS. LAZENBY: I know. I understand but  
4 no one else does.

5 Q Mr. Best -- as of March of 2007, we're  
6 going to begin to pay him for his lost earnings --

7 A Correct.

8 Q -- for thirty-three years. So that would

9 run through March of 2040, correct?

10 A All right.

11 Q And we're going to compensate him each

12 year uninterrupted.

13 A Okay. This is your hypothetical?

14 Q Yes.

15 A It's your hypothetical.

16 Q Mr. Best, assuming he leaves the military,

17 begins working in March, 2007 and in March of 2010

18 becomes ill and is out of work for a year. Then he

19 would, in fact, be working through March of 2041. So

20 the -- you're telling me the formula accounts for

21 interruptions in the work force yet he's paid

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1 consecutively through for thirty-three years. Why is

2 that?

3 MR. FLACHS: Objection. He never agreed  
4 with your last statement. He's corrected that three  
5 times at least.

6 THE WITNESS: Could you rephrase your  
7 question?

8 MR. FLACHS: Let's go off the record.

9 (A discussion was held off the record.)

10 Q Based on our discussion off the record,  
11 I'm going to summarize and you can say yes or no.

12 The formula, the work-life expectancy  
13 formula, accounts for movements in and out of the work  
14 force, interruptions in work in a statistical,  
15 mathematical formula.

16 A That's correct.

17 Q So I don't know how -- so the thirty-three  
18 years that you've found statistically that he will  
19 continue in the work force -- strike that.

20 (A discussion was held off the record.)

21 Q We've been off the record in circles, all

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1 of us speaking, trying to figure out this formula, the  
2 work-life expectancy formula.

3 Can you give me some background on the  
4 work-life expectancy? Tell me about the formula.

5 A If you go back to page two of four under  
6 work-life expectancy, the last sentence there. The  
7 way I -- just like I didn't estimate life expectancy  
8 or I didn't estimate retirement age, I rely on studies  
9 that are accepted in the field of forensic economics  
10 in order to determine statistical work-life  
11 expectancy.

12 This particular data, which is provided by  
13 Skoog and Ciecka, has been validated or accepted in  
14 court as a way of estimating these types of losses.  
15 Specifically -- I don't know whether you're familiar  
16 with the commission that looked at the 9-11 cases, the  
17 families that filed for compensation. Well, the  
18 special master who developed the methodology for



19 estimating those damages specifically relied on the  
20 methodology that we're using here as a way of coming  
21 up with numbers to compensate victims. The framework,

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1 the methodology, it's been accepted within legal and  
2 administrative circles as a way of coming up with the  
3 estimates of work-life expectancy.

4       What it attempts to do is given the fact  
5 that -- when is the average age a person would stop  
6 working if you take into consideration all of those  
7 things that cause -- that cause a person to move in  
8 and out of the labor market. They've looked at  
9 several studies about work force participation and  
10 have come up with some averages based on age and  
11 gender and level of education. So that's within the  
12 range of the literature which we try to give whoever

13 has to make a decision a way of figuring out what the  
14 appropriate number is. And we give a range of numbers  
15 here.

16           You basically have three approaches. One  
17 is using a retirement age. That's the approach  
18 somebody works to until they start receiving their  
19 retirement income.

20           The second method, which is referred to as  
21 the LPE method, it adjusts things statistically for

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1 the probability of being alive, probability of being  
2 in the work force, probability of being employed.  
3 There are no cutoff dates on that. You just take that  
4 out to whatever. Because as long as you're alive, you  
5 have a probability of being in the work force and  
6 being employed.

7 Q A probability or a possibility?

8 A A probability.

9 Q Okay. Go ahead.

10 A Well, we're talking about statistical

11 terms. In statistical terms, it's probability. My

12 father, who is eighty-five years old still works.

13 He's beyond what any work-life expectancy table would

14 have and any retirement table would have. And we find

15 people continue to work for extended periods of time.

16 So anecdotally, lawyers tend to work longer on average

17 than other groups, but we don't have any statistics on

18 it.

19 And then a third set of data are these

20 Skoog and Ciecka studies which say if you take all of

21 these things into consideration what would be a year

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1 in which we could say the person would be out of the  
2 labor market. Those are the three alternatives. I  
3 didn't do the LPE method because that takes us out --  
4 you just run those out to age one hundred. That's  
5 probably as difficult to explain as the one we're here  
6 struggling with.

7 Q I think I understand now. I think the  
8 difference between the retirement-age calculation and  
9 the life expectancy, the difference in the years  
10 there, fifty-six to sixty-seven, that's where it's  
11 accounting for the interruptions in and out. And  
12 that's why we're shortening it down to age fifty-six,  
13 correct?

14 A That's correct.

15 Q Rather than saying we're going to take you  
16 through age sixty-seven and then apply some percentage  
17 to that as to you'd be in the work force ninety  
18 percent and take it down, we're just assigning a year  
19 instead, correct?

20 A That's correct.

21 Q I think I got it. Sorry about the delay.

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1       A    You don't have to apologize. We're just  
2 doing our jobs.

3       Q    Now, based on the three calculations that  
4 you just explained to us -- we have the life  
5 expectancy, the work-life expectancy, and the  
6 retirement-age calculation -- which of those is most  
7 sound in economic principles?

8           MR. FLACHS: Let me note an objection  
9 because I think the question calls for him to project  
10 Mr. Best's life expectancy. And to the extent that it  
11 does call for that, this witness can't do that.

12       Q    Statistically, which calculation is most  
13 sound based on economic principles?

14       A    Well, when you look at the statistical  
15 models -- obviously, the way you build statistical

16 models is that they are -- you have to use historical  
17 data. So you somehow look at the past and you kind of  
18 project the future. So to the extent that the past  
19 numbers project the future then from -- say, in this  
20 case, if you say Mr. Best, then you can look at the  
21 work-life expectancy numbers. However, since we're

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1 looking out over a long period of time, more recent  
2 data which hasn't gotten put into the historical thing  
3 suggests that people who are lower -- the lower the  
4 income and the lower the education level, the  
5 likelihood that they'll be in the labor market longer.

6 In fact, there are a number of studies  
7 trying to figure out what the economists call the  
8 puzzle of why is it that retirement ages in the United  
9 States after going down for decades are now beginning

10 to go back up. This has all been within the last  
11 five, six, seven years. If you say which one is the  
12 most statistically reliable, you would have to be  
13 saying that the twenty or thirty years of data that  
14 went into computing the work expectancy numbers are  
15 going to hold for the next thirty years. Because it  
16 doesn't take into consideration these new trends that  
17 people are working longer for a number of reasons.  
18 They're living longer, they're healthier. And despite  
19 our dear colleague over here, a lot of people --  
20 retirement wasn't what it was all made up to be.  
21 People can only play so much golf or rock their kids

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1 on their knees for so long. What you find is people  
2 reentering the labor market for economic as well as  
3 personal or professional reasons.

4 Q Based on the statistical data that you  
5 have today, you don't have anything to support those  
6 new statistics of people staying in longer. Is that  
7 correct?

8 A Well, I mean -- no. In an attempt to do  
9 that -- that's why we give the range of the losses to  
10 take into consideration the possibility of changes  
11 over time. We don't -- based on given data, we know  
12 what the retirement ages are, say, for Social  
13 Security. And we would say unlikely that the  
14 government would shift those, but it's possible that  
15 could be the case.

16 Q But as we sit here today and the  
17 statistical data that you have, do you agree that the  
18 work-life expectancy calculation is the most sound  
19 based on economic principles?

20 A I would say it gives you one data point to  
21 consider when you're looking out. In essence, what

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1 you're doing is doing some financial planning for this  
2 person's life. And this just becomes one data point  
3 that you take into consideration, would be the age  
4 fifty-six. I'll certainly take into consideration  
5 ages beyond that as well.

6 Q But the work-life expectancy is the only  
7 calculation that accounts for interruptions in and out  
8 of the work force, correct?

9 A That's correct.

10 Q And in your economic expertise, don't you  
11 agree that an individual does move in and out of the  
12 work force and therefore that would be a factor in  
13 determining someone's future lost wages?

14 A Yeah. I mean as -- we know that people  
15 move in and out of the work force. We also know there  
16 are changes over time as we talked about that modify  
17 those movements in and out of the labor force. We're  
18 trying to give some guidelines to -- a metaphor or a  
19 hypothetical would be let's assume that we -- he was

20 going to live to age fifty-six hypothetically and then

21 he finds out he lives to age sixty-six. The question

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1 is, what would he live off of. When you make these  
2 plan assumptions, you have to take into consideration  
3 the possibility that there might be some changes over  
4 time. That's why you've got these range of numbers to  
5 consider possible losses. It's not open ended. We  
6 don't take it out to age one hundred. But we can say  
7 that within this -- these scenarios this is what the  
8 range of losses is likely to fall.

9       Again, if we take the financial planning  
10 example, then, unfortunately, people live longer than  
11 their assets. Well, so then in the financial planning  
12 kind of framework, you say select a possible date of  
13 death and add ten or fifteen years on to it as a way

14 of building in that kind of cushion so when you get to  
15 that age, you will have sufficient assets in order to  
16 live off of.

17 Q In the same respect, people could live  
18 longer than what they've saved for but they may also  
19 die much sooner than expected, correct?

20 A Right. But from a financial planning  
21 standpoint, would you rather -- it would be -- from a

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1 financial planning standpoint, you want to make sure  
2 the assets provide for the period that you're alive.

3 Q But we need to rely on statistical data  
4 because we don't know exactly how long Mr. Best will  
5 be alive, whether he exceeds some of these ages that  
6 you've cited or he may die prior to that, correct?

7 A Correct.

8 Q So that's why we rely on statistical data?

9 A Right.

10 But you don't want to lock yourself into a  
11 situation where the possibility that the individual is  
12 in a situation where the assumptions that are made  
13 come back to adversely affect the individual if the  
14 individual happens to be alive.

15 Q And the only way to do that is to  
16 overcompensate?

17 A Well, not necessarily -- we're not saying  
18 overcompensate. What we're saying then is here is a  
19 range of numbers to consider where the compensation  
20 should be.

21 Q And some of the higher numbers are adding

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1 a cushion?

2       A    Well, it's only a cushion if you die  
3 early. If you live beyond it, it's not a cushion.

4       Q    Let's move on to number four, lost  
5 earnings. This is on page two of four. In this  
6 paragraph, I believe this is where you obtained  
7 information from Mr. Melberg's report.

8       A    Uh-huh.

9       Q    Is that where you got his average weekly  
10 earning and his yearly earning?

11      A    Actually, that should be -- instead of  
12 earnings there, that should be compensation in terms  
13 of what he was earning in the service.

14      Q    When -- so it should state total  
15 compensation instead of earning?

16      A    Yes.

17      Q    And by total compensation, does that  
18 include his salary plus benefits?

19      A    Well, in the military, you get the salary  
20 plus benefits. But you also get -- referring again to  
21 Mr. Melberg's report -- on page two --

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1           MRS. LAZENBY: Yes. I have marked -- I'll  
2 mark it separately. Let's mark Mr. Melberg's as  
3 Number 9. So Peder Melberg's report is marked as  
4 Exhibit 9.

5           (Paige Deposition Exhibit Number 9 was  
6 marked for purposes of identification.)

7           THE WITNESS: If we look at the page two,  
8 top paragraph, you'll notice that the last -- second  
9 to the last line, Sergeant Best's total military  
10 compensation is \$48,772, including basic pay, BAS, and  
11 BAQ.

12        Q    What are BAS and BAQ?

13        A    One is for food and one is for housing.

14        Q    And did you do any research on this number  
15 or did it come straight from Mr. Melberg's report?

16        A    The 48,000 came from Mr. Melberg's report.

17 Q Now, in paragraph number four on Exhibit  
18 Number 5, towards the middle, it states that Sergeant  
19 Best's future earning capacity will be diminished due  
20 to the injuries he suffered on November 23, 2002.

21 A Right.

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1 Q Where did you get that information?

2 A From Mr. Melberg's report.

3 Q And what is it about his injuries that  
4 will change his earnings?

5 A Well --

6 Q If you know.

7 A Well, not specifically but on page three,  
8 Mr. Melberg summarizes that in the last paragraph of  
9 his report.

10 Q So this is page three of Exhibit Number 9?

11 A Yes.

12 Q Okay. And what is it there that you  
13 relied on?

14 A Well, I thought you -- I thought the  
15 question was -- what do you mean when you say relied  
16 on?

17 Q You make this statement that Sergeant  
18 Best --

19 A His capacity will be diminished.

20 Q Right. Where did you get that  
21 information?

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1 A It was based on Mr. Melberg's report.

2 Q And what specifically about it? Did you  
3 understand he had to leave the military or why was it  
4 his earnings were going to be diminished?



5       A    Oh, I didn't try to interpret the last  
6 paragraph which says when considered the cognitive and  
7 work deficits resulting from his injuries the kinds of  
8 things that Mr. Best would be limited to.

9       Q    So you relied on the last paragraph of  
10 Mr. Melberg's report?

11      A    Well, the whole report talks about -- not  
12 the whole report but snippets of the report talk about  
13 how the injuries are affecting him. I just pointed  
14 this out because to me that summarized that particular  
15 statement. But you'll have to ask Mr. Melberg.

16      Q    I will.

17           Looking at the next sentence that Sergeant  
18 Best's earnings losses will begin March, 2007. How  
19 did you determine that date?

20      A    Mr. -- is that one of the e-mails that was  
21 sent.

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1 MR. FLACHS: Yes.

2 THE WITNESS: It's from an e-mail.

3 (Paige Deposition Exhibit Number 8 was  
4 marked for purposes of identification.)

5 MR. FLACHS: Page eight, I think, the  
6 second page.

7 MRS. LAZENBY: Exhibit 8 you mean?

8 MR. FLACHS: Exhibit 8. I think the  
9 second page.

10 Q I'll show you your e-mails I have.

11 What does he tell you?

12 A He says on review of interview notes it  
13 appears that Sergeant Best will continue serving in  
14 the military until March, 2007.

15 Q So it's your understanding that he remains  
16 in the military and he will remain until March, 2007,  
17 correct?

18 A That's correct.

19 Q And that he's being compensated for that  
20 position until March, 2007?

21       A    That's my understanding, yes.

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1       Q    And then the last sentence in this number  
2 four paragraph of page two of four on Exhibit 5, you  
3 state Mr. Best will not re-enlist at the end of his  
4 tour of duty due the his injuries. Is this an  
5 assumption you made based on Mr. Melberg's report?

6       A    Right. And the paragraph starts according  
7 to the report. All of this information in this  
8 particular section is based on Mr. Melberg's report.  
9 These are not independent findings.

10      Q    So it's fair to say you have no  
11 independent knowledge of any of these facts. They  
12 purely came from Mr. Melberg's report?

13      A    That's correct.

14      Q    Do you have any knowledge about whether

15 Mr. Best's choice -- whether Mr. Best is voluntarily  
16 leaving the military or whether he's being terminated?

17 A I don't know.

18 Q Would that fact -- if he was voluntarily  
19 leaving the military, would that have any impact on  
20 the calculations that you've made?

21 A I'm not sure what the nature of the

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1 question --

2 Q If Mr. Best was leaving the military  
3 though he hasn't been asked to leave, he's leaving on  
4 his own, giving up a job that pays him  
5 forty-eight-plus thousand dollars a year and leaving  
6 to take a job that pays him \$24,000 a year, would that  
7 impact your opinions and/or any of your calculations?

8 A Well, I mean it would depend on what the

9 expert -- the vocational rehabilitation expert had to  
10 say.

11 Q How would that matter?

12 A What did you say?

13 Q Why would it matter if the vocational  
14 rehab expert said that he was voluntarily or  
15 involuntarily leaving the military?

16 A Because as an economist we don't measure  
17 earning capacity. That's not what we do.

18 Q When you're making a calculation, what do  
19 you start with? Do you start with the number -- the  
20 maximum amount that Mr. Best could earn outside of the  
21 military?

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1 A No. We're starting with the report by  
2 another expert. These are the facts that have been

3 given and provided for which to do some projections  
4 on. If there was another fact pattern, then we could  
5 get another set of projections.

6 Q So you're purely relying on these possible  
7 salaries that Mr. Melberg is setting forth in his  
8 report?

9 A That's correct.

10 Q On Exhibit Number 5, looking at paragraph  
11 number six, taxes. Why is it that you have not made  
12 any adjustments for federal or state income taxes?

13 A Because of the law in the State of  
14 Maryland.

15 Q So you're relying on a Maryland court  
16 decision?

17 A Yeah. And guidance from counsel. I don't  
18 interpret the law.

19 Q Do you agree that Mr. Best if he were  
20 earning his maximum -- if his -- there wasn't an  
21 difference in his earnings, he would continue to pay

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1 income taxes on -- strike that.

2 Your calculation is showing cumulative  
3 losses as to what he could have earned without the  
4 injury and what he can now earn with his injury,  
5 correct?

6 A That's correct.

7 Q Assuming that Mr. Best had not been  
8 injured and was earning his current earnings then  
9 adjusted each year, would he be paying taxes on those  
10 earnings?

11 A If somebody is working.

12 Q Yes. He would be paying taxes, correct?

13 A That's correct.

14 Q And he pays taxes now. Is that correct?

15 A I'm assuming that he -- I don't know  
16 whether he's paying taxes but I would assume.

17 Q He should be paying taxes?

18 A Right, he should be paying taxes.

19 Q Does your --

20 A But the tax issue is not an economic

21 issue. It's purely a legal issue in the State of

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1 Maryland.

2 Q I understand there is a case that says we

3 don't take into account -- putting that case aside.

4 If you were doing an economical calculation, you would

5 account for taxes, correct?

6 A Well, as an expert witness, we do the

7 calculations according to the laws that govern the

8 particular jurisdictions. And in different

9 jurisdictions the laws change.

10 Q You were talking earlier about estate

11 planning and how you try to determine how long someone



12 will earn money and how long someone will live. In

13 estate planning, if you're not serving as an expert

14 witness, do you account for taxes coming out of

15 earnings?

16 A Well, the example I was trying to give is

17 if you want to project how much money you want to

18 have on hand. It wasn't an estate tax question. It

19 was how much money you want to have on hand if you're

20 alive. So you want to make this projection -- the

21 issue there is what amount of funds you have to put

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1 aside each year in order to make sure that you have

2 the income that you expect to have. That was the --

3 sort of sets the example I was trying to give, not an

4 estate tax planning --

5 Q Right. But in that same scenario, the

6 earnings, they're being taxed, correct?

7 A Well, that scenario was how much do you  
8 have to put aside each year or invest each year to  
9 make sure you have a cumulative set of funds to  
10 provide for your future needs.

11 Q And the funds that you're expecting, you  
12 need to take into account that taxes are being paid?

13 A Well, if you -- once you start drawing  
14 down the funds, do you pay taxes on them?

15 Q Yes. Don't you account for that when  
16 you're trying to plan the financial future?

17 A Well, again --

18 Q Let me back up. When I asked you about  
19 taxes and you said that that's a legal question. When  
20 you serve as an expert witness, you do not take into  
21 account a deduction for taxes, correct?

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1 A Depending on the jurisdiction.

2 Q So in other jurisdictions outside of  
3 Maryland, would you account for a deduction for taxes?

4 A Yeah. If you're in the District of  
5 Columbia, you would.

6 Q So that would be -- that would be a  
7 significant factor in determining someone's cumulative  
8 losses in a jurisdiction other than Maryland?

9 A I don't know if it would be a significant  
10 factor. It's one factor that you have to take into  
11 consideration.

12 Q And the only reason you're not taking it  
13 into consideration in this case is because of a  
14 Maryland law that states that --

15 MR. FLACHS: Counsel, we'll stipulate to  
16 that. He was given instructions that the Maryland law  
17 says such and such with taxes. He followed those  
18 instructions. We'll stipulate that that is the reason  
19 why he's not made any mention of taxes beyond what's  
20 in the report. If we're incorrect with the law, then  
21 we'll have to come up with some new statistics.

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1 Q I want to look at table number one on

2 Exhibit Number 5.

3 This -- looking at lines twelve and

4 thirteen. Twelve we've already discussed. That's

5 the life expectancy of 71.8.

6 A I should change that from sixty-seven to

7 seventy-one.

8 Q I'm not following.

9 A Here. On line eleven.

10 Q Okay. Looking at line thirteen, healthy

11 life expectancy, 64.7. Can you explain that to me?

12 A Actually, that's something that probably

13 shouldn't have been included in this particular case.

14 I often use spreadsheets that are -- we write over

15 them. That's something that probably shouldn't have

16 been there.

17 Q Well, you can tell me what it means since

18 it is there. Will you tell me what it means?

19 A There are some studies that focus on

20 people's capacity to do things. That's what that

21 particular study attempts on that particular concept

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1 attempts to get at.

2 Q And does 64.7 mean based on the

3 statistical data that Mr. Best will be healthy and in

4 shape to work or do certain things until that age?

5 A I have to check and see whether that is

6 the number for Mr. Best. If that were the number,

7 yes.

8 Q If that were the number, that would be

9 what it means. So when you compare the healthy life

10 expectancy to the life expectancy, the seven-year  
11 difference there, would that be the unhealthy life  
12 expectancy?

13 A That's a good concept.

14 Q If you're saying he's expected to be  
15 healthy through 64.7 yet he's going to live until  
16 71.8, what are the years in-between? Are we expecting  
17 him to be in poor health such that he can't work?

18 A Or as you get older you have to slow down.  
19 It doesn't necessarily mean that you are a basket case  
20 or anything like that.

21 Q So two of your calculations, the

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1 retirement-age calculation and the life expectancy  
2 calculation, actually assume that Mr. Best is going to  
3 be earning money past his healthy life expectancy if,

4 in fact, 64.7 is his healthy life expectancy.

5 A That's correct.

6 But again, we know people who have serious  
7 conditions and fortunately or unfortunately they still  
8 work.

9 Q Looking at line eighteen, prior injury  
10 compensation. Is this number actually wrong? It's  
11 different than the one we were looking at earlier.

12 A Yeah. It should be the --

13 MR. KINSLEY: Off the record a second.

14 (A discussion was held off the record.)

15 THE WITNESS: It's right.

16 Q Explain to me line eighteen, prior injury  
17 compensation. What is that?

18 A If Mr. Best -- according to Mr. Melberg,  
19 if Mr. Best had not been injured and had left the  
20 service, he could have earned \$43,000.

21 Q As of what date? As of the accident date

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1 or as of March, 2007?

2 A As of March, 2007.

3 Q So do your losses use the \$43,000 --

4 A Yes. It's the difference between

5 forty-three --

6 Q It's an average.

7 A Under the -- if we go back to table one,

8 the second number fourteen should be March, 2007.

9 MR. KINSLEY: Any particular date?

10 THE WITNESS: March 1.

11 Q Let's look at paragraph number seven on

12 page three of four. It appears to me -- I'll try to

13 summarize -- that you are assigning fringe benefits

14 that he would earn in employment outside the military,

15 correct?

16 A That's correct.

17 Q And this is based on a statistical average

18 of what people normally -- what employers normally



19 give to their employees?

20 A That's correct.

21 Q And 8.5 percent is an --

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1 A 18.5.

2 Q 19.8. you apply that to the actual  
3 salary?

4 A That's correct.

5 Q We've touched on this briefly. But if  
6 Mr. Best remained in the military, would you assign  
7 that 18.5 percent to his compensation there or does  
8 his military compensation include these fringe  
9 benefits?

10 A The compensation includes the fringe  
11 benefits. Or it includes two of the fringe benefits.

12 Q Okay. Which ones?

13 A The housing and the food.

14 Q Does it also include medical benefits or

15 would he have to pay for those? Do you know, in the

16 military?

17 A Well, not while he's in the military. He

18 doesn't have to pay for medical bills.

19 Q So if he remained in the military -- I'm

20 going to give you a hypothetical.

21 If his lost income was based on him

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1 staying in the military -- and we're saying but for

2 the accident he would have earned -- his income would

3 have grown by ten percent each year but because of the

4 accident his income remains stable. So there is still

5 a loss of income in the hypothetical.

6 In calculating his lost earnings there and

7 he's in the military, would you add on a fringe

8 benefit amount as you've done in this calculation?

9 A Let me see if I -- so if the -- without

10 the injury situation he would have been an E-5.

11 Q Then gone to E-6, E-7, E-8. So his income

12 would have been growing?

13 A Increased as he got promotions and then as

14 the military got cost of living increases.

15 Q Correct. But because of the accident he

16 remains at E-5 at a flat salary. If you were

17 computing losses there, would you calculate in a

18 fringe benefit amount? I'm assuming you wouldn't

19 because he remains with the same fringe benefits.

20 A I think the -- I know it's a hypothetical,

21 but if my understanding of military compensation is

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1 correct, you can't stay at an E-5. You can't stay at  
2 that level forever. If you don't continue to grow,  
3 you have to leave.

4 Q Well, assuming he did, would your  
5 calculations include a markup for fringe benefits?

6 A Well, there would clearly be the markup  
7 for the BAS and the BAQ because as you go up the scale  
8 from E-5 to E-6 to E-7, the amounts you get paid for  
9 BAS and BAQ go up as well. So there would be some  
10 differential between the BAS and the BAQ. Depending  
11 on how the retirement income calculation is done,  
12 there would be some differential there.

13 For example, hypothetically, let's say the  
14 retirement formula goes like this. You get one  
15 percent of your salary -- you take the highest average  
16 three years of your salary and you get one percent of  
17 that for every year that you're in the service. If  
18 you're in the -- so that number would be higher for  
19 someone who was going from an E-5 to E-6 or E-7 than  
20 somebody who stays strictly as an E-5. So there would  
21 be a differential in the retirement income that the

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1 person would receive. So probably the only thing that  
2 there wouldn't be a differential on would be in terms  
3 of medical care. He wouldn't have to pay anymore  
4 for -- because he doesn't have to pay medical  
5 insurance that wouldn't be a differential there. For  
6 the BAS, the BAQ, and the retirement would be the --  
7 and then the income. So you have those four things.

8 Q And they're directly related to the  
9 income?

10 A Well, the BAS and BAQ are directly related  
11 to your grade E-4, E-5, E-6. The retirement income is  
12 a percentage. You take the average of your highest  
13 three years of income and then you get a percentage of  
14 that. And you multiply that by another number. In  
15 that sense, it's directly related to the income.

16 Q But in that hypothetical, you wouldn't

17 automatically apply 18.5 percent. It would be a  
18 lower, different number?

19 A Oh, no. There would be no way to say  
20 whether the number would be lower or higher.

21 Q Well, let's say it this way. If he

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1 remained in the military but still incurred a loss in  
2 earnings, you would not automatically choose to use  
3 this 18.5 percent that you got from the statistical  
4 data?

5 A Yeah. Because you're looking at a  
6 different model to compute the losses in terms of  
7 coming up with the differential.

8 (There was a break in the proceedings.)

9 (Paige Deposition Exhibit Number 6 was  
10 marked for purposes of identification.)

11 Q I'm going to show you Exhibit Number 6.

12 This is an e-mail that Mr. Flachs forwarded to us. It

13 looks like your e-mail is at the bottom.

14 A Right.

15 Q It has to do with revising one of your

16 reports.

17 A That's correct.

18 Q Is this the only e-mail correspondence

19 that you had with Mr. Flachs that you know of?

20 A Yes, it is.

21 (Paige Deposition Exhibit Number 10 was

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1 marked for purposes of identification.)

2 Q I wanted to show you this, it was attached

3 to another exhibit. It's marked as Number 10. This

4 is one of the plastic surgeon's reports. It was

5 included in your information. I'm not sure if you  
6 reviewed it or relied on it at all.

7 A That's the first time I've seen it.

8 Q So you've never seen it?

9 A No.

10 Q Fair enough.

11 We've gone over in detail your revised  
12 April 14 report which is marked as Exhibit Number 5.

13 A Right.

14 Q Other than your calculations and some of  
15 the statements made in this report, do you have any  
16 other opinions about this case?

17 A Could you rephrase the question?

18 Q Yeah. In your report marked as  
19 Exhibit Number 5, you make certain opinions regarding  
20 the economic value of this case based on lost  
21 earnings. Other than what's included in your report,

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1 do you have any other opinions about this case?

2 A The report contains all my opinions.

3 Q Your revised report of April 14th is your  
4 current report and the only report you intend to rely  
5 on as of today, correct?

6 A That's correct.

7 EXAMINATION BY MR. KINSLEY:

8 Q Dr. Pagie, I have a few follow-up  
9 questions. Part of your testimony earlier was that  
10 you were comparing these ranges of calculations with  
11 what I would call financial planning projections where  
12 you don't want to shortchange yourself by just  
13 guessing that I expect to live to age seventy-five and  
14 then run out of money at age seventy-five because you  
15 didn't expect you might live to eighty. So that you  
16 want to have a cushion or you want to take into  
17 account that somebody might live ten to fifteen years  
18 longer than they might otherwise be expecting  
19 statistically. Is that how you generally approach

20 financial planning type of programs or evaluations,

21 not necessarily the ten or fifteen years but just that

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1 concept in general? Do you want to overshoot on the

2 age?

3 A Let me back up. We were talking about, if

4 I remember correctly, in the context of whether or not

5 a particular number would undercompensate or

6 overcompensate someone. I think that was the context

7 of the discussion.

8 Q It eventually led there, yes.

9 A Because the questions, if I remember them

10 correctly, addressed whether or not -- would a

11 particular age be a cutoff point and you said that

12 somebody could go beyond that or somebody could fall

13 below that cutoff point.

14 Q Right. Which is why we have statistical  
15 averages, right?

16 A That's correct.

17 I think we were talking about a context of  
18 hypothetically and I gave that as a hypothetical. I  
19 wasn't rendering that as financial planning advice but  
20 just to try to use a hypothetical or an example of  
21 what we were looking at.

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1 Q Is the type of calculation you make in a  
2 case like this where you're trying to project  
3 somebody's lost income due to a reduced-income  
4 capacity -- do you take the same approach with this  
5 calculation as you would with a financial planning  
6 calculation?

7 A I'm not here to testify as a financial

8 planner. Again, we were looking for metaphors to try

9 to understand some things.

10 Q Do you do any kind of financial planning?

11 A No.

12 Q Have you evaluated financial planning to

13 give opinions on whether something was projected

14 forward well or not?

15 A Not for financial planning.

16 Q For anything comparable as far as taking

17 into account that somebody might live longer than they

18 statically would be expected to?

19 A No.

20 Q Of your three age -- I guess it's

21 Exhibit 5. Page one of four of Exhibit 5. You have,

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1 as we've discussed before, present value of losses,

2 the three columns, one age fifty-six, one age  
3 sixty-seven, one seventy-one. First of all, let me  
4 see if we can clarify something, at least in my mind.  
5 Two of these columns read to age to receive full  
6 Social Security benefits.

7 A Right.

8 Q Now, that's not correct for the age  
9 seventy-one, is it?

10 A Well, when you say it's not correct, what  
11 do you mean?

12 Q Well, based on Mr. Best's year of birth,  
13 he has to, under present law, work to age sixty-seven  
14 in order to receive full Social Security benefits.

15 A Or beyond.

16 Q Well, the law fixes a time, though, right?

17 A He can't get full prior to sixty-seven.

18 Q So when he hits age sixty-seven, assuming  
19 no change in the law, he has reached full retirement  
20 benefits?

21 A But he doesn't have to start collecting.

1 Q I understand that.

2 But he doesn't have to work to age  
3 seventy-one in order to receive full Social Security  
4 benefits, correct?

5 A That's correct, if that's what you mean.

6 Yes.

7 Q Statistically, of these three ages,  
8 fifty-six, sixty-seven, seventy-one, which is the one  
9 that is more likely than not the age that Mr. Best  
10 will statistically work until?

11 MR. FLACHS: I object. I don't think this  
12 witness is capable of answering that question.

13 But you can try.

14 THE WITNESS: I was going to ask him to  
15 restate the question.

16 Q Well, you picked age fifty-six in the  
17 first column because of what?

18 A Because of what the studies reflect.

19 MR. FLACHS: Let me just note another  
20 objection. I also think this is invading the province  
21 of the jury. I'll let you ask all of these questions

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1 subject to the objections I've put on the record.

2 Q You picked age sixty-seven in column two  
3 based on what?

4 A When he would be eligible for full Social  
5 Security retirement benefits.

6 Q And you picked age seventy-one because of  
7 what?

8 A If he continued to work beyond that toward  
9 the end of his life expectancy.

10 Q And you stopped at age seventy-one because  
11 the statistical life expectancy at the time of the

12 accident for him was 71.8. Is that correct?

13 A That's correct.

14 Q Now, age fifty-six, if I understood your

15 testimony earlier -- and correct me if I'm wrong --

16 that is the work -- that's the work-life expectancy of

17 Mr. Best running from the year of the accident and

18 then adding an additional thirty-three years, which

19 would bring him up to age fifty-six, correct?

20 A Correct.

21 Q Of these -- if that's the work-life

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1 expectancy, of these three ages, fifty-six,

2 sixty-seven, and seventy-one, for purposes of

3 projecting forward and coming in here with a figure,

4 isn't that the one that is more likely his

5 worklife -- expected worklife and then more likely his



6 lost wages when you project forward and then reduce to  
7 present value?

8 A Well, the reason that we give more than  
9 one number is to give a range. And I'm not here to  
10 say that one of these numbers is the number.

11 Q Are you here to say that any of these  
12 numbers is the right number?

13 A This is the range in which the losses  
14 would fall. Again, we're looking out over a thirty  
15 year, thirty-three, forty-year period.

16 Q Now, the calculations in tables one and  
17 two, are there any supporting documentations for those  
18 calculations?

19 A Well, it's laid out in the sources.

20 Q But --

21 A What did you mean?

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1 Q Are there any worksheets? Are there any  
2 computer printouts or handwritten charts or graphs or  
3 notes that demonstrate exactly how these calculations  
4 work?

5 A I can give you some -- I can provide you  
6 with the -- some of the underlying data if that's what  
7 you want. But everything is laid out in the sources  
8 here, discount rates, the growth rates.

9 Q Well, where -- exactly what sources give  
10 us the -- I need to look --

11 THE WITNESS: If you go down.

12 MR. FLACHS: Let him finish.

13 Q -- the work-life expectancy to the extent  
14 that it takes into consideration mortality rates and  
15 movements into and out of the labor market.

16 A If you look on page four of four, the  
17 third item.

18 Q All right. And if I wanted to hand your  
19 work to somebody, they would have to go -- is that a  
20 book? Is that a program?

21 A It's a journal article.

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1 Q And when you did these calculations, did  
2 you -- was that part of a computer program you had or  
3 did you just pull out a book and look at it?

4 A I just pulled out a book and looked at it.  
5 In this case, the journal article.

6 Q I'm sorry? What?

7 A The journal article.

8 Q The same thing for healthy life expectancy  
9 when you calculated that his healthy life expectancy  
10 is 64.7 I think was the figure?

11 A I was going to verify that.

12 Q The journal -- let's go to the -- on page  
13 four of four, let's go back to the work-life  
14 expectancy one. Does that have a series of charts or

15 formulas or something that you then just plugged into  
16 come up with these figures?  
17 MR. FLACHS: Well, you're pointing to the  
18 entire chart. You asked him a discreet question and  
19 then you pointed to all the statistics. I think  
20 Melberg provided a basis for quite a few of the  
21 statistics.

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1 MR. KINSLEY: I'm not talking about the  
2 factual assumptions. I'm talking about formulas.  
3 He's already made it clear the factual assumptions as  
4 far as the ability to work and what the wages would be  
5 and could be came from other sources and I accept that  
6 because that's not his job. That's not what he comes  
7 in for.

8 Q For example, on table two, economic loss,

9 wherever the work-life expectancy is factored in, was  
10 there some written calculation or computer calculation  
11 or any kind of calculation other than just this  
12 result? Is there somewhere where you actually worked  
13 out the math? Did you write it down?

14 A Everything is imbedded in spreadsheets.  
15 It's not a computer program. You know, cell five  
16 times cell six.

17 Q So there is a spreadsheet for these  
18 calculations somewhere?

19 A Well, the spreadsheet contains the  
20 calculations.

21 Q But does the spreadsheet exist either on a

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1 computer or on a piece of paper?

2 A This is it. Maybe we're talking about two

3 different things.

4 MRS. LAZENBY: Can we go off the record

5 for one second.

6 (A discussion was held off the record.)

7 MR. KINSLEY: I don't have any further

8 questions.

9 EXAMINATION BY MR. FLACHS:

10 Q I did have one or two questions.

11 I think you may have clarified this

12 indirectly with a question Mr. Kinsley just asked you.

13 But as I understand your calculation to age

14 seventy-one, that was to the first day of his turning

15 age seventy-one. Is that correct?

16 A That's correct.

17 Q Whereas his life expectancy as you've

18 calculated it or I guess repeated it statistically is

19 71.8 years.

20 A That's correct.

21 Q And you have not done a calculation that

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1 indicates his losses through 71.8 years?

2 A That's correct.

3 Q Is the life expectancy statistic, as  
4 you've used it and as you understood it, an average?

5 A Yes.

6 MR. FLACHS: I don't have anything  
7 further.

8 MR. KINSLEY: I do.

9 EXAMINATION BY MR. KINSLEY:

10 Q If you look at Exhibit 5, table two, the  
11 year 2049, which would be the year he turns  
12 seventy-one. His birthday is May 28, 1978. If, in  
13 fact, the calculation for the earnings loss had  
14 stopped at his seventy-first birthday, wouldn't the  
15 figures in column six, column seven, and column nine  
16 as well as column ten be lower than they are?

17 A No. I think the point that I was  
18 responding to is that we don't go beyond seventy-one.

19 If we had another line, it would be -- which would be

20 71.8, that .8 is not calculated there.

21 Q If you've got seven months past his

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1 birthday out of a twelve-month year, you've got

2 seventy years plus seven-twelfths because this

3 calculates an entire year, doesn't it, this line

4 beside 2049? It doesn't stop at May 27th.

5 A Okay. It doesn't stop at May 27th.

6 Q I'm not saying you need it to stop at

7 May 27th. I just want to make sure we're clear on the

8 record here that it did not, in fact, stop on the

9 seventy-first birthday. This calculation and the math

10 and the totals that you've given went through the end

11 of the year 2049 in which he would have been

12 seventy-one and seven months old and four days.



13 A All right. Okay.

14 MR. KINSLEY: Thank you.

15 MR. FLACHS: We'll read.

16 (Deposition concluded at 5:02 p.m.)

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1 CERTIFICATE OF DEPONENT

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3

4

5 I hereby certify that I have read and examined

6 the foregoing transcript, and the same is a true and

7 accurate record of the testimony given by me.

8

9 Any additions or corrections that I feel are  
10 necessary, I will attach on a separate sheet of paper  
11 to the original transcript.

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Jerome S. Paige

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**GORE BROTHERS**  
Reporting & Video Co., Inc.

1 State of Maryland

2 Prince George's County, to wit:

3 I, HEATHER AVALOS, a Notary Public of the

4 State of Maryland, County of Prince George's, do

5 hereby certify that the within-named witness

6 personally appeared before me at the time and place

7 herein set out, and after having been duly sworn by

8 me, according to law, was examined by counsel.

9 I further certify that the examination was

10 recorded stenographically by me and this transcript is

11 a true record of the proceedings.

12 I further certify that I am not of counsel

13 to any of the parties, nor in any way interested in

14 the outcome of this action.

15 As witness my hand and notarial seal this

16 3rd day of May, 2006.

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19 HEATHER AVALOS, Notary Public

20 My Commission Expires:

21 December 1, 2007

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