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Michael Soudry,  
Economist

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

BRIAN KUBIAK,

Plaintiff,

New York, N.Y.

v.

98 Civ. 8150

THE CITY OF NEW YORK,

Defendant.

Witness: MICHAEL SOUDRY

September 14, 2000,  
12:00 p.m.

Before:

HON. RICHARD CONWAY CASEY,

District Judge  
and a Jury.

APPEARANCES

FRIEDMAN & JAMES, LLP,  
Attorneys for Plaintiff,  
BERNARD D. FRIEDMAN,  
of Counsel.

LAW DEPARTMENT, CITY OF NEW YORK,  
Attorneys for Defendant  
MATTHEW J. MAIORANA,  
Assistant Corporation Counsel,  
of Counsel.

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1 MICHAEL SOUDRY,

2 called as a witness by the plaintiff,

3 having been duly sworn, testified as follows:

4 DIRECT EXAMINATION

5 BY MR. FRIEDMAN:

6 Q. What is your profession?

7 A. I am employed by a company by the name of Ecostat Forensic  
8 Economists.

9 Q. What is the business of Ecostat?

10 A. In Ecostat we are performing economic evaluations for  
11 lawyers, defense and plaintiffs, in cases such as this,  
12 personal injuries, wrongful death, wrongful termination, and  
13 other cases, estimating the economic loss in those cases.

14 Q. What is a forensic economist?

15 A. Forensic economist is a person like me that makes the  
16 evaluation, prepares the economic report, and if it's needed  
17 comes to trial and explain the methodology to jurors.

18 Q. State your educational background for the court and jury.

19 A. Yes. I have a B.A. in economics. I graduated in 1990 from  
20 the Hebrew University in Jerusalem, and I have a master's  
21 degree in administration with a major in finance, and I  
22 graduated in 1993 from the Hebrew University in Jerusalem.

23 Q. Would you state your employment history?

24 A. Yes. As I said before, currently I am employed with a  
25 company named Ecostat. I am employed there for about five

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1 years, and I am performing work as a forensic economist.

2 Before that, prior to this I was working for the  
3 Israel Economic Commission as an economist, and I was in charge  
4 of providing economic data on the U.S. and on Israel to  
5 internal purpose and also to investors that were interested in  
6 that. I was working there for about two and a half years.  
7 Prior to that I was working in the Israeli Bureau of Statistics  
8 as an economist.

9 Q. Have you previously qualified in court as an expert witness  
10 on economic loss as a result of personal injury?

11 A. Yes.

12 Q. Have you qualified as an expert witness in economic loss as  
13 a result of personal injury in this courthouse?

14 A. Yes.

15 Q. Do you prepare economic loss analyses for both plaintiffs  
16 and defendants in personal injury cases?

17 A. Yes.

18 Q. And if you can, can you tell us what percentage are  
19 prepared for plaintiffs and what percentage are prepared for  
20 defendants?

21 A. Our practice about preparing economic loss reports, about  
22 60 percent of the time for plaintiffs, and 43 percent of the  
23 time for defense.

24 Q. Have you been retained by Friedman & James to prepare an  
25 economic analysis regarding the loss of Brian Kubiak as a

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1 result of an accident that occurred on March 31, 1997?

2 A. Yes.

3 Q. Has Friedman & James paid Ecostat for the time spent by you  
4 in preparing such report?

5 A. Yes.

6 Q. And has our firm also agreed to pay you for your time that  
7 you spend today in court?

8 A. Yes.

9 Q. Have you ever met Brian Kubiak?

10 A. Just today.

11 Q. Is it necessary for you to meet someone such as Brian  
12 Kubiak in order for you to form an opinion as to the economic  
13 loss as the result of a personal injury?

14 A. No, it's not necessary.

15 Q. Why not, sir?

16 A. My evaluation of the economic loss is based on information  
17 provided to me and other relevant material regarding economic  
18 evaluation. A personal meeting with a plaintiff is not  
19 necessary. It's all based on material that is provided to me.

20 Q. Were you provided with certain material to review prior to  
21 preparing your report?

22 A. Yes.

23 Q. And what materials did you review?

24 A. I reviewed a copy of our firm questionnaire that we send  
25 and we filed regarding Brian Kubiak. I also reviewed copies of

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1 1997 and 1998 income tax records and payroll records for  
2 Mr. Kubiak.

3 I also reviewed a copy of notice of award to  
4 Mr. Kubiak dated November 1, 1999 from the Social Security  
5 Administration. I also reviewed a copy of vocational evaluation  
6 and earning capacity analysis prepared by Dr. David Stein that  
7 was dated November 11, 1999.

8 I reviewed a copy of medical evaluation for the  
9 plaintiff dated October 13, 1999 that was prepared by  
10 Dr. Richard Perell, and I also prepared a copy of a Local 333,  
11 the marine union's 1995 to 1999 agreement for the City of New  
12 York. That is the information that I reviewed in this case.

13 Q. And were you in court today during the testimony of  
14 Dr. David Stein?

15 A. Yes.

16 Q. Did you prepare one or two reports?

17 A. I prepared two reports in this case.

18 Q. What were the dates of the reports?

19 A. The first report that I prepared was dated -- is dated  
20 December 2, 1999, and the second one, which is a revision to  
21 the first one, is dated August 17, 2000, this year.

22 Q. And why did you make a revision to the first report?

23 A. Mainly because the trial date that I assumed in the first  
24 report was changed. The first, in my first report, the trial  
25 date that I assumed was December 15, 1999, and in the revision

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1 report I assumed a trial date of September 11, 2000.

2 Q. Mr. Soudry, did you also make certain -- did you also learn  
3 certain information about Mr. Kubiak which was helpful to you  
4 in the preparation of your report, such as his date of birth,  
5 date of injury and such?

6 A. Yes.

7 Q. What did you learn, sir?

8 A. From all the information provided to me, I learned that  
9 Mr. Kubiak was born October 3, 1949, he was injured on March  
10 31, 1997, at that time he was 47.5. I also learned that at the  
11 time of his injury he was employed by the City of New York as a  
12 ferry deckhand, and he was employed there since February 1997.  
13 Those were all the basic information that I got of from the  
14 information that was supplied to me.

15 Based on the tax returns and the union agreement I was  
16 able to determine his earnings, his annual earnings at the time  
17 of his injury.

18 Q. Did you also have information with regard to Mr. Kubiak's  
19 retirement plans?

20 A. Yes. I have information regarding his wages and benefits  
21 through his union agreement.

22 Q. Did you have information regarding what age Mr. Kubiak  
23 intended to retire?

24 A. Yes.

25 Q. What information did you have, sir?

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1 A. I was informed that he planned to work to age 65.

2 Q. Did you also calculate Mr. Kubiak's life expectancy at the  
3 time of his injury?

4 A. Yes.

5 Q. What was his life expectancy?

6 A. His life expectancy at the time of his injury was 29.3  
7 years to the year 2026.5 at which time at that time he will be  
8 76.8. This is based on the central -- the National Center for  
9 Health Statistics. It's the life expectancy tables published  
10 by the Public Health Services, and based on his age, male, we  
11 could find his life expectancy.

12 Q. Is it your function as a forensic economist to determine  
13 Mr. Kubiak's vocational capacity?

14 A. No. As an economic expert, it's not my field.

15 Q. How do you go about determining Mr. Kubiak's ability to  
16 earn money in the future?

17 A. Based on the vocational expert in this case.

18 Q. In this case it was Dr. Stein?

19 A. Dr. Stein, yes.

20 Q. Mr. Soudry, did you prepare a analysis under two different  
21 sets of facts?

22 A. Yes.

23 Q. What were the two sets of facts?

24 A. One fact was that Mr. Kubiak, due to his injury, will be  
25 unemployed, meaning that he will not return to the work force

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1 and he has no earning capacity in the future as a result of his  
2 injury. That was one scenario that I prepared for his economic  
3 loss.

4 The second one was based on Dr. Stein's evaluation  
5 that at the best he could make about \$16,000 earnings after his  
6 injury, so I estimated his loss with a mitigation income, with  
7 a mitigation factor that he is capable now of earning about  
8 \$16,000 a year.

9 Q. Mr. Soudry, explain your analysis under scenario one to age  
10 65 in such a case as set forth that Mr. Kubiak could no longer  
11 do any type of work.

12 A. OK. As I said before, the first determination was to  
13 establish what was his earnings at the time of his injury. He  
14 was employed by the City of New York as a deckhand, and his  
15 annual earning at the time of his injury in 1997 was \$31,999.  
16 Above that, and that is for 32 hours per week, working a 198  
17 days per year, he has additional income of, if he is doing  
18 another ten days outside of the 198, he gets additional income  
19 which was estimated to be about \$3,000, to a total of \$34,250 a  
20 period in 1997.

21 Q. That was for reduction days?

22 A. That is called reduction days. If he is doing another ten  
23 days more than 198 days, he is getting a higher rate of income,  
24 and combined it will give him earnings of \$34,250.

25 In addition, he could make also overtime. overtime

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1 hours, and I estimated that he will be able to do about four  
2 hours a week overtime to a total of \$8,780 a year in overtime  
3 earnings. That brings his total earnings to about \$43,000 a  
4 year.

5 My next evaluation was to determine, I prepared a  
6 table which shows his earnings from the time of his injury  
7 every year up to his retirement age of age 65, and the table is  
8 breakdown to a period of pretrial past losses and future  
9 losses, and I took his earnings, the wages and overtime  
10 earnings, and I increased them four -- based on his union  
11 agreement would have increased by a four-point-- they would  
12 increase by four points -- they will increase first in April  
13 1, 1998 by 3 percent, and then by 4.9 percent in March 1, 1999,  
14 and thereafter I assume they will increase by 3 percent up to  
15 the year 2005, and after the year 2005 I assume they will  
16 increase at the average long-term expected wage growth rate of  
17 4.2 percent.

18 That brings me to a factor that we have to understand  
19 when we are talking about wage growth rate, it's mainly to  
20 account for the inflation rate. We all know the fact the price  
21 of goods and services increase with time, and that's the  
22 meaning of inflation, increase in prices over time. So his  
23 wages, as I made the projection, would increase by about 3  
24 percent to the year 2005 and after that by 4.2.

25 My next determination was to reduce his earnings by 5

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1 percent for the probability of unemployment, and I reduced also  
2 his earnings for the income taxes at the rate of 13.5 percent  
3 for federal and state city taxes.

4 Then based on his union agreement, I added his lost  
5 benefit. He received mainly health and pension benefit, health  
6 and pension benefit. I was informed that just to cover his  
7 health insurance that he lost he would have to pay \$495 a  
8 month, so I added 20 percent of his earnings, which will cover  
9 the cost of replacing health insurance and his lost pension  
10 benefit to be 20 percent of his earnings.

11 Q. Those were benefits provided to him by the City of New  
12 York?

13 A. Yes, and were lost to him after his injury.

14 Then from all that, I am coming to the net loss, so I  
15 will just read for you the year, let's say 1999, a full year,  
16 if you will, if he had continued working he will earn \$36,936  
17 in base wages, he will have overtime earnings of \$9,468.

18 From that I am reducing unemployment foreseeability  
19 of \$2,320, and reducing taxes of \$5,894. I am also reducing  
20 what I didn't mention before is job-related expenses. Going to  
21 work costs money. you have to travel, you buy clothes, you buy  
22 food outside of the home, and I estimated the job maintenance  
23 expenses to be also union dues, he was a union member so you  
24 have to pay union dues.

25 This is expenses that has to be reduced from his

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1 earnings, and I estimated them to be 8 percent of his income,  
2 net income after taxes. so I am reducing job related expenses  
3 of \$3,055 in 1999.

4 I am adding fringe benefits, the medical and the lost  
5 pension benefit of \$7,018, and I am getting a net loss for this  
6 year of \$42,152, and I am doing this for each year all the way  
7 after his retirement age.

8 The next column, the next calculation that I have to  
9 make is to take all those sums of money that are in the future  
10 and in the past and bring them to a present value, what they  
11 are worth now.

12 Present value is taking into account the calculation,  
13 taking in the concept, also taking into account that money has  
14 the ability to earn interest. For example, if I have to give  
15 you now \$100, that costs me \$100 now. but if I have to give  
16 \$100 next year, it's enough for me now to have \$95, put it in a  
17 bank, earn interest. By next year, I will have \$100 to give  
18 you, so \$100 next year costs now less, costs about \$95.

19 If we are talking about money in the past, we have to  
20 add interest to them, so my next calculation was to take all  
21 those sums of money and to bring them to present value, and I  
22 am doing this by using a discount rate of 6 percent to the  
23 future, and for past losses of 2.5 percent that he could have  
24 earned on the money that he lost, 2.5 percent, and if you are  
25 giving now, we need to know what is the present value of the

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1 future losses now, he has the ability to invest them in a  
2 risk-free investment of 6 percent.

3 Q. When you are talking about reaching a present -- we are  
4 talking about losses up until the time of trial, which would be  
5 roughly today?

6 A. Yes, the past losses, yes.

7 Q. Past losses?

8 A. Yes.

9 Q. And future losses would be from today forward?

10 A. From today forward all the way to the year 2014 when he  
11 will have expected to retired at age 65, yes.

12 Q. Thank you. So, for example, the \$42,152 that he lost in  
13 net income in 1999 in present value when we adding interest, is  
14 \$43,206. If we take year in the future, 2001, the net loss is  
15 \$45,544 in the year 2001, but the present value, I am lowering  
16 it to \$42,966.

17 I am doing this the same way all the way, and I have  
18 the cumulative loss for each year for up to the trial date, to  
19 today, what is cumulative loss, and for the future, for each  
20 year, the total and the cumulative all the way so I could know  
21 after five years from now what's the cumulative loss and all  
22 the way also up to the end of his work life expectancy.

23 Q. Based on that, did you determine Mr. Kubiak's cumulative  
24 losses up to now?

25 A. Yes.

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1 Q. What is that?

2 A. The cumulative loss up to now from the time of his injury  
3 to the present is \$97,310.

4 Q. And in coming to that loss, did you also take into account  
5 that during periods of time in 1997 and 1998 Mr. Kubiak did  
6 work?

7 A. Yes, yes, in 1997 I took into account, just accounted for  
8 the time he was out of work. The same thing for 1998, and then  
9 from 1999, he is not employable.

10 Q. And what is Mr. Kubiak's loss from today to age 65?

11 A. From the present time to age 65, his cumulative loss to the  
12 year 2014 \$513,726.

13 Q. That was doing those calculations for each and every year,  
14 as you explained to the jury?

15 A. Yes.

16 Q. And did you also do an analysis based on the scenario that  
17 David Stein presented that perhaps at best Mr. Kubiak, from the  
18 time he issued his report in 1999, could earn \$16,827?

19 A. Yes.

20 Q. Can you tell the jury how you did that?

21 A. I did a similar analysis. This time I am assuming that  
22 Mr. Kubiak could earn \$16,827 per year. I again increased his  
23 earnings by 3 percent similar to what I did in the  
24 proceed-injury analysis to the year 2005, and then in the long  
25 run expected wage growth rate I am using 4.2 percent. I am

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1 reducing his earnings for the probability of unemployment again  
2 for 5 percent.

3 . I am reducing his earnings for job related expenses  
4 again, but this time lower because the earnings that Dr. Stein  
5 projected was not a union employment, so I just reduced it by 6  
6 percent, and reducing taxes at 8 percent, and I am adding  
7 fringe benefit to cover some fringe benefit, this is not a  
8 union employment that we are talking now, at 10 percent of his  
9 earnings, and I made a projection from the time of the trial  
10 all the way up to his age 65 every year, and if we took -- I  
11 will read for you the year 2001 what the projection for this  
12 year. In wages we are talking about \$17,852 a year and  
13 reducing unemployment probability of \$8,903, reducing taxes  
14 \$2,357, reducing job maintenance expenses \$936 a year.

15 I am adding fringe benefits of \$1,696, and I am  
16 getting net earnings, net income of \$16,362. Same present  
17 value calculation, and I have the lost earnings up to age 65.

18 Q. With respect to pretrial losses, were they the same as in  
19 scenario one?

20 A. Pretrial -- in this scenario, there is no pretrial  
21 earnings, so the pretrial is the same as the first scenario.

22 Q. That would be \$97,310?

23 A. Yes.

24 Q. And when you did these calculations, did you make the  
25 assumption that Mr. Kubiak would do full-time work?

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1 A. Yes, that was Dr. Stein in his best scenario estimate that  
2 Mr. Kubiak as a full-time employee will be able to earn  
3 \$16,872.

4 Q. Under that scenario, sir, what were his post-trial losses?

5 A. Under this scenario, first I am estimating his -- what he  
6 will be able to earn in the future assuming he could earn  
7 income, that comes to \$188,718.

8 If I am taking what I projected before, what was his  
9 pre-injury earnings, and I am reducing it for what he could  
10 earn now, at \$16,872, I am getting a post-trial loss at age 65  
11 up to the year 2014 of \$325,008.

12 Q. Mr. Soudry, you heard the testimony of Dr. Stein today that  
13 in his opinion Mr. Kubiak could not sustain any full-time work  
14 at this time?

15 A. Yes, I heard that.

16 Q. And at best, he could do some part-time work?

17 A. Yes.

18 Q. What effect would that have on your calculation under the  
19 second scenario?

20 A. The only effect it will be that the second -- my second  
21 scenario assumes that he will be able to work, so if he is not  
22 able to work or he will be able to work part-time, the loss  
23 will be higher.

24 Q. Under scenario one, if we were to add together the pretrial  
25 loss and the expected post-trial loss, in a situation where

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1 Mr. Kubiak could do no work, what would that total amount be  
2 be?

3 A. The total amount will be \$611,036. That is the pre- and  
4 the post-trial losses.

5 Q. And under scenario two, if you would give Mr. Kubiak the  
6 benefit of being able to do full-time work, what would his  
7 total loss be?

8 A. Total loss before \$422,318.

9 Q. And if Mr. Kubiak could not do full-time work but some  
10 part-time work, would the loss be somewhere between?

11 A. Yes.

12 Q. Did Mr. Kubiak sustain any damages as a result of his  
13 inability to do any work around the house?

14 A. Yes, that is what I was informed, yes.

15 Q. And would that loss be the same under either scenario?

16 A. Yes.

17 Q. Whether either full-time work or no work at all?

18 A. Yes, the same.

19 Q. How did you go about determining Mr. Kubiak's being unable  
20 to perform household services?

21 A. Lost household services is a component that could be  
22 measured in economic terms, and by doing this, I had to first  
23 determine how many hours he lost of work around the house per  
24 week, and I was told that he is unable to do some maintenance  
25 work at home. He used to do a lot of shopping, and he is

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1 unable to do this now due to his injury.

2 I estimated the number of hours that he lost per week  
3 based on the average household services provided by husbands of  
4 12.4 hours on average.

5 The next thing was do determine was the value of an  
6 hour in dollar terms, how much it will cost to replace these  
7 values, and the Bureau of Labor Statistics published the value  
8 of an hour in the service industry to be \$20.24 in 1997  
9 dollars. So I estimated the number of hours to be 12.4 times  
10 the value per hour of \$20.24, and I am getting an annual loss  
11 of about \$8,279 a year that is in 1998.

12 I am applying the same wage increases that I explained  
13 you before in the lost earnings analysis of 3 percent per year  
14 to the year 2005, and thereafter by 4.2 percent. I am reducing  
15 the loses for the probability of being disabled and unable to  
16 perform those services, regardless of the injury, to be 5  
17 percent, and I am getting his net loss for each year, and again  
18 my analysis, I have a table that shows his loss after the trial  
19 for each year, and then from the trial date all the way, and I  
20 ended it at age 70.

21 I didn't continue it to the end of his life  
22 expectancy. I cut it down at age 70, assuming that at that time  
23 he will not perform as much or he will perform less and I don't  
24 want to try to estimate how much he will at that time perform  
25 household services, so I just stopped it at age 70, and I have

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1 his losses up to the trial date and from the trial date to the  
2 future.

3 Q. Are those at present value?

4 A. Yes, at present value.

5 Q. Can you tell us what the pretrial component is, sir?

6 A. The pretrial component comes to \$28,437.

7 Q. And the post-trial component?

8 A. The post-trial component to age 70 in the year 2019 comes  
9 to \$128,686.

10 Q. What is the total amount in the year 2000 dollars?

11 A. The total amount in present value of the pre- and the  
12 post-trial lost household services comes to \$157,223.

13 MR. FRIEDMAN: Thank you, Mr. Soudry. I have no  
14 further questions at this time.

15 THE WITNESS: Thank you.

16 THE COURT: Mr. Maiorana?

17 MR. MAIORANA: May I?

18 THE COURT: You may inquire.

19 MR. MAIORANA: Thank you.

20 CROSS EXAMINATION

21 BY MR. MAIORANA:

22 Q. Mr. Soudry, are you ready?

23 A. Yes.

24 Q. You made your evaluation that was based on information  
25 provided to you, correct?

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Soudry - cross

1 A. Correct.

2 Q. That information was provided to you by Mr. Friedman,  
3 Mr. Kubiak's attorney, correct?

4 A. Correct.

5 Q. And you are assuming that Mr. Kubiak was actually injured  
6 on March 31, 1997, right?

7 A. Yes, that's correct.

8 Q. So if your assumption is incorrect, if your assumption is  
9 incorrect, then your wage loss data would not be applicable to  
10 any injury occurring on March 31, 1997, correct?

11 A. Could you repeat that, because you asked me if I assumed he  
12 was injured. Yes, I did. My economic analysis is under the  
13 assumption.

14 Q. Mr. Soudry, I will withdraw the question. You assumed that  
15 Mr. Kubiak was injured on March 31, 1997, right?

16 A. Yes.

17 Q. That was based on information provided to you by Mr.  
18 Friedman, correct?

19 A. Correct.

20 Q. You were not provided with any information indicating that  
21 Mr. Kubiak was not injured on March 31, 1997; is that fair?

22 A. Yes, that's fair.

23 Q. So you were not made aware of the hospital records from  
24 Victory Memorial Hospital from April 1997? You were not made  
25 aware of that, correct?

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Soudry - cross

1 A. No, I don't think so.

2 Q. That is not correct, or no, you were not made aware of it?

3 A. I don't think I am aware of it, no.

4 Q. You want to check your file?

5 A. Yes. I know.

6 Q. Why don't you check your file then?

7 MR. FRIEDMAN: Your Honor, plaintiff will concede that  
8 the witness was not made aware of prior treatment other than  
9 the report of Dr. Perell.

10 MR. MAIORANA: My question didn't go to prior  
11 treatment, Judge. My question went to April 30, 1997.

12 THE COURT: Can you supply him with April 30?

13 MR. FRIEDMAN: No, your Honor, we cannot supply the  
14 witness with any medical record other than the treating  
15 doctor's report.

16 THE COURT: All right, you got your answer, Mr.  
17 Maiorana.

18 MR. MAIORANA: Thank you, Judge.

19 Q. Mr. Soudry, you are unaware that on April 30, 1997  
20 Mr. Kubiak went to the emergency prom and told the triage nurse  
21 that he had no injury? You are not aware of that?

22 A. I am not aware of that.

23 Q. You are also unaware that Mr. Kubiak went to the hospital  
24 two weeks after the date that he claims he had a accident, two  
25 weeks after March 31, 1997?

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Soudry - cross

1 MR. FRIEDMAN: Your Honor, I object to this line of  
2 questioning. There is no relevancy.

3 MR. MAIORANA: He didn't hear the question, Judge.

4 THE COURT: Mr. Friedman, overruled.

5 Q. Let's start again, Mr. Soudry.

6 So it's fair to say that you were not made aware that  
7 Mr. Kubiak went to the hospital two weeks after the date that  
8 he claims he was injured, denied that he had a injury, and told  
9 the hospital that he had been having pain in his knee for three  
10 months off and on -- excuse me -- for two months off and on,  
11 barely for three weeks? You were not made aware of that,  
12 correct?

13 A. No, I am not.

14 Q. No you were not made aware of that?

15 A. I was not aware of that. I am not a medical expert.

16 Q. I didn't ask you if you were a medical expert, sir.

17 A. I am not.

18 Q. We went through your qualifications. I understand you have  
19 an M.B.A. and you are an economic expert.

20 A. That's correct.

21 Q. As part of your evaluation, you assumed that Mr. Kubiak,  
22 had he not been injured, and you assumed he was injured on  
23 March 31, so you made a second assumption that he would have  
24 maintained his employment with the city as a deckhand or in  
25 some similar capacity, correct?

OABCKUB1

Soudry - cross

1 A. That's correct, yes.

2 Q. So you assumed that he would continue to work?

3 A. Correct.

4 Q. So it also means that you assumed that some preexisting  
5 condition would not keep him from working; is that fair?

6 A. In general, yes. I was aware that he had prior injuries in  
7 '95 and '96, and I accounted them in my estimate of the  
8 probability of unemployment.

9 Q. What I am asking you, sir, you assumed that a preexisting  
10 arthritic condition in his knees would not keep him from  
11 working? That was an assumption that you made?

12 A. My assumption is --

13 Q. It's yes or no, Mr. Soudry. Did you make that assumption?

14 A. I can't answer it yes or no.

15 Q. Did you assume -- yes or no -- that some preexisting  
16 arthritic condition unrelated to any trauma on March 31, 1997,  
17 that such a preexisting condition would not prevent Mr. Kubiak  
18 from working as a deckhand?

19 A. I considered them, yes.

20 Q. You gave it a 5 percent chance?

21 A. Yes.

22 Q. But you are not a medical doctor, right?

23 A. That's correct.

24 Q. Did you consult a medical doctor with respect to the extent  
25 and the nature of Mr. Kubiak's arthritis?

OABCKUB1

Soudry - cross

1 A. No, I didn't.

2 Q. So you just pulled the 5 percent out of the air?

3 A. I didn't pull it.

4 Q. It wasn't based on any medical information?

5 MR. FRIEDMAN: Your Honor, could the witness answer  
6 the question?

7 THE COURT: Mr. Friedman, relax. Mr. Maiorana, don't  
8 argue with the witness. Give him an opportunity to answer the  
9 question.

10 MR. MAIORANA: I apologize, Judge.

11 Q. Mr. Soudry, my question to you is that 5 percent was not  
12 based on any medical analysis; is that correct?

13 A. That's correct.

14 Q. You assumed that Mr. Kubiak would retire at age 65, is that  
15 right?

16 A. That's right.

17 Q. That was based on what Mr. Kubiak told you, or excuse me,  
18 withdraw that, that was based on what Mr. Friedman and told you  
19 that Mr. Kubiak represented?

20 A. Correct.

21 Q. So if that was incorrect, then your assumption is  
22 incorrect?

23 A. Then, yes.

24 Q. You also assumed that Mr. Kubiak would perform household  
25 services until age 70?

OABCKUB1

Soudry - cross

- 1 A. Correct.
- 2 Q. That is an assumption that you made?
- 3 A. Yes.
- 4 Q. You also calculated Mr. Kubiak's life expectancy, right?
- 5 A. Yes.
- 6 Q. You did that using that the statistical tables?
- 7 A. Correct.
- 8 Q. Based on his age at the time of the supposed loss and based  
9 on his being a male, correct?
- 10 A. Yes.
- 11 Q. Those are that the statistical averages, correct?
- 12 A. That's correct.
- 13 Q. So you didn't perform any sort of study to see if  
14 Mr. Kubiak in fact met that statistical average, correct?
- 15 A. Again, I am not a medical expert, so as an economist I  
16 could just look at the tables of age and determine what his  
17 life expectancy.
- 18 Q. But Mr. Soudry, my question to you was, you didn't perform  
19 any studies to see if Mr. Kubiak actually fit the statistical  
20 average; is that correct?
- 21 A. What kind of studies? I didn't perform studies. I am not  
22 familiar with studies.
- 23 Q. That is my question, sir.
- 24 A. OK.
- 25 Q. Mr. Soudry, you also relied on a report from Dr. Perell,

QABCKUB1

Soudry - cross

- 1 correct?
- 2 A. I reviewed it, yes.
- 3 Q. And you also reviewed a report from Dr. Stein, right?
- 4 A. Yes.
- 5 Q. Assume for a minute that Dr. Perell made certain  
6 assumptions in coming to his own opinion. From such a  
7 scenario, then you would have adopted Dr. Pearl's assumptions;  
8 is that fair?
- 9 A. As a medical expert, you mean?
- 10 Q. That is the kind of expert he is, right?
- 11 A. I don't understand your question.
- 12 Q. You reviewed Dr. Pearl's report, right?
- 13 A. Yes.
- 14 Q. You used Dr. Pearl's report as data that you plugged into  
15 your calculations, correct?
- 16 A. No, Perell's report I just reviewed. My estimate is based  
17 on Dr. Stein's report.
- 18 Q. Why did you review Dr. Pearl's report then?
- 19 A. It was provided to me as relevant information, medical  
20 expert. I just reviewed it, and I am not a medical expert to  
21 give a opinion on it or to evaluate it.
- 22 Q. Mr. Soudry, I didn't ask you to evaluate it or to give an  
23 opinion on it. if I understand your testimony now, Dr. Pearl's  
24 report was irrelevant to your calculation, though you did  
25 review it because it was provided to you; is that fair?

OABCKUBI

Soudry - cross

1 A. It didn't change my opinion or didn't add to them, no.

2 Q. You did review and rely on Dr. Stein's report; is that  
3 correct?

4 A. That's correct.

5 Q. So if Dr. Stein made certain assumptions in coming to his  
6 opinion, then you would have relied on Dr. Stein's assumptions;  
7 is that correct?

8 A. I did, yes.

9 Q. So if Dr. Stein's assumptions were incorrect, then you  
10 would have relied on certain incorrect assumptions; is that  
11 fair?

12 A. That's fair.

13 Q. You calculated Mr. Kubiak's future earnings based on a  
14 little bit under two years working at the Staten Island ferry;  
15 is that correct?

16 A. Yes.

17 Q. At that time he was 47 years old; I think you said 47.5?

18 A. Yes.

19 Q. You didn't consider everything that occurred before the  
20 time that he was 47 and a half, right?

21 A. No.

22 Q. Didn't consider his work history before he was 47 and a  
23 half?

24 A. No, just the 5 percent for probability of unemployment.

25 That's it.

OABCKUB1

Soudry - cross

1 Q. So you calculated a 47-and-a-half-year-old man's future  
2 earnings based on a little under two years, is that correct?

3 A. Yes.

4 Q. You are aware that Mr. Kubiak had a prior back injury,  
5 correct?

6 A. Yes.

7 Q. And that he was out of work for a period of time?

8 A. Yes.

9 Q. Were you made aware of the fact that Mr. Kubiak had two  
10 back injuries?

11 A. I think I was informed that he had back injuries. I don't  
12 know if it's two or one.

13 Q. Were you made aware that Mr. Kubiak was actually out of  
14 work at two different times for a period of time because of  
15 back injuries?

16 A. Yes, I was aware of that.

17 Q. That he lost -- that twice he lost gaps of time in his work  
18 history because of back injuries?

19 A. Yes.

20 Q. You were aware of that?

21 A. Yes, I was.

22 Q. Mr. Soudry, I believe you gave your job title as forensic  
23 economist; is that right?

24 A. Yes.

25 Q. I heard that correctly?

OABCKUB1

Soudry - cross

1 A. Yes.

2 Q. Isn't it true that your company advertises you as a  
3 testifying expert?

4 A. Yes.

5 Q. Doesn't your company also maintain a web site  
6 www.ecostat.com?

7 A. Yes.

8 Q. And one of the things that are in that web site is a  
9 mission statement, correct?

10 A. You are probably right. I am not -- I don't know it by  
11 heart, but I saw the web site a few times but --

12 Q. So that there probably is something called a mission  
13 statement on that web site?

14 A. Yes, I think so.

15 Q. Some of the things in the mission statement are a list of  
16 things the firm offers; is that fair?

17 A. Yes.

18 Q. And one of the things the firm offers are experts proven at  
19 winning over juries; is that correct?

20 A. If you read it from there, that's correct. I mean our  
21 base --

22 Q. Would you like me to show it to you?

23 A. I believe you. You don't have to show me. I don't remember  
24 every word of it but --

25 THE COURT: Mr. Soudry, how many people are employed

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Soudry - cross

1 at your firm?

2 THE WITNESS: Our company is, we have two full  
3 employment as an economist and an assistant administrative and  
4 another professor that works with us as needed.

5 THE COURT: So you have four full-time employees, one  
6 assistant and you don't know what's in the web site?

7 THE WITNESS: I didn't write this web site, your  
8 Honor, and it was revised recently. I read it.

9 THE COURT: He is asking you a question. You have a  
10 firm that only has four employees, and you are telling the jury  
11 and the court that you don't know what the web site for the  
12 company says?

13 THE WITNESS: That's my honest answer, your Honor. I  
14 don't know every word.

15 THE COURT: Next question.

16 Q. Mr. Soudry, you are paid for your time here from court,  
17 correct?

18 A. Correct.

19 Q. You are paid to sit here and testify, right?

20 A. Yes.

21 Q. You are paid \$1,800 for half a day?

22 A. The company is, yes.

23 Q. I am sorry. Ecostat collects \$1,800 if you sit here for  
24 half a day?

25 A. Correct.

OABCKUB1

Soudry - cross

1 Q. If you sit here for a whole day, it's \$1,800 for the first  
2 half and then \$1,200 for the second half; is that fair?

3 A. Yes.

4 Q. That is in addition to the fee that your company gets for  
5 doing the report, which is \$1,500; is that correct?

6 A. Correct.

7 Q. You, personally not your company, you personally, have  
8 testified before for the firm Friedman & James; is that  
9 correct?

10 A. Yes.

11 Q. In fact, just in the years 1999 and 2000 this will be the  
12 third time that you are now appearing or behalf of Friedman &  
13 James; is that correct?

14 A. One second.

15 Q. Would you like me to refresh your recollection?

16 A. I have the list here.

17 (Pause)

18 A. In 1999 I think testified just once.

19 Q. In '99 you testified once for Mr. Friedman's firm, correct?

20 A. Yes.

21 Q. And then in the year 2000, this will be the second time you  
22 are testifying on behalf of Mr. Friedman's firm; is that  
23 correct?

24 A. I think the one that you have I didn't actually testify. I  
25 was here. It was settled before my testimony, so this will be

OABCKUB1

Soudry - cross

1 the second time, this will be the first time in the year 2000.

2 Q. What I got is a list of Michael Soudry's trial history in  
3 1996 to 2000, and it says 2000 trials, on behalf of John James,  
4 Mr. Friedman's partner, you testified in a case Thomas Brennan  
5 or Brannan in this court in front of Judge Dollinger?

6 A. I believe it's a mistake. I our secretary entered it. I was  
7 here in the trial. it was just settled before, I -- before my  
8 testimony. I I want back to the office and she added it to the  
9 list by mistake, so this is just my actual testimony for the  
10 offices of Friedman & James, this is my first testimony in the  
11 year 2000.

12 THE COURT: All right, Mr. Maiorana I think we will  
13 take our luncheon recess at this time.

14 MR. MAIORANA: Judge if I may, actually I only have  
15 two more questions.

16 THE COURT: All right if that be the case, put them to  
17 the witness.

18 MR. MAIORANA: Thank you, Judge.

19 Q. Mr. Soudry, you testified on direct that the work that your  
20 firm does is about 60 percent plaintiffs and 40 percent  
21 defendant; is that fair?

22 A. Yes.

23 Q. Isn't it true that in 1996, you testified once and that was  
24 on behalf of plaintiff?

25 A. Yes.

OABCKUB1

Soudry - cross

1 Q. And in 1997 you testified once and that was on behalf of  
2 the plaintiff?

3 A. Yes.

4 Q. In 1998, you testified six times and all of them were on  
5 behalf of the plaintiff?

6 A. Yes.

7 Q. And 1999, you testified 13 times?

8 A. Yes.

9 Q. 11 of them on behalf of the plaintiff?

10 A. Yes.

11 Q. Then in the year 2000, not counting the one where you say  
12 you were ready to take the stand but didn't actually take the  
13 stand, you testified seven times, six times on behalf of the  
14 plaintiff; is that correct?

15 A. Yes.

16 Q. So this actually makes another time that you are testifying  
17 on behalf of the plaintiff?

18 A. Yes.

19 Q. So you don't testify 60-40?

20 A. No, our work is 60-0. The actual testimony majority of the  
21 time is for plaintiff.

22 Q. Wasn't it more than a majority?

23 A. Majority. If you compare it to expert witnesses, the  
24 majority is for plaintiffs in testimony.

25 Q. Not what I asked you, Mr. Soudry.

0ABCKUB1

Soudry - cross

1 A. Out of, I think, 24 times that I testified in all the  
2 years, four times were for defense, the rest for plaintiffs.

3 Q. What percentage is that, sir?

4 A. That is less than 25 percent, that's 20 percent.

5 Q. Less than 20 percent?

6 A. About 20 percent.

7 Q. Little bit less than 20 percent for defense?

8 A. Yes.

9 Q. That means a little over 80 percent you testified for  
10 plaintiff?

11 A. Yes.

12 MR. MAIORANA: Thank you, sir. Nothing further, your.  
13 Honor?

14 THE COURT: We will take our --

15 MR. FRIEDMAN: Your Honor, may I just ask a couple of  
16 questions on redirect? I will be very brief.

17 THE COURT: All right.

18 REDIRECT EXAMINATION

19 BY MR. FRIEDMAN:

20 Q. Mr. Soudry, why did you not consider Mr. Kubiak's earnings  
21 prior to working as a deckhand on the Staten Island Ferry?

22 A. He was hired by the City of New York. He was working by  
23 the City of New York. He established earnings potential. I  
24 didn't find any reason to assume that it will be changed.

25 I looked at his work history, I estimated 5 percent

OABCKUB1

Soudry - redirect

1 probability of unemployment. There is no information provided  
2 to me to assume otherwise that he will leave this union work,  
3 that he had work in some other capacity. There was nothing  
4 that was presented to me that will support such a analysis.

5 Q. Why is it that the majority of your testimony, that is, 80  
6 percent of your testimony, is on behalf of plaintiffs?

7 A. Because defense lawyers naturally don't bring us so much to  
8 testify. They don't want to hear other opinion of the loss.

9 MR. MAIORANA: Objection, move to strike.

10 THE COURT: Sustained. how can you possibly testify to  
11 the operation of lawyers' minds, Mr. Friedman? Sustained.

12 MR. FRIEDMAN: I have nothing further, your Honor.

13 MR. MAIORANA: I have nothing further for this  
14 witness, Judge.

15 THE COURT: All right. Mr. Soudry, you may step down.  
16 you are excused.

17 (Witness excused)

18

19

20

21

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23

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