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IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF CALIFORNIA

SAN DIEGO DIVISION

--oOo--

IN RE: BANK OF AMERICA
CALIFORNIA UNEMPLOYMENT BENEFITS LITIGATION

Case Number: 21-MD-02992-GPC-MSB

________________________________/

This document relates to All Actions

________________________________/

VIDEO-RECORDED DEPOSITION OF DAVID I. LEVINE, Ph.D.

SAN FRANCISCO, CALIFORNIA

WEDNESDAY, MAY 28, 2025

Reported by:
Anrae Wimberley, CSR No. 7778
Job No. 7309212

haven't talked about? 09:45:50
A. No.
Q. Have you testified either in a deposition or at trial in anything other than what we've talked about with your expert work? 09:46:09
A. I've testified in two trials, I believe.
Q. What were those?
A. Let's see, when I was an undergraduate, my landlord took a shot at my roommate. I testified in that trial, I believe. 09:46:43
And a few years later, I was across the street from where a murder was committed, and I testified about the timing of gunshots in that trial.
Q. Exciting, perhaps too exciting. 09:47:02
Have you testified under oath in any other scenarios that we haven't talked about yet?
A. Not that I recall.
Q. What were you hired to do in this case?
A. Plaintiffs' attorney asked me to come up 09:47:39
with a conservative lower bound on a discount rate for damages for a few class of people who hadn't received their full unemployment insurance benefits and a conservative lower bound for the value of time for people who were kept on hold for unusually long 09:48:04

periods of time. 09:48:15

Q. Okay. I'm looking in your report -- you can refer to it, too. It will probably be helpful as we get through these questions.

I'm looking at the way you phrase those 09:48:27 topics in paragraph 5.

The first one you described as "an appropriate methodology for determining the value of the lost opportunity costs to the class members whose access to UI benefits was delayed or denied." 09:48:41

Explain to me what you mean by "lost opportunity costs" in that phrase.

A. So you kind of misused the term "opportunity cost" of choice A as being the value of A compared to what your next best choice, B. 09:49:00

So if you choose A, you forego B, and that's the opportunity cost. Or if you would like to choose A and someone takes that option away from you and you're stuck with B, the difference in that value is the opportunity cost itself. 09:49:18

A check is supposed to come in the mail today for you, and whoever is sending it says, Oh, it will be a month. So instead of having 1,000 days now, you have 1,000 -- $1,000 today, you'll have $1,000 in a month. 09:49:35

away one option, then the opportunity cost is, oh, 09:50:49
exactly the same inside, as you had just explained.

Q. Okay. So what is -- clarify for me again what the two options are that you're considering here. 09:51:00

A. Getting the $1,000 today versus in a month.

Q. Okay.

A. If I -- if -- and getting it in a month and taking out the loan so that I have as close to 09:51:09 $1,000 as I can today and repay the loan with the $1,000 in a month.

Q. And it's still accurate to use the phrase "opportunity cost" even though the person didn't have the option between getting the money now and 09:51:24 getting the money in a month?

MS. HUNSICKER: Objection; confusing.

BY MR. LEVENBERG:

Q. Is that confusing?

A. Can you just say it one more time? 09:51:33

Q. Is it still accurate to use the phrase "opportunity cost" if the person isn't making the choice?

It just struck me as a little weird.
Maybe it's not weird, but it struck me as a little 09:51:52

confusing because there was no other opportunity; 09:51:55
right?
They only had the one opportunity that they were going to get the money when the money was sent. 09:52:03
MS. HUNSICKER: Objection; confusing.
THE WITNESS: We can say I can choose between the A and B, and the opportunity cost of choosing A is the difference in value of A and B.
Or we can say I would choose A. That 09:52:18 option disappeared, I'm stuck with B, and it's the same opportunity cost. It's the same arithmetic --
BY MR. LEVENBERG:
Q. Okay.
A. -- as in your example. So that's how I'm 09:52:28 using it, and I think that's standard economics.
Q. Okay. And you draw a distinction between access to UI benefits being delayed or denied.
What do you mean when you say "delayed"?
A. If my debit card is supposed to have 09:52:55 $1,000 of credit on it and it doesn't have that $1,000 for an extra month, then I would call that a delay in access to benefits.
Q. And what would you mean when you say "denied"? 09:53:07

A. If the benefits disappeared and you didn't have access to them ever. 09:53:10

Q. Do you use the same method for evaluating the lost opportunity costs in the delayed scenario as you do in the denied scenario? 09:53:25

MS. HUNSICKER: Objection; compound.

THE WITNESS: Yeah, this is -- the word "denied" is not relevant because I only look at delayed in this report.

That's sort of a leftover from a -- the word "denied" is an unnecessary word because I don't look at that. 09:53:47

(Reporter seeks clarification.)

THE WITNESS: Because my method only looked at delayed. 09:54:15

BY MR. LEVENBERG:

Q. So you're not offering any opinion on the value of lost opportunity costs to people whose access to benefits was denied?

A. No. 09:54:33

Q. Did you evaluate any data on how many class members had delayed access to UI benefits?

A. I very briefly looked at one spreadsheet, but I didn't analyze it in any depth.

Q. And what spreadsheet did you look at? 09:55:00

A. I think McCrary had -- for this report, I did not look at any data. And after this report I looked at some. 09:55:07

I forget what your question was. Can you repeat it? 09:55:21

Q. Did you look at any data on the value of lost opportunity cost whose access to UI was delayed?

MS. HUNSICKER: Objection; confusing.

BY MR. LEVENBERG: 09:55:35

Q. You're right, that was confusing.

Did you evaluate any data on how many class members had delayed access to UI benefits?

A. And are you asking for this report or for my -- 09:55:48

Q. At any point did you evaluate that data -- those data?

A. I looked briefly at a spreadsheet that had some of those data on it, but I didn't analyze it in detail. 09:55:58

Q. And that spreadsheet came to you after you wrote this report?

A. Yes.

Q. And that was a spreadsheet referenced in Professor McCrary's report? 09:56:08

I don't remember what these are all called in detail, but those various stages of that process I assume we discussed. 10:03:39

Q. Backpedaling a little bit, did you consider or were you given any data about class members themselves? 10:03:57

MS. HUNSICKER: Objection; vague.

THE WITNESS: No. The class members -- I'm sorry, the class members, the 109,000 or the named plaintiffs? 10:04:34

BY MR. LEVENBERG:

Q. Any.

A. The plaintiffs' attorneys explained to me they had very limited data on the class members themselves, and the named plaintiffs were a nonrandom sample that was small. 10:04:47

So I didn't look at their -- any evidence about them when preparing this report.

Q. You didn't look at any evidence about the named plaintiffs when preparing this report? 10:05:07

MS. HUNSICKER: Objection; vague.

THE WITNESS: Unless something was mentioned in the available -- the Stango report available to me last February, I did not.

BY MR. LEVENBERG: 10:05:28

Q. What information relevant to class members 10:05:28
did you consider from the Stango report?
MS. HUNSICKER: Objection; vague.
BY MR. LEVENBERG:
Q. If any. 10:05:36
A. Nothing that I recall. You just asked if
I had seen any, and if he had quoted any, I would
have seen it.
Q. But you didn't consider it in preparing
your report? 10:05:48
MS. HUNSICKER: Objection; vague.
THE WITNESS: I did not consider evidence from
a small and nonrandom sample that was -- if he did
any, it would have been excerpted by proposedly -- I
don't know how to say that word -- excerpted with an 10:05:59
intent to be informative, no.
BY MR. LEVENBERG:
Q. And what about the unnamed class members,
did you look at any information about them in
preparing your report? 10:06:18
MS. HUNSICKER: Objection; vague.
THE WITNESS: Those 100-plus thousand?
BY MR. LEVENBERG:
Q. That certainly would be one of the
classes, yes. 10:06:31

A. No. 10:06:33

Q. Now, for any of the other classes, is the answer the same?

MS. HUNSICKER: Objection; compound.

THE WITNESS: I did not look at information on 10:06:41 class members for any of the classes.

BY MR. LEVENBERG:

Q. You mentioned a few numbers that you said plaintiffs' counsel told you about.

What assumptions did the plaintiffs' 10:06:59 counsel ask you to make in forming your opinions?

MS. HUNSICKER: Objection; vague.

THE WITNESS: Can you ask that again? It's a -- I'm not sure what you mean "what assumptions."

BY MR. LEVENBERG: 10:07:27

Q. Did plaintiffs' counsel ask you to make any assumptions in doing your report?

MS. HUNSICKER: Objection; vague.

THE WITNESS: They asked me to prepare a conservative lower bound on the cost of not having 10:07:45 access to the funds and of the time.

So any assumptions implicit in those, but something that would apply to the vast majority of the class members.

But they didn't state any particular 10:08:08

MS. BRYS: This is the August 2024 one. There are three Regans. I'm not sure which one he's referring to. 10:12:42

THE WITNESS: It was available to me in February of this year, so probably this one. 10:12:51

MR. LEVENBERG: Mark this one as an exhibit.

(Deposition Exhibit 2 was marked.)

MS. HUNSICKER: Is this Exhibit 2?

MR. LEVENBERG: Yes, despite the confusing "Exhibit 4" label. I assume it was Exhibit 4 to something else. 10:13:29

MS. HUNSICKER: The class certification.

BY MR. LEVENBERG:

Q. Take as much time as you need to look through this, but my question is, when you were referring to a Regan report that you reviewed, is this that report? 10:13:42

A. The table on page 3 is the same, so I assume the report is.

Yes. 10:14:06

Q. Okay. And my original question, rewinding a little bit, I believe you testified in response to my questions about looking at information about class members, that you had considered information from the Regan report. 10:14:17

Is that a fair characterization of what you told me? 10:14:19

A. Yes, from this Regan report since . . .

Q. Can you point me to the portions of the Regan report that had the information about class members that you were referring to? 10:14:36

MS. HUNSICKER: Objection; vague.

THE WITNESS: Definitely the definitions on the top of page 3.

If I can go back to an earlier answer, you asked what was in this spreadsheet that I looked at. 10:15:21

It is quite likely it's the spreadsheet Regan refers to on page 14 of this report, in which case, in addition to several dates, it also had which, if any, fraud filters applied. 10:15:47

I said I couldn't recall what else was in it. It looks as if it has fraud filters.

So in paragraphs 35 and 36, there's some of the counts that I referred to about the number of people in classes. 10:16:10

And paragraph 80 has some of the dates.

And I must have skipped one, but on -- paragraph 84 has some of the dollar amounts, which -- and if you take the total amount times the class size, you can get the average claim. And 10:17:32

presumably has similar dollar amounts for all the classes, I just . . . 10:17:35

Yeah, in paragraph 76 and . . .

Paragraph 100 and 108. And there must be a count. 10:18:28

And in paragraph 97, there's a count.

And paragraph 111, there's a count and 114 -- or paragraph 111 and 112, there's a count, and paragraph 114 is an amount.

And paragraph 119 has a count. 10:19:36

After page 54, excerpts from this spreadsheet, it looks like, and I assume this is the spreadsheet I looked at, but I . . .

I'm not 100 percent certain. I don't think it -- as I said, I looked at it pretty quickly. 10:20:32

So I can't promise I found every class size or sum of claims, but that's the sort of data I extracted from the Regan report.

And then the Stango report may have had mean or median claim, and it definitely had some -- the early Stango report had something about small claims or short claims, I believe. 10:20:50

BY MR. LEVENBERG:

Q. Now, did you review any of the underlying 10:21:09

data in the portions of the report you just mentioned or was your review limited to the report itself? 10:21:13

MS. HUNSICKER: Objection; vague.

THE WITNESS: After the rebuttal reports from McCrary, I received some of the underlying data and I looked at it briefly. 10:21:30

And -- yeah.

BY MR. LEVENBERG:

Q. But you didn't look at any of that data in creating your own report? 10:21:50

MS. HUNSICKER: Objection; asked and answered.

THE WITNESS: I did not.

BY MR. LEVENBERG:

Q. So in paragraph 34, when it references -- 10:22:01

A. I'm sorry, which report?

Q. I'm looking at the one with the green, Mr. Regan.

In paragraph 34, when it references [redacted]

You did not consider any of that data in 10:22:33

creating your report, did you? 10:22:37
A. I was asked to derive a methodology to create a conservative lower bound that would apply to the vast majority of the class members.
I didn't look at data for each of the 109,000. 10:23:04
Q. So does that mean I should understand that you did not look at any of the data referenced in paragraph 34?
A. Correct. 10:23:22
Q. And then I'm looking at the data -- or the spreadsheet that follows the signature page after page 54.
Did any of the data here factor in the conclusions in your report? 10:24:14
MS. HUNSICKER: Objection; vague.
THE WITNESS: I did not look at the microdata, the individual level data.
BY MR. LEVENBERG:
Q. And why not? 10:24:40
A. I was asked to derive a methodology to derive a conservative lower bound, and my methodology is appropriate for the vast majority of the class members. These data would not have helped in that project. 10:25:03

Q. What portion of the class would your methodology not be appropriate for? 10:25:06

MS. HUNSICKER: Objection; confusing.

THE WITNESS: Can you . . . the methodology I used applies to the vast majority of the class. I don't have a specific numeric number. 10:25:31

BY MR. LEVENBERG:

Q. Aside from a numeric number, what would make somebody belong to the class but have your methodology not be applicable to them? 10:25:48

MS. HUNSICKER: Objection; confusing, misstates testimony.

THE WITNESS: I have a couple of different opinions. I actually can't answer that. I have two different methods for two different questions. 10:26:38

So can you ask that again?

BY MR. LEVENBERG:

Q. Okay. Well, how would you describe the first of those two methods?

A. That the credit card interest rate is a conservative measure of the value of not having access to funds for the vast majority of the class members. 10:26:56

Q. And your testimony still is that your methodology is appropriate -- your methodology in 10:27:21

reference to the credit card interest rate is appropriate for the vast majority of the class members? 10:27:26

MS. HUNSICKER: Objection; misstates testimony.

MR. LEVENBERG: It didn't. 10:27:35

THE WITNESS: Can you say it again?

BY MR. LEVENBERG:

Q. Is your testimony still that your methodology in reference to the credit card interest rate is appropriate for the vast majority of the class members? 10:27:48

MS. HUNSICKER: Same objection.

THE WITNESS: Say it one more time. Let me just see if I can hear it.

BY MR. LEVENBERG: 10:27:59

Q. You testified before, "my methodology is appropriate for the vast majority of the class members."

Is that correct?

MS. HUNSICKER: Same objection. 10:28:06

THE WITNESS: Now, we're talking about the delays in payment?

BY MR. LEVENBERG:

Q. Well, I was just talking about that particular statement that you made. 10:28:18

A. There's the two methods I used. 10:28:21
Q. Right.
A. What the plaintiffs' attorney asked me to do was answer two questions with a conservative lower bound on the cost of delayed funds and the 10:28:30 opportunity cost, the value of time being on hold.
Q. Right. Which means you had two methods to --
A. Yes.
Q. -- to answer the two questions. 10:28:41
A. So I prefer you just do them one at a time.
Q. Right.
So as to the first method, is that method appropriate for the vast majority of the class 10:28:49 members?
MS. HUNSICKER: Objection; confusing.
THE WITNESS: The credit card interest rate is a conservative lower bound for the vast majority of the class members, yes. 10:28:59
BY MR. LEVENBERG:
Q. What portion of the class members is that methodology not appropriate for?
MS. HUNSICKER: Objection; confusing.
THE WITNESS: I don't have a numeric answer to 10:29:14

that question. 10:29:17

MS. CHAN: Mr. Levenberg, can we go off the record for just a second?

MR. LEVENBERG: Sure.

THE VIDEOGRAPHER: We're going off the record. 10:29:23 The time is 10:29 a.m.

(Discussion off the record.)

(Recess taken.)

THE VIDEOGRAPHER: We're back on the record. The time is 10:45 a.m. 10:45:56

BY MR. LEVENBERG:

Q. So before we took our break, we were discussing your opinion that the credit card interest rate is a conservative lower bound for the vast majority of the class members. 10:46:12

Is that still your opinion?

A. Yes.

Q. And my question was, what portion of the class members is it not appropriate for?

MS. HUNSICKER: Objection; confusing. 10:46:28

THE WITNESS: So the method I use is appropriate for the entire class. It's a conservative lower bound. I was asked to come up with a conservative lower bound that would apply to the vast majority, and that method applies to the 10:46:48

entire class. 10:46:53

BY MR. LEVENBERG:

Q. Well, you said before, "my methodology is appropriate for the vast majority of the class members." 10:46:59

A. I apologize for the imprecise language.

My methodology is appropriate for the entire class. The lower bound applies to the vast majority of the class members.

And there's a . . . yeah. 10:47:22

Q. Explain what that means, "the lower bound applies to the vast majority of the class members."

A. Plaintiffs' attorneys asked me to find a method that would estimate lower bound on the opportunity cost of not having access to funds that 10:47:54 would apply to the vast majority of class members, meaning that the vast majority would have an opportunity cost equal to or greater than that bound that I opined on.

And so the methodology applies to 10:48:21 everyone. The lower bound applies to the -- is the opportunity cost for --

Q. What portion of --

A. -- the credit card interest rate that I proposed using is a lower bound of the opportunity 10:48:35

cost for the vast majority of the class members. 10:48:44

Q. What portion of the class would have an opportunity cost less than that lower bound?

A. I don't have a numeric number.

Q. What characteristics of a class member 10:48:55 could cause them to have an opportunity cost less than that lower bound?

MS. HUNSICKER: Objection; incomplete hypothetical.

THE WITNESS: I was asked to create -- to 10:49:12 estimate an opportunity cost that would be a lower bound for the vast majority. I didn't do an analysis of each of the 100,000 plus to say the characteristics.

So it's -- I'm glad to go into the basis 10:49:28 of my opinion, and -- but I can't sum up all that in one answer easily.

BY MR. LEVENBERG:

Q. Well, if the lower bound applies to the vast majority of the class members, then there is a 10:49:48 portion to whom it does not apply; is that correct?

MS. HUNSICKER: Objection; misstates testimony.

THE WITNESS: There's two answers, and it's just -- my hesitation, it's a little bit hard for me to respond. 10:50:11

My method applies to the entire class because I was supposed -- I was asked to get something that would create an estimate of aggregate harm that was appropriate for the class. 10:50:14

So I -- that's what I was asked to do, and that's what I did. 10:50:32

Most people would have a higher opportunity cost, some would have that opportunity cost and a small minority could be different.

But that wasn't what I was asked to look at. I was asked to look at what would create an estimate of the aggregate harm. 10:50:49

BY MR. LEVENBERG:

Q. What would cause somebody to belong to that small minority? 10:51:02

MS. HUNSICKER: Objection; incomplete hypothetical.

THE WITNESS: It's hard for me to answer because there's so many ways to be above the bound, and if I start listing them, I'm afraid -- off the top of my head, I'm afraid I would be missing some. 10:51:42

So I would go through the basis of the opinion and at the end, we can return to that.

Is that reasonable?

BY MR. LEVENBERG: 10:51:53

If there's anything else that you want to mention there, I do want to hear it. 10:55:33

So if there are any other factors that could make someone a member of the small minority that have an opportunity cost less than the bound, let me know what you can think of. 10:55:44

A. I mean, not be reducing consumption in things that are hard to substitute across time, not be relying on sources of credit with high nonmonetary costs in terms of reputation or status or social obligation. 10:56:46

And that's what comes to mind.

Q. Anything else you can think of?

A. No. But I'm pretty sure I'll want to add to this list as the day proceeds. 10:57:16

Q. Okay. Well, if you do think of anything more as the day proceeds, feel free to let me know and I'll put in a note to self to ask you if anything else occurred to you.

One of the things that you listed was not having transaction costs be a large portion of the opportunity cost of not having access to funds. 10:57:37

I think I know what that means, but can you clarify it?

A. So you asked whether I had looked at the 10:58:02

microdata on the claims, and I said it wasn't 10:58:04
necessary for my methodology.

But, ultimately, one would take the interest rate that I defend as appropriate -- I don't know you would, one could, I guess a jury will 10:58:21 decide what to do if this goes to trial -- and multiply it times the size of the claim and the duration.

Some claims have very short duration or small amounts. And so if it's a $1,000 claim for 10:58:42 3 days or $100 claim for a month, my interest rate would imply damages of a couple dollars or less. And the transaction costs of having your debit card balance be off is more than $1.50, just in terms of the time involved, ignoring embarrassment or stress 10:59:19 or whatever.

So the notion that a small or a claim or a short claim, even if none of the other criteria held, the transaction costs are larger than the interest rate I'm proposing, and so the interest 10:59:54 rate remains a conservative lower bound.

Q. I'm trying to wrap my head around this scenario. Give me a moment.

So you referred to somebody who might need to access credit to cover a $1,000 claim for 3 days. 11:00:34

A. No, no. I apologize for my lack of clarity. 11:00:39

If somebody losses access to $1,000 for 3 days -- let me just do the math real quick.

I think -- we can check my math more fully -- but I think that means the damages are on the order of $1.50 using my method. 11:01:07

And the reason I say the credit card interest rate is lower bound to the opportunity cost, it is not necessarily that they would borrow the $1,000 for 3 days but simply that $1.50 is -- the transaction cost of dealing with why your debit card isn't working as expected is more than $1.50 for the vast majority of the class. 11:01:20

And we haven't talked about my second opinion about the value of time, but just for the moment thinking of the minimum wage as the value of time, they would say, you know, a few minutes of time it takes to figure out why it's denied, even if customer service is working perfectly, if you have to go on a website or visit a -- call a call center to figure out why it was denied and figure it out, that that's more than $1.50 worth of transaction costs. 11:01:42 11:02:02

Q. And what's the connection between that and 11:02:17

the credit card interest rate? 11:02:19

MS. HUNSICKER: Objection; vague.

THE WITNESS: The credit card interest rate says such a person has an opportunity cost of not having access to their funds, at least the credit 11:02:30 card interest rate, of at least $1.50.

And if you work out the transaction cost, they're well over $1.50, so this is a lower bound. This is a conservative amount of damages they have suffered. 11:02:46

Even if they are not borrowing, they still suffered damage -- here, it's transaction cost -- and this credit card rate is a conservative measure of their damage.

So it remains part of this -- this person 11:02:59 remains part of this vast majority, even if they didn't need to borrow it for three days. And some would, but even if they didn't.

BY MR. LEVENBERG:

Q. So this person's damages are not based on 11:03:17 the credit card rate, you're just certain that whatever damages those are, they are more than the credit card rate?

MS. HUNSICKER: Objection; misstates testimony, vague. 11:03:28

THE WITNESS: For the vast majority of people, the transaction cost would be more than what would be implied by the credit card interest rate, yes. 11:03:30

BY MR. LEVENBERG:

Q. But it's not the case that their damages are based on the credit card interest rate? 11:03:36

MS. HUNSICKER: Objection; vague, misstates testimony.

THE WITNESS: If we looked merely at the transaction costs, the credit card interest rate would be -- this $1.50 in this example would be a very conservative estimate of the damages they would suffer. 11:03:47

BY MR. LEVENBERG:

Q. Well, by "very conservative," what do you mean? You mean the damages they suffered are greater than the credit card interest rate? 11:03:57

MS. HUNSICKER: Objection; vague.

THE WITNESS: Greater or equal to, yes.

BY MR. LEVENBERG: 11:04:08

Q. Do the damages they suffered have anything to do with the credit card interest rate other than being more than it?

MS. HUNSICKER: Objection; vague.

THE WITNESS: In this hypothetical, I'm 11:04:23

assuming that their only cost are these transaction costs. 11:04:26

They could also be -- they might have other costs and then some of those would be tied to the credit card interest rate. But I'm saying, in this simplest example where they have no other cost, the credit card interest rate remains a conservative lower bound. 11:04:38

BY MR. LEVENBERG:

Q. Where their only costs are their opportunity costs? 11:04:54

A. No. Their only costs are the transaction costs.

Did I say that wrong? Pardon me.

THE REPORTER: No, I wrote it wrong. 11:05:06

THE WITNESS: Oh, okay. Thank you both for the correction.

BY MR. LEVENBERG:

Q. I know this is a complicated concept. I'm just trying to break it up into all of its parts. 11:05:14

Where their only costs are the transaction costs, their costs are greater than the credit card interest rate; is that your opinion?

A. Yes, for these small or short claims.

I mean, if we look at $100 claim for a 11:05:30

month, again, it's -- again, it's about $1.50, and 11:05:34
so it's a longer claim but it's a smaller amount of money --

(Reporter seeks clarification.)

A. -- the transaction costs are going to be 11:06:04
higher.

Let me just check my math here.

I think that's right, yeah.

So the point is, even for small or short claims, the credit card interest rate, even if they 11:06:20
have no need to borrow, remains a very conservative lower bound.

Q. Can the credit card interest rate be used to calculate their transaction costs?

MS. HUNSICKER: Objection; confusing. 11:06:36

THE WITNESS: I'm using it as a conservative lower bound.

Does that answer your question?

BY MR. LEVENBERG:

Q. Not quite. 11:06:50

So I understand your opinion that the interest rate is a conservative lower bound, meaning the transaction costs are higher than the figure produced by the interest rate.

Am I stating that accurately? 11:07:04

longer hours and get another job. That was pretty 11:33:45
hard for unemployed people during the pandemic.
But those are some of the options. There might be others I haven't thought of.
Q. Okay. Can you think of any others? 11:33:57
A. Not at this moment. I might -- please proceed.
Q. Sure.
So in that scenario where someone borrows off of a credit card to pay the $1,000 and pays 11:34:13
15.9 percent interest on their borrowing, I understand the basis for your opinion that 15.9 percent is a good measure of their cost, or a good minimum measure of their cost to be sure of, stating that accurately. 11:34:34
But not everybody is going to choose that option, right? We can assume that?
Can we assume that?
A. Yes.
Q. Okay. So there are some people who would 11:34:46
indeed access the $1,000 they have in the bank.
Is that a valid assumption?
A. I mean, very few people would use 100 percent of their bank account, but some might.
Q. And do you have any data on how frequently 11:35:16

account but they are accessing the account, do you have any data on how many people would choose that option over the other one? 11:36:46

A. Not tied to this hypothetical.

What we do see is that a very high share of American households have positive bank balances and have positive credit card debt they are paying interest on. 11:37:08

So it's -- people having money in the bank doesn't mean they're not borrowing on their credit card. 11:37:37

Q. Right.

Do you have any data on the proportion of class members who chose to pay on credit cards in lieu of accessing liquid funds? 11:37:52

A. No.

Q. Okay. I wanted to go through your report more or less in sequence, and I realize we were doing it a little bit out of sequence. So we'll leave that line of questioning there and go back roughly to the beginning. 11:38:22

I'm on paragraph 9 now.

Your statement there was, "Using an aggregate measure of harm is common practice in the field of economics, and aggregates are an 11:38:44

appropriate way to represent classwide harm." 11:38:48

Describe what you mean by "aggregate measure of harm."

A. The total harm suffered by a group.

Q. And do you need to have information about 11:39:17 the harm suffered by individual members of the group to form an opinion about the total harm suffered by the group?

MS. HUNSICKER: Objection; vague.

THE WITNESS: Can you ask that again? 11:39:41

You mean individuals as opposed to having . . .

BY MR. LEVENBERG:

Q. If you have information about the aggregate measure of harm for a group, can you use 11:39:50 that to draw conclusions about the harms suffered by individual members of the group?

MS. HUNSICKER: Objection; vague.

THE WITNESS: So the method I'm proposing is to say that this credit card interest rate is a 11:40:10 conservative lower bound on the opportunity cost of funds.

My expectation is one would then take the individual claims amounts and durations to create a damage per person. 11:40:30

Is that what you're asking? 11:40:34

I'm not sure what you're asking.

BY MR. LEVENBERG:

Q. Well, that is helpful.

So I guess let's back up a little. Tell 11:40:42 me how you would propose to arrive at the aggregate measure of harm.

A. If I can find opportunity cost to funds -- a lower bound on the opportunity cost to funds for the vast majority of the class, and we apply that to 11:41:11 the total amount of UI payments that were delayed times their delay, we would get an aggregate measure of harm.

Q. Okay. And that aggregate measure of harm is basically just the sum total of all individual 11:41:31 harms?

MS. HUNSICKER: Objection; confusing.

THE WITNESS: It is a conservative lower bound on the sum of the individual harms is what it's intended to create. 11:41:51

BY MR. LEVENBERG:

Q. Can your method be used to measure the individual harms suffered by any individual class member?

MS. HUNSICKER: Objection; outside the scope of 11:42:01

the report. 11:42:04

THE WITNESS: I was asked to create a method to get a conservative lower bound for estimating the aggregate harm.

I wasn't asked to -- 11:42:15

BY MR. LEVENBERG:

Q. Okay. You can finish.

So can your method be used to assess the harm experienced by any individual class member?

MS. HUNSICKER: Objection; outside the scope of the report. 11:42:29

THE WITNESS: I wasn't asked to do that, so I don't . . .

BY MR. LEVENBERG:

Q. Do you have an opinion on it? 11:42:40

MS. HUNSICKER: Same objection.

THE WITNESS: Ask the question again.

BY MR. LEVENBERG:

Q. Can your method be used to assess the harm experienced by any individual class member? 11:42:52

MS. HUNSICKER: Same objection.

THE WITNESS: I'm hesitant to answer because it's an ill-posed question.

My method was trying to create a conservative lower bound for the class and then use 11:43:01

the individualized information on claimed amounts 11:43:17
and duration.

It makes it very hard to say how . . . it
was not designed for any other purpose besides that.

BY MR. LEVENBERG: 11:43:41

Q. Could it be used for any purposes it
wasn't designed for?

MS. HUNSICKER: Objection; outside the scope of
the report.

THE WITNESS: I can't answer that. 11:43:51

I mean, I'm sorry, I'm just -- ask the
question again. It makes sense, but I'm having
trouble answering it.

BY MR. LEVENBERG:

Q. That's fine. 11:44:01

Can your method be used to assess the
harms experienced by any member of the class?

MS. HUNSICKER: Outside the scope of the
report; objection.

THE WITNESS: I wasn't designing the method 11:44:18
with that intent, and I don't have an expert opinion
on that.

I just -- you guys are welcome to hire me
to answer that question, but I just don't have an
opinion that I can defend right now. 11:44:33

So I will simply say the economic principles remain the same, and I would need to know way more about this to say how I would approach it. You just haven't told me enough and -- 11:48:13

BY MR. LEVENBERG: 11:48:27

Q. Well, what more would you want me to tell you?

MS. HUNSICKER: Objection; outside the scope of the report.

Asked and answered as well. 11:48:44

THE WITNESS: I'm still not even sure what -- since I was asked a question about aggregate harm to create a lower bound for a group, to say how I would approach that for an individual is just a very different question. 11:49:02

I have not thought deeply about what . . . I just haven't thought deeply about what it would take to answer it.

BY MR. LEVENBERG:

Q. So do you have an opinion about whether the method described in your report could be used to assess harm experienced by an individual class member? 11:49:43

MS. HUNSICKER: Objection; asked and answered.

THE WITNESS: The methodology I used was 11:50:10

designed to create a conservative lower bound on an interest rate that one could then multiply by an amount of missing -- of delayed funds times the duration of the delay and create an estimate of harms for individuals. 11:50:12 11:50:31

But it's designed to create an aggregate measure being a conservative lower bound that applies to the vast majority of the class.

Is that responsive to your question?

There's many -- I don't know what you mean by individual -- I mean -- 11:50:48

BY MR. LEVENBERG:

Q. Well, it is what it is.

A. -- it's what it is designed for.

Q. It is a helpful response, but I can't stop asking questions, so I'm going to keep going. 11:50:55

So should I interpret that to mean the method was designed to create an aggregate measure of harm for a class of 109,000 people; is that fair?

A. Even though I use that number, I forget exactly which, but that was part -- 11:51:14

Q. Whatever that number is, I know it's --

A. For more than 100,000 people, yes.

Q. Could that method also be used to create an aggregate measure of harm for a class of 50,000 11:51:29

There are a few paragraphs of allegations on page 81 and 82 about Stephanie Moore. 13:04:48

You could take your time to read it if you would like. Let me know when you're ready and I'll ask my next question. 13:05:02

(Witness reviews document.)

A. Okay.

Q. Based on what you've read here, can you form an opinion on whether Ms. Moore is in the group of the vast majority of people for whom your 13:05:57 conclusions about the credit card interest rate has a lower threshold of damage are appropriate?

MS. HUNSICKER: Objection; outside the scope, confusing, incomplete hypothetical.

THE WITNESS: The plaintiffs' attorney 13:06:18 requested that I determine a conservative lower bound on an appropriate discount rate or interest rate for the vast majority of the class.

It's designed to figure out the most -- a very generous amount of aggregate damage for the 13:06:41 bank to pay using standard social science methods.

It wasn't designed to speak to each of the 100,000 people and, in any case, there's vastly too little information here for me to say anything about this case. 13:07:14

have to tell me a lot more about what you are 13:09:50
interested in, and sitting here right now, I just
can't whip out an answer. It takes time for me to
think these things through.
BY MR. LEVENBERG: 13:10:03
Q. If I'm interested in whether Ms. Moore has
incurred damages, do you have enough information
here to form an opinion about that?
MS. HUNSICKER: Objection; same objections,
outside the scope, vague. 13:10:12
THE WITNESS: Damages meaning nonzero damages?
You just mean any damages?
BY MR. LEVENBERG:
Q. Sure. You can start there.
A. There's enough information here to say the 13:10:33
damages were above zero.
Q. And what information would you need to
determine how much above zero they are?
A. That's a different question than I was
asked to answer, and so I strongly encourage you to 13:10:48
hire me to answer that other question.
But my expert opinion is about the
aggregate damages that would be generous to the bank
and a conservative lower bound for the aggregate
harm. 13:11:08

information that you'd consider relevant to whether she is in the vast majority of people to whom your method applies? 13:21:21

MS. HUNSICKER: Objection; confusing, misstates testimony. 13:21:35

THE WITNESS: So, again, my method wasn't intended to be applied to each of 100,000 people, it would be a conservative estimate for the aggregate harm.

When McCrary was implying that people were not paying the credit card interest rate, thus they had a low opportunity cost, this seemed to show -- it was one of several statements here that, if true, would show meaningful opportunity costs above what McCrary was implying. 13:21:53 13:22:15

BY MR. LEVENBERG:

Q. How can the credit card interest rate be used to measure that opportunity cost?

A. The credit card interest rate is not supposed to measure the opportunity costs for each person. 13:22:36

What I can say is, when I read this and McCrary -- and, again, I wish I had McCrary.

I can't grab McCrary's report to look at exactly what he said? 13:22:54

Q. If it would help, we can show you McCrary's report. 13:22:55

A. I would appreciate that, if you would be so kind.

MR. LEVENBERG: All right. We're going to call it Exhibit 5. 13:23:01

(Deposition Exhibit 5 was marked.)

THE WITNESS: So what McCrary wrote in paragraph 76, "all of the class representatives used savings or borrowing from friends and family to cover at least some portion of their expenses. These sources of funds would have significantly lower costs than the credit card rate." 13:23:50

Continuing after a few sentences, "the credit card borrowing rate is above the upper bound of the cost of borrowing for the class representatives." 13:24:26

And continuing that "the named plaintiffs suggest credit card borrowing or any borrowing at a similar or even higher interest rate was not a primary source of borrowing for many class members." 13:24:49

And the implication was that if they were not borrowing with a high explicit credit card interest rate, that the opportunity cost was low.

And you asked me which of these suggested 13:25:12

the opportunity cost was higher and that the summary of returning to live with a person with whom she had an abusive relationship, late payments, a weakened credit rating, inability to look for a job, all seemed to have a positive opportunity cost. 13:25:15 13:25:56

My method wasn't designed to value each of these separately but is an extraordinarily conservative bound for someone like this.

The interest rate I'm proposing, it's something like $15 a month for the median claim. I don't recall the median claim, but on that order. 13:26:19

And that seems to be -- most people would require more than $15 to return to live with an abusive person or defer looking for work.

BY MR. LEVENBERG: 13:26:55

Q. Is there a connection between the $15 or the credit card interest rate and the harm of being forced to return to living with the person with whom she had an unhealthy relationship?

MS. HUNSICKER: Objection; asked and answered. 13:27:10

THE WITNESS: There's a very strong connection in that I was asked to get a lower bound, and that is much, much lower than what most people would consider that.

So only in the sense that I was asked to 13:27:18

find a lower bound, and it seems to satisfy that requirement. 13:27:20

BY MR. LEVENBERG:

Q. Is there enough information here for you to draw a conclusion about whether Ms. Moore is in the vast majority? 13:27:33

MS. HUNSICKER: Objection; vague, incomplete.

THE WITNESS: Are we assuming all of this is true for this question?

BY MR. LEVENBERG: 13:28:03

Q. If you need to assume it's true, tell me if you need to assume it.

A. If this were all true, she would suffer more harm than that.

Again, my method wasn't designed to go case by case. But I don't know how much her claim was for. I guess you told me that earlier. That was in an earlier thing you showed me and the duration. So I -- without doing some math, I'm a little hesitant to say. 13:28:12 13:28:35

Do you want me to do that math?

Q. You can.

(Pause in proceedings.)

A. Again, I hate to do math real-time, but I think the damages in my credit card rate are 13:29:43

A. Yes. 14:31:31

Q. How would you evaluate -- how would you quantify the value people place on that?

MS. HUNSICKER: Objection; vague.

THE WITNESS: I mean . . . I would have to 14:32:25 ponder how to do that.

It's not an important part of . . .

If we see somebody undertaking activities that are costly to avoid borrowing, that suggests that they value the borrowing capacity. That's the 14:33:47 general principle.

Applying it to this case is a little bit subtle because my method isn't designed to look at each of the 100-plus thousand case class members. But the general principle is -- would be to see what 14:34:04 people are doing to avoid borrowing and if people change their behavior as they get closer to their borrowing limit but are not yet at it.

BY MR. LEVENBERG:

Q. Let me approach it from another way. 14:34:24

I was talking about two options. The first option was keeping the streaming service and borrowing money to pay for it.

And you pointed out, I think very reasonably, that the value of -- that the streaming 14:34:38

access to funds was delayed. 14:55:00
Is that wrong?
A. Okay. You may have to break because I'm getting confused and I just may need more coffee.
Ask that one more time. If I don't 14:55:17 understand, maybe we'll break.
Q. I'm asking about the rate you were applying in the aggregate.
The aggregate is the aggregate period of time in which access to funds was delayed for 14:55:26 everybody, not just for one person but for everybody; right?
A. That wouldn't be how I would phrase it, not just for one person, including each of the one persons to create the aggregate. 14:55:46
Q. Right. Yeah. I think we're on the same page on that.
A. I'm sorry.
Q. Okay. So there's one number, which is basically a number of days that funds were delayed 14:55:57 in the aggregate; right?
A. I'm sorry, I was unclear.
People had different amounts of delay --
Q. Right.
A. -- so to generate -- it's not you take the 14:56:17

aggregate number of days and the aggregate dollar amount, you take each person's delay times dollar amount. 14:56:20

Q. Right.

A. So you don't sum up days, you sum up dollar days to create the -- yeah -- aggregate amount of days or years' worth of thousands or millions of whatever funds the bank owed that it had removed or not added or not permitted the State to add to various debit cards. 14:56:29 14:56:52

Okay. Are we saying the same thing?

Q. Yes.

A. Okay. So it's not aggregate days, it's aggregate days and dollars.

Q. So your method, what you're proposing, is you sum up the dollar days for each person during the period that they lacked access to the funds and then you apply your 15.9 percent interest to that; correct? 14:57:07

A. Yes. 14:57:27

Q. Okay. But you could also sum up the days a different way.

You could say that instead of measuring all of the days they were without access to funds, we'll measure all of the days in which they were 14:57:42

BY MR. LEVENBERG: 15:01:43

Q. Well --

A. -- the situation, and I'm -- you're correct, it's not about an individual, but if you told me all class members were this way, I'd say, 15:01:46 you know, that's a different situation than I -- you know -- different situation I haven't thought much about. So I'll try to be responsive.

Can you reask the question again? I think that -- 15:02:13

MS. HUNSICKER: Can we have a coffee break when you're done with this question?

MR. LEVENBERG: Maybe two or three more questions and then let's break.

MS. HUNSICKER: Thank you. 15:02:19

BY MR. LEVENBERG:

Q. You don't have any information about how many class members paid credit card interest though, do you?

MS. HUNSICKER: Objection; asked and answered. 15:02:27

THE WITNESS: No.

BY MR. LEVENBERG:

Q. So we also don't have any information about the periods in which class members paid credit card interest, do we? 15:02:43

A. If the "we" includes Bank of America, I have no idea how much information they have, but I do not. 15:02:46

Q. Okay. That's fine.

MR. LEVENBERG: All right. We can take that break. 15:02:54

THE VIDEOGRAPHER: We're going off the record. The time is 3:02 p.m.

(Recess taken.)

THE VIDEOGRAPHER: We're back on the record. The time is 3:19 p.m. 15:19:43

BY MR. LEVENBERG:

Q. Okay. I'm going to fast forward to part three of your report.

Looking at paragraph 47, your opinion is, "I understand that the Customer Service Class is seeking damages for time spent on hold with the Bank's Claims call center." 15:20:07

Is it your opinion that class members were damaged by all of the time they spent on hold? 15:20:22

MS. HUNSICKER: Objection; vague.

THE WITNESS: This is actually poorly written.

It should have said excess time on hold or excesses compared to some measure of normal time on hold. 15:20:44

A. I'm unsure how they're computing that. I don't know what data they have or experts. 15:21:55

Q. Okay. The next paragraph, you refer to several studies that have found that the typical value of time is close to the median wage. 15:22:08

What does that mean exactly? Does it mean the typical value of time for everybody, is that the median wage, or does it mean that the typical -- or does it mean that the value of everyone's time is at their own wage, so across a group value is the median? 15:22:28

MS. HUNSICKER: Objection; confusing.

THE WITNESS: Plaintiffs' attorneys asked me to pick a measure of the value of lost time that would be a conservative measure for the class as a whole. 15:22:48

When economists estimate this value of time, they sometimes estimate an aggregate number and they sometimes disaggregate it relative to an individual or a group's own wages.

And the relationship is pretty consistent in both methods, that economic theory says that, you know, if somebody is willing to take a wage to work 40 hours, that the value of their 40 hours is somewhat close to that wage or -- and that's roughly what we see depending on what the alternative use of 15:23:15 15:23:53

time is. 15:23:56

So for commuting, it's often somewhat less than the median wage. When you're commuting and stuck in traffic, it's higher than the median wage or above. When it's unproductive and stressful, if 15:24:14 you're in an airport and your flight is delayed, then it's quite a bit higher in the one study I saw that looked at that.

But across regions and across study methods, it's pretty consistently a bit below the 15:24:37 median wage for commuting and above for unpleasant commuting or things like that.

BY MR. LEVENBERG:

Q. Does it depend on a person's actual wage?

A. The disaggregated studies often find that 15:25:04 it moves not quite one for one but is higher for people with higher wages.

Again, that was why I chose to -- the plaintiffs' attorneys asked me to find a conservative measure that would, in aggregate, be 15:25:24 generous to the bank, lower than the average, and also be applied at a vast majority of the class members, which is what I did.

Q. So just to be clear, when we are talking about the studies that have found that the typical 15:25:45

Q. Somebody else can figure out how important that is to them. 15:41:14
Are there any opinions in your report sitting here today that you would revise or change in any way? 15:41:23
A. I mean, there's definitely wording and line editing I would do, but no, there are no substantive opinions.
You know, in paragraph 47, I should have said excess waiting time and so forth. So there's poorly worded sentences, but there are no opinions that I would change. 15:41:39
Q. Are there any additional opinions that you would express in this case that aren't contained in this report? 15:41:52
A. No.
Q. Do you have any plans to supplement this report?
A. I don't even know what that means.
Q. Do you have any plans to make any changes or additions to the report? 15:42:15
A. No.
I'll have to caution that I didn't know that was possible. If there's a possibility, I would definitely do some line editing. 15:42:32

Q. Other than line editing, are there any changes or additions you would make?

A. Yeah, I should say, I mentioned a couple of cases where after reading McCrary and Stango, you know, the Stavins citation on imperfect recall, that people were optimistic on how much they were saving, and the Federal Reserve data on reservation wages were both things I found in pursuing what they -- the sources that they cited, and I would mention those.

Q. Is there anything else you would add or change?

A. I think some of the wording I used on describing the Pulse Survey, the 66 percent, was literally Stango's words, in which case there should have been quotation marks, and I feel bad about that.

But I'm not sure of that. But it looked awfully similar to what he wrote. So it's definitely paraphrasing, maybe a quote, and I should have cited that.

Q. Anything else?

A. No.

MR. LEVENBERG: All right. I think I am probably done.

I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were administered an oath; that a record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; that the foregoing transcript is a true record of the testimony given.

Further, that if the foregoing pertains to the original transcript of a deposition in a Federal Case, before completion of the proceedings, review of the transcript (X) was ( ) was not requested.

I further certify that I am neither financially interested in the action nor a relative or employee of any attorney of any party to this action.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: June 11, 2025

Anrae Wimberley

ANRAE WIMBERLEY, CSR No. 7778