

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
SOUTHERN DIVISION  
NO. 7:23-CV-897**

**IN RE:**

**CAMP LEJEUNE WATER LITIGATION**

**This Document Relates To:**

*Bruce Hill v. USA, 7:23-CV-028*  
*Jimmy Laramore v. USA, 7:23-CV-594*  
*Frank Mousser v. USA, 7:23-CV-667*  
*Jacqueline Tukes v. USA, 7:23-CV-1553*  
*Gary McElhiney v. USA, 7:23-CV-1368*  
*Edgar Peterson v. USA, 7:23-CV-1576*  
*Diane Rothchild v. USA, 7:23-CV-858*  
*Richard Sparks v. USA, 7:23-CV-682*

**OPPOSITION TO PLAINTIFFS'  
MOTION TO EXCLUDE  
CERTAIN OPINIONS OF DEFENDANT'S  
PHASE 3 ECONOMIC EXPERTS,  
DUBRAVKA TOSIC, TRICIA YOUNT,  
AND ANDREW BROD**

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**TABLE OF JOINT APPENDIX EXHIBITS**

<b><u>Exhibit Number</u></b>	<b><u>Short Citation</u></b>	<b><u>Full Title</u></b>
655	Miller Rep. (Hill)	BRUCE HILL V. UNITED STATES OF AMERICA CAMP LEJEUNE WATER LITIGATION NO. 7:23-CV-00028 EXPERT REPORT OF DR. HENRY MILLER DECEMBER 15, 2025
780	Miller Dep. Tr.	Deposition Transcript of Henry Miller, Ph.D. February 20, 2026
708	Tosic Rep. (Hill)	IN RE: CAMP LEJEUNE WATER LITIGATION EXPERT REPORT OF DUBRAVKA TOSIC, PH.D. ESTIMATED ECONOMIC LOSS OF MR. BRUCE HILL December 15, 2025
642	Brod Rep. (Peterson)	Expert Report of Andrew Brod, Ph.D. In the matter of Edgar Allen Peterson, IV v. United States of America Case No. 7:23-CV-01576 December 15, 2025
725	Yount Rep. (Laramore)	Expert Report of Tricia M. Yount, CPA, MAFF Economic Damages Jimmy Laramore v. United States of America (Camp Lejeune Water Litigation) December 15, 2025
641	Brod Rep. (McElhiney)	Expert Report of Andrew Brod, Ph.D. In the matter of Gary Layne McElhiney, Sr. v. United States of America Case No. 7:23-CV-01368-BO December 15, 2025
786	Staller Dep. Tr.	Deposition Transcript of Chad Staller March 10, 2026

766	Rybolt Rep.	EXPERT REPORT OF PETER RYBOLT JANUARY 20, 2026
660	Miller Rep. (Tukes)	JACQUELINE TUKES V. UNITED STATES OF AMERICA CAMP LEJEUNE WATER LITIGATION NO. 7:23-CV-01553 EXPERT REPORT OF DR. HENRY MILLER DECEMBER 15, 2025
758	Staller Rebuttal	Expert Rebuttal Report of Chad L. Staller, J.D., MBA, MAC, CVA Re: Rebuttal Responses January 20, 2026
786	Staller Dep. Tr.	Deposition Transcript of Chad Staller March 10, 2026
813	Fryar Rep. (Laramore)	SURGICAL COST ANALYSIS February 7, 2025

## INTRODUCTION

In yet another attempt to render Section 804(e)(2) of the Camp Lejeune Justice Act of 2022 (the “CLJA”) meaningless, Plaintiffs challenge the United States’ expert economists, Andrew Brod, PhD, Dubravka Tomic, PhD, and Tricia Yount, CPA. The Plaintiffs’ motion (“Motion”) seeks to exclude their respective calculations of the value the United States will provide or pay—via Medicare, TRICARE<sup>1</sup>, and the Department of Veteran Affairs—for the future medical care that certain Track 1 Trial Plaintiffs will receive as a result of alleged Camp Lejeune injuries.<sup>2</sup> Plaintiffs’ challenge, under Federal Rule of Evidence 702 (“Rule 702”), boils down to a disagreement with the experts’ assumptions about the viability, rate growth, and future operation of Medicare, TRICARE, and the Veterans Health Administration (“VHA”) or the VA’s Community Care Network (“CCN”) (collectively, “VHA/CCN”). This disagreement is a weight of the evidence issue, not an admissibility issue.

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<sup>1</sup> In the United States’ Memorandum of Law in Opposition to Plaintiffs’ Motion *in Limine* to Preclude Inappropriate Offset Evidence (D.E. [805](#)), the United States, while acknowledging TRICARE is not expressly listed in Section 804(e)(2) of the CLJA, reserved the right to present evidence of payments made under unenumerated programs, like TRICARE, for purposes other than offsets. D.E. [813](#) at 5, n. 5. As noted in the United States’ contemporaneously-filed Response in Opposition to Plaintiffs’ Motion for Partial Summary Judgment Regarding Future Offsets (D.E. [860](#)), whether Plaintiffs can satisfy their burden of proof as to future damages where it is reasonably certain that TRICARE will cover future medical expenses is a separate issue from offsets expressly reserved by the United States. D.E. [878](#) at n. 3. To the extent the United States seeks to present evidence of future payments made under unenumerated programs, like TRICARE, for purposes other than offsets, TRICARE is addressed here.

<sup>2</sup> Certain Track 1 Trial Plaintiffs are seeking future damages based upon the cost of purportedly necessary medical care that they will need into the future for their respective Track 1 disease or related conditions. Such damages are based upon opinions from their life care planners who opined on alleged future care needs for Track 1 Trial Plaintiffs Bruce Hill, Jimmy Laramore, Frank Mousser, Jacqueline Tukes, Gary McElhiney, Edgar Peterson, Diane Rothchild, and Richard Sparks. Plaintiffs’ life care planners also offer opinions regarding the future medical care costs for Plaintiff Terry Dyer. However, because Ms. Dyer (at least as of the date that the United States’ last received a medical records supplementation) has not received treatment for her Track 1 disease that was paid by the United States, the United States has not presently sought to offset any potential litigation award pursuant to Section 804(e)(2) of the CLJA.

Plaintiffs argue that Dr. Brod, Dr. Tasic, and Ms. Yount: (1) assumed, without analysis, certain “predicate facts” necessary for reliable future offsets opinions; (2) made imprecise assumptions about the future rates of Medicare, TRICARE, and VHA/CCN; and (3) provided alternate hypothetical conclusions. Plaintiffs have cited no authority to support their arguments, and, notably, their own experts never raised these points in their rebuttal reports to Dr. Brod, Dr. Tasic, or Ms. Yount’s opinions.

Plaintiffs’ challenge is part of a three-pronged strategy to dismantle the Camp Lejeune Justice Act’s offset provision and increase damages beyond what the Act allows. In addition to this Motion, Plaintiffs have filed (1) a Motion *in Limine* to exclude evidence of future offsets and nullify any claims for past offsets for health care or disability compensation provided, and (2) a Motion for Partial Summary Judgment to exclude all claims for future offsets. *See* D.E. [865](#) at n. 2 (describing the coordinated attack). Plaintiffs want damages awards that do not account for medical expenses or disability payments that have been, or will be, covered by the United States. To that end, Plaintiffs argue that future government benefits are not guaranteed because changes to federal programs are possible, so offsets should not apply at all.

But the test of a future projection is not whether it is “tethered” to future facts (an inherent contradiction: there are no “facts” in the future), but whether it is reasonable and based on facts known at the time of the analysis. Economists necessarily rely on forward-looking assumptions regarding existing reimbursement systems like Medicare, TRICARE, and VHA/CCN, which have existed for decades and continue to reimburse Plaintiffs for medical treatment. *See* Miller Rep. (Hill) at 5-7 (JA Ex. 655, D.E. [837-19](#)).

As explained below, Dr. Brod, Dr. Tasic, and Ms. Yount offer, in part, specialized testimony to help the factfinder determine the present value of future medical care or payments.

And their testimony is the product of the reliable application of reliable economic principles and methods. Thus, their testimony is admissible under Rule 702. Without their testimony on the present value of future benefits, any award of future damages overcharges the United States and grants a “double recovery” to Plaintiffs—something Plaintiffs have routinely stated Section 804(e)(2) of the CLJA was meant to avoid, *see, e.g.* D.E. [806](#) at 1 (“Plaintiffs seek for the CLJA’s text to be applied as written, to prevent double recovery.”), at 5 (“Plaintiffs understand the Offset Provision in the CLJA as intended to prevent double recovery . . .”).<sup>3</sup>

### BACKGROUND

Dr. Brod, Dr. Tomic, and Ms. Yount opine on the present value of offsets for future medical care provided by the United States. To do so, they obtained data on the current reimbursement rates of Medicare, TRICARE, and VHA/CCN for the medical treatment identified in Plaintiffs’ life care plans. These reimbursement rates came from Dr. Henry Miller, the United States’ healthcare expert. *Nix v. Chemours Co. FC*, No. 7:17-CV-189-D, 2023 WL 6471690, at \*12 (E.D.N.C. Oct. 4, 2023) (Dever, J.) (acknowledging that experts may rely on the opinions of other experts, if it is common in the experts’ field to do so).

Dr. Miller analyzed: (1) current medical reimbursement rates under Medicare, TRICARE, and VHA/CCN; (2) how and why the rates are projected to increase for the programs; (3) eligibility criteria for the programs; and (4) the likelihood of the programs to continue in the future. *See, e.g.*, Miller Rep. (Hill) at 5-7 (JA Ex. 655, D.E. [837-19](#)). Dr. Miller also analyzed the interplay of the

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<sup>3</sup> The United States has made clear that the notion of “‘double recovery’ does not appear in any section of the CLJA, and PLG fails to cite any evidence in the legislative history to support the claim that the CLJA Offset Provision is confined to circumstances where it would prevent double recovery. To the contrary, the CLJA Offset Provision mandates that the United States ‘shall’ offset ‘*any* award’ by the amount of ‘*any* disability award, payment, or benefit’ CLJA § 804(e)(2).” D.E. [813](#) at 7 (emphasis original).

programs: Medicare is typically the primary payor, TRICARE is secondary to Medicare, when applicable; the VA relies on Medicare rates for the vast majority of its services. Miller Dep. Tr. at 96:6-98:24, 145:25-146:6, 157:20-23 (JA Ex. 780, D.E. [841-11](#)). Dr. Miller determined rates for programs that a given Plaintiff had already used to pay for his or her Track 1 disease or related conditions. In other words, if a Plaintiff had used Medicare and the VHA to pay for his Parkinson's Disease treatment, then Dr. Miller provided rates for both Medicare and the VHA for services contained within that Plaintiff's life care plan.

Dr. Brod, Dr. Tasic, and Ms. Yount then calculated the present-day value of future reimbursements from Medicare, TRICARE, and VHA/CCN based upon certain Plaintiffs' treatment identified in the Plaintiffs' experts' and the United States' experts' respective life care plans. To account for future growth in costs, they relied on specific medical components from the Consumer Price Index ("CPI"). The CPI is a standard method for tracking how the average price of goods and services change over time. D.E. [865](#) at 23 (noting Plaintiffs' challenge is not to the CPI generally); *Speigner v. Wilkie*, 31 Vet. App. 41, 48 (2019) ("The CPI-U for all items measures items that a consumer uses in everyday life, such as clothing, food, transportation, household furnishings and operations, fuel and utilities, and medical care.").

One of the major groups in the CPI is medical care, which incorporates historical Medicare rates. See U.S. Bureau of Labor Statistics, Consumer Price Index, <https://www.bls.gov/cpi/factsheets/medical-care.htm> (last visited May 16, 2026) ("While the weight of each CPI medical care related index is determined by out-of-pocket spending, price change [*sic*] reflected by the indexes measure the total reimbursement to medical care providers. This includes medical care payments made by private insurance companies, Medicare Part B, Medicare Part C (Medicare Advantage) and Medicare Part D on behalf of consumers."); *Hutchens*

*v. Abbott Lab'ys, Inc.*, No. 1:14-CV-176, 2016 WL 10566144, at \*5 (N.D. Ohio Dec. 22, 2016) (“The CPI consists of subdivisions, including a Medical Care Index . . .”).

Dr. Brod, Dr. Tomic, and Ms. Yount relied on specific medical components of the CPI that are tied to Plaintiffs’ future life care recommendations. *See* Tomic Rep. (Hill) at 19, n.107 (JA Ex. 708, D.E. [839-6](#)) (specifying CPI medical components: physicians’ services, medical care services, medical equipment and supplies, prescription drugs, and outpatient hospital services); Brod Rep. (Peterson) at 3 (JA Ex. 642, D.E. [837-6](#)) (specifying CPI medical components: physicians’ services, services by other medical professionals, medical equipment and supplies, prescription drugs, non-prescription drugs, care of elderly invalids at home, outpatient hospital services); Yount Rep. (Laramore) at 2-3 (JA Ex. 725, D.E. [839-23](#)) (projecting increases in costs using growth rates based on the historical price index for the CPI category Physicians and Services by Other Medical Professionals for the preceding twenty years).

Notably, the rates from medical components of the CPI track often underestimate historic Medicare data—i.e., the United States’ approach results in lower offsets than the approach of just looking at historical Medicare rates as Plaintiffs suggest. *Compare* Miller Dep. Tr. at 122:4-9 (JA Ex. 780, D.E. [841-11](#)) (testifying that Medicare rates have increased by two to three percent over the last several years), *with* Brod Rep. (McElhiney) at 3 (JA Ex. 641, D.E. [837-5](#)) (listing growth rates for various CPI medical components: 1.53%, 1.46%, 0.98%, 1.97%, 1.20%, 3.70%, 3.79%).

In sum, to assess the present value of future medical reimbursements from Medicare, TRICARE, and VHA/CCN, Dr. Brod, Dr. Tomic, and Ms. Yount properly reviewed specific medical components of the CPI that consider historical Medicare rates for the future medical care the individual Plaintiffs are seeking.

## LEGAL STANDARD

Federal Rule of Evidence 702 governs the admission of expert testimony:

A witness who is qualified as an expert by knowledge, skill, experience, training, or education may testify in the form of an opinion or otherwise if the proponent demonstrates to the court that it is more likely than not that:

- (a) the expert’s scientific, technical, or other specialized knowledge will help the trier of fact to understand the evidence or to determine a fact in issue;
- (b) the testimony is based on sufficient facts or data;
- (c) the testimony is the product of reliable principles and methods; and
- (d) the expert’s opinion reflects a reliable application of the principles and methods to the facts of the case.

Fed. R. Evid. 702.

An expert’s testimony is admissible if it “rests on a reliable foundation and is relevant to the task at hand.” *Belville v. Ford Motor Co.*, 919 F.3d 224, 232 (4th Cir. 2019) (quoting *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579, 597 (1993)). The Courts must assess “whether the reasoning or methodology underlying the testimony is scientifically valid and . . . whether that reasoning or methodology properly can be applied to the facts in issue.” *Belville*, 919 F.3d at 232 (quoting *Daubert*, 509 U.S. at 592–93). The test of reliability is flexible, and the law grants a district court discretion when making this determination. *In re Camp Lejeune Water Litig.*, No. 7:23-CV-897, 2025 WL 3565850, at \*12 (E.D.N.C. Dec. 12, 2025). A court has “broad latitude to consider whatever factors bearing on validity that the court finds to be useful; the particular factors will depend upon the unique circumstances of the expert testimony involved.” *Id.* at \*13.

A *Daubert* challenge does not test the correctness of the opinion but only the methodology utilized by the expert. Fed. R. Evid. 702 Advisory Committee’s Notes to 2023 Amendment (“[P]roponents ‘do not have to demonstrate to the judge by a preponderance of the evidence that the assessments of their experts are correct, they only have to demonstrate by a preponderance of evidence that their opinions are reliable. . . The evidentiary requirement of reliability is lower than the merits standard of correctness.’” (quoting *In re Paoli R.R. Yard PCB Litig.*, 35 F.3d 717, 744

(3d Cir. 1994)). Determining admissibility, which falls within the gatekeeping role of the court, is separate from determining weight and credibility. *In re Camp Lejeune Water Litig.*, 2025 WL 3565850, at \*10.

Once the court is satisfied that the reliability standard has been met, the expert’s testimony “should be tested by the adversary process — competing expert testimony and active cross-examination — rather than excluded from jurors’ scrutiny for fear that they will not grasp its complexities or satisfactorily weigh its inadequacies.” *Ruiz-Troche v. Pepsi Cola of P.R.*, 161 F.3d 77, 85 (1st Cir. 1998) (citing *Daubert*, 509 U.S. at 596).

## ARGUMENT

### **I. The Expert Opinion Testimony of Dr. Brod, Dr. Tasic, and Ms. Yount Satisfies Rule 702.**

The expert opinions of Dr. Brod, Dr. Tasic, and Ms. Yount on future offsets are admissible. They meet the requirements of Rule 702. Plaintiffs argue that these opinions are inadmissible under Rule 702 because they: (1) make assumptions regarding Medicare, TRICARE, and VHA/CCN that Plaintiffs disagree with; (2) rely on a different dataset than Plaintiffs would have used for projecting future costs under these programs; and (3) provide hypothetical conclusions. These arguments fail and will be addressed within the framework of Rule 702.

At root, Plaintiffs disagree with the assumptions used by Dr. Brod, Dr. Tasic, and Ms. Yount regarding future viability, rate growth, and operation of Medicare, TRICARE, and VHA/CCN; but these disagreements go to weight, not admissibility. *Wilder Enters., Inc. v. Allied Artists Pictures Corp.*, 632 F.2d 1135, 1144 (4th Cir. 1980) (“The asserted fallibility of the expert’s assumptions affected the weight of his testimony, not its admissibility.”); *Rhyne v. United States Steel Corp.*, 474 F. Supp. 3d 733, 761 (W.D.N.C. 2020) (citing cases and noting parenthetically that questions as to the validity of assumptions go to weight, not admissibility); *Smith v. Wellpath*,

*LLC*, No. 2:20-CV-77, 2023 WL 9317261, at \*16 (E.D. Va. Mar. 30, 2023) (noting that disputes over an expert’s assumptions affects the weight of their testimony, not its admissibility); *United States v. M/Y Amadea*, No. 23-CV-9304, 2025 WL 460030, at \*1 (S.D.N.Y. Jan. 15, 2025) (“Similarly, assertions that an expert witness’s testimony is based upon unfounded assumptions go to the weight, not the admissibility, of the testimony.” (internal quotations omitted)).

**A. The Specialized Knowledge of Dr. Brod, Dr. Tasic, and Ms. Yount Will Help the Trier of Fact.**

For reasons explained in the United States’ Memorandum of Law in Opposition to Plaintiffs’ Motion *In Limine* to Preclude Inappropriate Offset Evidence, the CLJA requires offsets for the amount of any award, payment, or benefit provided to a Plaintiff at any time. D.E. [813](#). This includes future medical care. *Id.* To that end, Dr. Brod, Dr. Tasic, and Ms. Yount provide testimony and calculations to help the Court determine the present value of offsets for Plaintiffs’ future medical care that will be paid by Medicare, TRICARE, and VHA/CCN.

To be helpful to the trier of fact, the proposed expert testimony must be outside the common knowledge or function of the fact finder. *Nix v. Chemours Co. FC, LLC*, 805 F. Supp. 3d 626, 642 (E.D.N.C. 2025). Calculating the present-day value of future treatment outlined in a life care plan requires expertise outside the common knowledge of a factfinder and is therefore helpful under Rule 702. *Dunn v. Pascoe*, No. 420-90, 2023 WL 1394886, at \*5 (S.D. Ga. Jan. 31, 2023). In fact, given the complexity of the economic issues, the testimony of economic experts is particularly helpful to the Court. *Id.* Here, there is a further level of complexity, given that the issue is not just the present-day value of future treatment outlined in Plaintiffs’ life care plans, but also the present value of the offsets for that future treatment based on Medicare, TRICARE, and VHA/CCN reimbursement rates. Thus, the economic testimony of Dr. Brod, Dr. Tasic, and Ms. Yount will help the Court navigate this specialized area.

**B. The Testimony of Dr. Brod, Dr. Tosic, and Ms. Yount is Based on Sufficient Facts or Data.**

The thrust of Plaintiffs’ challenge is that Dr. Brod, Dr. Tosic, and Ms. Yount do not analyze certain “predicate facts” related to federal health programs—e.g., whether coverage will exist, which payer will apply, and whether Plaintiffs will remain eligible. D.E. [865](#) at 3, 5, 12, 13, 16, 17, 19, 21, 22. Plaintiffs claim that these are foundational inputs required for an offset calculation. *Id.* at 18-19. Plaintiffs, however, offer nothing to support this.

What Plaintiffs are really arguing is that they disagree with the assumptions that the United States’ experts made regarding the future viability and operation of Medicare, TRICARE, and VHA/CCN, as well as the experts’ assumptions regarding Plaintiffs’ future eligibility for benefits under these programs. *See id.* at 3 (“they necessarily assume, without support or analysis . . . [n]o expert supports or tests those assumptions . . . [n]ot only are these assumptions unsupported . . . .”). Those assumptions result in offsets to potential litigation damages awards that account for future medical care sought by Plaintiffs. Plaintiffs seek to avoid these offsets entirely. But the validity of an expert’s assumptions, affects the weight of the expert’s testimony, not its admissibility. *Wilder Enters., Inc.*, 632 F.2d at 1144; *In re Camp Lejeune Water Litig.*, No. 7:23-CV-897, 2025 WL 3565850, at \*14 (E.D.N.C. Dec. 12, 2025) (Myers, J.) (stating that a court may not weigh an expert’s methodological inputs and citing cases where disputes over assumptions went to weight); *Mincey v. Se. Farm Equip., Co.*, No. 4:23-CV-1050-JD, 2025 WL 2450913, at \*13 (D.S.C. Aug. 26, 2025) (“The Fourth Circuit and other courts have repeatedly held that factual disagreements over expert assumptions—particularly those that can be corrected or clarified—go to the weight of the evidence, not its admissibility.”).

Moreover, there are several other problems with Plaintiffs’ argument: (1) the argument fails to cite any authority that “predicate facts” are necessary for a reliable future offset opinion,

(2) the argument fails to account for the fact that no analysis can guarantee the future of federal programs, and (3) the argument fails to acknowledge that Dr. Brod, Dr. Tomic, and Ms. Yount rely on Dr. Henry Miller, who analyzed the assumptions that Plaintiffs claim are unsupported, including the future viability of Medicare, TRICARE, and the VHA/CCN.

### **1. Plaintiffs Cite No Authority for Their Predicate Facts Requirement.**

First, despite framing these “predicate facts” as “foundational” and “necessary” to analyze future offsets, Plaintiffs fail to cite any authority to support this proposition. *See, e.g.*, D.E. [865](#) at 12-14, 16-19. Plaintiffs fail even to cite anything in their own experts’ original reports, testimony, or rebuttal reports to support this. If these “predicate facts” are as foundational and necessary as Plaintiffs claim (*id.* at 15-18), then their experts’ rebuttal reports to Dr. Brod, Dr. Tomic, and Ms. Yount would certainly have pointed this out. In sum, Plaintiffs create their own requirements for opining on future offsets which demand certainty about the future, and then criticize the United States’ experts for not meeting them.

### **2. No Analysis Can Guarantee the Future, Nor Is a Guarantee Required.**

Second, no expert can guarantee the future of federal programs or a plaintiff’s continued eligibility for any program. Staller Dep. Tr. at 237:24-238:6, 240:4-9 (JA Ex. 786, D.E. [841-17](#)). As such, the United States’ experts are entitled to make reasonable assumptions based on existing data. *See Packgen v. Berry Plastics Corp.*, 847 F.3d 80, 88 (1st Cir. 2017); Federal Judicial Center, *Reference Manual on Scientific Evidence* 461 (3d ed. 2011) (the general rule that a plaintiff may not recover damages beyond an amount proven with reasonable certainty “permits damages estimates that are not mathematically certain”); *see also* D.E. [859-1](#), Stephen M. Horner, *The Valuation of Earning Capacity Definition, Measurement and Evidence*, 12(1) J. of Econ. 13, 17

(1999) (noting the impossibility of removing all uncertainty from estimates of the amount of future damages) (Rybolt Rep. at 12 (JA Ex. 766, D.E. [840-30](#))).

This is exactly what Dr. Brod, Dr. Tomic, and Ms. Yount did. They obtained (1) Dr. Henry Miller's data on the reimbursement rates of Medicare, TRICARE, and VHA/CCN for specific treatment recommendations in the Plaintiffs' respective life care plans, and (2) growth rate data for specific medical components of the CPI corresponding to Plaintiffs' treatment recommendations. They then used this data to estimate the present value of future medical care to calculate an appropriate offset. Plaintiffs' complaint is that Dr. Miller's data on reimbursement rates reflects "only what was 'possible' not what will occur . . . ." D.E. [865](#) at 13. But as Plaintiffs' economist, Chad Staller, testified, because no one has a "crystal ball," there are assumptions forensic economists "have to make into the future." Staller Dep. Tr. at 237:24-238:6, 240:4-9 (JA Ex. 786, D.E. [841-17](#)) ("anything could happen, right, and that's why I don't testify to absolute certainty . . . .").

### **3. Dr. Miller Analyzed Assumptions that Plaintiffs Claim He Failed to Conduct.**

Lastly, Plaintiffs argue that Dr. Miller's data (and thus Dr. Brod, Dr. Tomic, and Ms. Yount's reliance on the same) is insufficient because he did not assess: coordination of benefits; whether coverage will exist in the future; how long coverage will continue; or how reimbursement rates will change. D.E. [865](#) at 12. These points again reflect a disagreement with the United States' experts' assumptions regarding coverage and rates; they do not show a flaw in Dr. Miller's methodology. Moreover, Plaintiffs' argument that Dr. Miller's data are insufficient is incorrect.

First, Dr. Miller explained payor coordination at his deposition. He testified that once a Plaintiff is eligible for Medicare, the Plaintiff remains eligible for Medicare coverage, and TRICARE provides secondary coverage to Medicare, to the extent applicable. Miller Dep. Tr. at

96:6-98:24, 157:20-23 (JA Ex. 780, D.E. [841-11](#)). As to VA reimbursement rates, Plaintiffs agree that those rates depend on and use Medicare rates. D.E. [865](#) at 25; *see also* Miller Dep. Tr. at 145:25-146:6 (JA Ex. 780, D.E. [841-11](#)). Dr. Brod, Dr. Tosic, and Ms. Yount understood this when forming their opinions. *See, e.g.*, Brod Rep. (McElhiney) at 6 (JA Ex. 641, D.E. [837-5](#)) (“[Dr. Miller] lists projected payments by Medicare (with TRICARE as secondary coverage) and VHA/CCN for the items in the Shahnasarian LCP.”).

Plaintiffs also misrepresent Dr. Miller’s testimony on VA rates, claiming that he testified that he could not evaluate the cost of care within VA facilities (D.E. [865](#) at 7-8), when he actually testified that the VA has relied on Medicare ratings for the vast majority of its services and that he evaluated VA costs using CCN rates as an acceptable proxy. Miller Dep. Tr. at 145:25-146:6, 148:5-7 (JA Ex. 780, D.E. [841-11](#)) (“I felt it was appropriate to use the CCN rate as equivalent to what it would cost in a VA facility.”). He grounded this approach in literature from his materials considered list and, given that actual VA costs are most often higher than CCN rates, his use of CCN rates is a conservative approach. *Id.* at 146:15-25, 239:13-20.

As to future coverage, Dr. Miller concluded that Medicare, TRICARE, and the VHA health care system are expected to continue for the foreseeable future, citing deposition testimony of witnesses from the Department of the Treasury, the Library of Congress, and the U.S. Department of Veteran Affairs. *See* Miller Rep. (Hill) at 5-7 (JA Ex. 655, D.E. [837-19](#)); Miller Rep. (Tukes) at 5-6 (JA Ex. 660, D.E. [837-24](#)) (discussing future viability of TRICARE); *see also* Miller Dep. Tr. at 236:18-237:8 (JA Ex. 780, D.E. [841-11](#)) (testifying that Medicare will continue to cover healthcare for those 65 and older and that its rates will definitely increase). Dr. Miller also concluded that the VHA rates will continue to keep pace with rising costs in the healthcare marketplace and the factors that will impact future Medicare rates, both of which are accounted

for by the CPI. *See* Miller Rep. (Hill) at 5-7 (JA Ex. 655, D.E. [837-19](#)); Miller Dep. Tr. at 128:7-25 (JA Ex. 780, D.E. [841-11](#)); <https://www.bls.gov/cpi/factsheets/medical-care.htm>, (last visited May 16, 2026).

In short, Plaintiffs disagree with Dr. Miller’s assumptions regarding Medicare, TRICARE, and VHA/CCN, even though they have not filed any motion challenging Dr. Miller. Whether Dr. Miller’s assumptions are correct is an issue for trial.

### **C. The Opinions of Dr. Brod, Dr. Tasic, and Ms. Yount Are the Product of Reliable Principles and Methods.**

Dr. Brod, Dr. Tasic, and Ms. Yount took the reimbursement rates that Dr. Miller calculated for certain Plaintiffs’ treatments and assumed growth rates from medical components of the Consumer Price Index—a measure of how the average price of goods and services change over time—to ascertain the present value of future reimbursements. Plaintiffs fault Dr. Brod, Dr. Tasic, and Ms. Yount for failing to use program-specific historical rate data, claiming that Dr. Miller would have done so. D.E. [865](#) at 25-26. But there are several issues with Plaintiffs’ argument: (1) at its core, this is another disagreement with assumptions—the strength of using the CPI versus historical program rate data to project future rates; (2) the CPI actually aligns with or underestimates historical rate data; and (3) Dr. Miller’s testimony actually supports using the CPI the way Dr. Brod, Dr. Tasic, and Ms. Yount used it.

First, Plaintiffs’ argument again goes to the strength of assumptions made by Dr. Brod, Dr. Tasic, and Mr. Yount, i.e., it is a weight of evidence issue. *See* D.E. [865](#) at 26 (“[T]he defense experts assumed that CPI alone, albeit tailored to categories of medical services, provides a reliable proxy . . . [T]hey assumed that CPI applies and performed calculations based on that assumption.”); *see also Wilder*, 632 F.2d at 1144; *see also Hutchens*, 2016 WL 10566144, at \*4 (finding expert’s use of CPI to determine future costs of medical items and services listed on life care plan

admissible under Rule 702). Dr. Brod, Dr. Tomic, and Ms. Yount based their assumptions of future growth rates for Medicare, TRICARE, and CCN/VA on the CPI. Plaintiffs, argue, without any support, that these experts should have, instead, based their assumptions on historical growth rates for these individual programs. D.E. [865](#) at 23-25. This is a disagreement over the strength of one component of the data underlying Dr, Brod, Dr. Tomic, and Ms. Yount’s analyses—an issue for cross-examination, not exclusion.

Second, Dr. Brod, Dr. Tomic, and Mr. Yount relied on narrow, medical components of the CPI—specific to the Plaintiffs’ recommended future medical treatment—that not only track historical Medicare data, but in many instances underestimate it. *See* Tomic Rep. (Hill) at 19, n.107 (JA Ex. 708, D.E. [839-6](#)) (describing growth rates based on specific medical components of the CPI that correspond to Plaintiffs’ life care plans’ recommended treatments: physicians’ services; medical care services; medical equipment and supplies; prescription drugs; and outpatient hospital services); Brod Rep. (Peterson) at 3 (JA Ex. 642, D.E. [837-6](#)) (specifying CPI medical components: physicians’ services; services by other medical professionals; medical equipment and supplies; prescription drugs; non-prescription drugs; care of elderly invalids at home; and outpatient hospital services); Yount Rep. (Laramore) at 2-3 (JA Ex. 725, D.E. [839-23](#)) (projecting increases in costs using growth rates based on the historical price index for the CPI category Physicians and Services by Other Medical Professionals for the preceding twenty years).

Plaintiffs argue that Dr. Brod, Dr. Tomic, and Ms. Yount should have instead used an approach described by Dr. Miller at his deposition that looks at historical rate increases for Medicare over the last few years. D.E. [865](#) at 25-26. What Plaintiffs omit is that Dr. Miller testified that Medicare rates have increased by two to three percent over the last several years, and the medical component CPI rates used by Dr. Brod, Dr. Tomic, and Ms. Yount track, and are often *less*

than, two to three percent. Miller Dep. Tr. at 122:4-9 (JA Ex. 780, D.E. [841-11](#)). For example, the following table from Dr. Brod identifies the CPI-based growth rates for various medical components corresponding to the Plaintiffs’ future recommended medical treatment:

**Table A: Life-Care Plan Categories and Growth Rates**

LCP category	Growth Rate	CPI Component
Evaluations	1.53%	Physicians’ services
Therapeutic Needs		
Therapeutic Needs, Other Med	1.46%	Services by other medical professionals
Diagnostic Tests		
Home Facility Care, Nurse		
Wheelchair Needs	0.98%	Medical equipment and supplies
Aids for Independent Living		
Drugs and Supply Needs	1.97%	Prescription drugs
Drugs and Supply Needs, OTC	1.20%	Nonprescription drugs
Home Facility Care, ex Nurse	3.70%	Care of elderly and invalids at home
Transportation	1.98%	New vehicles
Personal Fitness	2.85%	All items
Architectural Renovations	5.52%	New single-family houses under construction
Procedures/Hospitalizations	3.79%	Outpatient hospital services

Brod Rep. (McElhiney) at 3 (JA Ex. 641, D.E. [837-5](#)). The medical-related services have growth rates that are nearly all within two to three percent, with the majority falling below two percent. This results in conservative estimates and lower offsets to Plaintiffs’ damages than simply using the historical program rates over the last several years.

Third, Plaintiffs misrepresent the CPI and Dr. Miller’s testimony on its use for calculating an offset for future care. Plaintiffs’ suggestion that Medicare (and thus TRICARE and VHA/CCN) is unrelated to the CPI is not true, as the CPI considers historical Medicare rates. *See* <https://www.bls.gov/cpi/factsheets/medical-care.htm> (last visited May 16, 2026) (“While the weight of each CPI medical care related index is determined by out-of-pocket spending, price change [*sic*] reflected by the indexes measure the total reimbursement to medical care providers. This includes medical care payments made by private insurance companies, Medicare Part B,

Medicare Part C (Medicare Advantage) and Medicare Part D on behalf of consumers.”). TRICARE and VHA/CCN reimbursements also depend on Medicare rates. D.E. [865](#) at 24-25; Miller Dep. Tr. at 145:25-146:6 (JA Ex. 780, D.E. [841-11](#)). Plaintiffs’ suggestion that Dr. Brod, Dr. Tosic, and Ms. Yount applied “a single uniform inflation measure” is also incorrect. D.E. [865](#) at 24. As described above, they examined numerous, specific medical components within the CPI.

Moreover, Plaintiffs’ argument that Medicare, TRICARE, and VA use program-specific input price indexes to update payment rates does not demonstrate that the reimbursement rates are divorced from the CPI. D.E. [865](#) at 24-25. First, this argument does not address future rates of Medicare, TRICARE, and VHA/CCN or a method for determining future rates and, thus, is irrelevant. *Id.* Second, whether these programs rely on such indexes to update payment rates says nothing about whether the CPI is a reliable method for projecting future rate changes. D.E. [865](#) at 24-25. And in fact, the most Plaintiffs can say is that the CPI could understate or overstate price changes (*id.*)—this is true for any method of future projection. *See* Staller Dep. Tr. at 237:24-238:6 (JA Ex. 786, D.E. [841-17](#)).

Plaintiffs also misrepresent Dr. Miller’s testimony in their argument that any projection of future reimbursements to determine offsets “must be grounded in program-specific historical data” and that Dr. Miller would have performed a “more involved” analysis than Dr. Brod, Dr. Tosic, and Ms. Yount. D.E. [865](#) at 6, 26. But, Dr. Miller did not say that. Plaintiffs try to give this impression from his deposition testimony by omitting the beginning of Dr. Miller’s answer where he states that there are different ways to approach the issue of calculating future rates. D.E. [865](#) at 6. The complete answer demonstrates that Dr. Miller acknowledges the use of price indices, like the CPI, as one method of applying reimbursement rates into the future. He specifically states:

Thank you. There are a couple of different ways, but the way I would do it would be to look at how the rates have changed from year to

year within the program. There are price indices that are available to look at how rates change in general consumer price indexes, produce price indexes there are different index that are available, but there is also data that is available on how much rates have increased by Medicare from year to year, and I would use that information to show an increase, and the rates -- there is for the past several years the rates have been 2 to 3 percent increases.

Miller Dep. Tr. at 121:21-122:7 (JA Ex. 780, D.E. [841-11](#)).

Additionally, Plaintiffs do not cite any legal or economic authority that disputes the United States' approach. Moreover, Plaintiffs' experts, Mr. Staller and Mr. Rybolt, issued rebuttal reports on Dr. Brod, Dr. Tomic, and Ms. Yount's reports; yet they made no comment on these experts' use of the CPI. Staller Rebuttal at 1 (JA Ex. 758, D.E. [840-22](#)); Rybolt Rep. at 1-24 (JA Ex. 766, D.E. [840-30](#)).

**II. Plaintiffs' Disagreement with the Method Which Dr. Brod, Dr. Tomic, and Ms. Yount Present Their Opinions Is Not a Grounds for Exclusion Under Rule 702.**

Plaintiffs criticize Dr. Brod, Dr. Tomic, and Ms. Yount for providing "multiple hypothetical outcomes" for the cost of future medical expenses without explaining which program governs, arguing that no expert evaluates how Medicare, TRICARE, and VHA/CCN will interact in practice. D.E. [865](#) at 29. This is legally and factually incorrect.

Legally, nothing in Rule 702 prohibits an expert from analyzing multiple hypothetical scenarios. *Certain Underwriters at Lloyd's, London v. Sinkovich*, 232 F.3d 200, 203 (4th Cir. 2000) (noting that experts may testify on hypothetical questions); *Intel Corp. v. Future Link Sys., LLC*, 268 F. Supp. 3d 605, 621 (D. Del. 2017) (refusing to strike expert's opinion for offering alternative opinions). Ironically, Plaintiffs' expert, Mr. Staller, presents conclusions for multiple hypothetical future scenarios. Staller Dep. Tr. at 182:4-10, 219:9-13, 261:2-10 (JA Ex. 786, D.E. [841-17](#)) (offering multiple hypothetical scenarios for future household services based off of different payment rates). Plaintiffs' life care planner, Michael Fryar, similarly used multiple healthcare

databases to identify multiple possible costs for each recommended treatment. Fryar Rep. (Laramore) at 11 (JA Ex. 813, D.E. [842-19](#)) (“The complete range of charges obtained from all three healthcare databases, at the 50th and 75th percentile marks, are presented within the table.”).

Factually, Dr. Miller explained the interplay between Medicare, TRICARE, and VHA/CCN at deposition. He testified that once a Plaintiff is eligible for Medicare, he or she cannot refuse it, and that TRICARE is a secondary payor. Miller Dep. Tr. at 96:6-98:24, 157:20-23 (JA Ex. 780, D.E. [841-11](#)). Dr. Miller answered Plaintiffs’ questions on unrealistic and irrational hypotheticals concerning a patient’s refusal of Medicare or VHA benefits. Having explained that eligible Plaintiffs cannot refuse Medicare, Dr. Miller further explained that the hypotheticals would result in payments of extremely higher prices for private insurance and it would be irrational for anyone to make this selection. *Id.* at 96:6-99:25. He also explained how the VA relies on Medicare ratings for the vast majority of its services. *Id.* at 145:25-146:6. Thus, the “analysis” that Plaintiffs argue is being left up to the Court is simple addition based on the programs that apply. *Majeed v. Columbus Cnty. Bd. of Educ.*, No. 99-1341, 2000 WL 524804 at \*5, 213 F.3d 631 (Table) (4th Cir. May 2, 2000) (stating that expert testimony is not required for basic math); *United States v. Fenner*, 142 F.4th 510, 518 (7th Cir. 2025) (“Deploying basic arithmetic of addition and subtraction, even repeatedly, is often within the realm of lay, not expert, testimony.”).

## CONCLUSION

In sum, Plaintiffs’ multiple hypotheticals argument is legally unsound, factually incorrect, and inconsistent with their own experts’ approach.

The testimony of Dr. Brod, Dr. Tosic, and Ms. Yount is admissible under Rule 702 because it is helpful to the factfinder and it is rooted in reliable principles and reliable application of those

principles. Plaintiffs dispute these experts' assumptions and opinions, but that is not grounds for excluding their testimony.

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Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on June 2, 2026, I electronically filed the foregoing using the Court's Electronic Case Filing system, which will send notice to all counsel of record.

/s/ Marcus Tubin  
Marcus Tubin

**CERTIFICATE OF COMPLIANCE**

I hereby certify that this document complies with the applicable word limit in Local Rule 7.2(f)(3), and that this document has 6,334 words, as calculated by Microsoft Word.

/s/ Marcus Tubin  
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