

IN THE COURT OF COMMON PLEAS
OF CUYAHOGA COUNTY, OHIO

MARY LOU ZIMMERMAN,

et al.,

Plaintiffs,

vs.

Case No.

THE CLEVELAND CLINIC

399411

FOUNDATION, et al.

Defendants.

- - - - -
Deposition of JOHN F. BURKE, JR.,
Ph.D., called for examination under the
statute, taken before me, Kimberly K.
Hargis, RPR, a Notary Public in and for
the State of Ohio, at the offices of
Burke & Rosen 2800 Euclid Avenue, Suite
300, Cleveland, Ohio, on Wednesday, May
8, 2002 at 3:10: o'clock p.m.
- - - - -



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1 APPEARANCES:
2
3 On behalf of the Plaintiffs:
4 Linton & Hirshman, by
5 ROBERT LINTON, ESQ.
6 700 West St. Clair Avenue
7 Suite 300
8 Cleveland, Ohio 44114
9 (216) 771-5800
10
11 On behalf of the Defendants:
12 Reminger & Reminger Co.,
13 LPA, by
14 JAMES MALONE, ESQ.
15 113 St. Clair Avenue, N.E.
16 7th Floor
17 Cleveland, Ohio 44114
18 (216) 687-1311
19 ----
20
21
22
23
24
25

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1 now at all?
2 A. I am.
3 Q. Where are you teaching now?
4 A. John Carroll.
5 Q. Economics?
6 A. Yes.
7 Q. How long have you been on at
8 John Carroll?
9 A. About three years. I'm an
10 adjunct professor there. Harvey Rosen
11 and I team teach one course a semester.
12 Q. You split a class up?
13 A. Yes.
14 Q. Graduate or undergraduate?
15 A. Undergraduate this semester.
16 They've offered us graduate courses, but
17 we haven't worked out the scheduling.
18 Q. Have you got a current CV?
19 A. Yes, although I haven't
20 updated my CV in a long time, in about
21 a decade, but there it is. Let me make
22 a couple changes on there.
23 Q. Here. Okay. Go ahead.
24 A. I retired from Cleveland
25 State in 1994, and then in 1994 I was

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1 JOHN F. BURKE, JR., of lawful
2 age, called for examination, as provided
3 by the Ohio Rules of Civil Procedure,
4 being by me first duly sworn, as
5 hereinafter certified, deposed and said
6 as follows:
7 EXAMINATION OF
8 JOHN F. BURKE, JR.
9 BY-MR. MALONE:
10 Q. Give us your name and
11 professional address please.
12 A. Yes, sir. My name is John
13 F. Burke, Junior. My professional
14 address is 2800 Euclid Avenue,
15 Cleveland, Ohio.
16 Q. And you are a principal in
17 an organization known as Burke & Rosen?
18 A. Yes, sir.
19 Q. What is the nature of the
20 business of Burke & Rosen?
21 A. We're economic consultants
22 and most of the time when the phone
23 rings it's somebody associated with the
24 law that's calling.
25 Q. Right. And are you teaching

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1 promoted to associate professor
2 emeritus.
3 Q. You've got to update this?
4 A. Well, the dean made me do it
5 once a year, but since I retired I
6 don't have to. In 1999 we became
7 adjunct professors at John Carroll
8 University.
9 Q. And you're an expert, a
10 damages expert, if I may, for the
11 plaintiff in the matter of Mary Lou
12 Zimmerman against my client, the
13 Cleveland Clinic?
14 A. Yes, sir.
15 Q. Okay. Can I keep --
16 A. That's yours. That's your
17 copy, yes, sir.
18 Q. You have made some
19 handwritten changes on it indicating --
20 A. I have.
21 Q. -- what you just told us
22 about being at John Carroll?
23 A. Yes, sir.
24 Q. Okay. When were you
25 retained? You have your file in front



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1 of me, and I've sort of opened up the
2 folder. I don't want anything to get
3 misplaced. Tell me when you got started
4 on this matter?
5 A. I would think it would be in
6 December of 2001.
7 Q. Okay. Your report which you
8 have in front of you dated December
9 28th, and as I look at it -- maybe
10 that's not your report, I'm sorry.
11 That's your fee bill, okay.
12 You did a report on
13 December 28th, 2001. So am I correct
14 that you wrote them an acknowledgment
15 letter setting the fee and you completed
16 your report on the same day?
17 A. Yes, this is a form letter.
18 Q. I understand.
19 A. I just sent it out that day.
20 Q. Do you know when they sent
21 stuff to you?
22 A. I have a fax here that's
23 dated December 27th.
24 Q. 10:00 -- or no, 6:00 at
25 night.

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1 A. 18:00, that's 6:00 at night.
2 And this probably came along with the
3 same fax. So I probably got most of
4 this information in December 27th,
5 December 28th, might have been a phone
6 call that preceded that.
7 Q. This packet here dated with
8 a fax transmittal time on it
9 12/27/2001 --
10 MR. MALONE: John is page
11 1 missing?
12 A. I think page 1 may be this
13 page. They have the same date and time
14 on it.
15 Q. Yeah, okay. So we've got a
16 full packet here. This would appear to
17 be some sort of a life care plan?
18 A. It is.
19 Q. And this would be
20 consistent --
21 A. Shouldn't there be --
22 Q. There's a substantive report
23 and some stuff that goes behind it.
24 Let's look here. This would be it
25 looks like a 13-page narrative report by

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1 Tracy Wingate where it's signed, and
2 then there's some other stuff behind it,
3 fair enough?
4 A. Yes.
5 Q. Okay. And that 13-page
6 report plus what do you want to call
7 these?
8 A. Grids.
9 Q. Grids. Plus grids
10 constituting -- wait a minute. I'm
11 sorry. We've got something out of
12 order.
13 MR. MALONE: Off the
14 record a second.
15 (Discussion off record.)
16 BY MR. MALONE:
17 Q. In addition to the 13 pages
18 that we believe is the Tracy Wingate
19 narrative report, we have what would be
20 I think 23 pages of grids, and I get 23
21 by starting with page 6 and ending with
22 page 28. That works out to 23 pages;
23 is that right?
24 A. I think so.
25 Q. You're better at math than I

Page 9

1 am.
2 A. There's 22 between 6 and 28,
3 but you've got to count both ends.
4 Q. So that makes it 28 --
5 A. 23.
6 Q. 23, okay. And that stuff
7 came to you at about 6:00 at night on
8 the 27th of December, and in next day's
9 mail you were able to generate your
10 report of that date, December 28th,
11 consisting of seven pages and a cover
12 letter; is that about right?
13 A. Yes, sir.
14 Q. Did you write any other
15 reports or any other analyses of the
16 Mary Lou Zimmerman situation?
17 A. I did not.
18 Q. Okay. Anything come to your
19 attention of late to cause you to want
20 to make any amendments or changes in the
21 substance of what you have written here
22 in this case?
23 A. No, sir, not in the
24 substance of what I've written.
25 Q. Okay. You say that with a



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1 question mark.
2 A. I do say that with a
3 question mark. Mr. Linton has informed
4 me possibly, I don't have an assignment
5 yet, but there may be an assignment
6 coming in terms of services and the
7 husband's loss. He told me this
8 afternoon that the husband may have to
9 retire early and leave his work and he
10 may ask me to do something on that, but
11 not yet.
12 Q. You've done nothing yet?
13 MR. LINTON: Jim, I don't
14 intend to do that assuming this case
15 goes to trial next case week.
16 MR. MALONE: I
17 understand.
18 Q. So what else have we got in
19 the folder here?
20 Oh, I'm sorry, before I
21 forget, I have a check for you.
22 A. You're a good man.
23 Q. If I hadn't seen the letter
24 where Mr. Linton sent you money, I
25 wouldn't have thought of it. I think

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1 obviously asking his office.
2 Q. John, I'm pretty sure it is
3 on military time.
4 A. Is it on military time?
5 Q. Well, that one would tell me
6 that it is. Here's one, a transmission
7 record dated 12/27.
8 A. That is military time.
9 Q. It's got to be military
10 time, doesn't it?
11 A. Yes.
12 Q. And this is one dated April
13 10th, '02?
14 A. That looks like military
15 time.
16 Q. Dated 21:42. What was
17 transmitted and to whom on December 27th
18 '01 at 9:21 p.m.?
19 A. I don't know for sure, but I
20 would guess it was this letter.
21 Q. The letter dated December
22 28th?
23 A. No, that's not. I don't
24 know what was transmitted then.
25 Q. What was transmitted December

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1 that's a check from my firm for \$1,000.
2 Do you want to open it and make sure
3 it's in there?
4 A. It is. Thank you.
5 Q. Okay. Is it a firm check?
6 You don't mind holding it until Monday,
7 do you, before depositing it? No, I'm
8 kidding. Things are tough, but we
9 manage to get our checks to clear, I
10 think. Okay.
11 This looks like a
12 transmission, a fax transmission that's
13 timed December 28th. Is that 3:00 in
14 the morning?
15 A. That does say 3 am,
16 doesn't it?
17 Q. Is that right?
18 A. That's what it says. It
19 says 3:21 in the morning.
20 Q. Is this a confirmation of
21 something you sent out?
22 A. I don't know how my -- I
23 don't know if my fax is on military
24 time or not.
25 MR. COWAN: Dr. Burke is

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1 28th, '01 at 3:21 am?
2 A. Well, I think the timing is
3 wrong. I think the clock was probably
4 off.
5 Q. You don't work 24 hours a
6 day?
7 A. I do not.
8 Q. What do you think that is?
9 A. I think that the clock was
10 off.
11 Q. What do you think was sent
12 and to whom?
13 A. I think it could have been
14 this cover letter, excuse me, this
15 standard letter.
16 Q. Yeah.
17 A. Could have been that or it
18 could have been the report, and it was
19 sent to 771-5803.
20 Q. Do you know who that is?
21 A. 771-5803 is Robert Linton.
22 Q. Okay. So you got two faxes
23 going to Mr. Linton -- there it is,
24 right. I see that. It's also on his
25 stationery. You send him a fax on



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<p style="text-align: right;">Page 14</p> <p>1 December 28th at some time?</p> <p>2 A. Yes.</p> <p>3 Q. But we doubt that it's 3:21</p> <p>4 in the morning?</p> <p>5 A. Yes.</p> <p>6 Q. Fair enough. And another</p> <p>7 one is sent April 10th at 9:00 at</p> <p>8 night?</p> <p>9 A. Right. That was just last</p> <p>10 month.</p> <p>11 Q. Do you know what that was?</p> <p>12 A. No, I don't know, but maybe</p> <p>13 I can match it up with something. No,</p> <p>14 I don't know what it was. But here are</p> <p>15 the cover sheets for a lot of that.</p> <p>16 12/27 might go with that. No, I don't</p> <p>17 know what was sent then.</p> <p>18 Q. All right. Other than your</p> <p>19 report and an acknowledgment letter and</p> <p>20 a bill, did you send anything to Mr.</p> <p>21 Linton via fax?</p> <p>22 A. I don't believe so.</p> <p>23 Q. Did you send him anything by</p> <p>24 any other means?</p> <p>25 A. The report, which might have</p>	<p style="text-align: right;">Page 16</p> <p>1 estimates on this patient are premised</p> <p>2 on a life expectancy. Can you tell me</p> <p>3 the basis of that life expectancy</p> <p>4 estimation?</p> <p>5 A. Yes, sir. On page 2 of the</p> <p>6 report that is attached it gives a life</p> <p>7 expectancy measured from January 1st,</p> <p>8 2002, for 62.1-year-old American female</p> <p>9 to the age of 83.6 years, and the</p> <p>10 source of that is located in the</p> <p>11 footnote at the bottom.</p> <p>12 Q. Now, you don't know whether</p> <p>13 Mrs. Zimmerman is going to live to be</p> <p>14 83.6?</p> <p>15 A. I do not know that with</p> <p>16 absolute certainty, no, sir.</p> <p>17 Q. And what you're really</p> <p>18 telling us here is that a statistical</p> <p>19 study of all people of her particular</p> <p>20 subset, if you will, tend to work out</p> <p>21 to about 83.6 years of age --</p> <p>22 A. That's --</p> <p>23 Q. -- when they die?</p> <p>24 A. That's what I'm telling you,</p> <p>25 yes, sir.</p>
<p style="text-align: right;">Page 15</p> <p>1 gone by fax, might have also been sent</p> <p>2 in overnight mail. Let me see if</p> <p>3 there's anything to indicate. No,</p> <p>4 there's nothing to indicate that I also</p> <p>5 sent it by mail. However, usually the</p> <p>6 original has a different color.</p> <p>7 Q. More regular stationery?</p> <p>8 A. Yeah, so I wouldn't be</p> <p>9 surprised if I faxed this to Mr. Linton</p> <p>10 and then also put it in the mail to</p> <p>11 him.</p> <p>12 Q. Fair enough. Okay. You got</p> <p>13 your report in front of you?</p> <p>14 A. I do.</p> <p>15 Q. I'm going to ask the court</p> <p>16 reporter to make a copy of that whole</p> <p>17 pile, but we don't need to do that just</p> <p>18 yet, okay?</p> <p>19 In your report, and I'm</p> <p>20 looking at the substantive cover sheet</p> <p>21 dated December 28th, 2001, addressed</p> <p>22 Dear Attorney Linton, you have that in</p> <p>23 front of you?</p> <p>24 A. I do.</p> <p>25 Q. You indicate that your</p>	<p style="text-align: right;">Page 17</p> <p>1 Q. And actually that number</p> <p>2 changes from time to time as health</p> <p>3 care, nutrition and safety factors</p> <p>4 improve?</p> <p>5 A. Yes, sir.</p> <p>6 Q. But a person with a life</p> <p>7 expectancy of hypothetically 25 years</p> <p>8 who walks in front of a moving bus</p> <p>9 statistically has that same life</p> <p>10 expectancy right up until the minute the</p> <p>11 bus hits her and kills her, doesn't she?</p> <p>12 A. If the bus is bearing down</p> <p>13 on her at the time you're asking me to</p> <p>14 make the estimate, I'd say she's got a</p> <p>15 life expectancy of a second.</p> <p>16 Q. But that's realistic; that's</p> <p>17 not statistical, is it?</p> <p>18 A. Right. Before she crosses</p> <p>19 the street, this 62-year-old American</p> <p>20 Caucasian female would have the same</p> <p>21 life expectancy of every other similar</p> <p>22 situated person.</p> <p>23 Q. Right. And indeed as she is</p> <p>24 living she has that statistical life</p> <p>25 expectancy because we don't know what</p>



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1 the real life expectancy is; we don't
2 know what else to say about it, fair
3 enough?
4 A. Correct, so this is the best
5 scientific knowledge.
6 Q. Doctors might be able to
7 give us some insights on the life
8 expectancy based on health criteria?
9 A. They might.
10 Q. And that number --
11 A. Again, they might not. They
12 might.
13 Q. And the database that comes
14 up with the number that you cite of
15 83.6 consists of people that die at 60
16 and people that die at 90; wouldn't that
17 be so? And they're all amalgamized
18 together?
19 A. When measured from 58, it
20 would include that group.
21 Q. Sure.
22 A. That's a definition of a
23 life expectancy.
24 Q. So this doesn't really tell
25 us that Mrs. Zimmerman is going to live

Page 20

1 19, 2001?
2 A. No, sir, except what an
3 economist would add to the report such
4 as life expectancy and growth rates and
5 discount rates.
6 Q. What I meant by my question
7 was whether you have ever met or
8 interviewed Tracy Wingate?
9 A. I've not.
10 Q. Would you know her if she
11 walked in the room?
12 A. I would not.
13 Q. Okay. Have you ever met or
14 interviewed --
15 A. I may have spoken to her on
16 the phone. I don't know.
17 Q. On this case?
18 A. I don't remember speaking to
19 her on the phone in this case. I've
20 seen her reports before, and sometimes
21 when there's a question I'll call the
22 life care planner.
23 Q. Did you have a question
24 about any of this?
25 A. I don't think so, so I don't

Page 19

1 until 83.6; it tells us that most people
2 in her situation would tend to live to
3 83.6?
4 A. Yes, sir. Only two people
5 really know when you're going to die.
6 One is God.
7 Q. Yeah.
8 A. The other is the Mafia.
9 Q. See, well, I never thought
10 about God as a person and you don't
11 either, do you?
12 A. I was Jesuit trained.
13 Q. I know, but you know God is
14 not a person. You were Jesuit trained
15 and I belong to a Jesuit parish. We
16 can talk about that stuff some other
17 time.
18 Q. Okay. Your report is
19 really an analysis of the costs, present
20 and future, associated with a life care
21 plan of a Tracy Wingate, is it not?
22 A. You are correct.
23 Q. Have you done other work on
24 this file apart from reviewing the data
25 in Tracy Wingate's report of December

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1 remember speaking to her.
2 Q. You're not going to testify
3 you did speak to her. You simply don't
4 know?
5 A. Correct.
6 Q. You're a pretty good record
7 keeper. If you had, you would have --
8 A. No, I'm not a record keeper.
9 I'm a lousy record keeper.
10 Q. No?
11 A. We've already established
12 that. I didn't know what time those
13 faxes went out or who they went to. So
14 I'm not a good record keeper. But I
15 don't remember talking to her in this
16 case, and I'm not going to testify that
17 I talked to her in this case.
18 Q. Do you have any information
19 giving you insight into the status of
20 Mrs. Zimmerman before she had surgery at
21 the Cleveland Clinic for her OCD?
22 A. I have a little oral
23 information that I received from Mr.
24 Linton.
25 Q. Other than that do you have



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1 anything?
2 A. No.
3 Q. What did he tell you?
4 A. He told me that she had,
5 what did he say, obsessive compulsive
6 traits.
7 Q. Disorder?
8 A. Disorder, yes.
9 Q. OCD is an initial or is an
10 acronym that we can use.
11 A. Okay. I think that's one he
12 used but it's a new term to me because
13 I usually add anal retentive on the end
14 of that.
15 Q. I think psychiatrists might
16 take issue with that.
17 A. Probably would. He told me
18 that, and he therefore told me that she
19 wasn't real good at performing services
20 around the house and that she was not
21 an active member of the work force.
22 Q. Do you know what OCD is?
23 A. You just kind of told me.
24 It was obsessive compulsive disorder.
25 Q. Do you know what that means

Page 24

1 Q. That's the item of service
2 under there, that's scheduled to begin
3 in 2002; is that right?
4 A. Yes, sir.
5 Q. Do you know whether that was
6 done before 2002?
7 A. Do not.
8 Q. Do you know why it was
9 supposed to start in 2002 and not four
10 years earlier when she had her surgery?
11 A. I do not. I assume that's
12 when the life care plan set.
13 Q. Go to the next page.
14 A. Yes.
15 Q. These items all are scheduled
16 to begin in 2002. In fact, I think if
17 you go through the whole packet you're
18 going to find all these things are
19 scheduled to begin in 2002. Do you
20 want to take a minute and see if I'm
21 wrong about that?
22 A. I would not dispute you, but
23 if you would like me to I'll go through
24 and take a look at it.
25 Q. Just so we're sure.

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1 in terms of the day-to-day activities of
2 this patient?
3 A. I do not, no. In terms of
4 this patient, no, and I can only give
5 you a layman's -- isn't that somebody
6 who does something repetitively, washing
7 the hands, washing the hands, washing
8 the hands. But --
9 Q. Okay. Do you know what kind
10 of special needs this woman had before
11 her return from the Cleveland Clinic
12 foundation in the fall of 1998?
13 A. No.
14 Q. If any?
15 A. No, I don't know.
16 Q. I observe in Ms. Wingate's
17 report, do you have a copy of that in
18 there, in your folder?
19 A. I do.
20 Q. I want you to go to the
21 so-called grids which I think begin with
22 her page number 14. Have you got it?
23 A. I do.
24 Q. First one says guardianship?
25 A. Yes, sir.

Page 25

1 A. I see the occupational
2 therapy is going to start in 2003.
3 Q. Well, more correctly I should
4 state nothing begins earlier than 2002?
5 A. PT is going to start in
6 2003.
7 Q. There's a commode and hand
8 held shower that begins --
9 A. I think this report was
10 prepared the end of December 2001, so it
11 would strike me as logical that it's
12 going to start next month.
13 Q. There's my question though.
14 Do you know whether any of these
15 projected items by Ms. Wingate were in
16 place before her report?
17 A. I don't know.
18 Q. Do you go through and
19 critically evaluate any of these items
20 for redundancy or accuracy, or do you
21 just take all these numbers and assume
22 they're, in fact, legitimate and project
23 them into the future?
24 A. More so the latter than the
25 former, although if I find something



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1 that's an obvious consistency or an
2 obvious gap, 1 will then call the life
3 care planner. I dealt with one life
4 care planner who said this is going to
5 happen once a day, and then they
6 multiplied by seven to get a week and
7 then multiplied by four to get a month
8 and then they multiplied by twelve to
9 get the year, and I called them back
10 and said you've --
11 Q. Overdone it, your math is
12 off?
13 A. Your math is off. There are
14 more days in a year than there are --
15 Q. Do you know if you did that
16 here, did you go through this?
17 A. Went through this.
18 Q. Did you see anything that
19 looked funny or redundant or excessive?
20 A. No, I did not.
21 Q. Go to page 15, grid number
22 15 page.
23 A. Yes, I have that.
24 Q. Just for example, see where
25 it says case manager?

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1 A. Yes.
2 Q. In the upper left corner the
3 first item is case manager beginning in
4 2002 and it says four to six hours
5 every two years for the purpose of
6 communicating with physicians and
7 coordinate medical care. Did I read
8 that right?
9 A. Yes.
10 Q. What's it say right below
11 that, what's the next case item?
12 A. Same item, case manager.
13 Q. Beginning the same time?
14 A. Different number of hours.
15 Q. Two to three hours every
16 four years?
17 A. Yes.
18 Q. What's the purpose of it?
19 A. I don't know. I can't
20 answer that question.
21 Q. What's the stated purpose for
22 it?
23 A. Oh, the stated purpose says
24 communicate with physicians and
25 coordinate medical care.

Page 28

1 Q. Is there any difference in
2 those two?
3 A. The hours where it says
4 frequency and replacement are different.
5 Q. But the item to be provided
6 --
7 A. The item is the same.
8 Q. -- and the purpose to be
9 provided is the exactly the same, isn't
10 it?
11 A. Yes.
12 Q. So if a case manager comes
13 out there for four to six hours every
14 two years to communicate with physicians
15 and coordinate medical care, doesn't it
16 seem a little redundant to have one come
17 out every four years to do exactly the
18 same thing?
19 A. I don't know that they're
20 doing exactly the same thing.
21 Q. They say they're doing the
22 same thing, don't they?
23 A. No, it isn't. It's not
24 identical because it's a different
25 number of hours and it's also a

Page 29

1 different item under comment, but I'm
2 just surmising.
3 Q. But the words are absolutely
4 identical under purpose?
5 A. Under purpose they're
6 identical.
7 Q. Okay.
8 A. But you've got to ask the
9 life care planner there.
10 Q. I will, but I don't have her
11 in front of me. I have you in front of
12 me.
13 A. I assume you'll ask her and
14 if she says the same then I would
15 change my report accordingly.
16 Q. Now, you have no opinion and
17 you would not express an opinion as to
18 the true medical necessity of any of
19 these items. You've just assumed
20 they're all reasonably necessary, and
21 it's on those assumptions that you
22 proceed?
23 A. I think there's three
24 questions there and the answers are no,
25 no, and yes.



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<p style="text-align: right;">Page 30</p> <p>1 Q. Tell me what you're saying</p> <p>2 no to.</p> <p>3 A. I'm not making any judgment</p> <p>4 on this. I'm not making any judgment</p> <p>5 on the medical needs. I am just</p> <p>6 assessing what these things would cost</p> <p>7 if they are, in fact, needed.</p> <p>8 Q. Okay.</p> <p>9 A. No, no, and yes.</p> <p>10 Q. And by far the big items in</p> <p>11 your total overall picture are care</p> <p>12 providers, and if I get to that page I</p> <p>13 believe it's page 28 of the report?</p> <p>14 A. Yes, sir.</p> <p>15 Q. Are you there?</p> <p>16 A. I am.</p> <p>17 Q. Okay. I want to ask you a</p> <p>18 couple questions about this. Did you do</p> <p>19 any research into the resources</p> <p>20 available to you as an economist into</p> <p>21 the income of a home health aide?</p> <p>22 A. I did not.</p> <p>23 Q. That stuff is available to</p> <p>24 you, isn't it?</p> <p>25 A. I could do that, yes, sir.</p>	<p style="text-align: right;">Page 32</p> <p>1 dollars a year?</p> <p>2 A. I don't know any.</p> <p>3 Q. In fact, these numbers are</p> <p>4 really paid to a short-term service that</p> <p>5 would provide such people on some</p> <p>6 negotiated contract basis. This doesn't</p> <p>7 reflect what the home health aide makes,</p> <p>8 does it?</p> <p>9 A. It's part of that, but it's</p> <p>10 -- if you say it's the amount that's</p> <p>11 paid to a service, then that includes a</p> <p>12 variety of things.</p> <p>13 Q. Well, because over in the</p> <p>14 right column they list Gentiva, do you</p> <p>15 know what Gentiva is?</p> <p>16 A. I do not. I assume it's the</p> <p>17 service that provides this.</p> <p>18 Q. How did about Kelly Assisted</p> <p>19 Living?</p> <p>20 A. I assume it's a service that</p> <p>21 provides this.</p> <p>22 Q. Is that like Kelly Girls?</p> <p>23 A. I don't know.</p> <p>24 Q. How about Interim?</p> <p>25 A. I assume that's the same.</p>
<p style="text-align: right;">Page 31</p> <p>1 Q. How about the income of an</p> <p>2 LPM?</p> <p>3 A. I could do that also.</p> <p>4 Q. You could do it for</p> <p>5 Cleveland or you could do it for Kansas</p> <p>6 City, cancer?</p> <p>7 A. I could.</p> <p>8 Q. You could. But you didn't</p> <p>9 do it here?</p> <p>10 A. I did not do that.</p> <p>11 Q. Okay.</p> <p>12 A. I assume that this is more</p> <p>13 than one person.</p> <p>14 Q. Well, indeed. Twelve hours</p> <p>15 a day times seven days a week is 84</p> <p>16 hours, is it not?</p> <p>17 A. I think so.</p> <p>18 Q. So that's basically two</p> <p>19 people, two 42-hour weeks, right?</p> <p>20 A. Yes, sir.</p> <p>21 Q. That would be a full-time</p> <p>22 job, wouldn't it?</p> <p>23 A. More than a full-time job.</p> <p>24 Q. Do you know any home health</p> <p>25 aides that are making 40 plus thousand</p>	<p style="text-align: right;">Page 33</p> <p>1 Q. So would this be an</p> <p>2 alternate marketplace, and these three</p> <p>3 would be alternate vendors?</p> <p>4 A. It could be, yes, sir.</p> <p>5 Q. But you do not know?</p> <p>6 A. I do not know.</p> <p>7 Q. Fair enough. Have you ever</p> <p>8 had a need in your family or with</p> <p>9 friends to bring in a health care</p> <p>10 provider, a home health aide rather on a</p> <p>11 short-term basis?</p> <p>12 A. I've had the VNA come by.</p> <p>13 Q. Okay.</p> <p>14 A. And when I had a recent</p> <p>15 illness my wife took off from work and</p> <p>16 tended to my needs, which was very nice</p> <p>17 of her.</p> <p>18 Q. Indeed.</p> <p>19 A. And so she performed the</p> <p>20 equivalent service.</p> <p>21 Q. And when that happened, do</p> <p>22 you know what the home health aide was</p> <p>23 paid?</p> <p>24 A. Well, I know what my wife is</p> <p>25 paid.</p>



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1 Q. I bet your wife didn't take
2 a pay cut. She's a county judge, isn't
3 she?
4 A. She did not.
5 Q. You're not going to sit here
6 and tell me that her pay got docked,
7 John Burke. I know better than that
8 and you know better than that.
9 A. I said I know what she's
10 worth.
11 Q. Well, that wasn't—my
12 question. She didn't lose a dime for
13 taking care of you, did she?
14 A. She did not.
15 Q. Okay. Fair enough. Now, if
16 you go down to the LPN part of this
17 grid at page 28 again, we're talking
18 about 84 hours of coverage per week.
19 That's two full-time employees?
20 A. Plus.
21 Q. Plus two hours if you work
22 40 hours a week, right?
23 A. Four hours. 84 hours you
24 said?
25 Q. I'm sorry, you're right.

Page 36

1 Q. Now, in the world of
2 economics I'm not sure what the
3 principle would be or the economic
4 theory would be, but if I go to buy or
5 rent or hire a person to do a single
6 day's work, I would probably have to pay
7 a premium because it's one day and
8 there's no future and no benefits going
9 into that job, and it's just get it in,
10 get it out, I need help on a short-term
11 basis. I would pay more for that than
12 if I had somebody working for me
13 full-time, would I not?
14 A. I would think so, yes.
15 Q. Similarly -- this is a
16 long-term situation?
17 A. It is a long-term situation.
18 Q. You would expect that anyone
19 in this situation would use the economic
20 clout of negotiating a full-time
21 long-term secure position and get
22 somebody to come to work for a heck of
23 a lot less than the numbers quoted here
24 for those credentials, wouldn't you?
25 A. That's possible, but it also

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1 Four hours. Make me a liar for four
2 hours, John Burke. Shame on you.
3 That's two employees
4 working 42 hours a week each, right?
5 A. Yes.
6 Q. I'll bet you work 42 hours a
7 week, don't you?
8 A. I do.
9 Q. So do I.
10 Now, do you know any LPNs
11 that are making \$90,000 a year or
12 anything even close to it?
13 A. I do not, but is that one
14 person or two persons?
15 Q. Well, you've got a total per
16 for the two of them or total for the
17 service per this grid of \$183,000.
18 Divide that by two, it's 90,000 bucks,
19 isn't it?
20 A. Yes, sir.
21 Q. Do you know any LPNs
22 anywhere in the United States of America
23 that make \$90,000 a year?
24 A. I do not, but I don't think
25 I know any LPNs.

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1 depends on that other person's
2 opportunity cost, so if that other
3 person can make \$18 an hour working for
4 me, they're not going to come to work
5 for you for 16 bucks an hour.
6 Q. But if it costs 50 bucks an
7 hour including the 18 to pay a service
8 to deliver them on a short-term basis,
9 you might be able to do without the
10 service fees, right?
11 A. Oh, yes, but you shift a lot
12 of the burden because you now as the
13 employer, you must now pay the obliged
14 Social Security, the obliged
15 unemployment, the obliged Workers' Comp.
16 In addition you've got to fill out all
17 of those awful forms for the government
18 for each one of those agencies, several
19 times a year. You've got to do all the
20 accounting. So what we've done is
21 shifted the burden from the agency, who
22 we just write a check to, so that you
23 now have to do a lot of work to employ
24 that person.
25 Q. Okay.



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Page 38

1 A. And it comes back to that
2 basic economic law, there's no free
3 lunch. You either pay the agency or
4 you take it out of your own hide.
5 Q. Don't you think that people
6 like Gentiva and Kelly Assisted Living
7 and Interim are in the business of
8 providing these sorts of folks for the
9 home because they make a profit doing
10 it?
11 A. Absolutely.
12 Q. That's the American way,
13 isn't it?
14 A. That's the American way.
15 Q. If you can find a way to
16 make money, you can do it, if it's
17 legal, and make as much as you can?
18 A. Yes, it is. So that's what
19 they're doing.
20 Q. You know when Medicare
21 provides somebody to come into the home
22 on a long-term chronic basis they're
23 going to pay a lot less than these
24 numbers, aren't they?
25 A. I don't know what the

Page 40

1 situation is safety?
2 A. Yes, sir.
3 Q. So that means that if you
4 call them they'll come out and tow your
5 car?
6 A. Change a tire, bring you a
7 gallon of gas out to you.
8 Q. Do you know if the family
9 had a AAA membership anyway?
10 A. I do not.
11 Q. A lot of people do even
12 if --
13 A. I've got one.
14 Q. I've got one in my wallet.
15 A. Me too. Gives me a discount
16 out of Pack-N-Fly.
17 Q. Explain the numbers to me
18 under the van issue. It says they need
19 a new -- one/seven means a new one
20 every seven years?
21 A. Yes, sir.
22 Q. And it's obviously for the
23 purpose of transportation. How do they
24 get these numbers, per unit cost \$3,000
25 to \$4,500? Does that mean you can buy

Page 39

1 Medicare rates are.
2 Q. You didn't look that one up?
3 A. No, I didn't, didn't look
4 any of this up. Took what was in the
5 life care plan as a fact.
6 Q. Okay.
7 A. And if it were my child or
8 my spouse, I would want to have a
9 private person there; I would not want
10 to be relying on the government Medicare
11 to pay for it if it were my child or my
12 spouse.
13 Q. Okay. Go to the next page
14 please.
15 A. Yep.
16 Q. Page 29 under transportation?
17 A. Yes.
18 Q. I mean, there's an item in
19 the upper left corner that says AAA.
20 Do you know what that is?
21 A. Yes.
22 Q. What is it?
23 A. I think that's the American
24 Automobile Club.
25 Q. And its purpose in this

Page 41

1 a van in Kansas for \$4,500? I don't
2 understand that.
3 A. No, that's the cost -- I
4 think that's the cost of conversion.
5 Q. Well, isn't that down below,
6 van conversions?
7 A. I'm sorry, I was looking
8 down below.
9 Q. I'm looking above where it
10 says van. I'm truly am confused by that
11 number. I do not understand it.
12 Because then there's a per year cost for
13 the van of \$428.51. Now, I've got to
14 be honest with you. My job here is to
15 try to get that number lower. That
16 number is lower than what makes sense to
17 me.
18 A. I think what they're saying
19 is the standard cost of a Dodge van is
20 22,5 to 24,000; the average cost of a
21 family vehicle is 18,3, so the
22 difference between that is somewhere
23 between 3,000 and 4,500. And if you
24 spread that out over seven years it's
25 about four or five hundred a year.



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1 Q. I appreciate that
2 clarification. I had a hunch that's
3 what it meant, but I wasn't quite sure.
4 A. That's how I interpreted it.
5 Q. Okay. Page 31?
6 A. Yes, sir.
7 Q. We've got a bunch of Botox
8 injections. Couple places where it says
9 Botox. What's that?
10 A. I don't know what Botox is.
11 I assume it's some kind of drug or
12 medicine or therapy or something, but I
13 don't know what it is.
14 Q. Again, if I go through every
15 single item on these I believe we agree
16 there were 23 pages of grids, you don't
17 know whether any of those items were in
18 place for Mrs. Zimmerman before the life
19 care planner's projection starting in
20 2002 at the earliest?
21 A. Correct.
22 Q. Correct. Okay. Have you
23 been given any numbers to aggregate the
24 expenses incurred by this family, if
25 any, before the time of Ms. Wingate's

Page 44

1 Ms. Zimmerman as a case assignment and
2 there has to be somebody in charge of
3 looking over the case to make sure that
4 the things in here happen. I assume
5 that's what the case manager does.
6 Q. Would part of that be --
7 A. I know that's not Tracy
8 Wingate's job. She's not going to be
9 there to supervise.
10 Q. I didn't mean to suggest
11 that I thought it was. I just wanted
12 to make some clarification of what that
13 case manager's job was.
14 A. That's what I assume it is,
15 but I'm making an inference from what I
16 see here. Tracy Wingate can probably
17 give you a better --
18 Q. You'd assume that whoever
19 that case manager is, that it would be
20 someone professional and experienced in
21 such matters?
22 A. I would assume.
23 Q. And that part and parcel to
24 that would be to negotiate the best and
25 safest deals in terms of providing

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1 December 2001 report?
2 A. None.
3 Q. You have no idea what
4 they've spent, if they've spent
5 anything, to accommodate this lady?
6 A. No, I don't.
7 Q. You don't know whether indeed
8 any accommodations have been made for
9 her such as home health care nursing or
10 home health care providers, ramps,
11 conversions, vans or the like, do you?
12 A. No idea.
13 Q. Okay. When we talked in
14 here about the case manager, I forgot
15 what page that was on, you don't need
16 to go to the page, but remember I asked
17 you about the case manager being --
18 A. Page 50.
19 Q. Whether it was every two
20 years or four years?
21 A. Yes, sir.
22 Q. What is the case manager's
23 role in this?
24 A. I can only take the obvious
25 where it says case manager, they treat

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1 services and items that was available?
2 A. I don't know if they're a
3 negotiator. They may not be a
4 negotiator. They may be just somebody
5 who wants to see that the quality is
6 provided and they're indifferent to the
7 cost. I don't know that.
8 Q. But you don't know?
9 A. I don't know.
10 Q. Okay. There's a little
11 guess there, but that's okay.
12 All right. Now, as you
13 have projected these costs, and it
14 doesn't matter where you start, pick any
15 one, let's pick something that's an
16 annual cost. Find something, I don't
17 care what it is. So we can do some --
18 how about this, the guardianship, right
19 at the very first page.
20 A. Yes, sir.
21 Q. Okay. Now, you have assumed
22 that the cost per year of a guardianship
23 is \$1,175?
24 A. I have.
25 Q. And you have assumed that



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1 that cost will be incurred by Mrs.
2 Zimmerman or on her behalf during
3 calendar 2002 up through and including
4 2023?
5 A. Yes.
6 Q. And you have assumed, as I
7 understand it, that that will be a flat
8 fee per year unchanged for purposes of
9 your calculations. Doesn't go up,
10 doesn't go down?
11 A. I've assumed that's what it
12 is in the first year.
13 Q. Okay. Did you posit it to
14 change in the future?
15 A. Yes, I did.
16 Q. How did you do that? I'm
17 not talking about present value yet.
18 I'm talking about what do you say in
19 the future?
20 A. Right. I assume that this
21 cost will grow in the future.
22 Q. And by what factor?
23 A. I'm assuming it will keep
24 pace with inflation.
25 Q. Okay. Now, is this on one

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1 it be growth zero because that's real
2 dollars?
3 A. Yes.
4 Q. As opposed to whatever the
5 dollars might be in the future?
6 A. Yes, so I'm assuming that
7 just for example if you start off with
8 \$1,000 per time period and inflation
9 comes along at three percent that this
10 employee, this service, whatever it is,
11 is going to get a three percent increase
12 next year and next year it's going to
13 be 1,030, three percent more. In real
14 terms it's still 1,000 because inflation
15 was three percent.
16 Q. Inflation will eat up that
17 increase?
18 A. Yes, but you still have to
19 pay it. You still have to have the
20 money to pay it. You still have to pay
21 1,030. The next year if inflation comes
22 along at another three percent, you're
23 going to pay 1,063.
24 Q. What is the scientific basis
25 of your projection of inflation into the

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1 of your graphs?
2 A. It is.
3 Q. And that would be?
4 A. Page 4.
5 Q. Page 4, okay. Well,
6 actually, as I look through page 4, this
7 is a present value calculation, is it
8 not?
9 A. Oh, it is, but built into
10 there --
11 Q. How do I know what you've
12 posited the inflation rate to be?
13 A. Above additional cost you see
14 an A.
15 Q. Yes?
16 A. The A refers you to a
17 footnote at the bottom.
18 Q. It says discounted at a net,
19 25 percent?
20 A. Net 25, and that tells me I
21 grew it at zero and I discounted it at
22 two and a half, and also those are both
23 after inflation, growth rates and
24 discount rates.
25 Q. How does that work? How can

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1 future?
2 A. The scientific.
3 Q. Because you've done it here
4 for 20 years?
5 A. Yes.
6 Q. What's the scientific basis
7 for that?
8 A. The scientific basis is that
9 I know that I cannot predict what
10 inflation is going to be in any
11 particular time period. Therefore, I
12 don't predict it. I say it's just
13 going to keep pace with whatever
14 inflation is. And I've got two things
15 in my equation. I've got growth
16 including inflation on one side. I've
17 got discount including inflation on the
18 other side. If you have something on
19 both sides of your equation, you can
20 take it out. So that's what I do.
21 Q. How do we test the viability
22 of that theory, that you can take
23 inflation out of the equation because
24 you've got something on both sides?
25 A. Because you know and I know



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1 that --
2 Q. I don't know anything about
3 economics, so don't assume I know
4 anything.
5 A. We both know just from
6 reading the newspaper that when you get
7 a five percent wage increase that your
8 standard of living is not going to rise
9 by five percent because inflation comes
10 along and steals some from you. So if
11 your boss tells you you're getting five
12 percent this year and you look and the
13 consumer price index went up and it went
14 up by three percent, you can say I'm
15 getting three percent to keep pace with
16 inflation, I'm getting two percent that
17 enhances my standard of living. That's
18 how I can do it.
19 Q. What's inflation going to be
20 in 2002?
21 A. This year?
22 Q. Yes, this is May of 2002.
23 A. I would forecast, not with
24 reasonable scientific certainty, but I
25 would forecast about 3.1.

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1 known?
2 A. Right.
3 Q. In the future?
4 A. So this is what the future
5 would look like in an inflation-free
6 world.
7 Q. Okay. Where do you get the
8 2.5 percent?
9 A. I get that -- first of all,
10 I get it from reading the works of the
11 smart economists, Milton Friedman and
12 Irving Fisher, and then I looked at the
13 studies they did back in the '20s and
14 back in the 1950s and I replicated them.
15 I brought them up to currency.
16 Q. Have you published those,
17 those studies when you replicate them,
18 did you replicate them for the future or
19 for the science of economy?
20 A. No, you're never going to
21 get an article published because you
22 copied what somebody else did. That's
23 no originality in that.
24 Q. May not be, but maybe
25 bringing it to current time, 1920s,

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1 Q. That's a guess?
2 A. That's a guess. It's a
3 reasonable guess.
4 Q. What about 2003?
5 A. It's an educated guess.
6 Q. I understand you make
7 educated guesses.
8 A. But that's a guess.
9 Q. What's going to happen in
10 2003?
11 A. There is going to be
12 inflation.
13 Q. What's the number?
14 A. Between two and four.
15 Q. That's a pretty big swing.
16 A. Big swing. That's because,
17 as I said a few minutes ago, I have no
18 scientific ability as an economist, as a
19 social scientist to forecast inflation
20 and therefore I don't.
21 Q. But this is an attempt to
22 see the future?
23 A. It is.
24 Q. This is an attempt by you to
25 quantify something that's yet to be

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1 those were different times than today,
2 weren't they?
3 A. Any freshman in economics
4 class could do that. I'd like to claim
5 originality, but I've never had an
6 original idea in my life, which I used
7 to feel bad about, by the way, until
8 one day I figured out that Einstein only
9 had two ideas and anybody who is only
10 two behind Einstein can't be all bad.
11 Q. You're trying to charm me
12 again. You've got to stop this. This
13 is business. This is serious business.
14 A. I know, but I'm also Irish.
15 Q. I know. So am I. That's
16 why you're doing this to me, trying to
17 drive me crazy.
18 A. I can't forecast inflation,
19 so this is an inflation-free forecast.
20 If there is no inflation in the world,
21 this is what it's going to be.
22 Q. How does this 25 percent
23 work? What do I do mathematically to
24 test your calculation that in order to
25 pay \$1,175 in 21 years, I only need



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DEPOSITION OF JOHN BURKE, PH.D

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1 \$717?

2 A. First off is you know in the
3 future there are no guarantees, so I'm
4 not guaranteeing that number. I'm
5 saying if the world remains as it is
6 today.

7 But what you do is you go
8 back historically and you look at what
9 interest rates are on safe investments.
10 So I find over a period of time, let's
11 say from 1960 to 1998, '97, that here's
12 what interest rates looked like on
13 short-term governments. Then go back
14 and look at what has the inflation
15 rate been on the -- over the same
16 period of time, and I find that the
17 inflation rate also goes up and down and
18 it looks like this. And find that on
19 average there is a gap between the
20 nominal interest rate and the real
21 interest rate, and find that that gap
22 on a portfolio of investments tends to
23 be between two and three percent. And
24 took the mid point. And you'll
25 notice sometimes the yellow line is

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1 Inflation rate right now is probably
2 running around 3.1. Therefore, there is
3 a negative rate of interest.

4 Q. Is that 1.9 an annualized
5 figure or six-month figure?

6 A. That's the annualized rate of
7 return.

8 Q. On a six-month T bill?

9 A. Yes. Now, this is an
10 anomaly. Interest rates are
11 phenomenally low, they're at 40-year
12 lows.

13 Q. That's right. You
14 anticipated my next question?

15 A. You want to look at this
16 long term. And when look at this
17 long term after reading Friedman, who
18 got a Nobel prize for his work in this
19 area, find that Friedman is right and
20 I agree with him that the liquid real
21 rate of interest on a safe investments
22 is between two and three percent and I
23 used the mid point, two and a half.

24 Q. So three percent is an ultra
25 -- today, an ultra safe investment?

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1 above the blue line, which means that
2 inflation is greater than the rate of
3 interest.

4 Q. The rate of very
5 conservative, ultra safe interest.
6 You're talking about the safest form of
7 interest?

8 A. Absolutely.

9 Q. That is what, a treasury
10 bill?

11 A. A treasury bill.

12 Q. Because the United States
13 government is the obligor and if you
14 can't get money from the government,
15 we're probably in anarchy?

16 A. We are in anarchy.

17 Q. You said that once in court,
18 didn't you?

19 A. Yes, I did. And they have
20 got 275 million people working for them.

21 Q. Um-hmm.

22 A. That's a good source of
23 revenue. So right now if you were to
24 look at say a six-month T bill, the
25 rate on that might be around 1.9.

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1 A. Real, we're talking real.

2 Q. Right now, right this minute.

3 A. Yes.

4 Q. Never mind real. I want to
5 know if I put 100 bucks in an ultra
6 safe investment, how many bucks am I
7 going to have a year from now, 103?

8 A. No, you'll have less than
9 103. You cannot get that safe
10 investment.

11 Q. At three percent?

12 A. No, going to be close to the
13 two.

14 Q. Let me shift gears with you
15 for a minute and ask you about something
16 that's not an ultimate safe investment,
17 but the stock market?

18 A. Right.

19 Q. A diversified portfolio?

20 A. Yes.

21 Q. If we go back 20 years, the
22 stock market has done lots better than
23 these numbers, hasn't it?

24 A. Yes.

25 Q. Sure. In fact, at every



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1 ten-year interval you carve out of
2 history, save perhaps the Depression,
3 we've seen growth through the stock
4 market with a diversified fund that's
5 better than your numbers here?
6 A. Much better. Stock market
7 in the long run is going to average
8 about 11 percent. However, that doesn't
9 happen to everybody.
10 Q. What do you mean?
11 A. Well, that's what happens to
12 the overall Dow Jones, but that means
13 that you've bought all these stocks all
14 along and done everything that the Dow
15 Jones -- most people can't do that.
16 They buy individual stocks at a certain
17 point of time and they sell them at
18 another point in time.
19 Q. Actually what most people do
20 is buy mutual funds today, isn't it?
21 A. Even that --
22 Q. And the mutual fund manager
23 sees he has a diversified fund so he
24 can take as much of this 11 percent as
25 he possibly can for his investors?

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1 A. Yes, but even with a mutual
2 fund you've got to buy it at the right
3 time and sell it at the right time and
4 as Bernard Barruch always said, I always
5 sold too early.
6 Q. You never lose a dime in the
7 market if you never sell, do you?
8 A. No, you don't, because it's
9 all on paper. The real rate of return,
10 you've got to apply what's called a
11 Monte Carlo effect to this, so the
12 average person in the stock market makes
13 about half of that, they make around 5.5
14 or 6.
15 Q. Okay. So that --
16 A. And that includes inflation,
17 by the way.
18 Q. -- you have posited this
19 case at about five million bucks?
20 A. I have said the value of
21 that life care plan is about \$5 million.
22 Q. Let's call it 5 million.
23 A. That's the value of that
24 life care plan.
25 Q. So if I put that away at

Page 60

1 five percent, what's the return of that
2 at five percent?
3 A. About 250,000.
4 Q. How about 11 percent?
5 A. At 11 percent it's going to
6 be around 550,000.
7 Q. And that will cover every
8 one of those expenses, won't it and
9 still leave the 5 million untouched?
10 A. At 11 percent?
11 Q. Yes.
12 A. Could, yes, sir.
13 Q. Not could, but it would.
14 A. I didn't do that. I take
15 your word for it.
16 Q. In fact, at 250 it will
17 cover everything they need, won't it.
18 A. Maybe today, but 10 years
19 from now, 20 years from now it won't.
20 Q. But if it does today, that 5
21 million is still there, isn't it?
22 A. Yes, but the way this works
23 is if you have over a how long a period
24 of time are we looking at, over 21
25 years, if you have a sum, doesn't make

Page 61

1 any difference what the sum is out here,
2 5 million, if you have 5 million --
3 Q. I can tell you're a teacher,
4 you know why?
5 A. Why?
6 Q. Because you write upside
7 down.
8 A. And you put this away at any
9 percentage, let's say 10, you're going
10 to get \$500,000 year in, year out, and
11 that's going to be a flat fee. Your
12 expenses might start off here, but your
13 expenses are subject to inflation and
14 over a period of time they're going to
15 grow, grow, grow, grow, grow, grow,
16 grow, grow, eventually they exceed the
17 500,000. And the way I have set this
18 up when you get to the end there's
19 nothing left. You've spent it all.
20 Q. But that includes a lot of
21 assumptions, doesn't it?
22 A. Well, just four.
23 Q. Well, no, let me see if I
24 understand you correctly. It includes
25 the assumption that all the numbers



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1 you've been given by this lady, Tracy
2 Wingate, are correct?
3 A. That's one assumption.
4 Q. Yeah, so if somebody can cut
5 a deal for something like a home health
6 care nurse for a little less than
7 \$50,000 salary or whatever those numbers
8 work out to, that changes this, doesn't
9 it?
10 A. If the base numbers change.
11 Q. Then this changes?
12 A. Yes. You and I, I think,
13 have had this discussion before, but
14 there's a lot of information that the
15 economist needs and goes into his filter
16 but it comes out knowing, if you know
17 four things, one is time.
18 Q. Yes?
19 A. That's life expectancy. The
20 other one --
21 Q. We really don't know that.
22 We have a statistical projection, but we
23 don't know it?
24 A. But I said if you know it.
25 Whenever you're talking about the

Page 64

1 A. No, I didn't tell you that.
2 I told you that about one item.
3 Q. What's that, you mean the
4 guardianship thing?
5 A. Yes.
6 Q. How about a loaf of bread?
7 A. I think that would keep pace
8 with inflation.
9 Q. In other words, whatever I
10 paid for a loaf of bread back in 1960,
11 I might pay more in dollars in 19 -- in
12 2002. I have got the same loaf of
13 bread?
14 A. Yes.
15 Q. And those dollars are
16 probably apples to apples, they've just
17 got a different number in front of them?
18 A. Probably bread to bread.
19 Q. Bread to bread. And
20 basically when we get down to certain
21 staples, we can use the staple as a
22 constant and the dollars are the
23 variable?
24 A. Yes, sir.
25 Q. Fair enough?

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1 future, you don't know it.
2 Q. That is correct.
3 A. So you know the base cost.
4 Q. Base cost meaning what?
5 A. Whatever is in the life care
6 plan.
7 Q. In other words, the hard
8 dollars that are assumed for today's
9 purposes?
10 A. Yes, you need a buck a day.
11 Q. Today's cost in today's
12 dollars?
13 A. Yes. The third thing you
14 have to know is some kind of growth
15 rate. The last thing you have to know
16 is some kind of discount rate.
17 Q. Now what's the growth, what's
18 that?
19 A. That's how fast these amounts
20 are going to increase.
21 Q. You mean the price is going
22 to go up?
23 A. Yes.
24 Q. But you've already told me
25 in real dollars they won't change?

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1 A. Fair enough.
2 Q. I learned that from you.
3 You taught me all this stuff.
4 A. So you stop a random
5 economist on the street and say to him,
6 hey, I want 20 years, the cost today is
7 \$100, it's going to grow at three
8 percent per annum, it's going to be
9 discounted at five and a half percent
10 per annum, what's the value of that
11 annuity? Every economist in the world
12 is going to give you the same answer.
13 Now, if you want a different answer,
14 you've got to change one of these
15 numbers. You've got to say no, it's
16 not 20 years or 10 or maybe it's 30,
17 you've got to change that. Or you've
18 got to change the cost today, it's not
19 100, it's a buck and a half. Or you
20 have to change the growth rate or change
21 the discount rate. That's the only way
22 you're going to get another number.
23 Q. Do you know the Rule of 72?
24 A. I do.
25 Q. What is that?



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1 A. That says that if you have a
2 sum of money invested at a certain
3 percent, let's say 10, and you divide it
4 into 72, and that is a pretty good
5 approximation of how long it's going to
6 take that money to double. So in this
7 case it's 7.2 years. Put a buck away,
8 at 10 percent interest per annum, come
9 back in seven and a half years and it
10 will double.
11 Q. You'll have two bucks?
12 A. You'll have two bucks.
13 Q. If you have a million put
14 away, you'll come back and have two
15 million?
16 A. You'll have two million.
17 Great thumb rule.
18 Q. I don't know how it works.
19 I don't know why it makes sense. It's
20 like that thing with nines. Why does
21 that work? You know what I'm talking
22 about with nines?
23 A. Yes. Well, I just got
24 through reading a book about an
25 equation, E is equal to MC squared,

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1 which I never understood. In my 65
2 years, I never understood that equation
3 until I read this book. And it's a
4 great book in terms of explaining what
5 the equation means.
6 Q. I'll talk to you about that
7 after we get done here. We're almost
8 done.
9 In your report you state
10 in the very -- in really your last
11 sentence, I have considered the
12 implications of Mrs. Zimmerman living
13 longer than her normal life expectancy,
14 which under normal circumstances is
15 likely to happen.
16 What are those normal
17 circumstances?
18 A. A thing that you mentioned
19 earlier when you talked about the
20 progression in American society of
21 health and medicine and nutrition and
22 diet and medical equipment. The best
23 example I think is the life expectancy
24 of a white male in America in 1900 was
25 46 years. Life expectancy of a white

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1 male in 1999, almost 100 years later, is
2 about 75 years. Change in diet, change
3 in nutrition, change in OSHA.
4 Q. Okay. Fair enough. And
5 also --
6 A. But when I say it's a
7 conservative figure, I have assumed no
8 such change.
9 Q. I understand. Now I
10 understand what you mean by normal
11 circumstances. Normal circumstances
12 means that this is Ozzie and Harriet
13 Nelson?
14 A. No, it's us Americans, who
15 include Ozzie and Harriet, but other
16 include the other Ozzy that's making the
17 headlines today.
18 Q. Ozzy Ozborn?
19 A. Yes, all the Ozzies are
20 around.
21 Q. But clearly debilitating
22 injuries, debilitating comorbid factors
23 of health, at risk factors to things
24 like decubitus ulcers are medical
25 conditions which militate against the

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1 life expectancy you talk about?
2 A. Yes. However, today we know
3 what to do about those things.
4 Q. But we haven't been able to
5 eliminate those things, have we?
6 A. No, we haven't, but in the
7 meantime we have extended life
8 expectancy by an amazing amount of time.
9 Amazing amount of time. Those things
10 still exist, but, Jim, if you and I had
11 been born in 1900 we'd both be dead by
12 now because we've outlived our life
13 expectancy according to those early
14 figures.
15 Q. You don't know that we'd
16 both be dead?
17 A. Statistically.
18 Q. You know that most people
19 statistically born in 1900 are no longer
20 with us today, but I bet I can find
21 somebody around who was born in 1900.
22 You know we can do that.
23 A. Yes, I do.
24 Q. Sure. Not many. That's 102
25 years old, but there's probably



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1 somewhere --
2 A. Yes. By the way, the
3 octogenarians are the biggest growing
4 group in our society largely because of
5 medicine, diet, nutrition and OSHA,
6 safety equipment.
7 Q. And they're the sickest group
8 in our society, the most demanding for
9 health care, aren't they?
10 A. The older you get, the more
11 your requirements are. And by the way,
12 it's worse for us lefties.
13 Q. What?
14 A. It's worse for lefties.
15 Q. Not that I don't think
16 that's a good thing, but what do you
17 mean by that?
18 A. Almost all equipment is
19 designed to be run by a right-handed
20 person, and lefties have more accidents
21 because that have. Equipment is
22 designed to be --
23 Q. Really?
24 A. Oh, absolutely.
25 Q. Give me an example.

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1 these things and projecting it out,
2 you've got a computer program that
3 assumes these things you've told us
4 today, and it does all the calculations?
5 A. Thirty-five years ago I used
6 to the all the calculations by hand.
7 Q. Yeah.
8 A. On a, what's that, a Smith
9 Corona.
10 Q. Hewlett Packard?
11 A. Before Hewlett Packard, this
12 is one of those things with a crank on
13 the side, put the number in, crank.
14 Q. Okay. All right.
15 A. However, the formulas haven't
16 changed and the numbers haven't changed.
17 The computer just does it, one, more
18 accurately and two much faster, but
19 you're absolutely right. It's all done
20 on a computer.
21 MR. MALONE: Okay. I
22 have no further questions. I want you
23 to give -- can I give that to her and
24 she'll get it back to you?
25 THE WITNESS: Sure.

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1 MR. MALONE: Off the
2 record.
3 (Discussion off record.)
4 BY MR. MALONE:
5 Q. Just a couple more things I
6 want to make sure I understand. You
7 actually got your report out on this
8 matter in less than 24 hours from your
9 retention?
10 A. Yes, sir.
11 Q. Okay.
12 A. Mr. Linton called me up,
13 said he needed it right away, put
14 everybody to work on it, we got it done
15 right away.
16 Q. And in truth, what really
17 comes here is a bunch of numbers being
18 fed into a computer program that you
19 have created, and you hit a number and
20 that spits out the answer?
21 A. Absolutely.
22 Q. You're not sitting down, you,
23 John Burke, with your Ph.D. in economics
24 or your colleague Harvey Rosen with his
25 Ph.D. in economics, and calculating

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1 CEFARATTI GROUP FILE NO. 6703
2 CASE CAPTION: MARY LOU ZIMMERMAN, et al.
3 V. THE CLEVELAND CLINIC FOUNDATION, et al
4 DEPONENT: JOHN BURKE, M.D.
5 DEPOSITION DATE: MAY 8, 2002
6
7 (SIGN HERE)
8 The State of Ohio,)
9 County of Cuyahoga) SS:
10 Before me, a Notary Public in and
11 for said County and State, personally
12 appeared JOHN BURKE, MD., who
13 acknowledged that he/she did read
14 his/her transcript in the above-
15 captioned matter, listed any necessary
16 corrections on the accompanying errata
17 sheet, and did sign the foregoing sworn
18 statement and that the same is his/her
19 free act and deed.
20 IN TESTIMONY WHEREOF, I have
21 hereunto affixed my name and official
22 seal at , this
23 day of , A.D. 2002.
24
25 Notary Public Commission Expires



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1 I am not, nor is the court
2 reporting firm with which I am
3 affiliated, under a contract as defined
4 in Civil Rule 28 (D).
5 IN WITNESS WHEREOF, I have
6 hereunto set my hand this day of
7 ,2002.
8
9
10
11
12 Kimberly K. Hargis, Notary Public
13 within and for the State of Ohio
14
15
16
17
18 My commission expires June 15, 2006.
19
20
21
22
23
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25

Page 75

1 CERTIFICATE
2
3 State of Ohio) SS.:
4 County of Geauga)
5 I, Kimberly K. Hargis, a Notary
6 Public within and for the State of Ohio,
7 duly commissioned and qualified, do
8 hereby certify that the within named
9 witness, was duly sworn to testify the
10 truth, the whole truth and nothing but
11 the truth in the cause aforesaid; that
12 the testimony then given by the witness
13 was by me reduced to stenotypy in the
14 presence of said witness; afterwards
15 transcribed, and that the foregoing is a
16 true and correct transcription of the
17 testimony so given by the witness.
18 I do further certify that this
19 deposition was taken at the time and
20 place in the foregoing caption
21 specified.
22 I do further certify that I am
23 not a relative, counsel or attorney for
24 either party, or otherwise interested in
25 the event of this action.



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