

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
CIVIL ACTION – LAW**

PAULA CARLSON and
JAMIE CARLSON, her husband,

Plaintiffs,

vs.

JERJIS T. ALAJAJI, M.D., DUBOIS
RADIOLOGISTS, INC. and DUBOIS
REGIONAL MEDICAL CENTER,

Defendants.

No. 2006-563-CD

Civil Action – Medical Professional
Liability Action

**PLAINTIFFS' MOTION TO SUSTAIN
OBJECTIONS AND STRIKE PORTIONS
OF JAMES KENKEL, PH.D.'S
DEPOSITION**

Filed on behalf of the Plaintiffs

Counsel of Records for this Party:

Thomas E. Crenney, Esquire
PA I.D. No. 40986

James T. Tallman, Esquire
PA I.D. No. 79257

THOMAS E. CRENNY & ASSOCIATES, LLC
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JURY TRIAL DEMANDED

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OF JAMES KENKEL, PH.D.'S DEPOSITION**

AND NOW, come the Plaintiffs, Paula Carlson and Jamie Carlson, by and through their attorneys, Thomas E. Crenney & Associates, LLC, and respectfully present the following Motion to Sustain Objections and Strike Portions of James Kenkel, Ph.D.'s Deposition as follows:

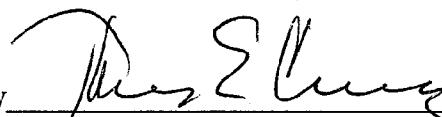
1. Attached hereto as Exhibit "A" is a list of specific objections that Plaintiff asks the Court to sustain.
2. Plaintiffs have submitted a brief explaining the basis for its objections and why they should be sustained.

WHEREFORE, Plaintiffs, Paula Carlson and Jamie Carlson, respectfully request that this Honorable Court grant this Motion and sustain its objections and strike corresponding portions of James Kenkel, Ph.D.'s deposition.

Respectfully submitted,

THOMAS E. CRENNEY & ASSOCIATES, LLC

By


Thomas E. Crenney, Esquire
Attorney for Plaintiffs

One Gateway Center
18th Floor - West
Pittsburgh, PA 15222
(412) 644-5545

DATE: 1/25/08

A	Plaintiffs' objections to cross examination regarding whether Ms. Carlson returning to her pre-injury job would affect her wage loss should be sustained on the grounds that the questions were repetitive, irrelevant and intend to prejudice Plaintiffs.
1	p. 59, lines 1-2, 22
2	p. 60, lines 13-14
3	p. 62, lines 1 and 13
4	p. 64, lines 9-10, 21-25, p. 65, lines 1-17
5	p. 69, line 9
6	p. 72, line 24
7	p. 73, lines 13-16 and 25
8	p. 74, line 4
9	p. 77, lines 11-13
B	Plaintiffs' objections to medical questions should be sustained.
10	p. 80, lines 22-23
11	p. 83, lines 9-10, 13-14, 16-17
12	p. 93, line 4
13	p. 94, line 1
C	Plaintiffs' objections to questions regarding evaluation of lost household services should be sustained as Dr. Kenkel's direct testimony did not include lost household services.
14	p. 87, lines 16-18
15	p. 88, lines 2-5
16	p. 111, lines 15-16 and 21
17	p. 112, lines 3-8
18	p. 129, lines 1, 9-10, 20, 22-25
19	p. 131, lines 17-19
D	Plaintiffs' objection to question violating the collateral source rule should be sustained.
20	p. 92, lines 7 and 13
E	Plaintiffs' objections to questions implying that Dr. Kenkel was provided with incorrect or incomplete information.
21	p. 75, lines 8-13
22	p. 76, lines 5-8, 11-14

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing

PLAINTIFFS' MOTION TO SUSTAIN OBJECTIONS AND STRIKE PORTIONS OF

JAMES KENKEL, PH.D.'S DEPOSITION was served by First Class Mail, postage prepaid

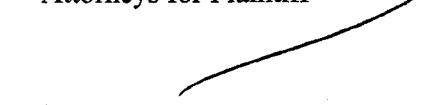
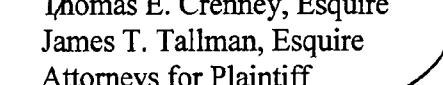
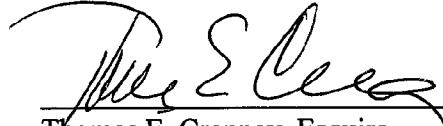
on the 25th day of January, 2008, as follows:

Darryl R. Slimak, Esquire
MCQUAIDE BLASKO FLEMING & FAULKNER,
INC.
811 University Drive
State College, PA 16801
(Counsel for *Jerjis T. Alajaji, M.D.*)

Walter Fredrick Wall, Esquire
120 Lakemont Park Boulevard
Altoona, PA 16602
(Counsel for *DuBois Radiologists, Inc.*)

David R. Johnson, Esquire
THOMSON RHODES & COWIE
Two Chatham Center, 10th Floor
Pittsburgh, PA 15219
(Counsel for *DuBois Regional Medical Center*)

Thomas E. Crenney, Esquire
James T. Tallman, Esquire
Attorneys for Plaintiff



**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
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vs.

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REGIONAL MEDICAL CENTER,

Defendants.

ORDER OF COURT

AND NOW, this _____ day of _____, 2008, Plaintiffs' Motion to Sustain
Objections and Strike Portions of James Kenkel, Ph.D.'s Deposition is granted.

BY THE COURT

J.

**IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
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Defendants.

ORDER OF COURT

AND NOW, this _____ day of _____, 2008, it is hereby ORDERED that oral argument on Plaintiffs' Motion to Sustain Objections and Strike Portions of James Kenkel, Ph.D.'s Deposition is scheduled for the _____ day of _____, 2008, at _____ o'clock _____.m. before the Honorable Charles C. Brown, Jr. in Courtroom No. _____ of the Clearfield County Courthouse.

BY THE COURT

J.

IN THE COURT OF COMMON PLEAS OF CLEARFIELD COUNTY, PENNSYLVANIA
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BRIEF IN SUPPORT OF PLAINTIFFS'
OBJECTIONS TO DEFENDANTS'
CROSS-EXAMINATION OF JAMES
KENKEL, Ph.D.

Filed on behalf of the Plaintiffs

Counsel of Records for this Party:

Thomas E. Crenney, Esquire
PA I.D. No. 40986

James T. Tallman, Esquire
PA I.D. No. 79257

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Defendants.

BRIEF IN SUPPORT OF PLAINTIFFS' OBJECTIONS TO DEFENDANTS'
CROSS-EXAMINATION OF JAMES KENKEL, Ph.D.

AND NOW comes the Plaintiffs, Paula and Jamie Carlson, by and through their attorneys, Thomas E. Crenney & Associates, LLC, and file the following Brief in Support of Plaintiffs' Objections to Defendants Cross-Examination of James Kenkel, Ph.D., as follows:

This Brief provides an overview of Plaintiffs' objections to Defendants' Cross-Examination of James Kenkel, Ph.D. and the basis for sustaining the objections. The brief itself does not address each specific objection. Attached to the Brief as Exhibit "A" is a chart listing each specific objection that Plaintiff maintains and requests that the Court sustain. Attached to the Brief as Exhibit "B" is a copy of the entire transcript of Dr. Kenkel's deposition. Attached as Exhibit "C" to the Brief is a letter from Attorney Crenney to all defense counsel identifying objections that Plaintiffs are withdrawing.

A. **PLAINTIFFS' OBJECTIONS TO CROSS EXAMINATION REGARDING WHETHER MS. CARLSON RETURNING TO HER PRE-INJURY JOB WOULD AFFECT HER WAGE LOSS SHOULD BE SUSTAINED ON THE GROUNDS THAT THE QUESTIONS WERE REPETITIVE, IRRELEVANT, IMPROPER AND INTENDED TO PREJUDICE PLAINTIFFS.**

Beginning on page 58 of Dr. Kenkel's deposition, Attorney Slimak began questioning Dr. Kenkel whether if assumptions or information that Dr. Kenkel relied upon turned out to be wrong, it would affect his calculations. Initially, Attorney Slimak was not specific as to what he was referring and the questions were vague, unclear and ambiguous. See, e.g., p. 59, lines 15-25. Attorney Slimak did ask more specific questions but the questions were repetitive, improper, irrelevant and intended to prejudice the Plaintiffs. The apparent point that Attorney Slimak was attempting to make with Dr. Kenkel was that if Ms. Carlson returned to her pre-injury job at her pre-injury pay, her wage loss claim would be eliminated. The obvious answer is yes and this point could have been made in one or possibly two questions. Instead of just one or two questions and moving on, Attorney Slimak took advantage of the fact that the deposition was occurring outside of the courtroom where a judge could rule instantly on objections. Indeed, Plaintiffs' counsel has withdrawn many objections to Attorney Slimak's questions on this matter. (See Exhibit "C.") From page 60 until page 77, Attorney Slimak asked Dr. Kenkel essentially the same question to make the same point over and over again. Further, in his questioning, Attorney Slimak was putting facts into the record that were not yet in evidence regarding the disputed factual issue of DuBois Regional Medical Center's claimed job offer. In this regard, Attorney Slimak asked Dr. Kenkel whether he had been provided with and reviewed depositions of Rose Campbell, Bob McKee or Martin Maloney. The testimony from these individuals regarding the claimed job offers and/or Ms. Carlson's ability to return to her pre-injury job and/or DuBois Regional Medical Center's willingness to accommodate Ms. Carlson is beyond Dr. Kenkel's report and beyond his areas of expertise. Mr. Kenkel is not a vocational expert.

The testimony of these witnesses is beyond the area of Dr. Kenkel's expertise to evaluate and it is unfair to suggest to the jury that this is information that he should have reviewed.

One specific example of a question that was improper is the following:

Q. Are you aware of whether the hospital was willing to do whatever it would take and the law would require to accommodate Ms. Carlson so that she could return to work as a radiation therapist and have no ongoing work loss?

A. No.

MR. CRENNEY: Objection. Just let me get this out. I'm so sorry, Professor. I don't mean to interrupt you. Objection to the form. Objection to the relevance. Objection to the phrase whatever it takes. Objection –

ATTORNEY SLIMAK: That's based on the testimony.

MR. CRENNEY: Objection to the statement whatever it takes. Objection to the form. Objection as beyond the scope of this witness's competence or his testimony on direct. He has acknowledged to you that if she goes back to work and is paid what she was paid before and gets only a 3 percent increase per year that then she would get that money, and she wouldn't have the loss. These questions are just you making a speech.

ATTORNEY SLIMAK: I'll just object to your comments. That's your making a speech. Move to strike those comments.

MR. CRENNEY: Your entire cross-examination with the greatest respect is you putting in points that aren't appropriate here.

ATTORNEY SLIMAK: That is your argument, and I certainly disagree with you under the law.

Kenkel dep. at p. 64, line 15 to p. 65, line 24.

Attorney Slimak's question on page 64, line 15 is improper for a number of reasons. It puts into evidence, as if established fact, the contested point of the Defendant hospital's willingness to accommodate in perpetuity Ms. Carlson. The question is also not relevant to Dr. Kenkel's testimony.

The issue of whether the hospital offered Paula her job back is tied to the question of whether she could do her job. It is also tied to the issue of whether the hospital would or could accommodate Paula Carlson her entire work life. It is tied to the question of what the hospital will do with an employee at will once the lawsuit is over and it is free to take whatever action it wishes to take. Counsel should not be permitted to repeatedly ask the same basic question to an economist, not a vocational rehabilitation witness, not a fact witness, as to what would happen if Paula Carlson got her job back, kept it and would have been paid what she was making pre-injury in perpetuity throughout her working career. Finally, the reality is that if all of this had taken place in Court, any judge would have said very quickly you have made your point counsel, move on.

B. PLAINTIFFS' OBJECTIONS TO MEDICAL AND VOCATIONAL REHABILITATION QUESTIONS SHOULD BE SUSTAINED.

In his voir dire of Dr. Kenkel, Attorney Slimak went to great lengths to establish that he is not a medical doctor and does not have any medical training. See Dep. at p. 14, line 1 to p. 16, line 9. Specifically, Attorney Slimak asked Dr. Kenkel if he had any experience or was qualified to testify about the adverse effects on life expectancy of various medical conditions such a giant cell tumor. Dr. Kenkel answered the question, "no." See Dep. at p. 14, line 19 to p. 16, line 6. In fact, Dr. Kenkel testified that he had never heard of a giant cell tumor prior to this case. Id. Attorney Slimak then clarified that Dr. Kenkel is not a rehabilitation or vocational expert, but

rather his expertise lies in the areas of mathematics, economics and statistics. Attorney Slimak then asked Dr. Kenkel whether he would be testifying on matters on medical, vocational or rehabilitation issues. See Dep. at p. 16, lines 7-8. Dr. Kenkel answered, "no." See Dep. at p. 16, line 9.

Despite these questions and answers on voir dire, Attorney Slimak asked Dr. Kenkel whether he had statistics or knowledge about the effects of giant cell tumors on people's ability to work or their tendency to retire. See Dep. p. 80, lines 8 to 21. He also asked Dr. Kenkel if he knew about the risk of recurrence of giant cell tumors. As Attorney Slimak has established in his voir dire, Dr. Kenkel did not have any familiarity with giant cell tumors before this case and stated that he would not be testifying about these matter. These are matters beyond the scope of Dr. Kenkel's report and direct testimony and were an improper attempt to undermine Dr. Kenkel's credibility and prejudice the jury against him. Similarly, Attorney Slimak asked Dr. Kenkel if he was aware of back injuries or degenerative disc disease on work life expectancy. See Dep. p. 79, line 15 to p. 80, line 7. Dr. Kenkel had testified during voir dire he was not a vocational or rehabilitation specialist. Attorney Slimak specifically asked, "Are you a rehabilitation specialist or vocational expert who is trained and experienced in returning people with medical problems back to work and increasing their earning power?" See Dep. at p. 15, lines 7 to 11. Dr. Kenkel answered "no" to that question. See Dep. at p. 15, line 12. Later in the deposition, Attorney Slimak again returned to questions outside of Dr. Kenkel's area of expertise and asked questions regarding her present work outside of the home. See Dep. at p. 92, line 15 to p. 94, line 1. These questions are outside of the scope of Dr. Kenkel's report and his area of expertise.

Attorney Slimak should not be permitted to ask such "strawman" questions to undermine Dr. Kenkel's credibility after establishing the scope of his expertise and limit of the areas on which he is qualified to testify. Further, these questions went to matters beyond the scope of Dr. Kenkel's report and direct testimony.

C. PLAINTIFFS' OBJECTIONS TO QUESTIONS REGARDING EVALUATION OF LOST HOUSEHOLD SERVICES SHOULD BE SUSTAINED AS DR. KENKEL'S DIRECT TESTIMONY DID NOT INCLUDE LOST HOUSEHOLD SERVICES.

On direct examination, Dr. Kenkel was asked whether he was going to testify about the value of lost household services. See Dep. p. 30, line 5. Dr. Kenkel answered that he was not going to testify about such matter. See Dep. p. 30, lines 5 through 9. Dr. Kenkel's report did include the value of lost household services but that claim is withdrawn. On cross-examination, however, Attorney Slimak and Attorney Johnson asked a number of questions concerning household services and Dr. Kenkel's projections and why his testimony did not include household services. See Dep. at p. 87, lines 9 through 18. Specifically, on page 111, Attorney Johnson asked about Dr. Kenkel's report in which he calculated household services even though he did not testify on direct examination about household services. This question is beyond the scope of Dr. Kenkel's direct testimony. The Defendants are free to cross-examine Ms. Carlson about her work around the house. This is simply not a matter upon which Dr. Kenkel should have been questioned given its exclusion from his direct testimony.

D. PLAINTIFFS' OBJECTION TO QUESTION VIOLATING THE COLLATERAL SOURCE RULE SHOULD BE SUSTAINED.

On cross examination, Attorney Slimak asked whether Dr. Kenkel was aware that Ms. Carlson had "elected to not return to work for a period of time because she had other sources of income." See Dep. p. 92, lines 2 to 12. This question violates the collateral source rule

because in the question, Attorney Slimak states that Ms. Carlson had collateral sources of income.

E. PLAINTIFFS' OBJECTIONS TO QUESTIONS IMPLYING THAT DR. KENKEL WAS PROVIDED WITH INCORRECT OR INCOMPLETE INFORMATION.

On cross-examination, Attorney Slimak's "strawman" questions such as "it's better to have complete rather than incomplete information" and "it's better to have correct rather than incorrect information," in writing a report. See Dep. p. 74, line 23 to p. 75, line 13. These questions are improper as they unfairly imply that Dr. Kenkel had improper or incorrect information which was not established by Attorney Slimak. Attorney Slimak continued on asking the following question:

ATTORNEY SLIMAK: Do you agree, Dr. Kenkel, that it would be best to have presented a fair and balanced approach to the calculation of economic loss and let the jury decide the truth rather than having a one-sided approach?

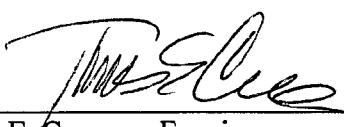
MR. CRENNEY: Objection to the form of that question. It's an outrageous question, Attorney Slimak, which I imagine you know. I am so surprised you would ask a question like that.

Kenkel Dep. at p. 75, line 25 to p. 76, line 8.

This objection should be sustained and the question stricken consistently with Plaintiffs' other arguments in this Brief. There is nothing unfair or not balanced about the economic report. If anything, as his testimony shows, it was extremely conservative. It used a three (3%) percent increase in salary when in fact the record shows that Paula Carlson averaged an increase in her salary of eleven (11%) percent per year from 2001 to 2006. It included nothing about household services. It used 1.5% as the discount rate.

Respectfully submitted,

THOMAS E. CRENNEY & ASSOCIATES, LLC

By 

Thomas E. Crenney, Esquire
Attorneys for Plaintiff

One Gateway Center
18th Floor - West
Pittsburgh, PA 15222
(412) 644-5545

DATE: 1/25/08

A	Plaintiffs' objections to cross examination regarding whether Ms. Carlson returning to her pre-injury job would affect her wage loss should be sustained on the grounds that the questions were repetitive, irrelevant and intend to prejudice Plaintiffs.
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15	p. 88, lines 2-5
16	p. 111, lines 15-16 and 21
17	p. 112, lines 3-8
18	p. 129, lines 1, 9-10, 20, 22-25
19	p. 131, lines 17-19
D	Plaintiffs' objection to question violating the collateral source rule should be sustained.
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22	p. 76, lines 5-8, 11-14

1 IN THE COURT OF COMMON PLEAS
2 OF CLEARFIELD COUNTY, PENNSYLVANIA

3 PAULA CARLSON and CIVIL DIVISION
4 JAMIE CARLSON,
5 her husband,

6 Plaintiffs, No. 2006-563-CD

7 vs.
8 JERJIS T. ALAJAJI, M.D., VIDEOTAPE DEPOSITION
9 DUBOIS RADIOLOGISTS, TRANSCRIPT OF:
10 INC., and DUBOIS James Kenkel, Ph.D.
11 REGIONAL MEDICAL CENTER,
12 Defendants.

13 DEPOSITION DATE:
14 January 21, 2008
15 Monday, 2:06 p.m.

16 PARTY TAKING DEPOSITION:
17 Plaintiffs

18 COUNSEL OF RECORD
19 FOR THIS PARTY:
20 Thomas Crenney, Esq.
21 LAW OFFICES OF THOMAS
22 CRENNY & ASSOCIATES
23 One Gateway Center
24 18th Floor
25 Pittsburgh, PA 15222
 412-644-5545

26 REPORTED BY:
27 Kristin Lytle, RPR
28 Notary Public
29 AKF Reference No. KL04947

30 EXHIBIT "B"

1 VIDEOTAPE DEPOSITION OF JAMES KENKEL, Ph.D.,
2 a witness, called by the Plaintiffs for examination,
3 in accordance with the Pennsylvania Rules of Civil
Procedure, taken by and before Kristin Lytle, RPR, a
4 Court Reporter and Notary Public in and for the
Commonwealth of Pennsylvania, at the offices of
5 McBride & McBride, 211 South Center Street,
Grove City, Pennsylvania, on Monday, January 21,
2008, commencing at 2:06 p.m.
6

7

8 APPEARANCES:

9 FOR THE PLAINTIFFS:

10 Thomas Crenney, Esq.
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11 Pittsburgh, PA 15222
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13 FOR THE DEFENDANT JERJIS T. ALAJAJI, M.D.:
Darryl R. Slimak, Esq.
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theslimaks@comcast.net

17 FOR THE DEFENDANT DUBOIS REGIONAL MEDICAL
18 CENTER:
David Johnson, Esq.

19 THOMSON RHODES & COWIE
1010 Two Chatham Center
20 Pittsburgh, PA 15219
412-232-3400

21 drj@trc-law.com

22 ALSO PRESENT:

Matt Martin, videographer

23

24

25

EXHIBIT "B"

1	* I N D E X *	
2	Examination by Mr. Crenney	5
	Voir Dire Examination by Mr. Slimak	12
3	Cont. of Examination by Mr. Crenney	25
	Examination by Mr. Slimak	57
4	Examination by Mr. Johnson	97
	Re-Examination by Mr. Crenney	117
5	Re-Examination by Mr. Slimak	128
	Re-Examination by Mr. Johnson	132
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	Certificate of Court Reporter	138
7	Errata Sheet	139
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10		
11		
12		
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*** INDEX OF EXHIBITS ***

(Exhibits 1 and 2 were marked prior to the proceedings and retained by Mr. Crenney.)

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EXHIBIT "B"

1 THE VIDEOGRAPHER: Good afternoon.
2 My name is Matthew Martin. I am the
3 videographer. I'm here from AKF Court
4 Reporting and VideoTech Services. Today's date
5 is January 21st, 2008. The time right now is
6 2:06 p.m., and it's indicated on the screen.

7 We are here to take the video
8 deposition of Dr. James Kenkel. We are at 211
9 South Center Street, Grove City, Pennsylvania
10 16127. The case name is Carlson versus
11 Alajaji. This case is being heard at the Court
12 of Common Pleas, Clearfield, Pennsylvania,
13 Number 2006-563.

14 Will Counsel please identify
15 themselves and whom they represent?

16 MR. CRENNY: Tom Crenney for the
17 Carlsons.

18 MR. SLIMAK: This is Darryl Slimak,
19 and I'm here on behalf of Dr. Alajaji.

20 MR. JOHNSON: Dave Johnson
21 representing DuBois Regional Medical Center.

22 THE VIDEOGRAPHER: And if the court
23 reporter may swear in the witness, we may
24 proceed.

25

- - - -

EXHIBIT "B"

1 JAMES KENKEL, Ph.D.,
2 being first duly sworn,
3 was examined and testified as follows:
4 - - - - -

5 EXAMINATION
6 - - - - -

7 BY MR. CRENNEY:

8 Q. Professor, could you please state your name.
9 A. My name is James L. Kenkel, K-E-N-K-E-L.
10 Q. What is your address?
11 A. I live at 807 Academy Place in Mount Lebanon,
12 Pennsylvania, which is a suburb of Pittsburgh.
13 Q. What's your current occupation?
14 A. I'm a professor of economics in the department
15 of economics at the University of Pittsburgh.
16 Q. And what is your educational background?
17 A. I have a bachelor's degree in mathematics from
18 Xavier University in Cincinnati, Ohio, in 1966,
19 a master's degree in economics from Purdue
20 University in Lafayette, Indiana, in 1968, and
21 a Ph.D. in economics from Purdue University in
22 1969. I also had additional training in
23 economics at Princeton University in Princeton,
24 New Jersey, in 1971.
25 Q. And what is your employment background?

EXHIBIT "B"

1 A. After receiving my Ph.D. in 1969, I was hired
2 as a full-time faculty member in the department
3 of economics at the University of Pittsburgh in
4 September of 1969. And I have been a full-time
5 faculty member there continuously since
6 September of 1969. So I have been there about
7 38 years.

8 Q. What are your duties as a professor?

9 A. Every faculty member has duties that fall into
10 three broad areas. We're all supposed to
11 teach. I have taught regularly at both the
12 Ph.D. and the undergraduate level. We're all
13 supposed to publish and do research. And we're
14 to provide various services to the department
15 and the university by holding different
16 academic positions and serving on various
17 committees.

18 Q. What courses have you taught, Professor?

19 A. I have taught courses in microeconomics. Micro
20 means small. So in microeconomics we analyze
21 the behavior of individual consumers or
22 individual households or individual workers or
23 individual businesses. And we analyze how
24 people or businesses react to economic forces
25 taking place around them.

EXHIBIT "B"

I have taught courses in
macroeconomics. Macro means big. So in
macroeconomics we are examining broad trends in
the overall United States economy. We examine
factors that contribute to the growth of the
economy. We examine trends in inflation,
trends in interest rates, trends in employment.
and unemployment. We examine how the banking
system works, how the government influences the
economy, how international trade influences
economy, and so forth.

I have taught courses in monetary theory and money and banking, business decision theory. Given my background in mathematics, I have taught lots of different courses in mathematical economics. I have taught courses in the math department at Pitt. And I regularly teach in the statistics department.

19 Q. Have you written books and published articles?

20 A. I have published a book on risk in mortgage
21 lending with a couple other professors at Pitt.
22 I have published a Ph.D. level textbook on
23 mathematical economics. I have published four
24 different statistics books, the latest is
25 called Statistics For Management and Economics
EXHIBIT "B"

EXHIBIT "B"

1 that have been used at 50 to 100 universities
2 across the country.

11 Q. Professor, can you tell us a little more about
12 services you have performed for your department
13 and for the university?

14 A. For approximately 5 years I was the director of
15 the Ph.D. program in economics. I have served
16 as the chairman of the department of economics.
17 For approximately 20 years I was on the board
18 of directors of the Computer Research Institute
19 at Pitt. And I would say throughout the years
20 I have served on a hundred or more different
21 academic committees.

22 O. Are you a member of any professional societies?

23 A. I'm a member of the American Economic
24 Association and the Pennsylvania Economic
25 Association, the International Institute

Institute of
EXHIBIT "B"

1 Forecasters, the American Association of
2 Financial Experts, the American Statistical
3 Association, the Mathematics Association of
4 America. And what I'm doing today is
5 testifying in a legal matter. That area of
6 economics is called forensic economics. I'm a
7 member of the National Association of Forensic
8 Economics and also the American Rehabilitation
9 Economics Association.

10 Q. Have you received any scholarships or
11 fellowships during your career?

12 A. I attended Xavier University on a four-year
13 presidential scholarship. I had a National
14 Science Foundation fellowship and a National
15 Defense Education Act fellowship at Purdue
16 University. And I attended Princeton
17 University on a National Science Foundation
18 fellowship.

19 Q. Have you received teaching awards?

20 A. Yes, sir.

21 Q. And could you tell the jury about that if you
22 don't mind?

23 A. In 1982 I received a Teacher of the Year Award
24 at Pitt. In 1991 the economics department
25 instituted a Teacher of the Year Award, and I
EXHIBIT "B"

1 was the first person to get that award. In
2 nineteen -- I think it was '96 I was a finalist
3 for the Chancellor's Distinguished Teaching
4 Award at all university campuses.

5 Q. Have you performed consulting services for
6 government agencies and national corporations?

7 A. I have consulted with the Federal Home Loan
8 Bank Board in Washington concerning risk in
9 mortgage lending and how it influences the
10 decline and decay of the inner cities across
11 the country. I have consulted with the
12 Environmental Protection Agency concerning
13 proposed changes in pollution control laws and
14 how it influences profitability and investment
15 in the steel industry.

I have consulted with the
Pharmaceutical Manufacturers' Association in
Washington concerning proposed changes in
patent laws and how it influences research and
development of new drugs and medicines. And
throughout the years I have consulted with, I
don't know, 50 to 100 major national and
international corporations including companies
such as Ford, General Motors, Chrysler,
Westinghouse, Dow Chemical, Kawasaki, Hyundai,

1 Sony Corporation, Mellon Bank, and many others.

2 Q. Have you taught seminars concerning how to
3 calculate economic loss in an injury case?

4 A. Yes. What I'm here to do today is project
5 economic losses suffered by Paula Carlson. I
6 have been asked to give seminars at the
7 University of Pittsburgh Law School to explain
8 to attorneys from Ohio, Pennsylvania, and West
9 Virginia what's involved in calculating
10 economic losses in personal injury and wrongful
11 death cases. I have been asked to give
12 seminars to the Pennsylvania Bar Association.
13 I have been asked to give seminars to the
14 Attorney General's Office for the State of
15 Pennsylvania and for the Supreme Court of
16 Pennsylvania.

17 Q. Professor, have you testified for plaintiffs
18 and defendants in these cases?

19 A. Yes, sir.

20 Q. Both sides?

21 A. Yes, sir.

22 Q. Approximately how many times have you
23 testified?

24 A. I have testified I would say more than 600 to
25 700 times.

EXHIBIT "B"

1 Q. And in what states?

2 A. I have testified all over Pennsylvania. I have
3 testified in Ohio, West Virginia, Maryland,
4 Washington, D.C., Virginia, North Carolina,
5 South Carolina, New Jersey, New York,
6 Connecticut. And I have worked for attorneys
7 in probably 25 or 30 different states.

8 Q. And have you testified in both federal court
9 and state court?

10 A. Yes, sir.

11 MR. CRENNEY: I offer Professor
12 Kenkel as an expert in economics.

13 - - - -

14 VOIR DIRE EXAMINATION

15 - - - -

16 BY MR. SLIMAK:

17 Q. Mr. Kenkel, do you usually go by Professor or
18 Mr. or Dr. Kenkel? How do you like it?

19 A. Dr. Kenkel is what the students usually call
20 me.

21 Q. Okay. Dr. Kenkel, based on what Attorney
22 Crenney was asking you, will you essentially go
23 to whatever state any attorney that hires you
24 will pay you to go to to testify?

25 A. Possibly. Usually I try to have the testimony
EXHIBIT "B"

1 closer to my home. But I have testified in
2 South Carolina and Connecticut, et cetera.

3 Q. Okay. As long as you're being paid, you will
4 go?

5 A. If it fits into my schedule, yes.

6 Q. Okay. Well, today we're at an attorney's
7 office apparently here in Grove City,
8 Pennsylvania. Have you testified here before?

9 A. I have never been in Grove City to testify. I
10 have testified in other -- all over the State
11 of Pennsylvania however.

12 Q. Okay. So you also go wherever in Pennsylvania
13 attorneys will hire you to testify?

14 A. In general, yes.

15 Q. Now are you -- there was discussion about your
16 background and associations with the University
17 of Pittsburgh. Are you here today on behalf of
18 the University of Pittsburgh?

19 A. No, sir.

20 Q. Okay. With regard to your fees for today, does
21 moneys go back to the University of Pittsburgh,
22 or do they go back into your pocket?

23 A. The fees are mine. The University of
24 Pittsburgh has nothing to do with this. This
25 is a private affair.

EXHIBIT "B"

1 Q. Okay. Now you said that you used the -- used
2 the title of Doctor. That's how you usually
3 are known day-to-day; is that correct?

4 A. Yes, sir.

5 Q. Is that because you have a Doctorate of
6 Philosophy in the area of economics?

7 A. Yes, sir.

8 Q. You are not trained as a physician doctor,
9 correct?

10 A. That's correct.

11 Q. You have never went to medical school?

12 A. That's correct.

13 Q. You are not authorized to practice medicine in
14 Pennsylvania?

15 A. No, I'm not.

16 Q. You have no training in any field of medicine,
17 correct?

18 A. That's correct.

19 Q. Now are you qualified with the background you
20 have talked about to render opinions on the
21 adverse effects of certain medical conditions
22 on life expectancy?

23 A. No, sir.

24 Q. Are you qualified based on the things that you
25 have been talking about to testify in adverse
EXHIBIT "B"

1 effects on work life expectancy of various
2 medical conditions such as a giant cell tumor?

3 A. No, sir.

4 Q. Have you ever heard of a giant cell tumor prior
5 to this case?

6 A. No, sir.

7 Q. Okay. Are you a rehabilitation specialist or a
8 vocational expert who is trained and
9 experienced in returning people with medical
10 problems back to work and increasing their
11 earning power?

12 A. No, sir.

13 Q. Now you mentioned about your professional
14 memberships, and you said you belong to the
15 American Statistical Association I think. And
16 another one I saw on your resume there was the
17 Mathematical Association, among others; is that
18 correct?

19 A. Yes, sir.

20 Q. Is that what you do a lot of is you use
21 statistics and math calculations?

22 A. Well, I teach courses in mathematical
23 economics, and I also teach courses in the
24 statistics department. And I have written a
25 whole set of statistics books. So I use
EXHIBIT "B"

1 mathematics every day in my life.

2 Q. So is what you're going to be doing today
3 utilizing statistics?

4 A. Yes.

5 Q. Okay. And then mathematical calculations?

6 A. Yes, sir.

7 Q. Okay. But you're not getting into medical or
8 vocational or rehabilitation issues?

9 A. No, sir.

10 Q. All right. With regard to the types of things
11 that you anticipate testifying here to today,
12 do you determine what the facts are, or do you
13 make assumptions of what the facts are and then
14 perform your statistical and mathematical
15 calculations?

16 A. I am provided with an information sheet that I
17 sent to the attorney, and then I'm given
18 background information which I assume is
19 correct. And I also ask for various documents
20 to support that information, and I received
21 lots of background information.

22 Q. So then you're dependent and what you
23 anticipate testifying to are facts supplied to
24 you by the attorney, correct?

25 A. Yes.

EXHIBIT "B"

1 Q. And was that by all the attorneys at this
2 deposition or just one attorney?

3 A. Just Mr. Crenney's office.

4 Q. So you are not here to testify with regard to
5 any facts from anyone else other than
6 Mr. Crenney?

7 A. Well, the facts may have come from Paula
8 Carlson or her husband. But I always get my
9 information through the attorney so that the
10 attorney is aware of any information that I
11 might be using that was supplied to me.

12 Q. Okay. Now with regard to your testifying here
13 today, is it correct that you are hired by
14 Mr. Crenney?

15 A. Yes, sir.

16 Q. You were not involved in this case by the court
17 of Clearfield County, correct?

18 A. That's correct.

19 Q. Do you know how Mr. Crenney got your name to
20 contact you to have you review this matter and
21 testify for his clients?

22 A. No, I do not.

23 Q. Do you make it known in some fashion as to
24 being available to be hired by attorneys to
25 perform reviews in these types of medical cases
EXHIBIT "B"

1 for a fee?

2 A. No.

3 Q. Do you get so much business to testify through
4 word of mouth, past experience between
5 attorneys that bring personal injury lawsuits
6 that you don't -- that you have all the work
7 you need and don't need to advertise?

8 A. I have never advertised ever. It's not my goal
9 to advertise. And any legal case that I have
10 ever gotten presumably came through word of
11 mouth or my past reputation.

12 Q. Okay. Well, I think you said that you
13 testified 6 to 700 times so far; is that right?

14 A. Yes, sir.

15 Q. And I would assume from that that you've
16 probably reviewed a bunch more cases, more
17 times than you have testified, correct?

18 A. Yes.

19 Q. And now could you give us an estimate of how
20 many times you have been hired to review cases,
21 including the ones that you ended up testifying
22 in?

23 A. I have been involved in more than 5,000
24 economic cases.

25 Q. And each one of these you charge?

EXHIBIT "B"

1 A. Yes, sir.

2 Q. And each one of these you will go testify
3 wherever if the attorneys will pay you?

4 A. Well, as you have just indicated, most of the
5 time I don't have to testify. I would say
6 about 90 percent of the time a case settles
7 without me needing to testify, so I don't have
8 to go any place.

9 Q. You still charge for those cases?

10 A. Well, I charge if I write an economic report
11 and do any work, yes.

12 Q. Okay. Well, how many cases do you currently
13 have in your office in one stage or another of
14 review?

15 A. Well, right now at home I'm working on two
16 different cases.

17 Q. Well, how many cases do you have in one stage
18 or another of review whether or not you're
19 still working on them or whether they're
20 sitting there waiting for you to testify?

21 A. I don't know. I mean, I have done cases that
22 are sitting there since possibly 1998. I mean,
23 I don't even know if these cases are open or
24 not. They're just filed away.

25 Q. So how many case files do you think you have
EXHIBIT "B"

1 back home that may be in an active state?

2 A. I don't know. There might be a thousand of
3 them filed away.

4 Q. Okay. Now has it got to the point where some
5 attorneys keep hiring you time and time again?

6 A. I have worked for some attorneys on numerous
7 occasions, yes.

8 Q. Have you ever worked with Mr. Crenney before?

9 A. Not that I recall, no.

10 Q. Okay. Are there some attorneys, though, that
11 you do work for time and time again?

12 A. If they call and ask for my services, yes. I
13 have worked for many attorneys on more than one
14 occasion.

15 Q. Okay. And what do you charge for fees?

16 A. Typically I charge \$250 an hour.

17 Q. And sometimes is it not typical that you charge
18 other fees?

19 A. It depends. On some business cases and so on,
20 I might raise my rate. But on personal injury
21 and wrongful death cases, I typically charge
22 \$250.

23 Q. And how long does it typically take you to
24 prepare a report?

25 A. It varies. Probably about 8 hours is the
EXHIBIT "B"

1 average.

2 Q. And then you charge then for the time you
3 testify too?

4 A. Yes.

5 Q. What rate do you charge for that?

6 A. I charge \$1,200 to testify plus \$300 an hour
7 for travel.

8 Q. You charge more for traveling than you charge
9 for reviewing materials to prepare your report?

10 A. I now charge \$300 an hour, yes. The time is
11 not mine and I'm not at home.

12 Q. Okay. So if you are asked to testify, your
13 price goes up for the travel portion?

14 A. Yes.

15 Q. And you have a \$1,200 fee for the deposition?

16 A. Yes.

17 Q. Okay. And is that for a number -- certain
18 number of hours or not?

19 A. No. I mean, my day is gone. It doesn't matter
20 if I testify for 10 minutes or 8 hours. The
21 day is wasted in my -- I mean, well, from my
22 point of view, the day is wasted. I can't do
23 anything other than appear here at the
24 deposition.

25 Q. Okay. Now with regard to your -- the reports
EXHIBIT "B"

1 that you're charging for, is a lot of this in
2 your computer system?

3 A. Yes.

4 Q. And then do you use that as a template then for
5 your reports?

6 A. Well, I have certain things that I put into
7 every economic report. Because when I have
8 testified in Pennsylvania, attorneys and judges
9 have said if you don't kind of have this
10 explained in your report you're not allowed to
11 testify about it unless you're asked very
12 specific questions. So over the years my
13 reports typically just tended to get longer so
14 that I could cover everything that I thought
15 might be relevant when I'm asked questions in
16 court.

17 Q. Okay. And then with regard to each of these
18 reports that you have to generate for each of
19 these cases that you review or have to testify
20 in, what do you do, put in some additional data
21 for that specific individual that the --
22 whatever the attorney provided you with and
23 then push a couple buttons to print out the
24 final product?

25 A. Well, obviously to print it I push a couple of
EXHIBIT "B"

1 buttons. But it's not like I just type four
2 numbers into a computer and push a button and
3 say I get a generic report. I mean, here is
4 the information (indicating) I've got on Paula
5 Carlson which took a long, long time to review.
6 And after that I made a report specific to
7 Paula Carlson.

8 But there are certain sections in my
9 report that are identical to what I would put
10 in any report concerning a personal injury. I
11 mean, I have statements in here on what do I
12 mean by personal injury, how do I calculate the
13 losses, how do we discount the present value
14 and so forth. That's standard in every single
15 case that I do. So I put that same thing in
16 every report.

17 Q. So is it fair to say then that the bulk of the
18 pages of the report that you have in that pile
19 in front of you is something that you use
20 essentially in every case that's on your
21 computer as a template then for the reports you
22 generate for the attorneys?

23 MR. CRENNEY: Counsel, I'm going to
24 object to the question to the extent that your
25 cross here is on qualifications, and you should
EXHIBIT "B"

1 try to limit your cross to qualifications and
2 do your cross of the witness after his
3 testimony.

4 BY MR. SLIMAK:

5 Q. You still have to answer the question because I
6 would disagree with that assertion with regard
7 to this particular question and with regard to
8 the door being open with regard to initial
9 questions asked by Mr. Crenney.

10 So if you need to be --

11 A. A large -- all I can say is a large portion of
12 this report is identical to what I would put in
13 any personal injury report.

14 Q. Okay. Do you give him a discount for that?

15 A. No.

16 MR. SLIMAK: Okay. Nothing further
17 at this time.

18 MR. JOHNSON: Can we go off camera,
19 please?

20 THE VIDEOGRAPHER: We are going off
21 the record. The time right now is 2:27 p.m.
22 That's indicated on the screen.

23 - - - -

24 (Whereupon, the following was held
25 off the videotape record.)

EXHIBIT "B"

1

2 MR. JOHNSON: I would like to see the
3 materials that the doctor has that pertain to
4 Ms. Carlson.

5 MR. SLIMAK: May I look over your
6 shoulder?

7 MR. JOHNSON: Certainly.

8

9 (There was a recess in the proceedings.)

10

11 MR. JOHNSON: Thank you. I have no
12 questions on qualifications at this time.

13

14 (Whereupon, the videotape resumed.)

15

16 THE VIDEOGRAPHER: We are now back on
17 the video record. The time right now is 2:32
18 p.m., and that is indicated on the screen. You
19 may proceed.

20 MR. JOHNSON: I would defer any
21 questioning of the Doctor.

22

23 CONTINUED EXAMINATION

24

25 BY MR. CRENNEY:

EXHIBIT "B"

1 Q. Doctor or Professor will do, right?

2 A. Yes, sir.

3 Q. Did you ever meet me before today?

4 A. No, sir.

5 Q. Did we meet about 10 or 15 minutes before this
6 deposition started?

7 A. Yes, sir.

8 Q. For the first time ever, right?

9 A. Yes, sir.

10 Q. And other than sending you some basic facts
11 about this case, did I have anything to do with
12 your input in that report?

13 A. No, sir.

14 Q. For instance, you talked about facts that you
15 assumed. Principal among those facts are how
16 much Paula Carlson made before her injury
17 before she was hurt versus how much she made
18 afterward, correct?

19 A. Yes, sir.

20 Q. And you depended on other data like W-2s for
21 instance, not just what I told you to determine
22 that information, correct?

23 A. Yes, sir.

24 MR. SLIMAK: Continue objection to
25 leading.

EXHIBIT "B"

1 MR. CRENNEY: You have no continuing
2 objection.

3 MR. SLIMAK: I will object every time
4 then.

5 MR. CRENNEY: You are welcome to do
6 it.

7 BY MR. CRENNEY:

8 Q. What did you depend on in terms of determining
9 Paula's income?

10 A. I had W-2 statements and income tax records.

11 Q. Would you agree that that's a lot more than
12 just what I told you?

13 A. That's correct.

14 Q. All right. Doctor, would you agree that
15 Mr. Slimak asked you a lot of questions, a lot
16 of questions about what you charged?

17 A. Yes, sir.

18 Q. Do you know if Mr. Slimak is going to pay some
19 of the witnesses he calls at trial?

20 A. Well, I don't know that for certain, but I
21 would say it's reasonable to assume that any
22 expert that is called by the defense will be
23 getting paid, yes.

24 Q. Like Dr. Schmidt, Dr. Horsley do you think
25 they're going to get paid?

EXHIBIT "B"

1 A. If they are testifying as experts for the
2 defense, I would assume they're being paid,
3 yes.

4 Q. You have been around courtrooms a while, and do
5 most of the experts get paid?

6 A. As far as --

7 MR. SLIMAK: Object. Beyond the
8 scope of the cross.

9 MR. CRENNEY: I disagree with that.

10 BY MR. CRENNEY:

11 Q. You have been around courts for quite a long
12 time. Do most of the experts get paid?

13 A. Yes.

14 Q. Okay. If you could, Professor, if you would be
15 kind enough to explain what economic loss is
16 and interface that if you could with what
17 you're trying to do, the story you're trying to
18 tell the jury.

19 A. When we try to project economic losses
20 resulting from an injury, we want to take into
21 account background information about the
22 individual, how old they were, what their
23 education history was, what their employment
24 history was, what their income history was, and
25 so forth. And based on that we like to project
EXHIBIT "B"

1 how much income they could have been expected
2 to earn over the remainder of their work life
3 absent the injury.

4 In addition, we'd like to take into
5 account the value of any fringe benefits they
6 may have been expected to receive in the course
7 of that employment absent the injury. And then
8 we should subtract any potential income that
9 they can be expected to earn after the injury
10 with the injury. And we should subtract any
11 fringe benefits they're expected to receive
12 with the injury after the injury.

13 So we basically calculate income and
14 fringe benefits that could have been earned
15 without the injury and subtract income and
16 fringe benefits that could be earned with the
17 injury. And in a typical case, people when
18 they suffer an injury lose the ability to do
19 certain things around the house, which I call
20 lost household services. In this case in order
21 to be conservative, I have been asked to omit
22 any discussion or calculation of lost household
23 services. But in most of my cases that is
24 part.

25 Q. So you're not going to calculate in any way,
EXHIBIT "B"

1 shape, or form a number for household services?

2 MR. SLIMAK: Objection to leading.

3 A. That's correct.

4 BY MR. CRENNEY:

5 Q. Are you going to calculate household services?

6 A. No, sir.

7 Q. Are you going to calculate one penny for
8 household services?

9 A. No, sir.

10 Q. Is that normally done?

11 A. In most --

12 MR. SLIMAK: Objection. Irrelevant
13 now.

14 MR. CRENNEY: I'll withdraw that.

15 I'll withdraw that. I agree that is
16 irrelevant.

17 BY MR. CRENNEY:

18 Q. Do you start with how much Paula was making
19 before the injury? Is that an important thing
20 to know?

21 A. Yes.

22 Q. And can you tell the jury about that, what
23 information you have on what her earnings were
24 before the injury?

25 A. Well, prior to the injury she was working at
EXHIBIT "B"

1 DuBois Regional Medical Center as a radiation
2 therapist. The information provided to me
3 indicates that she's been employed as a
4 radiation therapist at the hospital or the
5 medical center from August of 1992 through --
6 the last date of actual employment was May 5th
7 of 2005.

8 The information provided to me
9 indicated that she worked 36 hours per week.
10 And I had information about her hourly wage
11 rate all the way back to 1992. For example, in
12 1992 she was making \$12.70 an hour. By 1995
13 she was making \$15.16 an hour. In the year
14 2000 she was making \$18.94 an hour. In 2005 --
15 well, we should review. The date of injury is
16 April the 12th of 2005. In 2005 she was making
17 \$31.26 an hour. And I had additional
18 information that in 2006 the hourly wage rate
19 increased to \$32.87 an hour. So I get
20 information about her wage rate, and from that
21 I could calculate, for example, rates of
22 increase in wages and so forth.

23 I also had W-2 statements that showed
24 what her annual income was. For example, in
25 1999 she made \$41,409. In the year 2000 she
EXHIBIT "B"

1 made \$42,847. In 2001 she made \$46,129. In
2 2002 she made \$45,517. In 2003 her earnings
3 were \$56,525. And in her last year of full
4 employment before the injury in 2004, her
5 income was \$64,042.

6 Q. Is it fair to say that her hourly rate
7 increased as the years went by?

8 A. Yes. She started in 1992 at \$12.70, and in
9 2005 she was making \$31.26 an hour.

10 Q. Now, Professor -- yearly she made more money
11 too, correct?

12 A. Yes.

13 Q. All right. Is part of what you're going to do
14 is project what she would have made absent the
15 injury; is that right?

16 A. Yes.

17 Q. Do you -- how do you do that? How do you take
18 into account for the future raises she might
19 get?

20 A. Well, I start out with the background
21 information. So I can kind of go through the
22 whole process.

23 I start with the background
24 information. I was given her date of birth,
25 April of 1971. The date of injury was April
EXHIBIT "B"

1 12th of 2005. So at the date of injury she was
2 33.9 years of age. So the first thing an
3 economist does in any case is project how long
4 would we expect this person to live. To do
5 that it is customary to refer to this document,
6 the United States Life Table which is published
7 by the Department of Health and Human Services.

8 So this is the official United States
9 Life Table. And in here we have tables which
10 show how long in the future a person can be
11 expected to live based on how old you are
12 today, based on whether you're male or female,
13 white or nonwhite. This document indicates
14 that if you are a female age 33.9, as Paul
15 Carlson was at the date of injury, she would
16 have a future life expectancy of 48.6
17 additional years to age 82.5.

18 The next thing we would like to do is
19 project how long would a person like Paula
20 Carlson be expected to work. To do that I
21 referred to information published by the
22 Department of Labor, the Bureau of Labor
23 Statistics, which shows that the average age at
24 retirement for a 33-year-old female is age
25 61.3. So if she worked from age 33.9 to age
EXHIBIT "B"

1 61.3, she would work for 27.4 additional years.

2 So in my report I made two different
3 projections. One is based on potential
4 employment for 27.4 additional years.

5 Alternatively, based on current Social Security
6 rules and regulations, she would not be
7 eligible to get full Social Security benefits
8 until age 67. So I made a second projection
9 that she had the capacity or the potential to
10 work full time to at least age 67 in which case
11 she would have worked for 33.1 years.

12 Q. May I stop you there? Are you saying that for
13 Paula Carlson she can't get her Social Security
14 under current regulations until she's 67 years
15 old?

16 MR. SLIMAK: Objection. Leading.

17 A. She could Social Security --

18 BY MR. CRENNEY:

19 O. Hold on. I have to reform the question.

Under current regulations how long would it take -- at what age would Paula get Social Security? Explain that situation to the jury.

24 A. She could start getting Social Security at age

25 62. But her annual benefit would be reduced by
EXHIBIT "B"

1 30 percent compared to what she would get if
2 she worked to age 67. Sixty-seven is her
3 potential full retirement age. That's based on
4 the year you're born. For example, for me my
5 full retirement age is 66. If I retire before
6 age 66, my Social Security income will be
7 reduced every year for the rest of my life by a
8 certain percentage. The same thing would be
9 true for Paula Carlson.

10 So I made the first projection that
11 she could work to age 61.3, which is earlier
12 than age 62. So that projection had basically
13 nothing to do with Social Security. The second
14 one is based on to get full benefits she would
15 have to work to at least age 67.

16 I took into account information about
17 is it likely that she would die before reaching
18 age 61 or age 67 or whatever. The
19 documentation in the life table shows that if
20 you are a 33-year-old female the probability
21 that you'll live to at least age 62 is
22 approximately 92 percent. So it would be
23 extremely unusual if Paula Carlson dies before
24 eaching reaching age 62.

25 I took into account her marital
EXHIBIT "B"

1 status. Her husband is Jamie. He was also
2 born in 1971, and he is now 36 years of age.
3 And he has a future life expectancy to about
4 age 77, which is customary or typical that
5 women typically live about 5 years longer than
6 men to do. I had information that the family
7 had -- has two children. Brooke was born in
8 1995, and Ryan was born in 1998. So they would
9 be about 12 years of age now and about 9 years
10 of age now.

11 I had information about Paula
12 Carlson's education history. She graduated
13 from Philipsburg High School in 1989. She
14 attended the Mercy Hospital School of Radiology
15 from 1989 through 1991 and eventually became
16 certified in radiology. She attended the
17 Community College of Allegheny County from 1991
18 through 1992 and became certified in radiation
19 therapy.

20 As I indicated earlier, I had her W-2
21 statements. Her employment history basically
22 is she worked full time at DuBois Regional
23 Medical Center from 1992 until her injury in
24 2005.

25 Q. Did you calculate the percentage of increase
EXHIBIT "B"

1 she received in salary at DuBois for any period
2 in the past?

3 A. Well, her wage rate increased on the average
4 11 percent a year between 2001 and 2006. If
5 she was still there in 2006, she would have
6 been earning \$32.87 an hour.

7 Q. Go ahead.

8 A. In 2001 she would have been earning \$19.45.
9 That's a 69 percent increase during a five-year
10 period. And with a compound and annual growth
11 rate, that represents a compound and annual
12 growth at 11.1 percent per year.

13 Q. Thank you.

14 A. Also between 2005 and 2006 she would have
15 received a raise of approximately 5.2 percent.
16 So that is just based on documentation that was
17 provided to me.

18 Q. Thank you.

19 A. Now when I projected the economic losses --
20 this report was written in early 2007, so I
21 needed some date to break what is the past loss
22 and what is the future loss. And at the time I
23 didn't know if there would be a trial or when
24 it would be, so I needed some convenient date
25 to break the past and the future. So the

EXHIBIT "B"

1 obvious date would be let's call the past loss
2 from the date of injury in 2005 up to December
3 31st of 2006.

4 So I calculated a past loss. The way
5 I did that was I said at the date of injury she
6 was making \$31.26 an hour. That represents an
7 annual income of \$58,518 a year based on
8 working 36 hours a week.

9 Now she was being treated at the date
10 of injury. I assumed that it would take
11 approximately 3 months for her to recover. So
12 I gave her no economic loss from April 12th of
13 2005 to June 30th of 2005. Then I assumed that
14 she could return to work as of July 1st of 2005
15 and work for the remainder of the year, which
16 would be exactly one-half year.

17 Q. Absent the injury?

18. A. Yes.

19 Q. Okay.

20 A. So based on employment for the whole year, she
21 would have made \$58,518. So during that half
22 year of lost employment because of this injury,
23 her lost income in 2005 is \$29,259.

24 Then I had the wage rate data which
25 shows that in 2006 her hourly wage would have
EXHIBIT "B"

1 increased to \$32.87. So if she worked the same
2 amount in 2006 as we projected in 2005, her
3 income in 2006 would have been \$61,532. So
4 during your half year of 2005 and the entire
5 year of 2006, the loss would be \$90,792.

6 MR. SLIMAK: I'm going to just place
7 an objection on the basis that there's no
8 foundation for what you're testifying to
9 because you haven't specified what you're
10 claiming is the injury that you're basing your
11 calculations on.

12 BY MR. CRENNEY:

13 Q. You can go ahead and proceed.

14 A. The next thing I need to do is make a
15 projection of how much income could be made in
16 the future, and then we need to discount that
17 to present value. So let me explain what we
18 mean by discounting to present value.

25 Q. Now would you tell the jury again, if you would
EXHIBIT "B"

1 be so kind, what those salary increases -- what
2 the average was done between 2001 and I think
3 you said 2005?

4 A. Between 2001 and 2006 her wage rate increased
5 69 percent which is a compounded rate of growth
6 of 11 percent per year.

7 Q. That was in the past during that period?

8 A. Yes.

9 Q. So now you're going to tell the jury what you
10 did for the future, correct?

11 A. Yes. Now we don't know what the wage rates are
12 going to be in the future with certainty, so we
13 need to make some projection. The first thing
14 I did was I said in 2006 the consumer price
15 index increased 3.2 percent, so the cost of
16 things basically went up 3.2 percent. So just
17 to maintain your standard of living, to
18 maintain your buying power, you would need a
19 raise of 3.2 percent. I gave her a raise in
20 2007 of 3.2 percent, which is extremely
21 conservative given her past history where the
22 average wage in a five-year period was -- the
23 average wage raise was 11 percent per year.
24 And even during the last year the raise was
25 over 5 percent per year.

EXHIBIT "B"

1 Q. Did you go much lower than that?

2 A. After 2007 based on various government
3 forecasts about what future inflation would be,
4 I gave her a 3 percent raise every year.

5 Q. No more?

6 A. Three percent every single year.

7 Now we get to the idea of discounting
8 to present value. Suppose that you say in the
9 year 2015 a person should be earning, say,
10 \$80,000 and suppose that the jury made an award
11 today that says, okay, you lost \$80,000 in the
12 year -- did I say 2015? The question becomes
13 do you need to give that person \$80,000 today.
14 No, you don't. You would give them less than
15 \$80,000 today. They could invest that at a safe
16 interest rate. And that amount that you gave
17 the person or awarded them today would grow to
18 match the \$80,000 in the year 2015.

19 Q. In those 7 years they would make money on
20 interest?

21 A. Yes. So the present value of the future loss
22 is the amount you would have to set aside today
23 so that that money could be invested in safe
24 investments and grow with compound interest to
25 match the \$80,000 that should be awarded in
EXHIBIT "B"

1 future years.

2 So besides projecting what the
3 interest or the inflation rate should be, we
4 need to also project, well, if you invested the
5 money today how fast would it grow. When I
6 wrote my report, the interest rate or yield on
7 10-year treasury securities was about 4.5
8 percent. So I projected that the investment in
9 safe securities, treasury securities, would
10 grow 4.5 percent per year. And based on that I
11 projected how much you have to set aside today
12 to match the future loss year after year after
13 year.

14 Now at the present time the inflation
15 rate is 4.1 percent. I projected 3 percent.
16 So I do not have her income growing fast
17 enough. I used a 4.5 percent interest rate.
18 At the present time the yield on 10-year
19 treasury securities is about 3.8 percent. So
20 I'm giving her too much growth in interest. So
21 the numbers I'm going to project today are
22 going to be far too low compared to what they
23 would be if I wrote the report today.

24 Q. But that's what we're going to stick with,
25 isn't it?

EXHIBIT "B"

1 A. Yes.

2 Q. Okay.

3 A. Now based on the projection of working for 27.4
4 years to age 61, I projected a past loss of
5 about \$90,000. And the present value of the
6 future loss over the future 25.7 years after
7 January 1st of 2007 would be \$1,346,235.

8 So I'm explaining now how I did the
9 projections, and now the numbers become
10 relatively easy to calculate. And instead of
11 me just constantly explaining these numbers, I
12 made a chart here that summarizes my
13 calculations. There are going to be two
14 charts: one based on working for 27.4 years to
15 age 61.3, and the second chart will be based on
16 working longer to age 67.

17 So the first thing we want to do is
18 project the present value of the potential
19 income. And I explained that the past loss was
20 about \$90,000, and the present value of the
21 future loss was about \$1,346,000. So the
22 amount you would have to set aside today to
23 match the actual losses as her income grows
24 over time the amount you would have to set
25 aside today is \$1,437,027.

EXHIBIT "B"

10 Q. And that involved Paula putting in 4 percent
11 and the employer matching?

12 A. Yes. So I projected the fringe benefits at
13 11.65 percent. She had the option to receive
14 medical benefits through the hospital, and she
15 opted not to take the medical benefits because
16 her husband in his employment had medical
17 benefits.

18 Q. Did you know her husband had multiple
19 sclerosis?

20 A. Yes.

21 0. Was that part of the data you received?

22 A. Yes.

23 Q. But for now he has medical benefits and the
24 family chooses to be on his plan; is that
25 correct?

EXHIBIT "B"

1 MR. JOHNSON: Objection.

2 MR. CRENNEY: To the form?

3 MR. JOHNSON: I object to the form of
4 the question. I also object on the basis of
5 relevance.

6 MR. SLIMAK: I join.

7 BY MR. CRENNEY:

8 Q. Doctor, let me start this over.

9 Is Paula on the hospital medical
10 plan?

11 A. No.

12 Q. What plan is she on?

13 A. She's on her husband's health plan.

14 Q. Does her husband receive that benefit through
15 his employment?

16 A. Yes.

17 Q. Did you know he had multiple sclerosis? Is
18 that part of the information you gathered?

19 MR. JOHNSON: Objection.

20 MR. SLIMAK: Object. Asked and
21 answered, all of this.

22 BY MR. CRENNEY:

23 Q. You can answer.

24 A. Yes.

25 Q. Do you know what his prognosis is?

EXHIBIT "B"

1 MR. JOHNSON: Objection.

2 MR. SLIMAK: Objection.

3 A. No, I don't.

4 BY MR. CRENNEY:

5 Q. Okay. Doctor, what is the generic value, if
6 you can give one, of health care benefits
7 vis-a-vis pay for someone who is in the
8 marketplace, working in the marketplace?

9 MR. SLIMAK: I'm going to object.

10 It's beyond the scope of his report. His
11 report indicates that he was not going to
12 attribute expense to that.

13 MR. JOHNSON: I join in that
14 objection.

15 BY MR. CRENNEY:

16 Q. Go ahead. You can answer.

17 A. The data that I put into my report showing the
18 percentage of people that get fringe benefits
19 and the value of fringe benefits relative to
20 income, the data in the Statistical Abstract of
21 the United States indicate that across the
22 country in businesses with say more than 50
23 employees, fringe benefits amount to about 25.9
24 percent of income. I have projected the fringe
25 benefits at 11.65 percent.

EXHIBIT "B"

1 MR. SLIMAK: I renew my objection.

2 Same basis. Move to strike.

3 MR. JOHNSON: I join.

4 BY MR. CRENNEY:

5 Q. Doctor, are you saying this information is in
6 your report, correct?

7 MR. SLIMAK: I'm going to object to
8 leading.

9 A. Yes.

10 BY MR. CRENNEY:

11 Q. Is this information in your report?

12 A. Yes.

13 Q. Now in terms of the numbers you're giving this
14 jury, did you make a calculation for Paula
15 Carlson that had anything to do with health
16 care?

17 A. No, sir. I did not give her any health care.

18 Q. So that is not going to be part of the numbers
19 you give the jury, correct?

20 A. That's correct.

21 Q. Okay. Go ahead.

22 A. So absent the injury I projected that her
23 income -- well, I should first of all mention
24 for the court reporter I guess the value of the
25 fringe benefits amount to \$167,413. So if we
EXHIBIT "B"

1 add together the income and the fringe benefits
2 in present value terms, the net income without
3 the injury would be \$1,604,441.

4 MR. SLIMAK: Same objections as
5 previously. I move to strike on the basis that
6 you haven't laid the foundation to identify
7 what the injury is that you're considering.

8 BY MR. CRENNEY:

9 Q. You can go ahead.

10 A. The next thing I need to do is make a
11 subtraction for any potential income that can
12 be earned with the injury. The information
13 provided to me indicated that in January of
14 2007 Paula Carlson began working at Red Lobster
15 as the seater or the greeter, kind of a
16 receptionist, and was earning \$6.25 an hour.
17 The wage documentation that I received
18 indicated that she was working approximately 20
19 hours per week.

20 So I projected that during the
21 remainder of her work life she could earn income
22 for working about 20 hours per week at Red
23 Lobster. She was making \$6.25 an hour. So
24 exactly as I did at the hospital I'm going to
25 give her 3 percent raises, and I'm going to
EXHIBIT "B"

1 discount the present value at 4.5 percent per
2 year. So the present value of her income with
3 the injury would be \$137,800. For fringe
4 benefits --

5 MR. SLIMAK: Same objection.

6 THE WITNESS: The only fringe benefit
7 that she would be receiving would be the
8 employer's mandatory contribution to Social
9 Security and Medicare, which is 7.65 percent.
10 So the value of the fringe benefits would be
11 \$10,541. So her future earning capacity with
12 the injury, including income and fringe
13 benefits, all in present value terms, is
14 \$148,341.

15 MR. SLIMAK: Same objection.

16 THE WITNESS: So if we take into
17 account her potential income and fringe
18 benefits without the injury and subtract the
19 value of the fringe benefits and income with
20 the injury, the net economic loss becomes
21 \$1,456,099.

22 MR. SLIMAK: Same objection.

23 BY MR. CRENNEY:

24 Q. And that is if she works for 27.4 years?

25 A. Yes, sir.

EXHIBIT "B"

1 Q. Okay. And it's up to you, Professor, but we
2 can look -- and that's Plaintiffs' Exhibit 1,
3 correct?

4 A. Yes.

5 Q. All right.

6 A. Then I repeated all these calculations based on
7 the projection that she could have worked to
8 age 67 at full Social Security retirement age.
9 So here we have employment for 33 years. And
10 the way I did the calculations the methodology
11 is exactly the same. I don't know, for the
12 court reporter I guess I should read the
13 numbers.

14 So the potential income that she
15 could have earned without the injury would be
16 \$1,671,983.

17 MR. SLIMAK: Same objection.

18 THE WITNESS: The fringe benefits are
19 again at 11.65 percent of income ignoring any
20 health benefits. That would be \$194,786. So
21 the net income absent the injury is \$1,866,769.

22 MR. SLIMAK: Same objection.

23 THE WITNESS: Now I have her working
24 with the injury at Red Lobster working
25 continuously again to age 67. Her potential
EXHIBIT "B"

1 income at Red Lobster in present value terms
2 would be \$161,850. The fringe benefits would
3 be \$12,381. So her net income with the injury
4 would be \$174,231.

5 MR. SLIMAK: Same objection.

10 MR. SLIMAK: Same objection.

13 BY MR. CRENNEY:

14 Q. Professor, in terms of your calculations, you
15 assumed, did you not, that absent what has been
16 called the injury she would have been back to
17 work on July 1st, 2005; is that correct?

18 A. Yes, sir.

19 Q. You did half a year for 2005?

20 A. Yes.

21 Q. And we could easily change that and use
22 October 1 if that's what the evidence would
23 indicate, correct?

24 And just -- I'm not asking you to
25 make that calculation. But we would have to
EXHIBIT "B"

1 make a change for past earnings, wouldn't we,
2 the loss of past earnings?

3 A. Yes. For example, I projected that the lost
4 earnings in 2005 are \$29,259. If you made the
5 assumption that she would never go back to work
6 until January 1st of 2006, you should just /
7 decrease the numbers by \$29,259.

8 Q. And you'd be there, correct?

9 A. Yes, sir.

10 Q. All right. And you assume that something
11 happened on April 12th that we are calling the
12 injury, correct?

13 A. Yes.

14 Q. And you --

15 MR. SLIMAK: Objection. Leading.

16 MR. CRENNEY: Pardon me?

17 MR. SLIMAK: Leading.

18 BY MR. CRENNEY:

19 Q. Did you assume something occurred on April
20 12th, and did you call that the injury?

21 A. Yes.

22 Q. April 12th, 2005?

23 A. Yes.

24 Q. Okay. And you made certain assumptions about
25 when she could have gone back to work if that

EXHIBIT "B"

1 something that didn't happen, that thing we are
2 calling an injury, correct?

3 MR. SLIMAK: Same objection.

4 A. That's correct.

5 MR. CRENNEY: Is that an objection to
6 form?

7 MR. SLIMAK: Yes. Plus the prior
8 objection on the injury.

9 BY MR. CRENNEY:

10 Q. Okay. Did you assume that something happened
11 on April 12th that -- well, strike that. I'm
12 going to move on.

13 Do you have to change your tape here
14 pretty soon?

15 THE VIDEOGRAPHER: I have about 5
16 minutes left.

17 MR. CRENNEY: Why don't you go ahead
18 and change it.

24 - - - -

25 (There was a recess in the proceedings.)
EXHIBIT "B"

1

2 THE VIDEOGRAPHER: We are now back on
3 the video record. This marks the beginning of
4 tape number two in the deposition of
5 Mr. Kenkel. The time right now is 3:11 p.m.,
6 and that's indicated on the screen. You may
7 proceed.

8 BY MR. CRENNEY:

9 Q. Doctor, were you provided medical records from
10 Dr. Yaw, Dr. Richman, and Dr. Pisasio?

11 A. As I recall I was, yes. I mean, I'm not a
12 medical doctor, so I didn't spend a lot of time
13 reviewing that.

14 Q. Did you assume that Paula could not do the job
15 of a radiation therapist in terms of making
16 your calculations?

17 A. Yes.

18 Q. So is it accurate that if the hospital is
19 willing to take her back at the same salary and
20 increase that salary and give her a job as a
21 glorified clerk and let her hold that job for
22 27 years or 33 years would your calculations
23 then be wrong?

24 MR. JOHNSON: Object to the question.

25 MR. SLIMAK: Objection to form.
EXHIBIT "B"

1 MR. JOHNSON: No proper foundation.

2 MR. CRENNEY: I'll agree with that.

3 A. If the hospital would rehire her at some future
4 date and match the salary that she would have
5 earned as a radiation therapist, at that stage
6 the economic loss would stop provided that they
7 continued to employ her for the remainder of
8 her work life if -- you know, if they hire her
9 back and then the hospital goes out of
10 business, well -- or if they, say, renege on
11 the deal or whatever, then we would revert back
12 to the situation I have here.

13 MR. JOHNSON: I move to strike the
14 comments of Counsel prior to the answer. I
15 also move to strike the answer of the witness.

16 BY MR. CRENNEY:

17 Q. Would it also be true if the Red Lobster
18 decided to pay her 64,000 a year 3 percent
19 every year for what she's doing now then there
20 wouldn't be any wage loss, would there?

21 MR. SLIMAK: Objection.

22 Argumentative.

23 MR. CRENNEY: I'm not arguing with
24 the witness.

25 A. That's correct but that's --

EXHIBIT "B"

1 BY MR. CRENNEY:

2 Q. Is that likely?

3 A. No. I think it's a totally unreasonable
4 assumption to assume that Red Lobster would pay
5 a greeter \$65,000 a year --

6 Q. You may be right.

7 A. -- for 20 hours work.

8 Q. You may be right.

9 Professor, generally speaking are
10 people working longer than they used to? Are
11 they putting off retirement as a general
12 proposition?

13 A. The data are a little bit mixed. But in
14 general people work a tiny bit longer because
15 their life expectancy is longer. So you need
16 to kind of protect your wealth and income after
17 you retire so you've got to generate more
18 income while you're working.

19 Q. Professor, are the opinions that you have
20 rendered today are they to a reasonable degree
21 of certainty?

22 A. Yes, sir.

23 MR. CRENNEY: Thanks. Go ahead and
24 cross.

25 MR. SLIMAK: Thank you.

EXHIBIT "B"

1

2 EXAMINATION

3

4 BY MR. SLIMAK:

5 Q. Mr. Kenkel, I do have a number of questions to
6 ask you. Let me just start out what did you
7 assume was the injury?

8 A. I was given information that Paula Carlson had
9 a giant cell tumor on her right wrist and
10 because of the error in reading the x-ray and
11 the delay in diagnosis extensive surgery was
12 required to remove it. As a result she has
13 lost almost complete function of her upper --
14 her right upper extremity.

15 Q. Okay. Did you assume then that the doctors
16 gave her the giant cell tumor?

17 A. No, sir.

18 Q. Did you take into consideration what the
19 outcome and treatments would be needed for the
20 giant cell tumor even if it had been diagnosed
21 on April 12th, 2005?

22 A. What I did was projected that she would have
23 been able to return to work as of, as I
24 indicated, July 1st of 2005. But we've also
25 indicated, you know, if she returned to
EXHIBIT "B"

1 full-time work in, say, January of 2006 then
2 what we need to do is subtract about \$29,000
3 from my loss projections.

4 Q. Did you take into consideration or make in any
5 of your calculations the risk of recurrence of
6 a giant cell tumor even if it had been
7 diagnosed April 12th, 2005?

8 A. No, sir.

9 Q. Did you have any statistics to turn to with
10 regard to individuals who have had the
11 unfortunate circumstance of developing a giant
12 cell tumor at age 33 or 34?

13 A. No, sir.

14 Q. You don't know what effect that would be on her
15 work life expectancy, do you?

16 A. No, sir.

17 Q. Now do you agree that the calculations you've
18 made here today are based upon various
19 hypothetical assumptions that you have made?

20 A. Yes.

21 Q. Do you agree that if certain assumptions or the
22 facts that you made are incorrect then your
23 calculations do not reflect the proper measure
24 of what you're calling a loss resulting from
25 injuries?

EXHIBIT "B"

1 MR. CRENNEY: Objection to the form
2 of the question.

3 A. It depends. It depends on which assumptions or
4 facts are wrong. For example, I have in my
5 report that she was born on April 26th of 1971.
6 If she was really born on April 25th, that's
7 not going to change any of my projections or
8 whatever.

I have here that she was hired on, say, August 24th of 1992. Well, if she was hired a month later or a year later even, it's not going to change my projection. So it depends on what numbers I'm using that you presume are incorrect.

15 BY MR. SLIMAK:

16 Q. Well, you would agree that if certain of the
17 assumptions that you have to make to make your
18 calculations certain of those are very
19 important ones. And if they are incorrect, the
20 ultimate numbers that you're projecting are not
21 accurate?

22 MR. CRENNEY: Objection to the form.
23 Unclear. Ambiguous. You don't know -- please
24 tell him what you're talking about. What
25 assumptions?

EXHIBIT "B"

1 A. I would agree that if certain things are
2 grossly wrong then it's possible that my
3 projections are totally wrong.

4 BY MR. SLIMAK:

5 Q. Okay. Well, did you personally meet with and
6 interview Ms. Carlson's employment supervisor
7 at DuBois Regional Medical Center, Rose
8 Campbell, or the hospital's human resources
9 administrator, Mr. Bob McKee, or any other
10 medical center personnel to determine whether
11 Ms. Carlson could return to work at the medical
12 center as a radiation technician?

13 MR. CRENNEY: Objection. It's an
14 irrelevant question. Beyond the scope.

15 A. No, I did not.

16 BY MR. SLIMAK:

17 Q. In preparing your report did you take into
18 consideration and cite the Americans With
19 Disabilities Act return-to-work provisions?

20 A. I am aware of the act so --

21 MR. CRENNEY: Same objection.

22 THE WITNESS: I am aware of it, so
23 it's in the background of any projection I
24 make. I am assuming that she is not capable of
25 returning to her former employment.

EXHIBIT "B"

1 BY MR. SLIMAK:

2 Q. Are you aware that under that law employers
3 must provide reasonable accommodations to allow
4 disabled employees to return to work as long as
5 with the accommodations the employee is able to
6 perform the essential functions of their job?

7 A. Yes.

8 MR. CRENNEY: Pardon me. I'm so,
9 sorry, Professor. Same objection.

10 BY MR. SLIMAK:

11 Q. Are you aware of efforts that the DuBois
12 Regional Medical Center was making to
13 accommodate and prepare for Ms. Carlson's
14 return to work as a radiation therapist before
15 she sued them?

16 A. No.

17 MR. CRENNEY: Same objection.

18 BY MR. SLIMAK:

19 Q. Are you aware of whether the medical center was
20 willing to comply with the law to provide
21 reasonable accommodations to Ms. Carlson so as
22 to allow her to return to work performing the
23 essential functions of her radiation technician
24 job without loss of any earnings or fringe
25 benefits at all?

EXHIBIT "B"

1 MR. CRENNEY: Same objection.

2 A. No.

3 BY MR. SLIMAK:

4 Q. Do you agree that if the facts of this case
5 show that the hospital had undertaken efforts
6 to make sure that Ms. Carlson could continue to
7 do her radiation technologist job on a
8 full-time basis despite her giant cell tumor
9 problems because of the surgery performed by
10 Dr. Yaw that she could have returned to work
11 and would not have had any ongoing income loss
12 at all?

13 MR. CRENNEY: Same objection.

14 A. If she could earn the same income as I've
15 projected and that income is going to be earned
16 for as long as I have projected, then in any
17 year that the income is earned that matches the
18 income that I projected there wouldn't be a
19 loss that year. But that presumes that
20 somebody is going to actually pay her to do
21 something that possibly she can't do.

22 BY MR. SLIMAK:

23 Q. Did plaintiff's attorney, Mr. Crenney, provided
24 you with the deposition of sworn testimony he
25 took of Rose Campbell or of Mr. Bob McKee that
EXHIBIT "B"

1 he also took under oath from them, these
2 personnel people at DuBois Regional Medical
3 Center?

4 MR. CRENNEY: Objection. That would
5 have been outside the scope of this witness's
6 testimony and his competence.

7 MR. SLIMAK: Well, it's relevant for
8 cross-examination as to develop information
9 that was available and that was not provided to
10 the witness. On cross-examination that's
11 perfectly appropriate.

12 MR. CRENNEY: Same objection.

13 BY MR. SLIMAK:

14 Q. Were you provided with those depositions that
15 Attorney Crenney took of the DuBois Regional
16 Medical Center hospital personnel?

17 A. No.

18 Q. Were you provided with the deposition of
19 Mr. Martin Maloney, the head physical therapist
20 at DuBois Regional Medical Center, whose
21 deposition Mr. Crenney took under oath in this
22 matter?

23 MR. CRENNEY: Same objection.

24 A. No.

25 BY MR. SLIMAK:

EXHIBIT "B"

1 Q. Were you aware that Mr. Maloney had performed a
2 job function analysis and made changes in the
3 job description as well as recommendations for
4 reducing the amount of weight and physical
5 activity that she would have to perform with
6 her affected arm in order to potentially
7 accommodate her medical problem and allow
8 Ms. Carlson to return to work?

9 MR. CRENNEY: Objection to the form.
10 Objection to the relevance.

11 A. No.

12 MR. CRENNEY: Objection as beyond the
13 scope of this witness's testimony on direct.

14 BY MR. SLIMAK:

15 Q. Are you aware of whether the hospital was
16 willing to do whatever it would take and the
17 law would require to accommodate Ms. Carlson so
18 that she could return to work as a radiation
19 therapist and have no ongoing work loss?

20 A. No.

21 MR. CRENNEY: Objection. Just let me
22 get this out. I'm so sorry, Professor. I
23 don't mean to interrupt you.

24 Objection to the form. Objection to
25 the relevance. Objection to the phrase
EXHIBIT "B"

1 whatever it takes. Objection --

2 MR. SLIMAK: That's based on the
3 testimony.

4 MR. CRENNEY: Objection to the
5 statement whatever it takes. Objection to the
6 form. Objection as beyond the scope of this
7 witness's competence or his testimony on
8 direct.

9 He has acknowledged to you that if
10 she goes back to work and is paid what she was
11 paid before and gets only a 3 percent increase
12 per year that then she would get that money,
13 and she wouldn't have the loss. These
14 questions are just you making a speech.

15 MR. SLIMAK: I'll just object to your
16 comments. That's your making a speech. Move
17 to strike those comments.

18 MR. CRENNEY: Your entire
19 cross-examination with the greatest respect is
20 you putting in points that aren't appropriate
21 here.

22 MR. SLIMAK: That is your argument,
23 and I certainly disagree with you under the
24 law.

25 MR. CRENNEY: I understand. But
EXHIBIT "B"

1 that's the objection I have. This is just
2 speech making by you, Mr. Slimak.

3 MR. SLIMAK: I move to strike.

4 MR. CRENNEY: Surely you can wait
5 until your own rehabilitation -- vocational
6 rehabilitation -- this is the economist in the
7 case.

8 MR. SLIMAK: Are you making a speech
9 or what?

10 MR. CRENNEY: I'm explaining to you
11 the foundation of the objection in a polite
12 way.

13 MR. SLIMAK: You don't need to
14 explain to me.

15 MR. CRENNEY: There is a vocational
16 rehabilitation person that may testify for you
17 and for the plaintiff, and that would be the
18 appropriate place for this kind of thing on
19 what the hospital is willing to do.

20 MR. SLIMAK: It's perfectly
21 appropriate to cross-examine this witness. You
22 provide him with certain information. I'm
23 providing him with certain information that you
24 failed to provide that you had available and
25 had to determine if it affects his opinions if
EXHIBIT "B"

1 he would have had this information available to
2 utilize it. That's perfectly appropriate and
3 critical cross-examination.

4 MR. CRENNEY: Not so.

5 BY MR. SLIMAK:

6 Q. I'm not sure if we had the answer to the last
7 question, sir. Let me re-ask it I think where
8 I was at.

15 MR. CRENNEY: Same objection.

16 Objection to the form.

17 MR. SLIMAK: We already have your
18 objection. I just re-asked the same question.
19 You don't have to repeat your objections again.
20 You're being obstructive.

21 MR. CRENNEY: I am not trying to be
22 obstructive.

23 MR. SLIMAK: Do you have nothing new,
24 sir?

25 MR. CRENNY: Mr. Slimak, please EXHIBIT "B"

1 excuse me. You're saying I have an objection
2 to that question on any possible basis that I
3 might have mentioned in the past; is that
4 correct?

5 MR. SLIMAK: Are you repeating the
6 same objections you already raised to the same
7 question?

8 MR. CRENNEY: My question to you --
9 and it's a polite one -- do I have a continuing
10 objection on all the bases that I stated in the
11 past?

12 MR. SLIMAK: I couldn't possibly
13 remember all those objections.

14 MR. CRENNEY: Then I will make the
15 objections again since you can't remember. I'm
16 objecting on the form of the question. It's
17 not clear. I'm objecting because it's beyond
18 the scope of this witness's expertise or his
19 testimony on direct. I'm objecting because
20 it's inappropriate for this witness and
21 irrelevant in the case and certainly irrelevant
22 to economist's testimony.

23 MR. SLIMAK: Anything further, sir?

24 MR. CRENNEY: No, sir.

25 BY MR. SLIMAK:

EXHIBIT "B"

1 Q. Now I'm going to re-ask the question so we know
2 what it was.

9 MR. CRENNEY: Same objection.

10 A. No.

11 BY MR. SLIMAK:

12 Q. Now I know that you testified earlier that
13 Ms. Carlson had worked at the hospital in this
14 position for 12 to almost 13 years; is that
15 correct?

16 A. Yes.

17 Q. And do you agree that with her training and
18 background in this radiation technician area
19 with that degree of experience that she was an
20 extremely valuable and experienced employee
21 that a hospital would want to keep working if
22 at all possible?

EXHIBIT "B"

1 BY MR. SLIMAK:

2 Q. Will you answer the question, please?

3 MR. CRENNEY: Okay. Objection. I'm
4 just going to note --

5 MR. SLIMAK: All you have to say is I
6 repeat the same objection or same objection and
7 then it will be acknowledged.

8 MR. CRENNEY: Yeah, but I can't be
9 sure you will agree to what it refers to. If
10 you would just agree that I have a continuing
11 objection based on what I said to the last two
12 questions.

13 Let me go over it one more time that
14 it is objection to the form, that it's not
15 relevant, that it's beyond the scope of direct
16 and beyond the scope of his expertise, an
17 economist in this case.

18 Do I have a continuing objection for
19 that?

20 MR. SLIMAK: Let me say this. You
21 can't restrict the cross-examination of this
22 witness to those facts that you asked him to
23 assume only. I'm entitled to point out facts
24 that he had available that he did not consider.

25 And so the basis for your objection is totally
EXHIBIT "B"

1 inappropriate. You're just being
2 obstructionist.

3 MR. CRENNY: No, I'm not. I'm just
4 making objections. If you'll agree that I have
5 that continuing objection, I won't interrupt
6 you. I don't mean to interrupt you.

7 MR. SLIMAK: I do think if you have
8 an objection because of your prior position on
9 such questions you should say same objection,
10 and then we will understand that whatever it is
11 that you have just been going on about would be
12 what you meant in that regard. I think that's
13 the easiest way to do it so that we know that
14 you have an actual objection versus whether you
15 don't have an objection to a particular
16 question so we're not guessing when we go
17 before the judge and have issues ruled upon.

18 BY MR. SLIMAK:

19 Q. Now let me re-ask the question.

20 Mr. Kenkel, do you agree that with
21 Ms. Carlson's training and background as a
22 radiation technician and radiation therapist
23 and her 12 to 13 years' experience working in
24 the radiation department of the DuBois Regional
25 Medical Center that she would be an extremely
 EXHIBIT "B"

1 valuable and experienced employee that the
2 hospital would want to keep working if at all
3 possible?

4 MR. CRENNEY: Same objection.

5 A. Yes.

6 BY MR. SLIMAK:

7 Q. Are you aware of testimony that Attorney
8 Crenney obtained from Mr. McKee at the DuBois
9 Regional Medical Center where he testified that
10 the hospital did feel she was a good employee?

11 A. No.

12 MR. CRENNEY: Same objection.

13 BY MR. SLIMAK:

14 Q. Are you aware of testimony that plaintiffs'
15 attorney, Mr. Crenney, had developed under oath
16 that Mr. McKee had called Paula Carlson in
17 February of 2006 after he had spoke with
18 Mr. Ray Graeca, the president of the medical
19 center, and John Sutika, the vice president and
20 chief financial officer, to reaffirm the
21 medical center's position that they would like
22 to work with her in terms of whatever she would
23 be able to do when she could return to work?

24 MR. CRENNEY: Same objection.

25 A. No.

EXHIBIT "B"

1 BY MR. SLIMAK:

2 Q. Are you aware of testimony by Mr. McKee that
3 Mr. McKee communicated to Paula Carlson that
4 the medical center wished to work with her when
5 it was identified that she would be able to
6 return to work?

7 And what I mean by with work her,
8 identified what she could and could not do and
9 determine what accommodations we could make so
10 it would be possible for her to return to work.

11 Were you aware of that?

12 A. No.

13 MR. CRENNEY: Same objection.

14 Q. That's at his deposition at page 18 and 19.

15 MR. CRENNEY: Excuse me. I'm so
16 sorry. Same objection.

17 BY MR. SLIMAK:

18 Q. And were you aware of Mr. McKee's testimony in
19 that same deposition at page 21 when he was
20 asked the question: And it was the medical
21 center's position that you wanted her back and
22 you would make every effort to accommodate her;
23 is that correct? And his answer was: That's
24 what our goal was, yes.

25 MR. CRENNEY: Same objection.

EXHIBIT "B"

1 BY MR. SLIMAK:

2 Q. Were you aware of that?

3 A. No.

4 MR. CRENNEY: Same objection.

5 BY MR. SLIMAK:

6 Q. Are you aware Ms. Carlson testified in her
7 deposition that there was a meeting set up by
8 her supervisor, Rose Campbell, to talk to
9 Ms. Carlson about when she could return to
10 work?

11 A. No.

12 Q. Were you even provided with the sworn testimony
13 of Ms. Carlson in her deposition?

14 A. No.

15 Q. Is it relatively common, sir, in gathering
16 appropriate information to prepare a report and
17 come into a court of law or give sworn
18 testimony in a serious matter like this that
19 you would often review deposition testimony of
20 various witnesses if it is given to you by the
21 attorney who hired you?

22 A. Yes.

23 Q. Do you agree that it's best to have complete
24 information rather than incomplete information
25 when you are making important forensic economic
EXHIBIT "B"

1 decisions and trying to write a proper report?

2 MR. CRENNY: Same objection.

3 A. Yes.

4 BY MR. SLIMAK:

5 Q. Do you agree it is better to have correct
6 information than incorrect information when
7 you're trying to write your report?

8 MR. CRENNY: Same objection.

9 A. Yes.

10 MR. CRENNY: There's nothing
11 incorrect that was provided to this witness.
12 If you have something you want to point out,
13 otherwise it's very misleading.

14 MR. SLIMAK: That's for the judge and
15 the jury to decide based on all the evidence in
16 the case.

17 BY MR. SLIMAK:

18 Q. Who determined, Mr. Kenkel, what information
19 you would or would not consider in performing
20 your economic loss calculations and preparing
21 your report?

22 A. I provided an information form asking for
23 certain background information, and then the
24 attorney's office sent me the reply.

25 Q. Do you agree, Mr. Kenkel, that it would be best
EXHIBIT "B"

1 to have presented a fair and balanced approach
2 to the calculation of economic loss and let the
3 jury decide the truth rather than having a
4 one-sided approach?

5 MR. CRENNEY: Objection to the form
6 of that question. It's an outrageous question,
7 Mr. Slimak, which I imagine you know. I am so
8 surprised you would ask a question like that.

9 BY MR. SLIMAK:

10 Q. Well, Mr. Kenkel, you have to answer.

11 MR. CRENNEY: He does even though
12 that question is just a terrible question and
13 any lawyer would know was improper. Go ahead
14 and answer.

15 A. I have no information indicating that anything
16 that was provided to me is incorrect. So as
17 far as I know my projections are perfectly
18 reasonable.

19 BY MR. SLIMAK:

20 Q. Did you ask Attorney Crenney to provide you
21 with complete information that you should have
22 in order to make your calculations?

23 A. I asked for a certain set of information. And
24 as far as I know, the information I asked for I
25 received.

EXHIBIT "B"

1 Q. Now did you ask Mr. Crenney what all
2 information was available to take into
3 consideration to prepare your report?

4 A. No.

5 Q. If information would be provided to you that
6 indicated that Ms. Carlson could return to work
7 at the DuBois Regional Medical Center in her
8 job position as a radiation therapist, would
9 you have felt that was important information
10 for you to consider?

11 MR. CRENNY: Same objection. May I
12 add to that asked, asked, asked, and asked and
13 answered. It's repetitive beyond belief.

14 MR. SLIMAK: Unfortunately because
15 there's so many objections to everything I have
16 to clarify. And this is actually a bit
17 different than the prior questions because I am
18 trying to avoid some of your on and on
19 repetitive objections to every single question,
20 sir.

21 BY MR. SLIMAK:

22 Q. You'll have to answer.

23 A. If I was provided information that I thought
24 was relevant in making my projections that
25 would change my projection, I would take it

EXHIBIT "B"

1 into account.

2 Q. Okay. Now with regard to these calculations
3 that you did make based on information that
4 were given by Attorney Crenney, did you project
5 that Paula Carlson would have like 27.4
6 additional years to work?

7 A. Yes.

8 Q. Okay. And do you agree that there's no
9 certainty that Ms. Carlson would have actually
10 worked 27.4 additional years?

11 A. That's correct. There's no certainty that she
12 wouldn't have worked more than that.

13 Q. And obviously because you don't have a crystal
14 ball she may have worked less for a number of
15 reasons, correct?

16 A. Yes.

17 Q. What are some of the reasons that people don't
18 work out to their full statistical work life
19 expectancy?

20 A. Because the job ceases to exist, because they
21 don't like the job. One possibility is you get
22 injured. You die. You become unemployed.
23 Maybe your husband wins the lottery and you say
24 I don't need to work anymore.

25 Q. So you would agree then that the potential for
EXHIBIT "B"

1 an on-the-job injury is one of the factors that
2 would undermine the length of your statistical
3 work life expectancy if we knew that that might
4 occur?

5 A. But that's already taken into account in the
6 work life data that I have used.

7 Q. Only on a statistical basis applying to all
8 persons and all occupations, correct?

9 A. Yes.

10 Q. It is not specific to Paula Carlson's job as a
11 radiation technician or technologist, correct?

12 A. As far as I know there's no data in the world
13 concerning the rate of injuries of radiation
14 therapists.

15 Q. Well, you had indicated in your testimony
16 earlier that you had had some medical
17 information that was provided to you by
18 Mr. Crenney. Do you know if you were provided
19 information with regards to Paula Carlson's
20 past occupational health records of injuries at
21 work as a radiation therapist which included a
22 herniated disk in her neck?

23 MR. CRENNY: Objection.

24 A. I was aware that there was a herniated disk.

25 BY MR. SLIMAK:

EXHIBIT "B"

1 Q. Do you have some statistics for how long the
2 work life expectancy would be of an individual
3 if they have any type -- a job that requires
4 physical lifting and manipulation if they have
5 a herniated disk in their neck?

6 A. No. As far as I know there are no data like
7 that.

8 Q. Did you have any statistics of what age people
9 tend to retire after they have developed a
10 giant cell tumor of the wrist?

11 A. No.

12 Q. Do you whether people with giant cell tumors
13 oftentimes have to change jobs because of the
14 surgery they need to try to remove the tumor
15 and stop it from spreading?

16 A. No.

17 Q. Are you aware of what the risk of recurrence is
18 of a giant cell tumor even if it's caught very
19 early and tried to be treated with what is
20 known as curettage and cementing procedure?

21 A. No.

22 MR. CRENNEY: Objection to all of
23 these questions. Same objection.

24 BY MR. SLIMAK:

25 Q. Are you aware of statistics out there with
EXHIBIT "B"

1 regard to the effect of degenerative disk
2 disease of the back on work life expectancy?

3 MR. CRENNEY: Same objection.

4 A. No.

5 BY MR. SLIMAK:

6 Q. Are you aware of whether or not the literature
7 indicates that back injuries are one of the
8 most significant factors undermining
9 individuals' work life expectancies?

10 A. No.

11 MR. CRENNEY: Same objection.

12 BY MR. SLIMAK:

13 Q. Now were you area that Ms. Carlson had
14 testified in her deposition at page 102 to 103
15 that prior to April of 2005 she had had
16 problems from her day-to-day activities at work
17 that caused her back jobs problems as well as a
18 herniated disk in her neck and caused her to
19 miss work?

20 A. No.

21 Q. Were you aware that subsequent medical records
22 that she had obtained indicated that there had
23 been progression of her cervical disk disease
24 with the development of spurs in the area of
25 where the herniated disk occurred?

EXHIBIT "B"

1 A. No.

2 Q. With regard to your calculations, did you
3 subtract out of the work life expectancy any
4 periods of time for extended absences from work
5 from whatever cause?

6 A. No. The work life expectancy data already take
7 that into account.

8 Q. But that's for everybody in all occupations,
9 correct? It's not specific to Paula Carlson.

10 A. That's just like saying a life expectancy isn't
11 specific to a certain person. I mean, how long
12 an individual is going to live cannot be
13 projected with exact certainty. What you do is
14 put you the person into a class with
15 characteristics like themselves. That's what I
16 did with Paula Carlson when I projected how
17 long she would work.

18 Q. All right.

19 A. It's based on the average behavior of people.
20 Actually if you take her situation, her
21 probability of losing a job is much lower than
22 the typical person. She didn't change jobs.
23 Lots of people change jobs constantly. Their
24 jobs cease to exist. She is in a steady job.
25 The hospital typically isn't going to go out of
EXHIBIT "B"

1 existence. They're not going to have big
2 layoffs. So if anything I would say if I have
3 under -- if I've over or underestimated her
4 work life expectancy, I would say I have
5 underestimated it.

6 Q. Do you know what the statistical likelihood
7 would have been of Ms. Carlson even developing
8 a giant cell tumor to begin with?

9 MR. CRENNEY: Objection.

10 A. No.

11 BY MR. SLIMAK:

12 Q. Your field is statistics, correct?

13 MR. CRENNEY: Exactly. Same
14 objection --

15 A. Yes.

16 MR. CRENNEY: -- on this line of
17 questioning.

18 BY MR. SLIMAK:

19 Q. Now in your calculations did you assume that --
20 well, let me reask the question.

21 Do you know whether -- let me re-ask
22 it a different way. I'm trying to avoid
23 Mr. Crenney's objection.

24 Mr. Kenkel, assuming that Ms. Carlson
25 would have needed an aggressive and extensive
EXHIBIT "B"

1 type of surgery similar to or the same as the
2 type of surgery she underwent on June 27th,
3 2005, even if her bone tumor had been diagnosed
4 on April 12th, 2005, do you know what the
5 effect of that would have been on her work life
6 expectancy?

7 MR. CRENNEY: Same objection.

8 A. No. I assumed that she could have been back to
9 work as of July 1st of 2005. But I have also
10 indicated how my projections would change if
11 you assume she would be back to work, say,
12 January 1st of 2006.

13 BY MR. SLIMAK:

14 Q. If the treatment Ms. Carlson needed for her
15 condition would have been the same regardless
16 of the date of diagnosis, do you agree that
17 your calculations are incorrect because she
18 would not have had all these years of work loss
19 by --

20 MR. CRENNEY: Same objection.

21 A. I agree.

22 BY MR. SLIMAK:

23 Q. Right. Okay.

24 Now I understand from your testimony
25 that you were -- made these projections of
EXHIBIT "B"

1 income loss based on an assumption that Paula
2 Carlson would continue to work at Red Lobster
3 at 20 hours per week only and at \$6.25 per
4 hour; is that correct?

5 A. Yes. But I have given her future raises.

6 Q. I understand that. But those other assumptions
7 that I just mentioned were part of your
8 calculations, correct?

9 A. I had assumed she would work 20 hours a week.
10 But once again, if the jury wants to double
11 that and say she would work 40 hours a week,
12 what you would do is look at my chart and just
13 double the numbers that we're subtracting and
14 make the new calculation. My calculations are
15 based on working 40 hours -- or 20 hours per
16 week, which is what she was doing when I wrote
17 my report.

18 Q. Okay. Now with regard to this work, do you
19 agree that in order to calculate a net economic
20 loss as I understand your theory here you have
21 been testifying about it's necessary to
22 subtract any income that Paul Carlson could
23 actually earn after the date of this claimed
24 injury from the potential income that would
25 have been projected to be earned absent claimed
EXHIBIT "D"

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1 injury?

2 A. That's correct.

3 Q. All right. And you use \$6.25 an hour for 20
4 hours per week indefinitely for the next 27
5 years under one scenario and then 30 some years
6 under the other next scenario, is that correct,
7 plus a salary increase yearly?

8 A. Yes.

9 Q. All right. Are you aware that by June of 2007
10 Ms. Carlson was actually making \$6.50 an hour,
11 not the 6.15 -- not 6.25 an hour at Red
12 Lobster?

13 A. No.

14 Q. So you used a lower rate, right?

15 A. What date are you talking about?

16 Q. Well, by June of 2007 did you know that there
17 was a higher rate she was actually receiving?

18 A. That's basically what I'm projecting.

19 Q. Well, as we got here in today's deposition
20 didn't you have provided for us new pages that
21 you changed out of your report because you
22 changed them from what you originally
23 projected?

24 A. The only change I made was that I subtracted --
25 I eliminated the household services. Otherwise

EXHIBIT "B"

1 those charts are identical to my original
2 report.

3 Q. Okay. So when you got here today to testify,
4 you updated your report with regard to removing
5 claims that you had calculated for loss of
6 household services which you're not claiming
7 anymore, correct?

8 A. Yes.

9 Q. Now with regard to your report, am I correct
10 that in that area of the household services you
11 were projecting that those needs to be replaced
12 at 7.15 an hour, even though you have now
13 abandoned those, but yet for Ms. Carlson you
14 weren't giving her the benefit of the minimum
15 wage increase to \$7.15 per hour?

16 MR. CRENNEY: I'm going to object
17 anything regarding household services as beyond
18 the scope of direct and irrelevant.

19 MR. SLIMAK: You have already raised
20 the issue and mentioned this issue. And what
21 I'm cross-examining him is on the inconsistency
22 in his report of making calculations that
23 Ms. Carlson can only make \$6.25 an hour into
24 the future when the law is and he understands
25 it and utilized it in his other calculations a

EXHIBIT "B"

1 rate of 7.15 per hour.

2 MR. CRENNEY: You told me when I
3 asked the question on household services it was
4 irrelevant, and I agreed. You made an
5 objection on that.

6 MR. SLIMAK: It would be irrelevant
7 to claim those. I'm just questioning him with
8 regard to a factor that he used this in
9 calculations which now he's not used on the
10 other --

11 THE WITNESS: I would have her
12 earning approximately \$6.94 today rather than
13 \$7.15 which is the minimum wage.

14 BY MR. SLIMAK:

15 Q. So you recognize that you came into this
16 deposition to testify under oath using
17 calculations that are inconsistent with
18 Pennsylvania minimum wage law, correct?

19 A. If she is getting the minimum wage there as
20 opposed to -- different waitresses and servers
21 and so on get a much lower wage rate and also
22 get tips.

23 Q. Do you know Pennsylvania minimum wage law? Are
24 you familiar with it?

25 A. The Pennsylvania minimum wage is \$7.15 an hour.
EXHIBIT "B"

1 Q. Yes. And Ms. Carlson is not a waitress,
2 correct?

3 A. As far as I know. I don't know if she gets any
4 tips.

5 Q. Well, are you aware that with regard to her
6 category of work, her job position, that she
7 must be paid at a minimum the minimum
8 average -- excuse me, the minimum wage in
9 Pennsylvania?

10 A. The difference -- maybe we can speed things up.
11 The difference between what I have projected
12 and what she would be getting if she got the
13 minimum wage right now would be \$150 a year.
14 Over a period of 30 years let's say to split
15 the difference between 27 and 33, it would be
16 \$4,500 to add on, and that's not even in
17 present value terms. So it would be less than
18 \$4,500, which I am willing to subtract from
19 the net economic loss.

20 Q. Well, let's look at some other factors that you
21 left out of your report and not using accurate
22 data. Did --

23 MR. CRENNEY: I'm going to object to
24 the form of the question.

25 MR. SLIMAK: Let me withdraw the
EXHIBIT "B"

1 question.

2 BY MR. SLIMAK:

3 Q. In your report you assumed that she would only
4 be able to work 20 hours per week, correct?

5 A. I assumed she would average 20 hours per week.

6 Q. Are you aware that the records actually reflect
7 that even at Red Lobster there was weeks that
8 she worked 28 hours per week or 25 hours per
9 week or other hours per week?

10 A. Yes. She averaged 20. She averaged actually
11 less than 20. She averaged approximately 19.37
12 hours per week during the period when I had her
13 wage data.

14 Q. Are you aware of whether or not there are facts
15 that were developed in this case that would
16 indicate that Ms. Carlson could work up to 40
17 hours per week?

18 A. I have already indicated if she works 40 hours
19 per week then just double the numbers that I
20 have projected on the report and make the
21 subtraction. The jury should be capable of
22 multiplying by two and doing the subtraction.

23 Q. All right. So then we would have to double the
24 numbers to be subtracted out, is that what
25 you're saying, if she --

EXHIBIT "B"

1 A. If it is assumed that she is going to work 40
2 hours per week for the rest of her life, yes.

3 But she's not done that.

4 Q. Should we also be taking into consideration and
5 changing your figures that you have presented
6 on Plaintiffs' Exhibit No. 1 and 2 of the
7 claimed loss if, in fact, the evidence would
8 show that she could make a higher hourly rate
9 than what you have assumed which was the \$6.25
10 per hour plus the 3 percent raise per year?

11 A. I have already indicated that if she made \$7.15
12 an hour the numbers would change by about -- in
13 present value terms about \$150 a year. If she
14 worked 40 hours a week, it would be \$300 a
15 year. Over a period of 30 years that's about
16 \$9,000.

17 Q. Let's assume that if rather than working at
18 DuBois Regional Medical Center as a radiation
19 technologist if she did not go back there that
20 she was able to make 40 to \$50,000 per year in
21 a substitute job that was within her physical
22 capabilities would you agree that we would once
23 again need to adjust and subtract from your
24 calculations the amount she could make in those
25 jobs she could otherwise do?

EXHIBIT "B"

1 A. Yes.

2 Q. Okay. Were you aware from the data that you
3 were provided on some of those intake sheets
4 that Ms. Carlson had elected to not attempt to
5 return to work for a period of time because she
6 had other sources of income?

7 MR. CRENNEY: Objection.

8 A. No.

9 BY MR. SLIMAK:

10 Q. Okay. You didn't take any of that into
11 consideration?

12 A. No.

13 MR. CRENNEY: Same objection.

14 BY MR. SLIMAK:

15 Q. Do you agree that you are not qualified to make
16 the determination how many hours per week
17 Ms. Carlson could work at various jobs that
18 might be available?

19 A. I'm not a vocational expert. I'm not a medical
20 expert. So that's outside my area of
21 expertise.

22 Q. Okay. Did you have any information provided to
23 you of the types of activities that Ms. Carlson
24 testified in her deposition under oath that she
25 was performing around the house or outside the
EXHIBIT "B"

1 home or in the community that might translate
2 into time that she could otherwise be working?

3 A. No.

4 MR. CRENNEY: Same objection.

5 BY MR. SLIMAK:

6 Q. Now is it appropriate to take into
7 consideration under projections such as you're
8 making expenses that the individual no longer
9 has because they are not working as a deduction
10 from your calculations?

11 A. That's not done typically in a personal injury
12 case.

13 Q. All right.

14 A. I mean, it depends on some cases where there's
15 a union worker or whatever you might subtract
16 the union dues or their cost of, you know,
17 steel-toed shoes or something like that.

18 Q. All right. Did you make any assessment of
19 whether the numerous activities that
20 Ms. Carlson continues to do outside of the work
21 environment are things that she might be able
22 to utilize as skills to obtain other employment
23 to fill in those additional 20 hours that she's
24 not currently working because she's only
25 working at Red Lobster?

EXHIBIT "B"

1 MR. CRENNEY: Same objection.

2 A. I did not take that into account.

3 BY MR. SLIMAK:

4 Q. Now I know earlier in your deposition you had
5 gave projections of life expectancy, correct?

6 A. Yes.

7 Q. And is that because there's some correlation
8 recognized between potential life expectancy
9 and with regard to work life expectancy or why?

10 A. I always put in the life expectancy in any case
11 that I do, whether I'm going to use it or not.

12 In my original report I made a projection of
13 lost household services. Presumably they would
14 go to the end of your life expectancy, so I
15 would need to know what her life expectancy is.
16 In this case the economic losses that I
17 projected are going to stop when she stops
18 working either at about age 61 or age 67.

19 Q. Okay. So in your report then, you would often
20 put in things which ultimately you're not going
21 to testify to are relevant to the particular
22 circumstances?

23 A. I have things in my report that may be
24 relevant, may not be relevant. I have
25 indicated that she graduated from high school
EXHIBIT "B"

1 in a certain year. I mean whether that's
2 relevant or not is for the jury to decide.

13 Q. If there would be a factor that might affect
14 Ms. Carlson's work life or life expectancy
15 because of injury or disease in her family or
16 that might affect her, is that something then
17 that should be taken into consideration in
18 reducing these claims and calculations that
19 you've had?

20 MR. CRENNEY: Same objection.

21 A. If a medical doctor comes in and says with a
22 reasonable degree of certainty that she's going
23 to die before age 61 or before age 67, then I
24 would agree that that should be taken into
25 account. I have already indicated that the
EXHIBIT "B"

1 probability that she will live to at least age
2 62 is about 92 percent. So it's totally
3 unreasonable given the information I have to
4 assume that Paula Carlson is going to die
5 before generating the economic losses that I
6 testified to.

7 BY MR. SLIMAK:

8 Q. Do you know what the statistics are for the
9 risk of getting cancer tumors?

10 A. I don't have the data with me, no.

11 Q. Do you know if that affects life expectancy?

12 A. I would assume if you have cancer, yes, it
13 would affect your life expectancy.

14 Q. Do you know if her family has any history of
15 cancer?

16 A. Do I know --

17 Q. Yes.

18 A. If? I'm sorry.

19 Q. Ms. Carlson's family has any history of cancer.

20 A. I don't recall if I was given information. I
21 think I may have -- I'm not sure.

22 MR. SLIMAK: I have no other
23 questions for you at this time.

24 MR. JOHNSON: I need a microphone.

25 - - - -

EXHIBIT "B"

1

EXAMINATION

2

- - - -

3 BY MR. JOHNSON:

4 Q. Dr. Kenkel, good afternoon.

5 A. Hello.

6 Q. I won't be too long, but I do have some
7 questions I want to ask you.

8 You were asked some questions by
9 Mr. Slimak at the beginning of the deposition
10 and then by Mr. Crenney with regard to your
11 activities as an expert witness. Would you
12 agree with me, sir, that this is a very
13 substantial part of what you do professionally?

14 MR. CRENNEY: Excuse me. I'm so
15 sorry. Would you identify who you represent
16 because I think the jury might be confused
17 about that if you don't?

18 MR. JOHNSON: I would be glad to. I
19 represent DuBois Regional Medical Center. I
20 certainly assume, Mr. Crenney, that when the
21 time this deposition is played that the jury
22 will be well acquainted with me.

23 MR. CRENNEY: Well, I don't know when
24 it will be played. But you represent the
25 hospital, right?

EXHIBIT "B"

1 MR. JOHNSON: I do.

2 MR. CRENNEY: Thank you. So sorry to
3 interrupt, Mr. Johnson.

4 BY MR. JOHNSON:

5 Q. Let me go back to my question, and I will
6 restate my question, Doctor.

7 Would you agree with me, sir, that
8 testifying in cases such as this and preparing
9 reports such as you have done in this case is a
10 very substantial portion of your professional
11 activities?

12 A. It depends on what you mean by very
13 substantial.

14 Q. Well, certainly it has been a very lucrative
15 business for you over the years, hasn't it,
16 sir?

17 A. Yes.

18 Q. And just to kind of put a number on it, I think
19 you told us that you have been involved in over
20 5,000 cases, correct?

21 A. Yes.

22 Q. You have testified in 600 to 700 cases,
23 correct?

24 A. Yes.

25 Q. And you told us earlier what your fees are with
EXHIBIT "B"

1 respect to that.

2 Now in this particular case, you
3 prepared a report that you have in front of
4 you, correct?

5 A. Yes.

6 Q. And you indicated that you charge about 8 hours
7 for preparing a report, right?

8 A. A typical report takes about 8 hours.

9 Q. Is this a typical report?

10 A. No.

11 Q. How long would it take to prepare this report?

12 A. Well, it took me longer than 8 hours.

13 Q. So longer than 8 hours to prepare this report.

14 How long do you estimate it took you to prepare
15 this report?

16 A. Somewhere between 12 and 16 hours.

17 Q. Now if we consider what you have for 12 to 16
18 hours in this report, can we agree, sir, that
19 on the first four pages of the report you have
20 certain information that pertains to this
21 plaintiff?

22 A. That's correct.

23 Q. And so that we can provide to the jury the
24 substance of what you have, on the first page
25 you have the information concerning -- and
EXHIBIT "B"

1 please feel free to look at it so I don't
2 misstate anything.

9 A. Yes.

10 Q. Then if we turn to the next page, the items of
11 information you have are number of years from
12 the date of injury until the median age of
13 retirement, number of years from the date of
14 injury until potential retirement, percentage
15 of people of the same age, race, and sex who
16 live to age 62, same question who live to age
17 65, same question of people who live to age 70,
18 their marital status, the name of her spouse,
19 her date of birth, her current age, her life
20 expectancy, the names and ages of her children,
21 and a description of her education. Correct?

22 A. Yes.

23 O. That's all that's on that page.

24 The next page you have that she was
25 employed between 1992 and 2005 at DuBois
EXHIBIT "B"

1 Regional Medical Center, and you have
2 identified her income on a yearly basis
3 followed by her hourly wage rate on a yearly
4 basis, correct, sir?

5 A. Yes.

6 Q. And that takes care of page 4 of the
7 information, correct?

8 A. Yes.

9 Q. And then isn't it true that the next ten pages
10 are simply the same pages as you have included
11 in essentially every economic report that you
12 prepare?

13 A. No. It's basically the same in every economic
14 report involving personal injury.

15 Q. Okay. That's what I meant for the question to
16 be.

17 And in fact, you and I have discussed
18 this at numerous times in the past, correct?

19 A. Yes.

20 Q. So then we get to page 14 before we have any
21 additional information with particular
22 pertinence to Ms. Carlson, correct?

23 A. Yes.

24 Q. And beginning at page 14 you simply utilize the
25 information that we've described on pages _____.

1 1 through 4 -- and we have gone through over --
2 we've gone over all of it -- in order to make
3 your calculations, correct?

4 A. Yes.

5 Q. And you do that through the different
6 projections, and you do that over the next
7 seven pages with each page having about
8 three -- having about three or four paragraphs,
9 correct?

10 A. Yes.

11 Q. And then you get to the standard material again
12 in your report that goes from page 23 all the
13 way up to page 30, correct?

14 A. Yes.

15 Q. And then you take the same information, those
16 basic facts that were on page 1 through 4, and
17 you have one page that talks about fringe
18 benefits, correct?

19 A. Yes.

20 Q. And then you go into another section beginning
21 on page 33 and carrying through page 45 of your
22 report having to do with loss of household
23 services. correct?

24 A Yes

25 Q. And then beginning at page 45 you have more
EXHIBIT "B"

1 standard boilerplate information that carries
2 through to page 54, correct?

3 A. Yes.

4 Q. And then you use those same statistics that you
5 had on the first 4 pages that we went through,
6 and you make the projections beginning on page
7 54, correct?

8 A. Yes.

9 Q. Now you had told us at the end of Mr. Slimak's
10 questions that all this material that we have
11 in front of you pertains to Ms. Carlson,
12 correct?

13 A. Yes.

14 Q. In actual fact, sir, isn't it true that the
15 information you utilized to prepare your report
16 consisted of the basic statistical information
17 that you have identified in your report?

18 A. Yes.

19 Q. And so, for example, if you look through the
20 materials that you have, a lot of it pertains
21 to medical records and hospital charts. That
22 isn't relevant to your report, is it, sir?

23 A. Not to my report, no.

24 Q. And with respect to information concerning
25 Ms. Carlson you have, for example, her income
EXHIBIT "B"

1 tax returns which each are fairly thick, but
2 you just looked at the one line that has her
3 income, correct, sir?

4 A. No. I looked through the entire tax return.

5 Q. Okay. And with respect to the information you
6 utilized, you utilized the information
7 concerning her income, correct?

8 A. Yes.

9 Q. And did you, in fact, have her deposition
10 transcript?

11 A. No.

12 Q. May I just look at these for one second,
13 Doctor?

14 - - - -

15 (There was a brief pause in the proceedings.)

16 - - - -

17 BY MR. JOHNSON:

18 Q. Dr. Kenkel, looking at the materials is this
19 her deposition transcript?

20 A. Yes.

21 MR. SLIMAK: Her being who?

22 MR. JOHNSON: Her being Paula
23 Carlson.

24 THE WITNESS: Yes.

25 BY MR. JOHNSON:

EXHIBIT "B"

1 Q. So in fact, that was in the materials that you
2 had?

3 A. Yes.

4 Q. Okay. But you didn't look at it?

5 A. Yes, I did.

6 Q. Oh, you did look at it?

7 A. Yes.

8 Q. Okay. So you looked at her deposition, and it
9 was in the materials. You've now found that to
10 be the case, correct?

11 A. Yes.

12 Q. Very well. Dr. Kenkel, just a few basic
13 propositions. Would you agree with me that as
14 an economist you are attempting to predict the
15 future with respect to your projections?

16 A. Could you repeat the question?

17 Q. Would you agree with me that as an economist
18 you are attempting to predict the economic
19 future for Ms. Carlson?

20 A. I am trying to make a projection of what her
21 reasonable expected income is. I'm not going
22 to predict with certainty what's going to
23 happen in any given year. Given the background
24 and information, I want to make a projection
25 that is totally reasonable.

EXHIBIT "B"

1 Q. In fairness would it be true that predicting
2 the future economics of any person is an
3 inexact science?

4 A. Yes.

5 Q. So would it also be accurate that you are not
6 telling the jury what will be economically for
7 Ms. Carlson, but you are telling the jury what
8 you are projecting or what may be the case,
9 correct?

10 A. Correct.

11 Q. And is it also true, sir, that the accuracy of
12 an economic projection based -- that it depends
13 upon the accuracy of the assumptions that are
14 made?

15 A. Yes.

16 Q. For example, in your calculations as to what
17 Ms. Carlson would have earned, you assumed that
18 she would have spent the rest of her working
19 lifetime in the same position at DuBois
20 Regional Medical Center, correct?

21 A. Alternatively I'm projecting that she could
22 earn the same amount in some other position as
23 a radiation therapist if she decided to move
24 to, say, a different hospital. She doesn't
25 have to stay at DuBois to earn the amount of
EXHIBIT "B"

1 income she was earning. Presumably if she
2 wanted to be become a radiation therapist some
3 place else, she could earn a similar income
4 elsewhere. Otherwise presumably she wouldn't
5 change jobs.

6 Q. And in your projections you were only looking
7 specifically at the job at DuBois Regional
8 Medical Center, correct, sir?

9 A. Yes.

10 Q. And in looking specifically at that job, you
11 assumed that she wouldn't stop working short of
12 your projections because of family concerns for
13 example, correct?

14 A. That's correct.

15 Q. You assumed that for any personal reason she
16 would not voluntarily decide to leave the work
17 force, correct?

18 A. I'm projecting that on the average she would
19 work for about 27 to 33 years.

20 Q. You projected that she wouldn't leave the work
21 force because of accident or illness, correct?

22 A. That's correct. But that information is
23 already taken into account in the work life
24 statistics. I mean, I have got her retiring at
25 age 61, and most people don't retire at age 61.

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1 The reason is average is 61 is because some
2 people lose about a year. Otherwise she would
3 work to at least age 62.

4 Q. And clearly, therefore, what you are projecting
5 is a projection based on general statistics as
6 opposed to something that is pertinent only to
7 Ms. Carlson, correct?

8 A. No. The data that I have used are exactly
9 applicable to a person like Paula Carlson.

10 Q. Like Paula Carlson, correct? Not necessarily
11 Ms. Carlson and her personal attributes, right,
12 sir?

13 A. No. I have taken into account all the relevant
14 information: her age, her education, her
15 employment history. That's what you take into
16 account when you project work life.

17 Q. For example, wouldn't you agree with me,
18 Dr. Kenkel, that two individuals of the same
19 age in the same position with the same work
20 history may make different employment decisions
21 based upon different family circumstances?

22 A. Yes.

23 Q. Now going back to the fact or the premise that
24 your calculations are only as good as your
25 assumptions, with regard to the alternative
EXHIBIT "R"

EXHIBIT "B"

1 employment that you have projected for
2 Ms. Carlson you have projected, haven't you,
3 that she will never engage in employment for
4 the rest of her working lifetime at more than
5 20 hours per week earning \$6.25 per hour plus
6 cost of living increases?

7 A. In my projections that's what I projected. But
8 I have already indicated that if you want to
9 assume she worked 40 hours a week that's very
10 easy to make the adjustment by just doubling
11 the amount that I have subtracted.

12 Q. Well, in your projections, though, you have
13 also not taken into account that potentially
14 she could become employed in a job that pays
15 her substantially more than that per hour,
16 correct?

17 A. I have no evidence supporting that projection,
18 so I did not make that part of my report. I
19 don't have any evidence that she could earn
20 much more than she actually is. If that's the
21 case, why wouldn't she do that.

22 Q. Well, I don't know the answer to that, Doctor,
23 but that's why I'm asking the questions.

24 MR. CRENNEY: Pardon me. I'm so
25 sorry, Mr. Johnson. Motion to strike comments
EXHIBIT "B"

1 by the attorney.

2 MR. JOHNSON: And I move to strike
3 the comments by the witness in that event also.

4 MR. SLIMAK: I join in that.

5 MR. CRENNEY: I join in that.

6 BY MR. JOHNSON:

7 Q. Dr. Kenkel, with regard to your assumptions, is
8 it correct that you have also projected that
9 over the next 30 years no job opportunities
10 will be available to Ms. Carlson that pay her
11 at a higher rate than what she's currently
12 earning at her part-time job at Red Lobster?

13 A. That's correct.

14 Q. And is it correct, Dr. Kenkel, that you have
15 projected over the next 30 years that no job
16 opportunity will be available to Ms. Carlson by
17 which she could work at full-time employment?

18 A. I have already indicated that I have projected
19 that she work half time based on her employment
20 record that was given to me. And I have
21 indicated that if the jury disagrees with that
22 projection, it's very, very easy to adjust my
23 projection to take into account full-time
24 employment.

25 Q. And your assumptions have not taken into
EXHIBIT "B"

1 account whether she may be retrained or go to
2 school or have any additional education for
3 some other job besides working as a greeter at
4 Red Lobster, correct?

5 A. That's correct.

6 Q. We know, Dr. Kenkel, that when you prepared
7 this report in this case you had Ms. Carlson's
8 deposition and you reviewed it, right?

9 A. Yes.

10 Q. We also know that at the time you prepared the
11 report even though it is not now being claimed
12 by the plaintiffs you have an entire section
13 that talks about loss of household services,
14 correct?

15 MR. CRENNEY: Objection. Irrelevant.
16 Beyond the scope of direct.

17 MR. JOHNSON: It goes to credibility.

18 BY MR. JOHNSON:

19 Q. That's correct, isn't it, sir?

20 A. Yes.

21 MR. CRENNEY: Same objection.

22 BY MR. JOHNSON:

23 Q. And isn't it true, Dr. Kenkel, that in
24 reviewing Ms. Carlson's deposition you saw
25 that, in fact, she is doing many more household
EXHIBIT "B"

1 activities now than she was performing before
2 she was injured?

3 MR. CRENNY: Objection. May I have
4 a continuing objection, Mr. Johnson, and then I
5 will not interrupt you on this line?

6 MR. JOHNSON: Surely.

7 MR. CRENNY: I do have that
8 objection. Thank you.

9 A. Yes.

10 BY MR. JOHNSON:

11 Q. Now, Dr. Kenkel, how was the decision made to
12 not include fringe benefits? Excuse me. I
13 misspoke.

14 How was the decision made to not
15 include household services?

16 A. Mr. Crenney asked me to omit any discussion of
17 household services.

18 Q. When did he make that request to you?

19 A. Several days ago I guess. I don't remember
20 exactly when.

21 Q. So at least several days ago you spoke to
22 Mr. Crenney about this case, correct?

23 A. Yes.

24 Q. How long did you and Mr. Crenney discuss it
25 several days ago?

EXHIBIT "B"

1 A. It was probably an E-mail, so there was no time
2 element on the telephone or something like
3 that.

4 Q. Did he tell you why he did not want you to go
5 into that part of your report that had to do
6 with household services?

7 MR. CRENNEY: That's objectionable
8 for a number of reasons. Do I have all points
9 objection on that Mr. --

10 MR. JOHNSON: You may have any
11 objection you want on that.

12 MR. CRENNEY: Thank you.

13 A. I think what he was saying is that the
14 information in the deposition conflicted with
15 the information in the information form. So in
16 order to simplify the situation and be
17 conservative just omit any discussion of lost
18 household services.

19 BY MR. JOHNSON:

20 Q. In other words, you understood that the reason
21 that household services was not to be gotten
22 into, even though you have it in your report,
23 was because it was not supported by the
24 plaintiff's deposition testimony, correct?

25 A. There was a discrepancy between some of the
EXHIBIT "B"

1 information that I was provided with in two
2 different forms.

3 Q. And Dr. Kenkel, the videographer is giving me
4 the high sign, so we will move to a new tape
5 and go off the record.

6 THE VIDEOGRAPHER: We are going off
7 the record. The time right now is 4:15 p.m.,
8 and that's indicated on the screen. Please
9 stand by.

10 - - - -

11 (There was a recess in the proceedings.)

12 - - - -

13 THE VIDEOGRAPHER: We are now back on
14 the video record. The time right now is 4:17
15 p.m., and that's indicated on the screen. You
16 may proceed.

17 BY MR. JOHNSON:

18 Q. Thank you. Dr. Kenkel, with regard to the
19 report that you did prepare, you did include a
20 projection with regard to fringe benefits,
21 didn't you, sir?

22 A. Yes.

23 Q. And isn't it true that the majority of the
24 fringe benefits which you have included in your
25 report constitute the employer's contribution
EXHIBIT "B"

1 to Social Security?

2 A. Yes.

3 Q. In fact, the employer's contribution to Social
4 Security bear very little relationship to any
5 benefit the worker will ultimately receive;
6 isn't that true?

7 A. No. The amount that you receive in Social
8 Security benefits depends on your 35 years of
9 best earnings that are weighted by average
10 earnings of people in the labor force during
11 different years. So for example, \$10,000 of
12 earnings in 1970 is equivalent to, say, \$35,000
13 of earnings in, let's say, 1997.

14 Q. And we all --

15 A. Some people get more back from Social Security
16 than they put in. Some people get a little bit
17 less back from Social Security.

18 For a person like Ms. Carlson who is
19 expected to live to age 82, you would expect
20 she would get more back from Social Security
21 than she put in. The problem with Social
22 Security when you read about all this stuff is
23 that most of the people that are earning the
24 incomes that go into your Social Security
25 benefits are males. And males tend to live

EXHIBIT "B"

shorter life expectancies. You only get the
Social Security benefits until you die. The
longer you live the more benefits you're going
to get. So women come out ahead.

5 Q. And we all know, don't we, sir, that in fact
6 from each of our paychecks the amounts are
7 deducted up to a certain limit with respect to
8 Social Security?

9 A. Yes.

10 Q. So in fact, you or I as an employee and
11 Ms. Carlson as an employee out of her gross pay
12 those amounts are deducted for Social Security,
13 correct?

14 A. The employer puts in 7.65 percent, and the
15 employee puts in 7.65 percent. That's a tax.
16 Taxes are not to be discussed as far as I know
17 in Pennsylvania legal cases. So the amount
18 that the employee puts into the fund as a tax
19 is irrelevant.

20 Q. So you're only talking about whatever amount
21 the employer puts in which is not related to
22 the ultimate amount the person is entitled to,
23 correct? That's based on their salary, right?

24 MR. CRENNEY: Objection.

25 A. The amount that the employer puts in is based
EXHIBIT "B"

1 on your salary of 7.65 percent.

2 BY MR. JOHNSON:

3 Q. Isn't the Social Security based on the
4 individual's salary?

5 A. Yes.

6 Q. And isn't money deducted from that salary out
7 of the employee's income?

8 A. Yes. That's a tax. It's not to be discussed
9 in Pennsylvania legal cases.

10 MR. CRENNEY: Same objection.

11 MR. JOHNSON: I have no further
12 questions. Thank you.

13 - - - -

14 RE-EXAMINATION

15 - - - -

16 BY MR. CRENNEY:

17 Q. Doctor, you don't know what the job market is
18 like in Clearfield County, correct? You're not
19 a vocational rehabilitation person; isn't that
20 right?

21 A. I'm not a vocational rehabilitation person, no.

22 But I mean, Clearfield County has a
23 higher-than-the-average unemployment rate. I
24 would expect that if you had an income of
25 \$64,000 you're far above average, and there

EXHIBIT "B"

1 aren't too many jobs that are going to pay
2 something like that in Clearfield County.

3 MR. SLIMAK: Objection. Not
4 qualified to give that opinion.

5 MR. JOHNSON: I also object beyond
6 the scope of the cross-examination.

7 MR. CRENNEY: I think it's clearly in
8 the scope of cross-examination.

9 BY MR. CRENNEY:

10 Q. Is it your testimony that it might be very
11 difficult for Paula Carlson to find another job
12 with her education and her training that pays
13 \$64,000 a year in Clearfield County?

14 MR. SLIMAK: Same objection and
15 leading.

16 A. Yes.

17 BY MR. CRENNEY:

18 Q. Do you have an opinion as to whether it would
19 be easy or difficult, likely or unlikely for
20 Paula Carlson to be able to find another job in
21 Clearfield County that pays \$64,000 a year?

22 MR. SLIMAK: Same objections. Lack
23 of qualification.

24 MR. JOHNSON: Join. No proper
25 foundation.

EXHIBIT "B"

1 BY MR. CRENNY:

2 Q. Do you have an opinion?

3 A. I think it would be very difficult for her to
4 get a job like that.

5 Q. These men talked about the individual Paula
6 Carlson, and I would like to do that for a
7 minute. You did not -- and in fact, Mr. Slimak
8 talked about her chance of getting cancer. If
9 she got cancer and died in 2 or 3 years or 5
10 years, then your calculations would not be
11 accurate? She wouldn't have all that economic
12 loss, correct?

13 A. That's correct.

14 Q. If her husband required her attention because
15 of his illness -- Mr. Johnson talked about her
16 leaving work for personal reasons. If her
17 husband's illness progressed and she was
18 required at home to take care of him and she
19 had to quit her job, then your calculations
20 would change, wouldn't they?

21 A. Yes.

22 Q. I would like to talk about the dichotomy
23 between your testimony generally. Like you
24 talked about people like Paula Carlson live to
25 82 and Paula Carlson. You had a lot of data on
EXHIBIT "B"

1 Paula, correct?

2 A. Yes.

3 Q. And you used life tables to make a projection
4 on how long she would live?

5 A. Yes.

6 Q. And in doing that were you relying on economic,
7 technical material that is scientific in
8 nature?

9 A. Yes.

10 Q. Okay. And so in that sense that is fairly
11 exact as to the general population, correct?

12 MR. SLIMAK: Objection.

13 Argumentative and leading.

14 BY MR. CRENNEY:

15 Q. How would you characterize in terms of its
16 technical and scientific efficacy your
17 testimony that testimony that Paula on
18 average -- a person like Paula would live to be
19 82?

20 A. The data show that the average female like
21 Paula Carlson at age 33 will live 48.6
22 additional years. The data also show what
23 percentage of people live longer, what
24 percentage of people live less.

25 For my projections to be valid we
EXHIBIT "B"

1 need her to live to say age 61. I have already
2 indicated that more than 92 percent of people
3 like Paula Carlson live to at least age 62.

4 The other thing that people don't
5 take into account she's got a life expectancy
6 of 48 years. Well, approximately 40 years ago
7 the life expectancy of women was like 75. Now
8 the life expectancy of women is like 83, 84.
9 Twenty-five years from now the life expectancy
10 of these women is going to be much longer. So
11 if anything we have underestimated how long
12 Paula Carlson would be expected to live because
13 of all future medical improvements.

14 Q. Doctor, you were questioned about
15 communications you and I had and the fact that
16 I suggested to you that we weren't going to
17 offer evidence on household losses, correct?

18 A. Yes.

19 Q. Okay. Your report gives her an increase. You
20 used 3 percent, correct, 3 percent in terms of
21 the consumer price index? That's the salary
22 increase you gave her, correct?

23 A. I assumed a 3 percent annual increase in salary
24 in the future.

25 Q. Okay. And in fact, it -- in fact -- and we've
EXHIBIT "B"

1 talked a lot about these lawyers want to talk
2 about the individual Paula. Between 2001 and
3 2006 she had an 11 percent increase, correct?

4 A. 11 percent per year.

5 Q. Per year?

6 MR. SLIMAK: Objection to leading.

7 A. Her income went up 69 percent, which amounts to
8 about 11 percent per year.

9 MR. SLIMAK: Object to the fact of
10 leading and continuing leading as well as now
11 we're redoing and rehashing the direct. It's
12 inappropriate. Move to strike.

13 MR. CRENNY: I will reform the
14 leading part. I think the other is right on
15 the money on redirect.

16 MR. SLIMAK: You're trying to get the
17 last words on all the same thing you already
18 had.

25 And you can have a -- well, never mind. That's
EXHIBIT "B"

1 the purpose.

2 MR. SLIMAK: You can't go back and
3 redo your whole direct or even portions of your
4 direct that you've already covered at length.

5 BY MR. CRENNEY:

6 Q. Professor, okay, did I call -- and again,
7 Mr. Johnson talked to you about communications
8 we had. Did I call you and complain that you
9 didn't use 11 percent instead of 3 percent?

10 A. No, sir.

11 Q. Okay. When we met for 10 minutes here before
12 you testified, did I complain about that or
13 suggest that you use 11 percent since we were
14 making some changes?

15 A. No, sir.

16 Q. All right. Counsel has pointed out that you
17 deal with lots of lawyers and testify in lots
18 of cases. Do some lawyers try to squeeze every
19 penny that's possible if you can find any
20 foundation for it? They try to squeeze you or
21 try to influence you. Do they try that?

22 MR. JOHNSON: Objection.

23 BY MR. CRENNEY:

24 Q. Does that sometimes happen?

25 MR. SLIMAK: Objection to form and
EXHIBIT "B"

1 argumentative.

2 A. Yes.

3 BY MR. CRENNEY:

4 Q. Okay. Do you resist that?

5 A. Yes.

6 Q. Okay. Did I try that in this case?

7 A. No, sir.

8 Q. Okay. Did I instruct you to be extremely
9 conservative in the approach you took and the
10 numbers you gave to the jury?

11 MR. SLIMAK: Objection. Leading.

12 A. Actually you didn't give me any direction
13 whether you wanted me to be conservative or
14 aggressive or whatever. But after we talked or
15 whatever after I guess my deposition was set up
16 or whatever, you indicated that you wanted to
17 remove any discussion of household services.

18 And since then I have talked to you
19 about that the wage rate I projected was 3
20 percent whereas her actual history was 11
21 percent raises. I explained that I used an
22 interest rate of 4-and-a-half percent to assume
23 growth of a potential damage award where at the
24 present time the interest rate is like 3.8
25 percent. And I indicated that all of my
EXHIBIT "B"

1 numbers if you did the report over today all of
2 the numbers would be higher, and you said we're
3 going to stay with the report as written.

4 BY MR. CRENNEY:

5 Q. How would you characterize it, as conservative
6 or aggressive?

7 A. Conservative.

8 Q. Doctor, you were asked questions at length on
9 cross-examination about Paula Carlson's ability
10 or lack thereof to return to the job and the
11 willingness of the hospital to make
12 accommodations for her. That just happened so
13 you remember that, don't you?

14 A. Yes, sir.

15 Q. Okay. Do you know is there data on how
16 employers feel about employees when they are
17 sued in third-party cases? Are they -- do they
18 look less favorably on employees when they're
19 sued?

20 MR. JOHNSON: Objection.

21 A. I haven't seen any studies discussing that
22 issue. I mean, it's pretty reasonable to
23 assume that an employer would frown on any
24 employee that sued them.

25 MR. JOHNSON: Move to strike. No
EXHIBIT "B"

1 proper foundation.

2 BY MR. CRENNEY:

3 Q. Do you know what the hospital's reaction has
4 been to this lawsuit?

5 MR. JOHNSON: Objection.

6 A. No, sir.

7 BY MR. CRENNEY:

8 Q. Do you know who Ray Graeca is?

9 A. No, sir.

10 Q. Do you know who Ray Graeca's son is?

11 A. No, sir.

12 Q. Do you know if Ray Graeca is the head of the
13 hospital, and he was afraid that his son might
14 be sued so he directed that this offer be made
15 to Paula Carlson?

16 MR. JOHNSON: Objection.

17 A. No, sir.

18 MR. CRENNEY: I will withdraw the
19 question for today.

20 BY MR. CRENNEY:

21 Q. Doctor, what is an employee at will?

22 MR. JOHNSON: Objection.

23 A. As I understand it, that's an employee that can
24 be terminated at the wish of the employer.

25 MR. SLIMAK: Objection.

EXHIBIT "B"

1 BY MR. CRENNEY:

2 Q. For any reason?

3 MR. SLIMAK: Objection. Beyond the
4 scope of direct and now we're leading again.

5 BY MR. CRENNEY:

6 Q. Do you know what --

7 MR. SLIMAK: Objection to the scope
8 of the cross. Sorry.

9 MR. CRENNEY: I think this is right
10 on the money for the cross that was done.

11 MR. SLIMAK: You always do.

12 MR. CRENNEY: Well, I do. You asked
13 interminable questions on whether Paula could
14 return to work and count on employment for 33
15 years. That's why I'm asking this question.

16 BY MR. CRENNEY:

17 Q. Do you know what an employee at will is?

18 MR. SLIMAK: Objection.

19 A. As I understand it's an employee who can be
20 terminated at the wishes of the employer.

21 BY MR. CRENNEY:

22 Q. Do you know whether Paula Carlson is in the
23 union or not?

24 A. I have assumed that she's not in a union.

25 Q. Do you know if she is an employee at will?
EXHIBIT "B"

1 A. Presumably she would be an employee at will if
2 she went back.

3 Q. Do you know whether the aforementioned Rose
4 Campbell described her as an employee at will?

5 A. No.

6 Q. And are the opinions you have rendered here to
7 a reasonable degree of scientific, technical,
8 economic certainty?

9 A. Yes, sir.

10 MR. CRENNEY: Thank you, sir.

11 - - - -

12 RE-EXAMINATION

13 - - - -

14 BY MR. SLIMAK:

15 Q. Mr. Kenkel, did you change what you had
16 expected to testify to here today?

17 MR. CRENNEY: Excuse me, Mr. Slimak.
18 You need the mike.

19 MR. SLIMAK: Thank you.

20 BY MR. SLIMAK:

21 Q. Mr. Kenkel, did you change what you had
22 expected to testify to here today because
23 Mr. Crenney who hired you told you that he
24 wanted to change what you were planning to
25 testify to?

EXHIBIT "B"

1 MR. CRENNY: Object to form of the
2 question.

3 A. He asked me to omit any discussion of lost
4 household services.

5 BY MR. SLIMAK:

6 Q. My question is did Mr. Crenney ask you to
7 change what you had expected to testify to here
8 today?

9 MR. CRENNY: Objection. Asked and
10 answered.

11 A. I had no idea what I expected to testify to.

12 BY MR. SLIMAK:

13 Q. Did Mr. -- did you have some expectations of
14 what you thought you were going to be
15 testifying to?

16 A. I assumed that I would testify to the data
17 that's in my economic report.

18 Q. And did Mr. Crenney tell you to not testify to
19 certain aspects of the data in your report?

20 MR. CRENNY: Objection.

21 A. He asked me --

22 MR. CRENNY: Objection to the form.
23 Other than -- if you're going to do that, ask
24 him other than taking out household services
25 because there was nothing else.

EXHIBIT "B"

1 BY MR. SLIMAK:

2 Q. You have to answer the question.

3 A. He didn't tell me. He asked me to omit any
4 discussion of household services. And I said
5 in order to be conservative, fine, I will do
6 that.

7 Q. Did you have a discussion with Mr. Crenney
8 about whether or not for today's deposition you
9 would not make any reference to Paula Carlson's
10 deposition transcript which is in your file of
11 materials?

12 A. No. He never mentioned it at all. The
13 deposition was at the bottom of my pile. He
14 never mentioned that I should -- should or
15 should not discuss it. He never said a word
16 about it.

17 Q. The report that you prepared was it prepared
18 based on Paula Carlson's actual testimony in
19 her deposition, or was your report that you
20 prepared based on this document on top which is
21 the information provided to you by Paula
22 Carlson's attorney in summary form?

23 A. My report was based on -- the discussion of
24 household services was based on the information
25 in this form.

EXHIBIT "B"

1 Q. Who provided you that form?

2 A. It says the form was completed by Paula Carlson
3 and Thomas Crenney & Associates.

4 Q. Did they sign it?

5 A. It's typed in.

6 Q. Did you find out today that -- or within the
7 last few days that there's inconsistencies
8 between that information provided in that
9 document which you said was provided by Paula
10 Carlson and in her deposition testimony?

11 A. No. I had both of these.

12 Q. What did you say earlier that you find -- found
13 just out recently was inconsistent? Was there
14 inconsistencies between her deposition
15 testimony and this document that was provided
16 to you?

17 MR. CRENNEY: I'm assuming I have a
18 continuing objection on all of this; is that
19 correct?

20 MR. SLIMAK: Yes.

21 A. In the information form, the amount of time
22 doing lost household services was described,
23 which is different than what she said in her
24 deposition.

25 BY MR. SLIMAK:

EXHIBIT "B"

1 Q. My question to you is did you find that there
2 was testimony of Ms. Carlson in her deposition
3 which was inconsistent with information that
4 Ms. Carlson provided to you in this form that
5 you have?

6 A. The data are to a certain extent inconsistent,
7 yes.

8 MR. SLIMAK: That's all the questions
9 I have.

10 - - - -

11 RE-EXAMINATION

12 - - - -

13 BY MR. JOHNSON:

14 Q. Dr. Kenkel, with respect to the wage increase
15 that you referenced, what time period were you
16 talking about when you mentioned an 11 percent
17 increase?

18 A. 2001 through 2006.

19 Q. So in fact, you're talking about a five-year
20 period that in toto amounts to an 11 percent
21 increase?

22 A. No.

23 Q. You're not talking about 11 percent annually?

24 A. In 2006 her wage rate would be \$32.87. In 2001
25 her actual wage rate was \$19.45. That's a 69
EXHIBIT "B"

1 percent increase in a period of five years.

2 Q. Dr. Kenkel, aren't you really manipulating
3 numbers there? Because if you start with 2000
4 and 2001 she had 2.7 increase that year, didn't
5 she?

6 A. I am starting in 2001.

7 Q. And between 2001 and 2002 she had a 7 percent
8 increase, correct?

9 A. Approximately.

10 Q. And then a 4 percent increase the next year?

11 A. No. In 2003 her income was \$29.88 an hour.
12 And in 2002 it was \$20.81 an hour. That's a 43
13 percent increase in one year.

14 Q. Okay. And so after that certainly she did not
15 have that type of projection that you've used
16 to calculate the 11 percent, did she?

17 A. The 11 percent is based on a five-year average.
18 Just in the last year though her increase was
19 over 5.1 percent. I used a 3 percent raise.
20 If I used a 5 percent raise, all of my
21 projections would be much, much higher.

22 Q. And if in a person's work history they, in
23 fact, get a promotion so that they are into a
24 higher work category, that does not necessarily
25 mean that that's going to continue into the
EXHIBIT "B"

1 future, does it, sir?

2 A. The rate of increase might change if you don't
3 get another promotion. I would agree with
4 that. The wage rate is not going to go down.
5 That's for sure.

6 MR. JOHNSON: Thank you. I have no
7 further questions. Thank you.

8 MR. CRENNEY: I have none. Thank
9 you. Thank you, Professor.

10 THE VIDEOGRAPHER: With there being
11 no further questions, the deposition is
12 concluded. The time right now is 4:38 p.m.

13 - - - -

14 (Whereupon, the following was held
15 off the videotape record.)

16 - - - -

17 MR. CRENNEY: Mr. Slimak, I would be
18 pleased to call you on Wednesday to try to do
19 something to make sure the judge doesn't have
20 to do too much because I'm sure we can agree --
21 reach an agreement on many of these objections,
22 and I would like to have the opportunity to do
23 that.

24 Does that sound all right, or is
25 there a better day for you?

EXHIBIT "B"

1 MR. SLIMAK: I don't have my calendar
2 with me. But I have to review the transcript.
3 It is common that people will review these
4 transcripts and decide some objections will be
5 pursued and some will not be. And that would
6 be the normal course of what I would expect.
7 And so therefore we'll have to regroup, and we
8 will decide in the limited time that we have
9 before Friday to have all this filed of what's
10 to be argued, that type of thing. So we have
11 to wait until we get the transcript first
12 before we can decide anything.

13 MR. CRENNEY: Well, obviously we need
14 the transcript to try to do this. All I'm
15 saying to you is I would like to call and try
16 to do it. Do you want to try to do that?

17 MR. SLIMAK: What I would prefer
18 because it makes it easier and it makes it much
19 more efficient is that if you send me those
20 objections that you actually intend to argue
21 then we can do that effectively.

22 MR. CRENNEY: My experience is that
23 people get on the phone and do it together and
24 that way it's not one sided. Is that your
25 experience, Mr. Johnson?

EXHIBIT "B"

1 MR. SLIMAK: I don't expect it to be
2 one sided, sir.

3 MR. CRENNEY: That's what I'm saying.
4 Can we get on the phone and do this? Can we
5 get on the phone and try to do this, sir?

6 MR. SLIMAK: I'm not sure that I have
7 multiple hours to discuss each and every
8 objection that you made to the questions on the
9 phone for several hours when we have such a
10 limited time, as you know, to prepare our page
11 and line transcript issues for the judge to
12 rule on if we don't agree.

13 I think it's far more effective and
14 efficient for us to outline those objections
15 that we actually intend to pursue and not to
16 pursue and then we regroup and decide whether
17 or not the other side will concede those or
18 not. That is the way it's been routinely done.
19 It is very efficient and effective to resolve
20 the things because then we don't have to
21 present to the Court issues that are
22 inconsequential.

23 MR. CRENNEY: I think it's too bad
24 that you won't get on the phone with me to try
25 to do this.

EXHIBIT "B"

1 MR. SLIMAK: I'm asking you to get on
2 the phone after we set forth those objections
3 that we really want to discuss so that I can be
4 prepared to know which ones we need to focus on
5 versus which ones we don't need to focus on.
6 And I just submit that that I think is a very
7 efficient way to get on the phone for us to
8 discuss these things because I think to the
9 extent that we can work them out before they
10 have to all be presented to the Court that is
11 fine.

12 MR. JOHNSON: For my part as far as
13 I'm concerned, I'm willing to go either way and
14 work it out however anybody wants to.

15 MR. CRENNY: I will give you a call
16 as soon as we get the transcript to try to set
17 something up, Mr. Johnson. Is that all right?

18 MR. JOHNSON: That's fine.

19 MR. CRENNEY: Thanks.

20 - - - -

21 (The proceedings were concluded at 4:42 p.m.)

22 - - - -

23

24

35

1

EXHIBIT "B"

1 COMMONWEALTH OF PENNSYLVANIA) CERTIFICATE

2 COUNTY OF ALLEGHENY) SS:

3 I, Kristin Lytle, RPR, a Court Reporter and
4 Notary Public in and for the Commonwealth of
5 Pennsylvania, do hereby certify that the witness,
6 JAMES KENKEL, Ph.D., was by me first duly sworn to
7 testify to the truth, the whole truth, and nothing
8 but the truth; that the foregoing deposition was
9 taken at the time and place stated herein; and that
10 the said deposition was recorded stenographically by
11 me and then reduced to printing under my direction,
12 and constitutes a true record of the testimony given
13 by said witness.

14 I further certify that I am not a relative or
15 employee of any of the parties, or a relative or
16 employee of either counsel, and that I am in no way
17 interested directly or indirectly in this action.

18 IN WITNESS WHEREOF, I have hereunto set my hand
19 and affixed my seal of office this 22nd day of
20 January, 2008.

21

22

23

24 Notary Public

25

EXHIBIT "B"

1 COMMONWEALTH OF PENNSYLVANIA) E R R A T A
2 COUNTY OF ALLEGHENY) S H E E T

2

3 I, JAMES KENKEL, Ph.D., have read the foregoing pages
4 of my deposition given on January 21, 2008, and wish
5 to make the following, if any, amendments, additions,
6 deletions or corrections:

7 5 Page/Line Should Read Reason for Change

8

9

10

11

12

13

14

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18

19

20

21 In all other respects, the transcript is true and
22 correct.

23

JAMES KENKEL, Ph.D.

24

25 Subscribed and sworn to before me this
26 _____ day of _____, 20 _____.
27 _____

28 Notary Public

29 AKF Reference No. KL04947

EXHIBIT "B"

THO~~O~~S E. CRENNEY & ASSOCIA~~O~~S, LLC

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January 24 2008

Via Facsimile and U.S. Mail

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Re: Paula Carlson, et al. vs. Jerjis T. Alajaji, M.D., et al.
Docket No. 2006 – 563 GD (Clearfield County)
Our File No. 2895.01

Gentlemen:

Listed below are my proposals for removal of sections of Dr. Kenkel's testimony and my withdrawals of objections. Please note the references are from the emailed version of the transcript. As I stated in my previous correspondence, I continue to believe that the best way to accomplish our goals which would be to save the Court's time is to work together in good faith over the telephone. I note again that I have not heard from anyone regarding voluntary withdrawals or proposals for removals. This, of course, makes it difficult for me in preparing my submissions to the Court.

1. Proposed removal page 29, line 25 and page 30, lines 1 – 16, with the caveat that discussions of household services would not be included in anything that's presented to the jury at any place in the deposition, since he's not going to give a number for it
2. Remove page 53, lines 10 – 25
3. Withdraw page 60, line 21
4. Withdraw page 61, lines 8 & 9
5. Withdraw page 61, line 17

All Counsel
January 24, 2008
Page 2

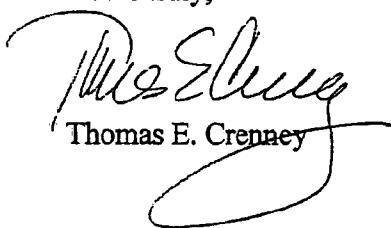
6. Withdraw page 63, lines 4 – 6,
7. Withdraw page 63, line 12
8. Withdraw page 63, line 23
9. Remove page 65, lines 18 – 25
10. Remove all of page 66
11. Remove page 67, lines 1 – 4
12. Withdraw objection page 67, lines 15 & 16
13. Remove page 67, 17 – 25
14. Remove all of page 68
15. Proposed removal page 69, lines 17 – 25
16. Remove all of page 70
17. Remove page 71, lines 1 – 19
18. Withdraw page 72, line 4
19. Withdraw page 72, line 12
20. Withdraw page 75, line 2
21. Withdraw page 79, line 23
22. Withdraw page 81, line 3
23. Withdraw page 81, line 11
24. Withdraw page 84, line 7
25. Withdraw page 84, line 20
26. Withdraw page 89, lines 23 – 25
27. Remove page 90, line 1

All Counsel
January 24, 2008
Page 3

28. Withdraw page 95, line 20
29. Strike page 109, line 20 beginning "if that's the case why wouldn't she do that" throughout the rest of the page
30. Strike page 110, lines 1 – 5
31. Remove objections page 113, lines 7 – 12
32. Withdraw page 116, line 24
33. Withdraw page 117, line 10
34. Proposed removal page 126, lines 12 – 19

Thank you for your kind attention to this matter.

Yours truly,



Thomas E. Crenney

TEC/bjw

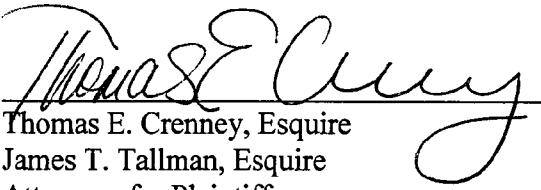
CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing **BRIEF IN SUPPORT OF PLAINTIFFS' OBJECTIONS TO DEFENDANTS' CROSS-EXAMINATION OF JAMES KENKEL, Ph.D.** was served by First Class Mail, postage prepaid on the 25th day of January, 2008, as follows:

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