[J-40A-40D-2010]
IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

CASTILLE, C.J., SAYLOR, EAKIN, BAER, TODD, McCAFFERY, ORIE MELVIN, JJ.

MARK L. HELPIN	: Nos. 36 and 37 EAP 2009
v.	: Appeal from the Order of the Superior Court entered April 1, 2009, at 125 EDA
TRUSTEES OF THE UNIVERSITY OF PENNSYLVANIA, MARJORIE JEFFCOAT, THOMAS FREITAG, AND LAWRENCE M. LEVIN	: 2008 and 307 EDA 2009, affirming the Order of the Philadelphia County Court of Common Pleas entered December 13, 2007 at 0702 September Term, 2005.
APPEAL OF: TRUSTEES OF THE UNIVERSITY OF PENNSYLVANIA	: 969 A.2d 601 (Pa.Super. 2009)
	: Argued: May 12, 2010
MARK L. HELPIN,	: Nos. 48 and 49 EAP 2009
Appellant	: Appeal from the Order of the Superior Court entered April 1, 2009, at 125 EDA
v.	: 2008 and 307 EDA 2009, affirming the Order of the Philadelphia County Court of
TRUSTEES OF THE UNIVERSITY OF PENNSYLVANIA, MARJORIE JEFFCOAT, THOMAS FREITAG, AND LAWRENCE M. LEVIN,	: Common Pleas entered December 13, 2007 at 0702 September Term, 2005.
	: 969 A.2d 601 (Pa.Super. 2009)
Appellees	: Argued: May 12, 2010

OPINION

MR. JUSTICE McCAFFERY **DECIDED: December 21, 2010**

This case originated as an employment dispute sounding in, inter alia, breach of contract. The issue before this Court is whether a damages award for lost future income derived from business profits should be discounted to present value.

The relevant facts are as follows. Mark L. Helpin, D.M.D., ("Dr. Helpin") accepted a position in 1989 at the School of Dental Medicine at the University of Pennsylvania, with primary responsibilities as the Director of Pediatric Dentistry at the Children's Hospital of Philadelphia ("CHOP"). In an offer letter to Dr. Helpin dated September 1, 1989, then-Dean Raymond J. Fonseca, D.M.D., informed Dr. Helpin that his base salary for the 1989-90 academic year would be $60,000. In addition, this base salary was to be supplemented with bonuses and salary increments, which the offer letter set forth as follows:

> In the future, patient care activities at CHOP will offer you the opportunity for bonuses and salary increments, with 50% of CHOP Dental's net operations available to you for such increases. I envision that a large portion of your future salary will, in fact, be derived from the net operations and success you will have at CHOP. I assure you this financial and salary/bonus arrangement will continue even if you no longer serve as Director or Chairman.

Letter to Dr. Helpin from Dean Fonseca, dated 9/1/89 (Plaintiff's Exhibit P-1).

In 1996, Dr. Helpin was promoted to associate professsor, in which capacity he could be terminated only for "just cause" or in the event that he was not able to generate sufficient income to offset his salary and expenses, pursuant to the policies of the University of Pennsylvania ("Penn"). Dr. Helpin remained at CHOP until December 2003, each year having available 50% of the profits from the CHOP dental clinic to use for any purpose he wished, including paying himself or reinvesting in the clinic. In December 2003, Marjorie Jeffcoat, D.M.D., the then-new dean of the School of Dental Medicine, transferred Dr. Helpin from CHOP to Penn's dental clinic in Bryn Mawr. In September 2004, Dr. Helpin

gave notice of his intention to resign from Penn at the end of the year, citing intolerable working conditions and a reduction in his salary, which was no longer linked to the CHOP dental clinic profits.

In 2005, Dr. Helpin brought an action in, inter alia, breach of contract against the Trustees of the University of Pennsylvania, and tortious interference with prospective economic relationship against Penn; Dean Jeffcoat; Thomas Freitag, the Associate Dean for Finance of the School of Dental Medicine at the University of Pennsylvania; and Lawrence M. Levin, the Chief of the Division of Oral and Maxillofacial Surgery at the University of Pennsylvania Health System. A jury heard testimony over a period of three weeks in June 2007.

At the end of Dr. Helpin's case, the trial court granted the defendants' motion for a nonsuit on the claim of tortious interference with prospective economic relationship, thereby dismissing Drs. Jeffcoat, Freitag, and Levin from the action. However, the jury returned a verdict in favor of Dr. Helpin on the breach of contract claims and awarded him $4.04 million in damages. The jury found that Penn had constructively discharged Dr. Helpin without "just cause," and had improperly failed to continue to pay him 50% of the profits from the CHOP dental clinic. Penn filed a post-trial motion seeking judgment notwithstanding the verdict or a new trial, and Dr. Helpin filed a "conditional motion for post-trial relief and to award interest." The trial court denied all post-trial motions and entered judgment on the jury's verdict on December 10, 2007.

The Superior Court affirmed. Helpin v. Trustees of the University of Pennsylvania, 969 A.2d 601 (Pa.Super. 2009). Penn then filed a petition for allowance of appeal to this Court, seeking a new trial with respect to damages only. Dr. Helpin filed a "conditional cross-petition for allowance of appeal" to this Court, seeking review only if this Court granted Penn's petition. Both petitions were granted, limited respectively to the following questions:

> Should damages for future income that would have been calculated as part of a business's profits be discounted to present value?

Helpin v. Trustees of the University of Pennsylvania, 981 A.2d 1280 (Pa. 2009).

> Did the trial court properly grant a nonsuit on [Dr. Helpin's] claim for tortious interference with prospective economic relations?

Helpin v. Trustees of the University of Pennsylvania, 984 A.2d 478 (Pa. 2009).

We begin with Penn's appeal, which presents a question of law as to the calculation of damages for lost future income that would have been derived from a specified percentage of the profits of a business. Because this is a question of law, our standard of review is de novo and our scope is plenary. In re Novosielski, 992 A.2d 89, 99 (Pa. 2010). The legal background and principles relevant to the issue before us are as follows.

> Where one party to a contract without any legal justification, breaches the contract, the other party is entitled to recover, unless the contract provided otherwise, whatever damages he suffered, provided (1) they were such as would naturally and ordinarily result from the breach, or (2) they were reasonably foreseeable and within the contemplation of the parties at the time they made the contract, and (3) they can be proved with reasonable certainty.

Ferrer v. Trustees of the University of Pennsylvania, 825 A.2d 591, 610 (Pa. 2002).

The purpose of a damage award is to place the non-breaching party "as nearly as possible in the same position [it] would have occupied had there been no breach." Lambert v. Durallium Products Corporation, 72 A.2d 66, 67 (Pa. 1950).

> The measure of damages for breach of contract is compensation for the loss sustained. The aggrieved party can recover nothing more than will compensate him.

Id. (emphasis in original).

Loss of future earnings, if proven, is properly included in a damage award. See, e.g., Robertson v. Atlantic Richfield Petroleum Products Company, 537 A.2d 814, 823 (Pa.Super. 1987) (in a breach of employment contract case, declining to grant remittitur with respect to the jury's award of damages for lost future earnings); see also Kaczkowski v. Bolubasz, 421 A.2d 1027, 1029-30 (Pa. 1980) (in a wrongful death/survival action, discussing the calculation of damages for lost future earnings). Obviously, future earnings cannot be calculated with mathematical precision and exactness. Jones & Laughlin Steel Corporation v. Pfeifer, 462 U.S. 523, 546 (1983) ("[B]y its very nature the calculation of an award for lost earnings must be a rough approximation."). The law does not permit a damages award to be based on mere guesswork or speculation, but rather requires a reasonable basis to support such an award. Kaczkowski, supra at 1030; see Robertson, supra at 823 (concluding that the jury's award for lost future earnings was based on reasonable assumptions and supported by the evidence). In practice, estimation of future earnings has been neither straightforward nor without controversy.[1]

In 1916, the United States Supreme Court held that, when damages are based upon the deprivation of future pecuniary benefits, any lump-sum award should be discounted to

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[1] The inherent and unavoidable lack of precision in the calculation of future losses based upon an individual's prospects has been the subject of judicial observation. The United States Supreme Court has recognized the difficulty in estimating an award for lost future earnings:

> We do not suggest that the trial judge should embark on a search for 'delusive exactness.' It is perfectly obvious that the most detailed inquiry can at best produce an approximate result.

Jones & Laughlin Steel Corporation v. Pfeifer, 462 U.S. 523, 552 (1983) (citation omitted).

See also Conte v. Flota Mercante Del Estado, 277 F.2d 664, 669 (2d Cir. 1960) ("We recognize the delusive exactness of all this since, among other defects, life expectancies are averages … .").

the "present value" of those benefits. Chesapeake & Ohio Railway Co. v. Kelly, 241 U.S. 485 (1916). Implicit in this holding was the Court's assumption that any monetary award would be safely invested by the awardee, and accordingly would earn interest for the duration of the award. Relying on the principle that damages should be limited to **compensating** the injured party for the deprivation of future benefits, the High Court determined that "adequate allowance [must] be made, according to circumstances, for the earning power of money." Id. at 491. If the earning power of the monetary damage award were not taken into account, then the true value of the award would be greater than the amount to which the aggrieved party was entitled, resulting in overcompensation. Id. at 489, 493. Although finding it "self[-]evident that a given sum of money in hand is worth more than the like sum of money payable in the future," the Court declined to set forth a formula that should be used to calculate the discount of a damages award to present value Id. at 489. Rather, the Court left such matters to "the law of the forum." Id. at 490-91.

In 1922, in a personal injury case, this Court held that a jury must discount an award of future damages to present value and that, in such a calculation, "interest must be computed at the lawful rate of 6 [six] per cent." Windle v. Davis, 118 A. 503 (Pa. 1922); see also Kaczkowski, supra at 1030 n.10 (discussing Windle). More than forty years later, in Gregorius v. Safeway Steel Scaffolds Company of Pittsburgh, 187 A.2d 646, 650 (Pa. 1963), this Court rejected the appellant/plaintiff's assertion that the six percent interest rule of Windle was "antiquated and unrealistic" in view of modern economic conditions. While recognizing that interest rates varied from day to day and from place to place, this Court nonetheless concluded that "[t]here must be a fixed rule to aid juries in calculating the present worth" of future damages, and that "a change in the rule would lead only to confusion and chaos and add greater difficulty in the trial of such cases." Gregorius, supra at 650. Justice Musmanno vigorously dissented in Gregorius and would have modified the six percent rule of Windle, reasoning that "[e]veryone knows that obtaining a return of 6%

on one's money today is like growing watermelons in the Sahara." Gregorius, supra at 650 (Musmanno, J., dissenting).

Not until 1980, in Kaczkowski, supra, a wrongful death and survival action, did this Court abandon Windle's six percent rule in the context of lost future earning capacity. The decedent in Kaczkowski was a 20-year-old man who had been studying computer operations at the time of his death in a motor vehicle accident. After liability for the decedent's death had been established and during retrial on the question of damages, the trial court refused to allow plaintiff's expert to testify regarding a four percent annual increment to the decedent's projected salary to account for the impact on his lost future earnings of both the inflation rate and productivity gains[2]. The trial court held that any evidence of an annual increment percentage, whether based on inflation or productivity, was not admissible; however, the court did instruct the jury to discount the decedent's projected lost earnings to present value by assuming that any damage award would earn six percent interest. The jury returned a verdict of $30,000 on behalf of the decedent's estate. This Court reversed and remanded for a new trial on damages, reasoning that, in order to compensate fully for the decedent's loss of future earnings, it was necessary to take into account both the impact of inflation and increases in productivity, as discussed below.

Considering first the impact of inflation, Kaczkowski noted that, in the absence of inflation, there was no economic disagreement with the theory behind discounting future damages awards to present value. Id. at 1030 n.10. However, economic data established

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[2] As discussed in the text infra, productivity includes factors such as age, maturity, education, skill, and technology advances. Kaczkowski, supra at 1029 n.5, 1031, 1033-34.

Inflation is defined in Kaczkowski as "the increase in the volume of money and credit relative to available goods resulting in a substantial and continuing rise in the general price level." Id. at 1029 n.4 (quoting Websters, Third International Dictionary (1965)).

that "[e]ven though the rate of inflation has not been numerically the same [since 1940], the presence of inflation as a factor in our economy has been constant." Id. at 1033. Recognizing inflation's potential to reduce an initially generous award for future damages, we concluded that "inflation should be reflected in an award of lost future earnings." Id. at 1029-30. As we summarized in Kaczkowski, supra at 1037, because inflation has become an inherent part of our economy, "it is no longer legitimate to assume the availability of future interest rates by discounting to present value without also assuming the necessary concomitant of future inflation."

To compensate for the competing effects of interest and inflation on a lump-sum damages award for lost future earnings, we adopted the "total offset" approach, which is based on the following assumption:

> Under the total offset method, a court does not discount the award to its present value but assumes that the effect of the future inflation rate will completely offset the interest rate, thereby eliminating any need to discount the award to its present value.

Id. at 1036.

Thus, the total offset method assumes that, viewed long term, inflation rate and interest rate will completely offset each other.

> Since over the long run interest rates, and, therefore, the discount rates, will rise and fall with inflation, we shall exploit this natural adjustment by offsetting the two factors in computing lost future earning capacity. We are satisfied that the total offset method provides at least as much, if not greater, accuracy than an attempt to assign a factor that would reflect the varying changes in the rate of inflation over the years. Our experiences with the use of the six percent discount rate suggest the difficulties inherent in such an approach. As to the concomitant goals of efficiency and predictability, the desirability of the total offset method is obvious. There is no method that can assure absolute accuracy. An additional feature of the total offset method is that where there is a

> variance, it will be in favor of the innocent victim and not the tortfeasor who caused the loss.

Id. at 1037-38.

In Kaczkowski, we concluded that current economic theory supported adoption of the total offset approach:

> Current economic theory demonstrates the accuracy of the total offset approach to inflation. As previously noted, the total offset method assumes that in the long run, future inflation and the discount rate will offset each other. … [C]ritics of the total offset approach fail to realize that **future inflation rates and future interest rates do not exist in a vacuum, but co-vary significantly.** It can be stated with assurance that present interest rates depend at least in part upon expectations of future inflation.

Id. at 1037 (internal citations omitted) (emphasis added).

Finally, the Kaczkowski Court also addressed the effect on future earnings of gains in productivity. Productivity includes such factors as age, maturity, education, skill, and technology advances. Id. at 1029 n.5, 1031, 1033-34. We emphasized that productivity is separate and distinct from inflation, and that both had to be considered in estimating lost future earning capacity. Id. at 1029 n.5 and 1032-33. To determine the effect of productivity factors on lost future earnings, we directed the trial court to adopt an evidentiary approach; i.e., the fact-finder should consider relevant evidence as to productivity factors and then make an informed estimation as to lost future earnings based on all the evidence presented.

Thus, to summarize, Kaczkowski set forth a framework for calculating a damages award based on lost future earnings. First, with respect to gains in productivity, Kaczkowski directed the fact-finder to consider relevant evidence, and then, based on that evidence, to estimate lost future earnings, and award damages that fully compensate the aggrieved party. Second, Kaczkowski directed that the award for lost future earnings was not to be

discounted to present value because, as a matter of law, the future inflation rate was presumed to offset totally the future interest rate. Id. at 1038-39. By adopting the total offset approach, Kaczkowski concluded that it was possible "to reflect the impact of inflation in [lost future earning capacity] cases without specifically submitting this question to the jury." Id. at 1039.[3, 4]

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[3] Although implicitly critical of Kaczkowski, Penn does not ask this Court to overturn it. See Penn's Reply Brief at 3. Rather, Penn argues that Kaczkowski established only a "narrow exception" to the general rule requiring that future damages be discounted to present value, which exception applies only to lost future wages, which are subject to cost-of-living or similar inflation-driven increases.

[4] Penn points out that "Kaczkowski stands alone," in that Pennsylvania is the only state that has established a conclusive legal presumption that the inflation rate totally offsets the interest rate for purposes of a damages award based on lost future earnings. Penn's Brief at 13. Penn also notes that the "United States Supreme Court has twice declined to extend Kaczkowski to claims for lost wages under federal statutes, both times reversing appellate courts (this Court and the Third Circuit Court of Appeals, respectively) for doing so." Penn's Brief at 12 (citing Moenssen Southwestern Railway Company v. Morgan, 486 U.S. 330, 340 (1988) and Jones & Laughlin Steel Corporation v. Pfeifer, 462 U.S. 523, 550 (1983)).

In Pfeifer, a work injury case brought under the Longshoremen's and Harbor Workers' Compensation Act, a federal district court in Pennsylvania applied Kaczkowski "as a mandatory federal rule of decision" and the Third Circuit affirmed. Id. at 550. The United States Supreme Court vacated and remanded for reconsideration of the damages award, concluding that the use of the approach delineated in Kaczkowski was not mandatory in federal courts, even though it "has the virtue of simplicity and may even be economically precise." Id. The Court declined to direct the district court to use **any** particular approach in place of Kaczkowski, but rather required the court to "make a deliberate choice, rather than assuming that it [was] bound by a rule of state law." Id. at 553.

While analyzing the circumstances presented in Pfeifer, the Supreme Court compared several methods, including the total offset approach of Kaczkowski, that had been used by the federal judiciary, the states, or our sister common law nations to account for the impact of inflation on lost future income. Id. at 538-48. The Pfeifer litigants and amici had urged the Court "to select one of the many rules that have been proposed and establish it for all time as the exclusive method in all federal trials for calculating an award for lost earnings in an inflationary economy;" however, the Court refused to do so. Id. at 546. While declining (continued…)

It must be noted that this Court decided Kaczkowski narrowly. Specifically, we stated that, with respect to the calculation of future damages "in other contexts," we did not wish to disturb the requirement that an award be discounted to present value, assuming an interest rate of six percent. Id. at 1037 n.21. We now face one of those "other contexts" in the instant case, to wit, should Dr. Helpin's damages award for lost future earned income, part of which derives from profits of a dental clinic, be governed by Kaczkowski's total offset approach.

Penn argues that its damages expert was erroneously barred from presenting evidence as to the present value of Dr. Helpin's lost future earned income. The trial court relied on Kaczkowski to hold that no present value discount should be applied to Dr. Helpin's lost future earnings because the total offset approach was established law in

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(…continued)
to select any particular approach as the federal standard, the High Court noted that "nothing prevents parties interested in keeping litigation costs under control from stipulating to [the approach of Kaczkowski] before trial." Id. at 550.

In Morgan, supra, a railroad employee filed a negligence action in state court under the Federal Employers' Liability Act. Relying on Kaczkowski, the trial judge refused to instruct the jury as to discounting a damages award for lost future earnings to present value. This Court affirmed. The United States Supreme Court reversed and remanded, concluding that the trial judge had erred by applying Kaczkowski's total offset approach, a rule of state law, to an action under federal law. The Court determined that by requiring the jury to follow Kaczkowski's total offset approach, the trial judge "improperly took from the jury the essentially factual question of the appropriate rate at which to discount [the damages award under the Federal Employers' Liability Act] to present value." Morgan, supra at 341-42. However, as in Pfeifer, the Court also stated that the parties were free to stipulate to the use of the total offset method. Id. at 342 n.11.

Thus, as Penn correctly notes, the United States Supreme Court has not made the total offset approach of Kaczkowski the standard for federal trials involving damages for lost future earnings. However, the High Court has not selected **any** particular approach as a single federal standard, and has not barred the use of the total offset approach under appropriate circumstances in federal trials.

Pennyslvania under the circumstances of this case. Before reviewing the trial court's application of Kaczkowski, we must first consider in some detail what occurred at trial.

During Dr. Helpin's case-in-chief, he presented the testimony of his damages expert, Edwin Rosenthol, a certified public accountant. Notes of Testimony ("N.T."), 6/8/07 (a.m.), at 80-118. Mr. Rosenthol testified that, based on his calculations, Dr. Helpin suffered a net loss in earned income of $5,795,796 due to Penn's breach of contract. Id. at 89, 116-117. As to the methodology and assumptions used to calculate this loss, Mr. Rosenthol explained that there were two components to Dr. Helpin's earned income: first, his base salary from Penn, and second, his income from CHOP's dental clinic, which included a percentage of the clinic's net profit as well as periodic bonuses. Id. at 100-101. Although Penn cross-examined Mr. Rosenthol in detail, at no time did Penn object to his failure to discount his calculation of lost future income to present value. Indeed, the concept of discounting to present value was not even mentioned by either party in the context of Mr. Rosenthol's testimony. N.T., 6/8/07 (p.m.), at 5-19. Thus, to sum up Dr. Helpin's damage evidence, it was presented to the jury without any discount to present value and without relevant objection.

It was ten days after Mr. Rosenthol's testimony, during the testimony of Penn's damages expert, Dr. Brian Sullivan, that the concept of discounting future loss to present value was introduced into the proceedings. N.T., 6/18/07, at 4-55. Dr. Sullivan, a forensic economist, testified that, according to his calculations, Dr. Helpin's loss of future earnings was between $456,071 and $713,023.[5] Id. at 32-33. Although Dr. Sullivan's report, like Mr. Rosenthol's report, was not admitted into evidence, Dr. Sullivan testified with the aid of a chart, referred to as "Defense Exhibit 30" ("Exhibit D-30"), which was shown to the jury.

[5] The range of lost earnings in Dr. Sullivan's calculations arose from his use of two different assumptions as to Dr. Helpin's age at retirement as well as from different estimations as to the level of bonus payments he would receive from his new employer.

Exhibit D-30 summarized Dr. Sullivan's analysis and presented his figures in tabular form. When Penn's counsel started to question Dr. Sullivan about his discount of Dr. Helpin's lost future earnings to present value, Dr. Helpin's counsel objected. N.T., 6/18/07, at 34. After an in camera conference with counsel, the court sustained the objection "[f]or the moment," and refused to allow questioning of Dr. Sullivan as to the concept or use of present value discounting. Id. at 38; see also id. at 74. During cross-examination of Dr. Sullivan, Dr. Helpin's counsel moved to strike Exhibit D-30 because it showed future earnings discounted to present value. The court deferred its ruling on this motion to strike.

Later in the afternoon, the court held another in camera conference with counsel concerning Dr. Helpin's motion to strike Exhibit D-30 and, more generally, the applicability of the discounted present value method to future damages under the facts of this case. Dr. Helpin argued that the holding of Kaczkowski, which rejected discounting to present value in favor of the total offset approach for calculating future damages due to loss of earnings, applied to the instant case. In contrast, Penn distinguished Kaczkowski by arguing that its holding did not apply to lost profits, which constituted the portion of Dr. Helpin's earnings derived from the CHOP dental clinic. Following argument, the trial court excluded Exhibit D-30; however, Dr. Sullivan had already completed his testimony and had used Exhibit D-30. N.T., 6/18/07, at 55, 78. There is no indication from the record that any of Dr. Sullivan's testimony regarding his calculations of Dr. Helpin's lost earned income was stricken.

In this appeal, Penn continues to assert that future damages in the form of lost profits are inherently distinct from future damages in the form of lost wages because profits "depend on myriad factors having nothing to do with inflation, including supply and demand, competition, sales volume, macroeconomic conditions, cost and profitability analysis, revenue forecasts, marketing and advertising, and the condition of the industry and the local and/or regional economy." Penn's Brief at 15. Penn argues that "the central

rationale" of Kaczkowski, i.e., that "'in the long run, future inflation and the discount [i.e., interest] rate will offset each other[,]' … applies only to types of future damages, like wages, that co-vary with inflation because only in that context does the 'offset' concept even arguably make economic sense." Penn's Brief at 15 (citing Kaczkowski, 421 A.2d at 1037). Accordingly, in Penn's view, lost future profits should not be subject to Kaczkowski's total offset rule, but rather should be discounted to present value using a prevailing interest rate. Finally, Penn asserts that the total offset method "is wholly inappropriate for lost profits because it creates a windfall for the plaintiff." Id.

We cannot agree that this Court's approach to damages based on lost future earnings, as set forth in Kaczkowski, is inapplicable to the circumstances presented here. If, as Penn seeks, the trial court merely discounted Dr. Helpin's damages award for lost future earned income to present value, then the negative effects of inflation on the ultimate purchasing value of the award would be ignored, contrary to Kaczkowski, and Dr. Helpin would be under-compensated.

We recognize that a large portion of Dr. Helpin's lost future earned income, like his past earned income, is attributable to his contractual share of the profits from CHOP's dental clinic. We further acknowledge, as Penn asserts, that the quantitative level of these profits will likely be determined by a multitude of factors, many of which may not be directly tied to the rate of inflation. Under Kaczkowski, such factors should be -- and indeed were -- a topic of evidence-based inquiry at trial. Mr. Rosenthol, Dr. Helpin's economics expert, testified at length and was subjected to extensive cross-examination as to his estimations of Dr. Helpin's lost future earned income from the CHOP clinic profits. Penn's economics expert, Dr. Sullivan, also testified as to his estimations of Dr. Helpin's lost future earned income. The jury heard and presumably incorporated into its future damages award all the testimony from both parties regarding factors relevant to projections of clinic profitability.

The total offset approach, as set forth by this Court in Kaczkowski, is not relevant to the consideration of such case-specific, individualized factors as those offered by Mr. Rosenthol and Dr. Sullivan. Rather, Kaczkowski's total offset approach addresses the very general effects of inflation on the value, over time, of a lump-sum damages award for lost future earnings. Kaczkowski's central assumptions -- that inflation must be considered and that, over time, inflation rate totally offsets interest rate -- are not dependent on the individual facts surrounding any specific lump-sum future damages award.

Dr. Helpin's damages for his lost future earned income were awarded, as is the general practice, in one lump-sum, even though the lost earnings project years into the future. There is no doubt that the rate of inflation in succeeding years will affect the ultimate value of Dr. Helpin's lump-sum award. Therefore, to compensate Dr. Helpin fully and fairly, it is necessary to make some estimations regarding not just the earning capacity of the award as realized through interest payments, but also the ultimate value of the award as diminished by inflation. To ignore the impact of years of inflation on a substantial proportion of Dr. Helpin's lost future earned income, while simultaneously applying a discount to present value based on the prevailing interest rate, would lead to unacceptable under-compensation of Dr. Helpin. The approach we set forth in Kaczkowski was designed to address such under-compensation, by taking into account not only future interest rates, but also future inflation rates. The concerns, the rationales, and the analysis set forth in Kaczkowski for lump-sum damages awards for lost future earnings are simply not altered by the fact that a substantial percentage of Dr. Helpin's lost future earned income derives from profits of the CHOP clinic.

We do not accept Penn's assertion that Kaczkowski applies only to cases involving lost future wages that "co-vary with inflation," presumably via periodic cost-of-living adjustments or a similar mechanism. Penn's Brief at 15. The determinative co-variance in Kaczkowski was between inflation, which decreases the purchasing power of money over

time, and interest, which increases the value of money over time. By adoption of the total offset approach, Kaczkowski resolved the specific problem of the competing effects of these two factors -- inflation and interest -- on a lump-sum damages award for lost future earnings. The competing effects of these two co-variables neither disappear nor become irrelevant -- and Kaczkowski is not rendered inapplicable -- merely because a portion of Dr. Helpin's future lost earned income is derived from profits of the CHOP clinic.

We recognized in Kaczkowski that, given the variability in inflation and interest rates, "[t]here is no method that can assure absolute accuracy" in predicting them over a period of years. Kaczkowski, supra at 1038. After carefully examining a variety of methods, we concluded that the total offset approach "provides at least as much, if not greater, accuracy than an attempt to assign a factor that would reflect the varying changes in the rate of inflation over the years." Id. In addition, Kaczkowski recognized that the total offset approach had virtues related to judicial efficiency and predictability:

> [Under the total offset approach, l]itigators are freed from introducing and verifying complex economic data. Judge and juries are not burdened with complicated, time consuming economic testimony. Finally, by eliminating the variables of inflation and future interest rates from the damage calculation, the ultimate award is more predictable.

Id. at 1038.

We are not persuaded that these considerations have any less significance or import or relevance merely because, as in Dr. Helpin's case, the lost future earnings at issue are partially derived from future profits of a business. The general effect of inflation to diminish the purchasing power of a lump-sum award for lost future earned income does not depend on whether some of those lost future earnings are derived from profits. We conclude that

Kaczkowski's total offset approach is applicable to the circumstances presented here, and accordingly, we affirm.[6]

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[6] Disputing Kaczkowski's basic assumptions and questioning the wisdom of Kaczkowski's holding, the dissent "would hold that lump-sum awards based on lost future income should be discounted to present value." Dissenting Opinion (Saylor, J.), slip op. at 1. However, the only question before us is whether Kaczkowski's holding should be applied when the lost future income at issue is derived specifically from business profits. Penn's position is that Kaczkowski should not be applied to future business profits, but rather should be strictly limited to its context, i.e., future lost wages. Notably Penn does not propose that Kaczkowski be overturned. The dissent agrees with Penn that Kaczkowski should not be extended; however, the dissent also implies that Kaczkowski was wrongly decided. Dissenting Opinion (Saylor, J.), slip op. at 3 ("[N]ot only did the Kaczkowski Court fail to establish a persuasive basis for total-offset, but it appeared content to introduce unnecessary, systemic imprecision in the law of remedies."); id. at 4 ("This is not the only theoretical shortcoming appearing on the face of the Kaczkowski decision."); id. at 5-6 ("Thus, from a theoretical standpoint, the Alaska court's limitation is economically sensible, and Kaczkowski's self-described 'eclectic method' is overly compensatory."); id. at 6 ("Even to the degree Kaczkowski is entitled to deference under stare decisis, for several reasons, I believe it would be best not to extend its approach to other scenarios … [T]he Kaczkowski Court's decision to apply the total-offset rule to damage estimates that include projected raises above and beyond predictable seniority-based increases stems from an analytical error, and ultimately results in overcompensation. Thus, it would be best, in my view, not to expand that error into other types of civil cases.")

The instant case does not present an appropriate forum for a consideration of whether Kaczkowski was wrongly decided and ultimately should be overturned. No analytical error or fundamental economic deficiency in Kaczkowski's holding was claimed or argued below, and the lower courts did not consider such possibilities. Thus, in the absence of any testimony or other evidence of record, it would be imprudent to conclude here that Kaczkowski's theoretical underpinnings are weak and its basic assumptions are unsupportable. Rather, we note that the Kaczkowski Court examined a variety of approaches to calculation of future lost wages, recognized that all approaches required estimates and predictions, and concluded that the total offset method was preferable for a variety of reasons, including accuracy, predictability, and judicial ease and efficiency.

With regard to the specifics of the instant case, the dissent suggests that "blind application" of the total offset method is inappropriate because, inter alia, Dr. Helpin's damages expert "**may** have already folded an expectation of price inflation into his estimate, not only with regard to lost profits or bonuses, but relative to [Dr. Helpin's] base academic salary." Dissenting Opinion (Saylor, J.), slip op. at 7 (emphasis added). This appears to be (continued…)

Because we have affirmed, there is no need to address the issue provisionally raised by Dr. Helpin as to the trial court's grant of nonsuit.

Messrs. Justice Eakin and Baer and Madame Justice Todd join the opinion.

Mr. Justice Saylor files a dissenting opinion in which Mr. Chief Justice Castille and Madame Justice Orie Melvin join.

(…continued)
speculation on the part of the dissent, and not a factual point raised or argued by the parties.