

Page 1

1 IN THE UNITED STATES DISTRICT COURT
2 FOR THE EASTERN DISTRICT OF MISSOURI
3 EASTERN DIVISION
4 DAVID WATKINS AND)
5 GINA WATKINS,)
6 Plaintiffs,)
7)
8 vs.) Cause No. 4:11-CV-1165-HEA
9)
10 EDWARD BAILEY AND GCL)
11 TRUCKING SERVICE, INC.,)
12 Defendants.)
13
14 Deposition of STAN SMITH, Ph.D.,
15 called for examination, taken pursuant to
16 notice, agreement and by the provisions of the
17 Rules of Civil Procedure for the United States
18 District Courts pertaining to the taking of
19 depositions, taken before PATRICIA A. ARMSTRONG,
20 a Notary Public within and for the County of
21 DuPage, State of Illinois, and a Certified
22 Shorthand Reporter, No. 084-1766, of said state,
23 taken at 115 South LaSalle Street, Suite 2600,
24 Chicago, Illinois, on the 11th day of September,
25 2012 at 11:30 a.m.

Page 2

1 I N D E X
2
3 WITNESS EXAMINATION
4 STAN SMITH, Ph.D.,
5 By Mr. Schmid 4 - 49
6
7 E X H I B I T S
8
9 Smith Exhibit
10 NUMBER MARKED FOR ID
11 Exhibit 1 Fees information form.....6
12 Exhibit 2 Printout from MODOT, benefits
13 estimate for Mr. Watkins.....9
14 Exhibit 3 August 24, 2012 Work Notes.....12
15 Exhibit 4 Lost wage calculations.....13
16
17 ---
18
19
20
21
22
23
24
25

Page 3

1 APPEARNCES:
2
3 ON BEHALF OF PLAINTIFFS:
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8 BY: MR. WILLIAM M. WUNDERLICH
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11 ON BEHALF OF DEFENDANT GLC TRUCKING
12 SERVICE, INC.:
13 BROWN & JAMES, P.C.
14 1010 Market Street, 20th Floor
15 St. Louis, Missouri 63101
16 314-421-3400
17 BY: MR. KURT A. SCHMID
18 kschmidt@bjpc.com
19
20 ALSO PRESENT:
21 The Court Reporter:
22 Ms. Patricia A. Armstrong, CSR, RPR,
23 Illinois CSR No. 084-001766
24 Midwest Litigation Services
25 711 North Eleventh Street
26 St. Louis, Missouri 63101
27 (314) 644-2191

Page 4

1 (WHEREUPON, the witness was
2 duly sworn.)
3 STAN SMITH, Ph.D.,
4 called as a witness herein, having been first
5 duly sworn, was examined and testified as
6 follows:
7 EXAMINATION
8 BY MR. SCHMID:
9 **Q. Can you please state your name,**
10 **sir.**
11 A. Stan B. Smith.
12 **Q. Mr. Smith, what is your business**
13 **address?**
14 A. 1165 North Clark Street, Chicago,
15 Illinois.
16 **Q. How long have you been at that**
17 **address?**
18 A. 27 years.
19 **Q. Dr. Smith, you have done plenty of**
20 **depositions, so I won't bore you with the rules,**
21 **but I just wanted to make sure you knew that if**
22 **you ever need a break during this deposition,**
23 **just let me know. Okay?**
24 A. Perfect.
25 **Q. All right. I wanted to ask you**

Page 5

1 **first when you were first contacted to work on**
 2 **this particular case?**
 3 A. August 21 is when I opened up a
 4 file. That's probably when we got the first
 5 set of materials. I can't recall exactly
 6 because I have had many conversations when Mr.
 7 Wunderlich might have called and said, "Hey,
 8 could you be prepared to do some work?" Then we
 9 sort of stand by for a while. I don't know how
 10 long that would have been.
 11 **Q. Do you have any forms at your**
 12 **office or, you know, sort of new file sheets**
 13 **that are filled out if a call comes in?**
 14 A. No. What we do is we send out an
 15 intake form, and sometimes that's returned to us
 16 with materials and sometimes we never hear
 17 again.
 18 **Q. Do you have an intake form for this**
 19 **case in your file?**
 20 A. Actually, I don't think -- yes, we
 21 do.
 22 **Q. If I could take a look at that?**
 23 A. That would have been filled by
 24 someone in Mr. Wunderlich's office. We just
 25 send out the blank.

Page 6

1 **Q. Dr. Smith, do you mind if I have**
 2 **this intake form marked as an exhibit for this**
 3 **deposition?**
 4 A. Sure.
 5 MR. SCHMID: We will have that marked as
 6 Smith Exhibit 1.
 7 (WHEREUPON, a certain document
 8 was marked Smith Deposition
 9 Exhibit No. 1, for identification,
 10 as of September 11, 2012.)
 11 BY MR. SCHMID:
 12 **Q. Now that we have this marked,**
 13 **Dr. Smith, I will just ask for you to identify**
 14 **for the record what has been marked as Smith**
 15 **Exhibit 1?**
 16 A. It is the fees information form.
 17 **Q. And to your understanding, that was**
 18 **filled out by somebody at Mr. Watkins'**
 19 **attorney's office?**
 20 A. Yes.
 21 **Q. On the second page of that exhibit**
 22 **near the top, it says "Discussed with WMW."**
 23 **I guess is that Mr. Wunderlich?**
 24 A. That would appear to be.
 25 **Q. Do you recall that actual, I guess,**

Page 7

1 **phone conversation with Mr. Wunderlich?**
 2 A. That's not my note.
 3 **Q. Okay. Whose note is that?**
 4 A. I tell you again, this form was
 5 sent to us, I have no idea who filled in what.
 6 **Q. Got it.**
 7 **So as far as you can tell, no**
 8 **writing on that form is writing from either you**
 9 **or anyone in your office?**
 10 A. Correct. It's not our practice to
 11 write on there.
 12 **Q. Got it.**
 13 **Besides this intake form, do you**
 14 **take any notes of telephone conversations with**
 15 **Mr. Wunderlich or anyone from Mr. Wunderlich's**
 16 **office about this case?**
 17 A. No.
 18 **Q. Okay. I think you testified**
 19 **earlier, you believe you were first contacted**
 20 **around August 21st, 2000 -- or you didn't say,**
 21 **was that 2012?**
 22 A. Yes -- well, it would have been
 23 before then because that's when we would have
 24 received that intake form. It looks like it was
 25 faxed to us.

Page 8

1 **Q. So sometime before that was your**
 2 **first contact in this case?**
 3 A. Most likely, yes.
 4 **Q. Dr. Smith, did you bring with you**
 5 **today all of your file materials with regard to**
 6 **this particular case?**
 7 A. Yes.
 8 **Q. Can you just identify for the**
 9 **record what the contents of your file in this**
 10 **case are?**
 11 A. Sure. This is itemized in the
 12 third paragraph of my report.
 13 Did you want me to read all this
 14 into the record?
 15 **Q. Well, I will ask you, your file**
 16 **materials consist of the Watkins 2011 tax**
 17 **return; correct?**
 18 A. Yes.
 19 **Q. And you have in there also a copy**
 20 **of the Plaintiffs' First Amended Complaint?**
 21 A. Yes.
 22 **Q. Mr. Watkins' Answers to**
 23 **Interrogatories?**
 24 A. Yes.
 25 **Q. Do you have a benefit estimate from**

Page 9

1 **MODOT in there?**
 2 A. Yes, it's Item 4 on list.
 3 **Q. Okay.**
 4 A. Everything that's on this list, I
 5 have.
 6 **Q. Can I see that benefit estimate for**
 7 **MODOT?**
 8 A. Sure.
 9 **Q. Would you mind, Dr. Smith, if I had**
 10 **this marked as an exhibit for your deposition?**
 11 A. Sure. Sure.
 12 MR. SCHMID: Bill, you have seen this
 13 before, I believe. I will show it to you.
 14 (WHEREUPON, a certain document
 15 was marked Smith Deposition
 16 Exhibit No. 2, for identification,
 17 as of September 11, 2012.)
 18 BY MR. SCHMID:
 19 **Q. Dr. Smith, I will show you what has**
 20 **been marked as Smith Exhibit 2, and ask you to**
 21 **identify that for the record?**
 22 A. This is a printout from MODOT,
 23 that's M-O-D-O-T, benefits estimate for
 24 Mr. Watkins.
 25 **Q. And you received that from**

Page 10

1 **Mr. Watkins' attorney's office?**
 2 A. Yes.
 3 **Q. Have you spoken with anybody from**
 4 **MODOT about Mr. Watkins' pay or benefits while**
 5 **he was there or any future employment**
 6 **opportunities there?**
 7 A. No.
 8 **Q. Now, you also have as part of your**
 9 **file the vocational rehabilitation report**
 10 **prepared by James England; is that right?**
 11 A. Yes.
 12 **Q. Can I ask, did that report have any**
 13 **influence or any impact on any of the opinions**
 14 **you intend to give in this matter?**
 15 A. No. It had an impact in the
 16 following sense: Based on this, we did not
 17 compute any alternate employment.
 18 **Q. So any offset wages that he could**
 19 **earn in the future based on that report?**
 20 A. Yeah, we -- the report does not
 21 provide support for an offset.
 22 **Q. You, yourself, are not making**
 23 **any -- do you, yourself, have any opinions on**
 24 **whether or not Mr. Watkins is employable in any**
 25 **capacity at this time?**

Page 11

1 A. No.
 2 **Q. I will ask you one last favor with**
 3 **regard to your file, Dr. Smith.**
 4 **If I could just take a look at it**
 5 **and make sure that there's nothing in there that**
 6 **I haven't otherwise seen, and then we can move**
 7 **on.**
 8 A. So were you going to go through
 9 your list?
 10 **Q. Well, if we could take a look at**
 11 **your file really quick and just see what is in**
 12 **there and that way we can move on from it?**
 13 A. Sure.
 14 These are blanks, basically. The
 15 top two items are my work product.
 16 **Q. Dr. Smith, do you mind if I have**
 17 **this marked as an exhibit?**
 18 A. Sure, you may feel free to mark
 19 anything here.
 20 MR. SCHMID: Bill, if you want to take a
 21 look at that real quick.
 22 MR. WUNDERLICH: Yes.
 23 MR. SCHMID: I will have that marked as
 24 Smith Exhibit 3.
 25 MR. WUNDERLICH: That's fine.

Page 12

1 (WHEREUPON, a certain document
 2 was marked Smith Deposition
 3 Exhibit No. 3, for identification,
 4 as of September 11, 2012.)
 5 BY MR. SCHMID:
 6 **Q. Dr. Smith, I wanted to ask you just**
 7 **a little bit about this Smith Exhibit 3. Up at**
 8 **the top, it's dated August 24, 2012, and it's**
 9 **labeled "Work Notes."**
 10 **I just wanted to ask you how do**
 11 **these work notes come to be?**
 12 A. Well, it's a basic form that's
 13 information from the rest of the file extracted
 14 and put in there, along with interview notes.
 15 **Q. Now, do you do that work of**
 16 **extraction or does somebody else at your office**
 17 **do that?**
 18 A. Well, it's a little of both.
 19 For example, my staff will cut and
 20 paste the name, they will look up the life
 21 expectancy, but all the formulas and the basic
 22 computations are my input.
 23 **Q. And you have interviewed**
 24 **Mr. Watkins himself, have you not?**
 25 A. Yes, the interview was conducted,

Page 13

1 it was at my direction.
 2 **Q. Was that over the phone or in**
 3 **person?**
 4 A. Phone.
 5 **Q. Did you take any notes while you**
 6 **were speaking to him?**
 7 A. There is several pages of notes
 8 that are a few pages deep into that exhibit.
 9 **Q. And are they typed directly into**
 10 **this form by you?**
 11 A. Yes.
 12 **Q. So there is no other handwritten**
 13 **notes that you take over the phone otherwise?**
 14 A. Correct.
 15 **Q. I am going to hand you what I am**
 16 **going to have marked as Smith Exhibit 4.**
 17 **I will hand that to Mr. Wunderlich**
 18 **first to take a look at and then I will ask you**
 19 **to identify it.**
 20 **(WHEREUPON, a certain document**
 21 **was marked Smith Deposition**
 22 **Exhibit No. 4, for identification,**
 23 **as of September 11, 2012.)**
 24 BY MR. SCHMID:
 25 **Q. And Dr. Smith, I am going to hand**

Page 14

1 **you what has been marked as Smith Exhibit 4.**
 2 **It's two pages that were paper-clipped together,**
 3 **and I am not certain that they have anything to**
 4 **do with one another, but you can let me know.**
 5 A. Well, the first says "Lost wage
 6 calculations," and it's somebody doing some
 7 mathematics on that.
 8 The second page are four paragraphs
 9 about some discussion about the losses. It
 10 appears to be written, obviously, by Mr. Watkins
 11 because there is incentives in here. It says
 12 "Due to pain, I am unable to remain for long
 13 periods of time in one position."
 14 **Q. Okay.**
 15 A. So my guess is these were some
 16 notes that Mr. Watkins made probably to
 17 facilitate his communications with
 18 Mr. Wunderlich, and they were passed along to me
 19 because I have some factual data on here.
 20 **Q. Sure. So that lost wage**
 21 **calculation, that wasn't performed at your**
 22 **office; correct?**
 23 A. Correct.
 24 **Q. And you also have as part of your**
 25 **file Mr. and Mrs. Watkins' 2011 tax return;**

Page 15

1 **correct?**
 2 A. Yes.
 3 **Q. Did that provide you with any**
 4 **information that was germane to your opinions in**
 5 **this case?**
 6 A. It just confirmed the background
 7 about what Mr. Watkins was getting as a benefit
 8 that he had earned.
 9 **Q. Dr. Smith, with regard to the**
 10 **transcripts from the Plaintiffs' depositions in**
 11 **this case, there are, I guess, sticky tabs that**
 12 **are put throughout the transcript.**
 13 **I wanted to ask you, are you the**
 14 **one who placed those tabs?**
 15 A. They were placed at my direction.
 16 They are like an index.
 17 **Q. So somebody else in your office**
 18 **placed those for you; is that correct?**
 19 A. Yes.
 20 **Q. I will ask you a question that**
 21 **might shortcut what I am doing right now.**
 22 **Do you ever make markings in the**
 23 **transcripts of depositions?**
 24 A. No.
 25 **Q. Okay. So your file, Dr. Smith, you**

Page 16

1 **have some fax cover sheets. You have your own**
 2 **working notes that you prepare. You have a copy**
 3 **of your report. You have a copy of the Notice**
 4 **of Deposition. You have some lost wage**
 5 **calculations and some words on lost wages from**
 6 **the Plaintiff. You have the First Amended**
 7 **Complaint. You have Answers to Interrogatories**
 8 **from Mr. Watkins. You have the Watkins 2011 tax**
 9 **returns. You have transcripts from the**
 10 **depositions of both Plaintiffs. You have a**
 11 **MODOT benefit form pertaining to Mr. Watkins,**
 12 **and you have a intake sheet.**
 13 **Is that correct?**
 14 A. Correct.
 15 **Q. Is there anything else that**
 16 **comprises your file in this matter?**
 17 A. No.
 18 **Q. So just -- and Mr. England's**
 19 **report, as well. Okay.**
 20 **I wanted to ask, have you worked**
 21 **for Mr. Wunderlich at all in the past?**
 22 A. There was at least one prior
 23 occasion.
 24 **Q. How long ago was that?**
 25 A. About a decade.

Page 17

1 **Q. I wanted to ask you: Is all of**
 2 **your work in the field of, at least in some way,**
 3 **litigation support?**
 4 A. No, it's about 70 to 90, depending
 5 upon the year.
 6 **Q. Of that 70 to 90 percent of your**
 7 **work, what percentage of that has to do with**
 8 **calculating lost earnings, et cetera, in either**
 9 **personal injury or wrongful death cases?**
 10 A. About three-quarters of the work is
 11 personal injury or wrongful death.
 12 **Q. Of the work that you do that is**
 13 **personal injury or wrongful death, in what, if**
 14 **you can estimate, what percentage are you**
 15 **retained by Counsel for Plaintiff?**
 16 A. About three-quarters of the time.
 17 **Q. Have you had occasion in the last**
 18 **five years to testify either in deposition or in**
 19 **trial on behalf of a Defendant in a personal**
 20 **injury or wrongful death claim?**
 21 A. Certainly.
 22 **Q. When was the last time you had**
 23 **testified here in deposition or at trial for a**
 24 **Defendant in personal injury or wrongful death**
 25 **claim?**

Page 18

1 A. It happens multiple times anyway,
 2 but I don't recall the most recent.
 3 **Q. How many -- well, let me ask you**
 4 **this: How many times in 2000 -- well, over the**
 5 **past year, how many times have you testified at**
 6 **trial in a personal injury or wrongful death**
 7 **case?**
 8 MR. WUNDERLICH: Let me object to the
 9 ambiguous nature of that question.
 10 Are you talking about strictly live
 11 at trial or are you including depositions taken
 12 to be shown to a jury at trial or both?
 13 BY MR. SCHMID:
 14 **Q. My question deals only with live**
 15 **testimony at trial.**
 16 A. I testify at trial roughly twice a
 17 month, and I would say, in addition, there is
 18 maybe 1 case in 10 or 20 where there is an
 19 evidence dep presented. It's fairly rare
 20 where -- so that might happen once a year, and I
 21 usually testify twice a month. A lot of times
 22 the evidence depositions are taken and I testify live
 23 at trial anyway.
 24 **Q. I also wanted to ask you, can you**
 25 **kind of describe for me how you are charging**

Page 19

1 **Mr. Wunderlich for your work and time in this**
 2 **case?**
 3 A. There is a set fee for the
 4 analysis. I believe there is a -- I wrote down
 5 somewhere where the overall was -- approximately
 6 \$4,000.
 7 **Q. So, overall, you believe that you**
 8 **charged in this case approximately \$4,000 at**
 9 **this point?**
 10 A. Right. Actually, I don't have an
 11 invoice out yet because we bill usually at the
 12 end of the month and the report was -- it was in
 13 late August, so there will be a new invoice
 14 going out shortly.
 15 **Q. So you say that there is some flat**
 16 **fee or some base fee for the work for the**
 17 **analysis at first; is that right?**
 18 A. Yes.
 19 **Q. And then after that, is it a charge**
 20 **hourly for your time or how is it charged?**
 21 A. Hourly.
 22 **Q. Do you know what your hourly fee**
 23 **has been on this case?**
 24 A. \$345 per hour.
 25 **Q. Then how do you charge or do you**

Page 20

1 **charge for deposition time?**
 2 A. It's all \$345 per hour.
 3 **Q. And what about trial testimony?**
 4 A. Everything is \$345 an hour;
 5 anything, everything, \$345 an hour.
 6 **Q. Have you ever testified in a case**
 7 **that was sitting in the Federal Court for the**
 8 **Eastern District of Missouri?**
 9 A. What --
 10 **Q. Federal Eastern District of**
 11 **Missouri.**
 12 A. What appellate district is that?
 13 **Q. Eighth Circuit.**
 14 A. I would say very likely.
 15 **Q. Do you recall ever having an**
 16 **opinion or having some testimony excluded at**
 17 **trial in a case that was sitting in the Federal**
 18 **Court in the Eastern District of Missouri?**
 19 A. No.
 20 **Q. And you have also testified in**
 21 **State Court cases in Missouri; correct?**
 22 A. Yes.
 23 **Q. Have you ever had an opinion**
 24 **excluded or testimony otherwise excluded at**
 25 **trial in a case sitting in the State Courts of**

Page 21

1 **Missouri?**
 2 A. Not to my recollection.
 3 **Q. Is there currently any information**
 4 **or data that you are waiting for to render any**
 5 **additional opinion or any clarification of any**
 6 **opinion?**
 7 A. I may be asked to look to see
 8 whether the benefits we calculated, which were
 9 based on full-time employment, would have all
 10 been provided to Mr. Watkins based on MODOT or
 11 not.
 12 **Q. Beyond that subject, is there any**
 13 **other information that you are waiting to render**
 14 **or clarify any opinion in this case?**
 15 A. No.
 16 **Q. Has there been any e-mail**
 17 **correspondence between you or your office and**
 18 **Mr. Wunderlich's office?**
 19 A. No.
 20 **Q. Let's get to the meat of it.**
 21 **You calculate a life expectancy for David**
 22 **Watkins in this case; correct?**
 23 A. Yes, 80.2 years.
 24 **Q. What reference did you consult to**
 25 **come up with that life expectancy?**

Page 22

1 A. The United States Life Tables.
 2 **Q. Do you ever use any other source to**
 3 **determine life expectancy?**
 4 A. No.
 5 **Q. Now, in this case, you utilized a**
 6 **real annual growth rate of 1 percent; is that**
 7 **correct?**
 8 A. Yes.
 9 **Q. How do you come to that real annual**
 10 **growth rate?**
 11 A. It's an average of the last 20
 12 years of growth in wages nationwide.
 13 **Q. And you use a real annual discount**
 14 **rate of 1.25 percent; is that correct?**
 15 A. Yes.
 16 **Q. Now, how do you arrive at that**
 17 **percent?**
 18 A. That's based on the last 20 years
 19 rate of return on Treasury Bill rates.
 20 **Q. Those are 90-day Treasury Bills;**
 21 **correct?**
 22 A. Yes.
 23 **Q. I just want to use the terminology**
 24 **that you like to use.**
 25 **Would you characterize or would you**

Page 23

1 **identify your field or at least one of your**
 2 **fields as forensic economics?**
 3 A. Yes.
 4 **Q. Do other forensic economists use**
 5 **any different real annual discount rates, to**
 6 **your knowledge?**
 7 A. Yes.
 8 **Q. Do the discount rates that they**
 9 **use, are they -- do they use both smaller and**
 10 **larger real annual discount rates?**
 11 A. Yes.
 12 **Q. Would you disagree with an**
 13 **economist who used a 1.5 percent real annual**
 14 **discount rate?**
 15 A. You can't really judge what an
 16 economist does until you see their rationale,
 17 and many things are very case specific.
 18 **Q. How long have you been using the**
 19 **1.25 percent real annual discount rate?**
 20 A. Forever in the sense that I always
 21 use the last 20 years, and this year that
 22 results in this number.
 23 Last year it was a hair different,
 24 but by using the last 20 years, each year that
 25 rate will change slightly.

Page 24

1 **Q. Sure. So from those, we get a net**
 2 **discount rate of .25 percent; is that correct?**
 3 A. Yes.
 4 **Q. All right. Let's get to -- you**
 5 **calculated past and future wage loss under two**
 6 **scenarios in this case; right?**
 7 A. Yes.
 8 **Q. The first one of those scenarios**
 9 **has Plaintiff David Watkins being employed in**
 10 **some capacity at a company MB West; is that**
 11 **right?**
 12 A. Yes.
 13 **Q. Have you obtained any information**
 14 **or data from MB West or anybody you believe to**
 15 **be a representative of MB West?**
 16 A. No.
 17 **Q. Did you obtain any information**
 18 **about MB West from anyone other than**
 19 **Mr. Watkins?**
 20 A. No.
 21 **Q. So Mr. Watkins told you that he**
 22 **believed he could have started working at MB**
 23 **West beginning in July of 2010 approximately 25**
 24 **to 30 hours per week; is that right?**
 25 A. Yes.

1 **Q. And he told you that he believed**
2 **his hourly wage at MB West would be about 30**
3 **percent to 40 percent more than his last hourly**
4 **wage at MODOT; is that right?**

5 A. Yes.

6 **Q. Mr. Watkins told you that he**
7 **believed his last hourly wage at MODOT was**
8 **between \$21 and \$22 per hour; is that right?**

9 A. Yes.

10 **Q. And that he made time-and-a-half if**
11 **he worked overtime; is that right?**

12 A. Yes.

13 **Q. Now, you didn't use the \$21 to \$22**
14 **per hour wage in your calculations, did you?**

15 A. Yes. It was the basis for the 30
16 percent increment.

17 **Q. Describe what you mean when you**
18 **said it was the basis for the 30 percent**
19 **increment?**

20 A. Well, we know what his monthly
21 earnings were when he was working 40 hours a
22 week.

23 **Q. How do we know that?**

24 A. We had the \$4,718 from the
25 earnings, Exhibit 2.

1 **program that you have or that you utilize to**
2 **come up with these calculations?**

3 A. Yes, it's just a spreadsheet. It's
4 basically a variation of what most people know
5 as Excel.

6 **Q. Okay. And when you say it's a**
7 **variation, is it actually Excel and then you**
8 **just have formatted for your use or is it a**
9 **different program?**

10 A. It's a predecessor, but I forget
11 the name, actually, it's been many years.

12 **Q. When you calculated the present**
13 **value of future wages for Mr. Watkins under**
14 **these scenarios, you calculated those values up**
15 **to the age of 80, which is Mr. Watkins' life**
16 **expectancy; correct?**

17 A. Yes.

18 **Q. You don't have any opinion in this**
19 **case as to how long Mr. Watkins would have**
20 **worked but for this injury, do you?**

21 A. Correct.

22 **Q. So these are just how the**
23 **calculations fall, there is no evaluation of how**
24 **long he had actually worked?**

25 A. I don't have an independent opinion

1 **Q. And I think what I wanted to make**
2 **sure of is that you ended up using -- you**
3 **actually came to at the end an hourly wage of**
4 **27.22; is that right?**

5 A. Yes.

6 **Q. Okay. So ultimately, you didn't**
7 **use what Mr. Watkins told you was his hourly**
8 **wage, because the paperwork dictated otherwise;**
9 **right?**

10 A. What number are you referring to
11 that --

12 **Q. I think your notes indicate that**
13 **your interview with him, he told you that he**
14 **earned between \$21 and \$22 per hour?**

15 A. Yes, and I believe that would be
16 the basis for the monthly earnings on Exhibit 2;
17 and since we used the earnings on Exhibit 2,
18 that's based on the hourly rate that he got, so
19 ultimately, we did use the \$21 or \$22 an hour
20 figure in the sense that it's embedded into the
21 4718 figure.

22 **Q. Okay. When you -- well, let me ask**
23 **you this first as kind of the nitty gritty:**
24 **These calculations at the end of your report,**
25 **can you describe what -- is there a computer**

1 as to how long, but he himself indicated that he
2 wanted to work.

3 **Q. He said 62, didn't he?**

4 A. To 62.

5 I do know that when you are looking
6 at hiring and thinking about that, a good number
7 of years before retirement, in his statement
8 made to us, he was 56, when reality hits when
9 you turn to that age at which you want to retire
10 and then you go to your financial advisor.

11 **Q. They tell you to keep working?**

12 A. Well, I think a couple of things
13 happen. No. 1, many people don't fully
14 appreciate -- they think they get more monthly.
15 They don't know what they are going to get on a
16 monthly basis, and what their financial advisor
17 tells them, "We don't know how long you are
18 going to live, so you can't take out this much
19 per month, you have to take out a little bit
20 less, because what if you outlive your life
21 expectancy tables by five years or ten years,"
22 and that's certainly possible.

23 And thirdly, your money is -- you
24 know, it's less exclusively invested in very,
25 very short-term. There can be some ups and

<p style="text-align: right;">Page 29</p> <p>1 downs in the returns, No. 1. 2 No. 2, if it's invested in very 3 short term and you have a very tight assurance 4 of what that return will be, although it's 5 usually low because the shorter term pays less, 6 you don't know that inflation might really 7 wallop the value of your money, so that even 8 though you know exactly how much money you will 9 have month by month in the long run because you 10 are investing in something pretty safe and 11 returns are pretty secure, you don't know how 12 much it will buy in the long run. 13 And then I think the most important 14 thing is, it's like if you have ever gone up to 15 the top of maybe like a 10 meter diving board 16 and it looks like, oh, yeah, that's something I 17 can do, you get up to the top and you look down, 18 you go, holy-moly, that's a lot. 19 So I think when people get to the 20 date of retirement and they are over the cliff 21 and they say -- they look at their calendar and 22 it's empty for the next 30 years, and they say, 23 wait a minute, I am supposed to fill the next 30 24 years with what, golf, or honey-do lists or 25 things like that.</p>	<p style="text-align: right;">Page 31</p> <p>1 socked away tons and tons of money in addition 2 to their retirement plans. 3 Q. Let me ask you this: Do you intend 4 to opine at trial as to how long Mr. Watkins 5 would have worked? 6 A. No, but I would, if Mr. Wunderlich 7 asked me, mention all the factors I have just 8 mentioned, including one more. And I am 9 experiencing that very same factor. 10 There are two children in the 11 Watkins family, 24 and 35. They may well have 12 grandchildren in the next decade. Statistically 13 speaking, I think that's fairly likely. Once 14 you have grandchildren, then you start thinking 15 about helping out your children financially, you 16 know, maybe paying for summer camp or buying 17 some extra things that younger folks can't 18 easily afford. You know, a good car seat these 19 days is 300 bucks per child. I bought a car 20 once for less than that. 21 When they start having 22 grandchildren and realize how wonderful 23 grandchildren can be and the financial 24 requirements of grandchildren, they may want to 25 put a little money away into an education fund,</p>
<p style="text-align: right;">Page 30</p> <p>1 Most people I have talked to get a 2 certain and significant satisfaction from 3 employment above and beyond the paycheck. And 4 the final thing is that you will never make more 5 money by retiring than by working. 6 So I think all those factors come 7 into play. I never take it to too seriously 8 about how long people say they will work in the 9 sense that I usually would imagine it would be 10 longer than what they think. 11 Q. So you think that it's certainly 12 possible that Mr. Watkins would have worked for 13 longer than he thinks he may have worked; 14 correct? 15 A. Right. Well, obviously, and in 16 terms of just conceptual possibilities, he might 17 have worked less, he might have worked more. I 18 think the tendency is longer. 19 62 is a pretty young age to retire; 20 and if you look at what he was making, and I 21 know his wife works, too, but this is not, you 22 know, very high income in the grand scheme of 23 things. 24 It's a very solid income, but it's 25 not the kind of thing where you imagine they</p>	<p style="text-align: right;">Page 32</p> <p>1 a college education fund. 2 So all these factors come into 3 play; and if he's enjoying his job and not 4 working necessarily full time, I mean, I would 5 think a lot of people say that's an ideal life 6 style, make a pretty good income and not have to 7 work full time. 8 Q. Have there been any studies in the 9 field of forensic economics about retirement 10 age? 11 A. Well, it's not the forensics. I 12 mean, the Social Security Administration will 13 tell you statistically when it is that people 14 start collecting a check. That doesn't tell you 15 when they stop working, it just tells you when 16 they start collecting a check because you can 17 collect a check and work. 18 But there are from the Bureau of 19 Labor Statistics statistics about the percentage 20 of people who participate, meaning offer 21 themselves for work. 22 And certainly at age 65, there is a 23 very healthy percentage of people who are not 24 working, but there is a healthy percentage of 25 people who are.</p>

Page 33

1 And here is what I find, you know,
 2 there is not much you and I can do about our
 3 height, a little bit we can do about our weight,
 4 but some things we can't do too much about.
 5 Life expectancy, well, you can eat a little
 6 healthier, things like that. But how long you
 7 work, you generally have a fair amount of
 8 decision over that unless you are facing a
 9 disability, such as, for example, in this case.
 10 Not every career is extendible, but
 11 it seems like Mr. Watkins does have an extension
 12 to his career that allows him to make a pretty
 13 good penny and not have to burn himself out.
 14 So I think in terms of work life
 15 statistics, while you can look at them,
 16 Mr. Watkins himself would have a lot to say
 17 about his work life.
 18 He would have much less to say
 19 about his height, which we can't change too
 20 much, or about his life expectancy, but about
 21 his work life, I think it's generally very
 22 useful to talk to the individual, and in this
 23 case, Mr. Watkins said 62.
 24 But I think we also need to
 25 understand not only what he says but how to put

Page 34

1 some light on that. And that's the light that
 2 Mr. Wunderlich asks me, how when people say they
 3 will retire in five to ten years, what the
 4 likelihood of that being a very precise
 5 measurement, I think there is many factors to
 6 consider when viewing the precision of that
 7 estimate.
 8 **Q. At this point, Mr. Wunderlich**
 9 **hasn't asked you to make those opinions;**
 10 **correct?**
 11 A. Well, none of what I just said are
 12 opinions, those are all factors that I think a
 13 trier of fact needs to be aware of. I don't
 14 have an opinion about how long he will retire,
 15 but I think one can consider that there are
 16 number of factors that could impact his age 62
 17 current statement.
 18 **Q. Are those factors listed or**
 19 **otherwise identified in the report that you**
 20 **prepared in this case?**
 21 A. No, because this is just generally
 22 known to economics.
 23 My report doesn't say I know how to
 24 add two plus two, but I know the answer is five,
 25 and I can say that on the stand without having

Page 35

1 to disclose that opinion -- I mean four.
 2 **Q. You also calculated going back**
 3 **to --**
 4 A. I am sorry, may I clarify one
 5 thing?
 6 **Q. Sure.**
 7 A. I am not sure why I misspoke
 8 earlier, but the wage of 4,718 does work out to
 9 the 27.22 an hour, and I apologize for
 10 misleading you on that.
 11 **Q. No, that's -- I think I knew your**
 12 **mistake and knew why you made it and figured it**
 13 **was. But thanks for clarifying.**
 14 **So that's how we get to 27.22 an**
 15 **hour based on the monthly wage as indicated in**
 16 **that MODOT benefits form related to Mr. Watkins;**
 17 **correct?**
 18 A. Yes.
 19 **Q. Okay. And you went ahead, and in**
 20 **order to calculate wages had Mr. Watkins gone to**
 21 **work for MB West as 130 percent of the wage that**
 22 **he was earning at the time of his retirement**
 23 **from MODOT; correct?**
 24 A. Correct. He had indicated he
 25 thought the wages could be 30 to 40 percent

Page 36

1 higher and that he could work between 25 and 30
 2 hours a week.
 3 So I will say that if one were to
 4 use the slightly higher figures instead of -- 30
 5 percent to 40 percent instead of 25 hours, 30
 6 hours a week, you know, those numbers would just
 7 scale up proportionately.
 8 **Q. Sure. Because in your**
 9 **calculations, you assumed 25 hours a week of**
 10 **work; is that right?**
 11 A. Yes.
 12 **Q. And not 30.**
 13 A. And the difference, if you looked
 14 at 40 percent increment times -- well, at 30
 15 hours would be, you know, significantly
 16 different, and I can tell you in a minute maybe
 17 after you ask your next question.
 18 **Q. We can plug in those numbers; and**
 19 **obviously, if we plug in a higher number for**
 20 **either the hourly wage or the hours worked a**
 21 **week, we are going to get a higher number;**
 22 **correct?**
 23 A. Yes. I can tell you, in fact,
 24 right now.
 25 This figure is, I think, 77

Page 37

1 percent, so if we took the higher amount, we
 2 would be at about 30 percent higher.
 3 **Q. So the calculations that you**
 4 **originally did in this case under the loss of**
 5 **wages only under Scenario 1, the present value**
 6 **cumulative of the lost wages only under Scenario**
 7 **1, if Mr. Watkins were to work until age 62,**
 8 **that number is \$297,660; is that right?**
 9 A. Yes.
 10 **Q. And then next under that Scenario**
 11 **1, you also calculated a loss of benefits for**
 12 **Mr. Watkins, and we just discussed that just a**
 13 **little bit today, but can you describe how you**
 14 **arrived at the numbers for those benefits?**
 15 A. Sure. He said that he got health
 16 insurance through MODOT as a retiree. He said
 17 he pays for coverage himself, but he believed --
 18 with MB West, he didn't discuss benefits, but he
 19 believed that the company did provide health,
 20 life and some sort of an additional retirement
 21 to its employees.
 22 Not knowing what were the benefits
 23 that would be paid, I assumed for the purpose of
 24 this report that he would get nationwide
 25 statistically average benefits.

Page 38

1 The source of the statistic for
 2 nationwide average benefits is cited at the
 3 bottom of Page 3 of my report, Bureau of Labor
 4 Statistics, the employer cost of employment
 5 compensation.
 6 That employer cost is an estimate
 7 of the average benefit paid to the average
 8 employee, which would include companies that
 9 would have very full packages, as well as
 10 companies that have de minimus packages, and I
 11 mean, the only legally required benefit is
 12 Social Security, 6.2.
 13 So the average benefit paid to the
 14 average employee would somewhat underestimate if
 15 an employee said I am going to get health
 16 retirement, you know, then that would be
 17 slightly higher than average because the average
 18 is probably three-quarters of a health plan,
 19 three-quarters of a retirement plan.
 20 So we took 25.1 percent without
 21 knowing exactly what benefits he would or
 22 wouldn't get. And I also, as I indicated to you
 23 earlier, did a recalculation that if he only
 24 were to get legally required Social Security and
 25 no other benefit, then there would be a

Page 39

1 reduction of about \$76,000 through age 62.
 2 **Q. And again, your only source for**
 3 **identification of benefits from MB West is via**
 4 **David Watkins; correct?**
 5 A. Yes.
 6 **Q. In the Bureau of Labor Statistics**
 7 **employer cost of employee compensation, are**
 8 **there subsets of benefits, percentages, subsets**
 9 **of all companies set?**
 10 A. Not that I am aware of, for
 11 example, manufacturing or -- not that I recall.
 12 **Q. Moving on to Scenario 2, where**
 13 **Mr. Watkins would work under MODOT's 1,000 hour**
 14 **program, you utilized the same hourly wage in**
 15 **that case, in that scenario, as you did in**
 16 **Scenario 1, which is \$27.22 an hour; correct?**
 17 A. Yes.
 18 **Q. And then in that case, though --**
 19 **well, I guess, let me just ask you this, and**
 20 **that way we can talk about it: What did**
 21 **Mr. Watkins tell you about that MODOT 1,000 hour**
 22 **program?**
 23 A. Well, he said he would have to pass
 24 an exam, wait a couple pay periods, and he would
 25 be doing the same work basically, and he gets

Page 40

1 the same hourly wage.
 2 And actually, more importantly, he
 3 said he would not have gotten any wage increase.
 4 There was some sort of a freeze.
 5 But he said he -- and he couldn't
 6 work more than 1,000 hours or that would impact
 7 his pension.
 8 But he could work at any other, you
 9 know, non-MODOT job, that wouldn't affect his
 10 pension. I am not saying he would, but he could
 11 have gone to Wal-Mart and worked on the weekend,
 12 for example.
 13 **Q. Okay.**
 14 A. So for Scenario No. 2, then, we
 15 used 1,000 hours based on \$27.22 an hour.
 16 And one further minor complication,
 17 since there is no wage increase, we actually
 18 showed a decline in the real value of that wage
 19 by 2.5 percent per year, so that it's basically
 20 buying 2.5 percent per year less.
 21 **Q. right.**
 22 A. So we give it a negative 2.5
 23 percent wage growth because we use a real
 24 discount.
 25 **Q. And in that scenario, when we are**

Page 41

1 **calculating loss of the present value of future**
 2 **wages under Scenario 2; and if we also assume**
 3 **that he worked until he was 62 years old, under**
 4 **that scenario, the present value of the loss of**
 5 **wage is \$148,830; is that correct?**
 6 A. Yes. Now, in that scenario, we
 7 assumed a legally required Social Security
 8 contribution and a statistically average health
 9 benefit only of 12.1 percent.
 10 But there again, we learned, and I
 11 think this might have been from the MODOT
 12 website, that the contribution for MODOT to a,
 13 quote, retired employee versus an active
 14 employee is \$112 a month less -- or I am sorry,
 15 it's basically 239 a month is my point.
 16 **Q. So under this scenario from data**
 17 **that you got from MODOT's website, you were**
 18 **actually able to get an exact amount of benefits**
 19 **paid per month?**
 20 A. Yes. So earlier we used the
 21 non-retired 351 a month for an active employee
 22 in this report, which was that 12.1 percent.
 23 If we took into account the
 24 likelihood that they would contribute a lower
 25 amount for a retired employee, I think that

Page 42

1 means his co-pay would go up or his
 2 co-contribution would go up, then that would
 3 reduce the total of 18.3 percent that I used by
 4 about 6.1 percent to a net of 11.1, not 18.3,
 5 and through retirement age 62, a drop of 15,198.
 6 **Q. And it looks like did you just make**
 7 **a note of what you saw on the MODOT website?**
 8 A. Yes, I had James, who did the
 9 interview, I had him take a look at those
 10 benefits. I think he said he got it from the
 11 website.
 12 **Q. You say James did Mr. Watkins'**
 13 **interview?**
 14 A. Yes.
 15 **Q. Okay. What is James' last name?**
 16 A. Webster.
 17 **Q. He is with your office?**
 18 A. Yes.
 19 **Q. What is his position there?**
 20 A. He is an economic research analyst.
 21 **Q. And do you know -- and I think I**
 22 **asked you earlier about how you get your notes**
 23 **into your work product, and I think you**
 24 **testified you typed yours directly into that**
 25 **report. Do you know if he has the same thing or**

Page 43

1 **what his practice is?**
 2 A. He is trained to type directly into
 3 the work notes.
 4 **Q. Got it.**
 5 **Moving on from those two scenarios**
 6 **and moving on to your calculations of loss of**
 7 **household services.**
 8 **I wanted to ask -- so you have --**
 9 **for Mr. Watkins, I guess you utilize a number**
 10 **for, I guess, hours worked around the household**
 11 **per day of three hours per day from 2010 to**
 12 **2018; is that right?**
 13 A. Yes.
 14 **Q. And the significance of 2018, I**
 15 **guess that's Mr. Watkins at age 62; is that**
 16 **right?**
 17 A. Yes. And then there is an assumed
 18 retirement and a different number of hours.
 19 **Q. Right. And so it's three hours per**
 20 **day, so that's 21 hours per week for that first**
 21 **bit of time up through retirement, and beyond**
 22 **that, it's 21.72 hours per week; is that right?**
 23 A. Yes.
 24 **Q. Okay. So there is a slight**
 25 **increase of work around retirement; is that**

Page 44

1 **right?**
 2 A. Yes.
 3 **Q. And then you make an assumption on**
 4 **Mr. Watkins, the loss of Mr. Watkins' household**
 5 **services as 50 percent of what he otherwise**
 6 **would have provided; is that right?**
 7 A. Yes.
 8 **Q. And can you describe how you arrive**
 9 **to that 50 percent number?**
 10 A. It's pretty much based on his
 11 interview statements, that he used to do three
 12 to four hours a week -- or I am sorry, a day,
 13 and now he does about half of that, things take
 14 longer when he does them.
 15 We also have his wife in her
 16 deposition stating that there is -- he certainly
 17 can't do any lifting.
 18 She said he put up a retaining wall
 19 at the house and at his son's house, he can't do
 20 that now.
 21 He can still help with cooking and
 22 help with cleaning, vacuuming and laundry, but
 23 he has to stop and take breaks. He can't do the
 24 heavier chores.
 25 So based on his statements, we show

Page 45

1 a loss here of 50 percent of the ability of what
 2 he used to do. The trier of facts thinks it's
 3 40 percent or 60 percent, you know this is
 4 simple.
 5 **Q. Right.**
 6 A. High school math, scale that number
 7 up or down.
 8 **Q. Then you utilize an hourly dollar**
 9 **value of those services; is that right?**
 10 A. Yes.
 11 **Q. And that's \$14.12 an hour?**
 12 A. Yes.
 13 **Q. And how do you come to that number?**
 14 A. That's based on the collection or
 15 professions of folks who provide such services
 16 in the household, people who work in laundromats
 17 and dry-cleaning shops and short-order cooks and
 18 things like that that are identified in the
 19 report.
 20 **Q. Now, your calculations of**
 21 **Mr. Watkins' future lost earnings assume that**
 22 **during the remainder of his working life, there**
 23 **would have been no time that he would have been**
 24 **unemployed or otherwise unable to work for**
 25 **reasons not related to this accident; is that**

Page 46

1 **correct?**
 2 A. Correct.
 3 **Q. I was going to ask, are you the one**
 4 **who input the numbers or at least the start of**
 5 **the numbers into the spreadsheet program that**
 6 **you use in this case?**
 7 A. No. I employ staff, who's great at
 8 typographical errors, considerably lower than
 9 mine.
 10 **Q. And do they glean the numbers and**
 11 **percentages that they are to use based on your**
 12 **notes and your work product?**
 13 A. The work notes, yes. The work
 14 notes spell out exactly what to put in.
 15 **Q. And have you checked these**
 16 **spreadsheets and charts that you have provided**
 17 **in this case for accuracy?**
 18 A. Yes.
 19 **Q. And upon your check, did your check**
 20 **reveal that the numbers were, in fact, accurate?**
 21 A. They did.
 22 **Q. Now, at one point, you authored a**
 23 **forensic economics textbook; is that right?**
 24 A. Yes.
 25 **Q. When was that?**

Page 47

1 A. 1990, it was first published, and
 2 updates -- I think a set of three updates in the
 3 '90s.
 4 **Q. Is that textbook still in use?**
 5 A. I can't say. I know it was in use
 6 in the '90s a number of places, but there have
 7 been other textbooks published since then.
 8 **Q. Unless you keep up with them, they**
 9 **move on without you, I guess?**
 10 A. Yes.
 11 **Q. Do you know is that textbook still**
 12 **in print?**
 13 A. It is available, yes. Here in my
 14 office, actually.
 15 **Q. Let me ask you this: Have any of**
 16 **your opinions dealing with the calculation of**
 17 **the present value of lost future earnings, to**
 18 **your knowledge, ever been excluded from being**
 19 **communicated to a jury?**
 20 A. No.
 21 **Q. Have any of your opinions with**
 22 **regard to the calculation of the present value**
 23 **of benefits lost ever been excluded from being**
 24 **heard by a jury at trial?**
 25 A. No.

Page 48

1 **Q. Have any of your opinions relating**
 2 **to the present value of the loss of household**
 3 **services ever been excluded from the hearing of**
 4 **a jury at trial?**
 5 A. No.
 6 **Q. You have had other types of**
 7 **testimony prohibited from being heard by a jury**
 8 **at trial; correct?**
 9 A. Only one other time.
 10 **Q. Okay. And is that hedonic damages?**
 11 A. Yes.
 12 **Q. But as far as the types of losses**
 13 **that you are prepared to testify about in this**
 14 **case, none of your opinions related to those**
 15 **types of losses have ever been prohibited from**
 16 **the hearing of a jury at trial; correct?**
 17 A. Correct.
 18 **Q. Do you have or does your office**
 19 **have a document or sheet that sets out how you**
 20 **charge in the matters that you work on?**
 21 A. Yes.
 22 MR. SCHMID: Well, Dr. Smith, I think
 23 that's all I have. So thank you.
 24 THE WITNESS: Very good.
 25 MR. WUNDERLICH: Dr. Smith, I generally

Page 49

1 tell my clients and witnesses to read the
2 deposition and not waive signature, but you have
3 done this many times, you are welcome to do
4 whatever you want.

5 THE WITNESS: I will waive since I think
6 today was pretty straightforward.

7 (WHEREUPON, the deposition
8 concluded at 1:05 p.m. and
9 signature was not waived.)
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Page 50

1 CERTIFICATE OF REPORTER
2 I, Patricia A. Armstrong, a
3 Certified Shorthand Reporter and Registered
4 Professional Reporter within and for the State
5 of Illinois, do hereby certify that the witness,
6 STAN SMITH, Ph.D., whose testimony appears in
7 the foregoing deposition was duly sworn by me;
8 that the testimony of said witness was taken on
9 August 11, 2012, by me to the best of my ability
10 and thereafter reduced to typewriting under my
11 direction; that I am neither counsel for,
12 related to, for employed by any of the parties
13 to the action in which this deposition was
14 taken, and further that I am not a relative or
15 employee of any attorney or counsel employed by
16 the parties thereto, for financially or
17 otherwise interested in the outcome of the
18 action.
19
20
21
22

23 _____
24 Patricia A. Armstrong, CSR-RPR
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<p>A</p> <p>a.m 1:25</p> <p>ability 45:1 50:9</p> <p>able 41:18</p> <p>accident 45:25</p> <p>account 41:23</p> <p>accuracy 46:17</p> <p>accurate 46:20</p> <p>action 50:13,18</p> <p>active 41:13,21</p> <p>actual 6:25</p> <p>add 34:24</p> <p>addition 18:17 31:1</p> <p>additional 21:5 37:20</p> <p>address 4:13 4:17</p> <p>Administrati... 32:12</p> <p>advisor 28:10 28:16</p> <p>affect 40:9</p> <p>afford 31:18</p> <p>age 27:15 28:9 30:19 32:10 32:22 34:16 37:7 39:1 42:5 43:15</p> <p>ago 16:24</p> <p>agreement 1:16</p> <p>ahead 35:19</p> <p>allows 33:12</p> <p>alternate 10:17</p> <p>ambiguous 18:9</p> <p>Amended 8:20 16:6</p> <p>amount 33:7 37:1 41:18,25</p> <p>analysis 19:4 19:17</p> <p>analyst 42:20</p> <p>annual 22:6,9 22:13 23:5,10</p>	<p>23:13,19</p> <p>answer 34:24</p> <p>Answers 8:22 16:7</p> <p>anybody 10:3 24:14</p> <p>anyway 18:1 18:23</p> <p>apologize 35:9</p> <p>appear 6:24</p> <p>APPEARNC... 3:1</p> <p>appears 14:10 50:6</p> <p>appellate 20:12</p> <p>appreciate 28:14</p> <p>approximately 19:5,8 24:23</p> <p>Armstrong 1:19 3:20 50:2,23</p> <p>arrive 22:16 44:8</p> <p>arrived 37:14</p> <p>asked 21:7 31:7 34:9 42:22</p> <p>asks 34:2</p> <p>ASSOCIATES 3:2</p> <p>assume 41:2 45:21</p> <p>assumed 36:9 37:23 41:7 43:17</p> <p>assumption 44:3</p> <p>assurance 29:3</p> <p>attorney 50:15</p> <p>attorney's 6:19 10:1</p> <p>August 2:14 5:3 7:20 12:8 19:13 50:9</p> <p>authored 46:22</p> <p>available 47:13</p>	<p>average 22:11 37:25 38:2,7 38:7,13,14,17 38:17 41:8</p> <p>aware 34:13 39:10</p> <hr/> <p>B</p> <p>B 2:7 4:11</p> <p>back 35:2</p> <p>background 15:6</p> <p>BAILEY 1:10</p> <p>base 19:16</p> <p>based 10:16,19 21:9,10 22:18 26:18 35:15 40:15 44:10 44:25 45:14 46:11</p> <p>basic 12:12,21</p> <p>basically 11:14 27:4 39:25 40:19 41:15</p> <p>basis 25:15,18 26:16 28:16</p> <p>beginning 24:23</p> <p>behalf 3:2,9 17:19</p> <p>believe 7:19 9:13 19:4,7 24:14 26:15</p> <p>believed 24:22 25:1,7 37:17 37:19</p> <p>benefit 8:25 9:6 15:7 16:11 38:7,11,13,25 41:9</p> <p>benefits 2:12 9:23 10:4 21:8 35:16 37:11,14,18 37:22,25 38:2 38:21 39:3,8</p>	<p>41:18 42:10 47:23</p> <p>best 50:9</p> <p>beyond 21:12 30:3 43:21</p> <p>bill 9:12 11:20 19:11 22:19</p> <p>Bills 22:20</p> <p>billwunderlic... 3:7</p> <p>bit 12:7 28:19 33:3 37:13 43:21</p> <p>blank 5:25</p> <p>blanks 11:14</p> <p>board 29:15</p> <p>bore 4:20</p> <p>bottom 38:3</p> <p>bought 31:19</p> <p>break 4:22</p> <p>breaks 44:23</p> <p>bring 8:4</p> <p>BROWN 3:11</p> <p>bucks 31:19</p> <p>Bureau 32:18 38:3 39:6</p> <p>burn 33:13</p> <p>business 4:12</p> <p>buy 29:12</p> <p>buying 31:16 40:20</p> <hr/> <p>C</p> <p>calculate 21:21 35:20</p> <p>calculated 21:8 24:5 27:12,14 35:2 37:11</p> <p>calculating 17:8 41:1</p> <p>calculation 14:21 47:16 47:22</p> <p>calculations 2:15 14:6 16:5 25:14</p>	<p>26:24 27:2,23 36:9 37:3 43:6 45:20</p> <p>calendar 29:21</p> <p>call 5:13</p> <p>called 1:15 4:4 5:7</p> <p>camp 31:16</p> <p>capacity 10:25 24:10</p> <p>car 31:18,19</p> <p>career 33:10,12</p> <p>case 5:2,19 7:16 8:2,6,10 15:5,11 18:7 18:18 19:2,8 19:23 20:6,17 20:25 21:14 21:22 22:5 23:17 24:6 27:19 33:9,23 34:20 37:4 39:15,18 46:6 46:17 48:14</p> <p>cases 17:9 20:21</p> <p>Cause 1:8</p> <p>certain 6:7 9:14 12:1 13:20 14:3 30:2</p> <p>certainly 17:21 28:22 30:11 32:22 44:16</p> <p>CERTIFICA... 50:1</p> <p>Certified 1:21 50:3</p> <p>certify 50:5</p> <p>cetera 17:8</p> <p>change 23:25 33:19</p> <p>characterize 22:25</p> <p>charge 19:19 19:25 20:1</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

48:20 charged 19:8 19:20 charging 18:25 charts 46:16 check 32:14,16 32:17 46:19 46:19 checked 46:15 Chicago 1:24 4:14 child 31:19 children 31:10 31:15 chores 44:24 Circuit 20:13 cited 38:2 Civil 1:17 claim 17:20,25 clarification 21:5 clarify 21:14 35:4 clarifying 35:13 Clark 4:14 cleaning 44:22 clients 49:1 cliff 29:20 co-contributi... 42:2 co-pay 42:1 collect 32:17 collecting 32:14,16 collection 45:14 college 32:1 come 12:11 21:25 22:9 27:2 30:6 32:2 45:13 comes 5:13 communicated 47:19 communicati...	14:17 companies 38:8 38:10 39:9 company 24:10 37:19 compensation 38:5 39:7 Complaint 8:20 16:7 complication 40:16 comprises 16:16 computations 12:22 compute 10:17 computer 26:25 conceptual 30:16 concluded 49:8 conducted 12:25 confirmed 15:6 consider 34:6 34:15 considerably 46:8 consist 8:16 consult 21:24 contact 8:2 contacted 5:1 7:19 contents 8:9 contribute 41:24 contribution 41:8,12 conversation 7:1 conversations 5:6 7:14 cooking 44:21 cooks 45:17 copy 8:19 16:2 16:3	correct 7:10 8:17 13:14 14:22,23 15:1 15:18 16:13 16:14 20:21 21:22 22:7,14 22:21 24:2 27:16,21 30:14 34:10 35:17,23,24 36:22 39:4,16 41:5 46:1,2 48:8,16,17 corresponde... 21:17 cost 38:4,6 39:7 counsel 17:15 50:11,15 County 1:20 couple 28:12 39:24 Court 1:1 3:19 20:7,18,21 Courts 1:18 20:25 cover 16:1 coverage 37:17 CSR 3:20,21 CSR-RPR 50:23 cumulative 37:6 current 34:17 currently 21:3 cut 12:19	day 1:24 43:11 43:11,20 44:12 days 31:19 de 38:10 dealing 47:16 deals 18:14 death 17:9,11 17:13,20,24 18:6 decade 16:25 31:12 decision 33:8 decline 40:18 deep 13:8 Defendant 3:9 17:19,24 Defendants 1:12 dep 18:19 depending 17:4 deposition 1:14 4:22 6:3,8 9:10,15 12:2 13:21 16:4 17:18,23 20:1 44:16 49:2,7 50:7,13 depositions 1:19 4:20 15:10,23 16:10 18:11 deps 18:22 describe 18:25 25:17 26:25 37:13 44:8 determine 22:3 dictated 26:8 difference 36:13 different 23:5 23:23 27:9 36:16 43:18 direction 13:1 15:15 50:11 directly 13:9	42:24 43:2 disability 33:9 disagree 23:12 disclose 35:1 discount 22:13 23:5,8,10,14 23:19 24:2 40:24 discuss 37:18 discussed 6:22 37:12 discussion 14:9 district 1:1,1 1:18 20:8,10 20:12,18 diving 29:15 DIVISION 1:2 document 6:7 9:14 12:1 13:20 48:19 doing 14:6 15:21 39:25 dollar 45:8 downs 29:1 Dr 4:19 6:1,13 8:4 9:9,19 11:3,16 12:6 13:25 15:9,25 48:22,25 drop 42:5 dry-cleaning 45:17 Due 14:12 duly 4:2,5 50:7 DuPage 1:21
		D		E
		D 2:1 damages 48:10 data 14:19 21:4 24:14 41:16 date 29:20 dated 12:8 David 1:4 21:21 24:9 39:4		E 2:1,7 e-mail 21:16 earlier 7:19 35:8 38:23 41:20 42:22 earn 10:19 earned 15:8 26:14 earning 35:22

earnings 17:8 25:21,25 26:16,17 45:21 47:17	16:18 enjoying 32:3 errors 46:8 estimate 2:13 8:25 9:6,23 17:14 34:7 38:6	33:10 extension 33:11 extra 31:17 extracted 12:13 extraction 12:16	filled 5:13,23 6:18 7:5 final 30:4 financial 28:10 28:16 31:23 financially 31:15 50:16	further 40:16 50:14 future 10:5,19 24:5 27:13 41:1 45:21 47:17
Eastern 1:1,2 20:8,10,18 eat 33:5 economic 42:20 economics 23:2 32:9 34:22 46:23 economist 23:13,16 economists 23:4 education 31:25 32:1 EDWARD 1:10 Eighth 20:13 either 7:8 17:8 17:18 36:20 Eleventh 3:23 embedded 26:20 employ 46:7 employable 10:24 employed 24:9 50:12,15 employee 38:8 38:14,15 39:7 41:13,14,21 41:25 50:15 employees 37:21 employer 38:4 38:6 39:7 employment 10:5,17 21:9 30:3 38:4 empty 29:22 ended 26:2 England 10:10 England's	et 17:8 evaluation 27:23 evidence 18:19 18:22 exact 41:18 exactly 5:5 29:8 38:21 46:14 exam 39:24 examination 1:15 2:3 4:7 examined 4:5 example 12:19 33:9 39:11 40:12 Excel 27:5,7 excluded 20:16 20:24,24 47:18,23 48:3 exclusively 28:24 exhibit 2:9,11 2:12,14,15 6:2,6,9,15,21 9:10,16,20 11:17,24 12:3 12:7 13:8,16 13:22 14:1 25:25 26:16 26:17 expectancy 12:21 21:21 21:25 22:3 27:16 28:21 33:5,20 experiencing 31:9 extendible	F facilitate 14:17 facing 33:8 fact 34:13 36:23 46:20 factor 31:9 factors 30:6 31:7 32:2 34:5,12,16,18 facts 45:2 factual 14:19 fair 33:7 fairly 18:19 31:13 fall 27:23 family 31:11 far 7:7 48:12 favor 11:2 fax 16:1 faxed 7:25 Federal 20:7 20:10,17 fee 19:3,16,16 19:22 feel 11:18 fees 2:11 6:16 field 17:2 23:1 32:9 fields 23:2 figure 26:20,21 36:25 figured 35:12 figures 36:4 file 5:4,12,19 8:5,9,15 10:9 11:3,11 12:13 14:25 15:25 16:16 fill 29:23	find 33:1 fine 11:25 first 4:4 5:1,1,4 7:19 8:2,20 13:18 14:5 16:6 19:17 24:8 26:23 43:20 47:1 five 17:18 28:21 34:3,24 flat 19:15 Floor 3:12 folks 31:17 45:15 following 10:16 follows 4:6 foregoing 50:7 forensic 23:2,4 32:9 46:23 forensics 32:11 Forever 23:20 forget 27:10 form 2:11 5:15 5:18 6:2,16 7:4,8,13,24 12:12 13:10 16:11 35:16 formatted 27:8 forms 5:11 formulas 12:21 four 14:8 35:1 44:12 free 11:18 freeze 40:4 full 32:4,7 38:9 full-time 21:9 fully 28:13 fund 31:25 32:1	G GCL 1:10 generally 33:7 33:21 34:21 48:25 germane 15:4 getting 15:7 GINA 1:5 give 10:14 40:22 GLC 3:9 glean 46:10 go 11:8 28:10 29:18 42:1,2 going 11:8 13:15,16,25 19:14 28:15 28:18 35:2 36:21 38:15 46:3 golf 29:24 good 28:6 31:18 32:6 33:13 48:24 gotten 40:3 grand 30:22 grandchildren 31:12,14,22 31:23,24 Gravois 3:3 great 46:7 gritty 26:23 growth 22:6,10 22:12 40:23 guess 6:23,25 14:15 15:11 39:19 43:9,10 43:15 47:9

<p>H</p> <p>H 2:7</p> <p>hair 23:23</p> <p>half 44:13</p> <p>hand 13:15,17 13:25</p> <p>handwritten 13:12</p> <p>happen 18:20 28:13</p> <p>happens 18:1</p> <p>health 37:15,19 38:15,18 41:8</p> <p>healthier 33:6</p> <p>healthy 32:23 32:24</p> <p>hear 5:16</p> <p>heard 47:24 48:7</p> <p>hearing 48:3 48:16</p> <p>heavier 44:24</p> <p>hedonic 48:10</p> <p>height 33:3,19</p> <p>help 44:21,22</p> <p>helping 31:15</p> <p>Hey 5:7</p> <p>high 3:4 30:22 45:6</p> <p>higher 36:1,4 36:19,21 37:1 37:2 38:17</p> <p>hiring 28:6</p> <p>hits 28:8</p> <p>holy-moly 29:18</p> <p>honey-do 29:24</p> <p>hour 19:24 20:2,4,5 25:8 25:14 26:14 26:19 35:9,15 39:13,16,21 40:15 45:11</p> <p>hourly 19:20 19:21,22 25:2 25:3,7 26:3,7</p>	<p>26:18 36:20 39:14 40:1 45:8</p> <p>hours 24:24 25:21 36:2,5 36:6,9,15,20 40:6,15 43:10 43:11,18,19 43:20,22 44:12</p> <p>house 44:19,19</p> <p>household 43:7 43:10 44:4 45:16 48:2</p> <hr/> <p style="text-align: center;">I</p> <hr/> <p>ID 2:10</p> <p>idea 7:5</p> <p>ideal 32:5</p> <p>identification 6:9 9:16 12:3 13:22 39:3</p> <p>identified 34:19 45:18</p> <p>identify 6:13 8:8 9:21 13:19 23:1</p> <p>Illinois 1:21,24 3:21 4:15 50:5,24</p> <p>imagine 30:9 30:25</p> <p>impact 10:13 10:15 34:16 40:6</p> <p>important 29:13</p> <p>importantly 40:2</p> <p>incentives 14:11</p> <p>include 38:8</p> <p>including 18:11 31:8</p> <p>income 30:22 30:24 32:6</p>	<p>increase 40:3 40:17 43:25</p> <p>increment 25:16,19 36:14</p> <p>independent 27:25</p> <p>index 15:16</p> <p>indicate 26:12</p> <p>indicated 28:1 35:15,24 38:22</p> <p>individual 33:22</p> <p>inflation 29:6</p> <p>influence 10:13</p> <p>information 2:11 6:16 12:13 15:4 21:3,13 24:13 24:17</p> <p>injury 17:9,11 17:13,20,24 18:6 27:20</p> <p>input 12:22 46:4</p> <p>insurance 37:16</p> <p>intake 5:15,18 6:2 7:13,24 16:12</p> <p>intend 10:14 31:3</p> <p>interested 50:17</p> <p>Interrogatori... 8:23 16:7</p> <p>interview 12:14 12:25 26:13 42:9,13 44:11</p> <p>interviewed 12:23</p> <p>invested 28:24 29:2</p> <p>investing 29:10</p> <p>invoice 19:11</p>	<p>19:13</p> <p>Item 9:2</p> <p>itemized 8:11</p> <p>items 11:15</p> <hr/> <p style="text-align: center;">J</p> <hr/> <p>James 3:11 10:10 42:8,12</p> <p>James' 42:15</p> <p>job 32:3 40:9</p> <p>judge 23:15</p> <p>July 24:23</p> <p>jury 18:12 47:19,24 48:4 48:7,16</p> <hr/> <p style="text-align: center;">K</p> <hr/> <p>keep 28:11 47:8</p> <p>kind 18:25 26:23 30:25</p> <p>knew 4:21 35:11,12</p> <p>know 4:23 5:9 5:12 14:4 19:22 25:20 25:23 27:4 28:5,15,17,24 29:6,8,11 30:21,22 31:16,18 33:1 34:23,24 36:6 36:15 38:16 40:9 42:21,25 45:3 47:5,11</p> <p>knowing 37:22 38:21</p> <p>knowledge 23:6 47:18</p> <p>known 34:22</p> <p>kschmidt@b... 3:16</p> <p>KURT 3:15</p> <hr/> <p style="text-align: center;">L</p> <hr/> <p>labeled 12:9</p>	<p>Labor 32:19 38:3 39:6</p> <p>larger 23:10</p> <p>LaSalle 1:23</p> <p>late 19:13</p> <p>laundromats 45:16</p> <p>laundry 44:22</p> <p>learned 41:10</p> <p>legally 38:11 38:24 41:7</p> <p>Let's 21:20 24:4</p> <p>License 50:24</p> <p>life 12:20 21:21 21:25 22:1,3 27:15 28:20 32:5 33:5,14 33:17,20,21 37:20 45:22</p> <p>lifting 44:17</p> <p>light 34:1,1</p> <p>likelihood 34:4 41:24</p> <p>list 9:2,4 11:9</p> <p>listed 34:18</p> <p>lists 29:24</p> <p>litigation 3:22 17:3</p> <p>little 12:7,18 28:19 31:25 33:3,5 37:13</p> <p>live 18:10,14,22 28:18</p> <p>long 4:16 5:10 14:12 16:24 23:18 27:19 27:24 28:1,17 29:9,12 30:8 31:4 33:6 34:14</p> <p>longer 30:10,13 30:18 44:14</p> <p>look 5:22 11:4 11:10,21 12:20 13:18</p>
-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

21:7 29:17,21 30:20 33:15 42:9 looked 36:13 looking 28:5 looks 7:24 29:16 42:6 loss 24:5 37:4 37:11 41:1,4 43:6 44:4 45:1 48:2 losses 14:9 48:12,15 lost 2:15 14:5 14:20 16:4,5 17:8 37:6 45:21 47:17 47:23 lot 18:21 29:18 32:5 33:16 Louis 3:13,24 low 29:5 lower 41:24 46:8	14:7 matter 10:14 16:16 matters 48:20 MB 24:10,14 24:15,18,22 25:2 35:21 37:18 39:3 mean 25:17 32:4,12 35:1 38:11 meaning 32:20 means 42:1 measurement 34:5 meat 21:20 mention 31:7 mentioned 31:8 meter 29:15 Midwest 3:22 mind 6:1 9:9 11:16 mine 46:9 minus 38:10 minor 40:16 minute 29:23 36:16 misleading 35:10 Missouri 1:1 3:4,13,24 20:8,11,18,21 21:1 misspoke 35:7 mistake 35:12 MODOT 2:12 9:1,7,22 10:4 16:11 21:10 25:4,7 35:16 35:23 37:16 39:21 41:11 41:12 42:7 MODOT's 39:13 41:17 money 28:23 29:7,8 30:5	31:1,25 month 18:17 18:21 19:12 28:19 29:9,9 41:14,15,19 41:21 monthly 25:20 26:16 28:14 28:16 35:15 move 11:6,12 47:9 moving 39:12 43:5,6 multiple 18:1	13:5,7,13 14:16 16:2 26:12 42:22 43:3 46:12,13 46:14 notice 1:16 16:3 number 2:10 23:22 26:10 28:6 34:16 36:19,21 37:8 43:9,18 44:9 45:6,13 47:6 numbers 36:6 36:18 37:14 46:4,5,10,20	opened 5:3 opine 31:4 opinion 20:16 20:23 21:5,6 21:14 27:18 27:25 34:14 35:1 opinions 10:13 10:23 15:4 34:9,12 47:16 47:21 48:1,14 opportunities 10:6 order 35:20 originally 37:4 outcome 50:17 outlive 28:20 overall 19:5,7 overtime 25:11
<hr/> M <hr/> M 3:6 M-O-D-O-T 9:23 making 10:22 30:20 manufacturing 39:11 mark 11:18 marked 2:10 6:2,5,8,12,14 9:10,15,20 11:17,23 12:2 13:16,21 14:1 Market 3:12 markings 15:22 materials 5:5 5:16 8:5,16 math 45:6 mathematics		<hr/> N <hr/> N 2:1 name 4:9 12:20 27:11 42:15 nationwide 22:12 37:24 38:2 nature 18:9 near 6:22 necessarily 32:4 need 4:22 33:24 needs 34:13 negative 40:22 neither 50:11 net 24:1 42:4 never 5:16 30:4 30:7 new 5:12 19:13 nitty 26:23 non-MODOT 40:9 non-retired 41:21 North 3:23 4:14 Notary 1:20 note 7:2,3 42:7 notes 2:14 7:14 12:9,11,14	<hr/> O <hr/> object 18:8 obtain 24:17 obtained 24:13 obviously 14:10 30:15 36:19 occasion 16:23 17:17 offer 32:20 office 5:12,24 6:19 7:9,16 10:1 12:16 14:22 15:17 21:17,18 42:17 47:14 48:18 offset 10:18,21 oh 29:16 Okay 4:23 7:3 7:18 9:3 14:14 15:25 16:19 26:6,22 27:6 35:19 40:13 42:15 43:24 48:10 old 41:3 once 18:20 31:13,20	<hr/> P <hr/> P.C 3:11 p.m 49:8 packages 38:9 38:10 page 6:21 14:8 38:3 pages 13:7,8 14:2 paid 37:23 38:7 38:13 41:19 pain 14:12 paper-clipped 14:2 paperwork 26:8 paragraph 8:12 paragraphs 14:8 part 10:8 14:24 participate 32:20 particular 5:2 8:6 parties 50:12

<p>50:16 pass 39:23 passed 14:18 paste 12:20 Patricia 1:19 3:20 50:2,23 pay 10:4 39:24 paycheck 30:3 paying 31:16 pays 29:5 37:17 penny 33:13 pension 40:7 40:10 people 27:4 28:13 29:19 30:1,8 32:5 32:13,20,23 32:25 34:2 45:16 percent 17:6 22:6,14,17 23:13,19 24:2 25:3,3,16,18 35:21,25 36:5 36:5,14 37:1 37:2 38:20 40:19,20,23 41:9,22 42:3 42:4 44:5,9 45:1,3,3 percentage 17:7,14 32:19 32:23,24 percentages 39:8 46:11 Perfect 4:24 performed 14:21 periods 14:13 39:24 person 13:3 personal 17:9 17:11,13,19 17:24 18:6 pertaining 1:18 16:11</p>	<p>Ph.D 1:14 2:4 4:3 50:6 phone 7:1 13:2 13:4,13 placed 15:14 15:15,18 places 47:6 Plaintiff 16:6 17:15 24:9 Plaintiffs 1:6 3:2 16:10 Plaintiffs' 8:20 15:10 plan 38:18,19 plans 31:2 play 30:7 32:3 please 4:9 plenty 4:19 plug 36:18,19 plus 34:24 point 19:9 34:8 41:15 46:22 position 14:13 42:19 possibilities 30:16 possible 28:22 30:12 practice 7:10 43:1 precise 34:4 precision 34:6 predecessor 27:10 prepare 16:2 prepared 5:8 10:10 34:20 48:13 present 3:18 27:12 37:5 41:1,4 47:17 47:22 48:2 presented 18:19 pretty 29:10,11 30:19 32:6</p>	<p>33:12 44:10 49:6 print 47:12 printout 2:12 9:22 prior 16:22 probably 5:4 14:16 38:18 Procedure 1:17 product 11:15 42:23 46:12 Professional 50:4 professions 45:15 program 27:1 27:9 39:14,22 46:5 prohibited 48:7,15 proportionat... 36:7 provide 10:21 15:3 37:19 45:15 provided 21:10 44:6 46:16 provisions 1:16 Public 1:20 published 47:1 47:7 purpose 37:23 pursuant 1:15 put 12:14 15:12 31:25 33:25 44:18 46:14</p> <hr/> <p style="text-align: center;">Q</p> <hr/> <p>question 15:20 18:9,14 36:17 quick 11:11,21 quote 41:13</p> <hr/> <p style="text-align: center;">R</p> <hr/> <p>rare 18:19 rate 22:6,10,14</p>	<p>22:19 23:14 23:19,25 24:2 26:18 rates 22:19 23:5,8,10 rationale 23:16 read 8:13 49:1 real 11:21 22:6 22:9,13 23:5 23:10,13,19 40:18,23 reality 28:8 realize 31:22 really 11:11 23:15 29:6 reasons 45:25 recalculation 38:23 recall 5:5 6:25 18:2 20:15 39:11 received 7:24 9:25 recollection 21:2 record 6:14 8:9 8:14 9:21 reduce 42:3 reduced 50:10 reduction 39:1 reference 21:24 referring 26:10 regard 8:5 11:3 15:9 47:22 Registered 50:3 rehabilitation 10:9 related 35:16 45:25 48:14 50:12 relating 48:1 relative 50:14 remain 14:12 remainder 45:22</p>	<p>render 21:4,13 report 8:12 10:9,12,19,20 16:3,19 19:12 26:24 34:19 34:23 37:24 38:3 41:22 42:25 45:19 Reporter 1:22 3:19 50:1,3,4 representative 24:15 required 38:11 38:24 41:7 requirements 31:24 research 42:20 rest 12:13 results 23:22 retained 17:15 retaining 44:18 retire 28:9 30:19 34:3,14 retired 41:13 41:25 retiree 37:16 retirement 28:7 29:20 31:2 32:9 35:22 37:20 38:16,19 42:5 43:18,21,25 retiring 30:5 return 8:17 14:25 22:19 29:4 returned 5:15 returns 16:9 29:1,11 reveal 46:20 Ridge 3:4 right 4:25 10:10 15:21 19:10,17 24:4 24:6,11,24 25:4,8,11</p>
--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

26:4,9 30:15 36:10,24 37:8 40:21 43:12 43:16,19,22 44:1,6 45:5,9 46:23 roughly 18:16 RPR 3:20 rules 1:17 4:20 run 29:9,12	send 5:14,25 sense 10:16 23:20 26:20 30:9 sent 7:5 September 1:24 6:10 9:17 12:4 13:23 seriously 30:7 SERVICE 1:11 3:10 services 3:22 43:7 44:5 45:9,15 48:3 set 5:5 19:3 39:9 47:2 sets 48:19 sheet 16:12 48:19 sheets 5:12 16:1 shops 45:17 short 29:3 short-order 45:17 short-term 28:25 shortcut 15:21 shorter 29:5 Shorthand 1:22 50:3 shortly 19:14 show 9:13,19 44:25 showed 40:18 shown 18:12 signature 49:2 49:9 significance 43:14 significant 30:2 significantly 36:15 simple 45:4 sir 4:10	sitting 20:7,17 20:25 slight 43:24 slightly 23:25 36:4 38:17 smaller 23:9 Smith 1:14 2:4 2:9 4:3,11,12 4:19 6:1,6,8 6:13,14 8:4 9:9,15,19,20 11:3,16,24 12:2,6,7 13:16,21,25 14:1 15:9,25 48:22,25 50:6 Social 32:12 38:12,24 41:7 socked 31:1 solid 30:24 somebody 6:18 12:16 14:6 15:17 somewhat 38:14 son's 44:19 sorry 35:4 41:14 44:12 sort 5:9,12 37:20 40:4 source 22:2 38:1 39:2 South 1:23 speaking 13:6 31:13 specific 23:17 spell 46:14 spoken 10:3 spreadsheet 27:3 46:5 spreadsheets 46:16 St 3:13,24 staff 12:19 46:7 Stan 1:14 2:4 4:3,11 50:6	stand 5:9 34:25 start 31:14,21 32:14,16 46:4 started 24:22 state 1:21,22 4:9 20:21,25 50:4 statement 28:7 34:17 statements 44:11,25 States 1:1,17 22:1 stating 44:16 statistic 38:1 statistically 31:12 32:13 37:25 41:8 statistics 32:19 32:19 33:15 38:4 39:6 sticky 15:11 stop 32:15 44:23 straightforw... 49:6 Street 1:23 3:12,23 4:14 strictly 18:10 studies 32:8 style 32:6 subject 21:12 subsets 39:8,8 Suite 1:23 summer 31:16 support 10:21 17:3 supposed 29:23 sure 4:21 6:4 8:11 9:8,11 9:11 11:5,13 11:18 14:20 24:1 26:2 35:6,7 36:8 37:15 sworn 4:2,5	50:7 <hr/> T <hr/> T 2:7 tables 22:1 28:21 tabs 15:11,14 take 5:22 7:14 11:4,10,20 13:5,13,18 28:18,19 30:7 42:9 44:13,23 taken 1:15,19 1:23 18:11,22 50:8,14 talk 33:22 39:20 talked 30:1 talking 18:10 tax 8:16 14:25 16:8 telephone 7:14 tell 7:4,7 28:11 32:13,14 36:16,23 39:21 49:1 tells 28:17 32:15 ten 28:21 34:3 tendency 30:18 term 29:3,5 terminology 22:23 terms 30:16 33:14 testified 4:5 7:18 17:23 18:5 20:6,20 42:24 testify 17:18 18:16,21,22 48:13 testimony 18:15 20:3,16 20:24 48:7 50:6,8
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<p>textbook 46:23 47:4,11 textbooks 47:7 thank 48:23 thanks 35:13 thereto 50:16 thing 29:14 30:4,25 35:5 42:25 things 23:17 28:12 29:25 30:23 31:17 33:4,6 44:13 45:18 think 5:20 7:18 26:1,12 28:12 28:14 29:13 29:19 30:6,10 30:11,18 31:13 32:5 33:14,21,24 34:5,12,15 35:11 36:25 41:11,25 42:10,21,23 47:2 48:22 49:5 thinking 28:6 31:14 thinks 30:13 45:2 third 8:12 thirdly 28:23 thought 35:25 three 43:11,19 44:11 47:2 three-quarters 17:10,16 38:18,19 tight 29:3 time 10:25 14:13 17:16 17:22 19:1,20 20:1 32:4,7 35:22 43:21 45:23 48:9</p>	<p>time-and-a-h... 25:10 times 18:1,4,5 18:21 36:14 49:3 today 8:5 37:13 49:6 told 24:21 25:1 25:6 26:7,13 tons 31:1,1 top 6:22 11:15 12:8 29:15,17 total 42:3 trained 43:2 transcript 15:12 transcripts 15:10,23 16:9 Treasury 22:19 22:20 trial 17:19,23 18:6,11,12,15 18:16,23 20:3 20:17,25 31:4 47:24 48:4,8 48:16 trier 34:13 45:2 TRUCKING 1:11 3:9 turn 28:9 twice 18:16,21 two 11:15 14:2 24:5 31:10 34:24,24 43:5 type 43:2 typed 13:9 42:24 types 48:6,12 48:15 typewriting 50:10 typographical 46:8</p>	<p>26:19 unable 14:12 45:24 underestimate 38:14 understand 33:25 understanding 6:17 unemployed 45:24 United 1:1,17 22:1 updates 47:2,2 ups 28:25 use 22:2,13,23 22:24 23:4,9 23:9,21 25:13 26:7,19 27:8 36:4 40:23 46:6,11 47:4 47:5 useful 33:22 usually 18:21 19:11 29:5 30:9 utilize 27:1 43:9 45:8 utilized 22:5 39:14</p>	<p style="text-align: center;">W</p> <p>wage 2:15 14:5 14:20 16:4 24:5 25:2,4,7 25:14 26:3,8 35:8,15,21 36:20 39:14 40:1,3,17,18 40:23 41:5 wages 10:18 16:5 22:12 27:13 35:20 35:25 37:5,6 41:2 wait 29:23 39:24 waiting 21:4,13 waive 49:2,5 waived 49:9 Wal-Mart 40:11 wall 44:18 wallop 29:7 want 8:13 11:20 22:23 28:9 31:24 49:4 wanted 4:21,25 12:6,10 15:13 16:20 17:1 18:24 26:1 28:2 43:8 wasn't 14:21 Watkins 1:4,5 2:13 8:16 9:24 10:24 12:24 14:10 14:16 15:7 16:8,8,11 21:10,22 24:9 24:19,21 25:6 26:7 27:13,19 30:12 31:4,11 33:11,16,23 35:16,20 37:7 37:12 39:4,13</p>	<p>39:21 43:9,15 44:4 Watkins' 6:18 8:22 10:1,4 14:25 27:15 42:12 44:4 45:21 way 11:12 17:2 39:20 website 41:12 41:17 42:7,11 Webster 42:16 week 24:24 25:22 36:2,6 36:9,21 43:20 43:22 44:12 weekend 40:11 weight 33:3 welcome 49:3 went 35:19 West 24:10,14 24:15,18,23 25:2 35:21 37:18 39:3 wife 30:21 44:15 WILLIAM 3:2 3:6 witness 2:3 4:1 4:4 48:24 49:5 50:5,8 witnesses 49:1 WMW 6:22 wonderful 31:22 words 16:5 work 2:14 5:1 5:8 11:15 12:9,11,15 17:2,7,10,12 19:1,16 28:2 30:8 32:7,17 32:21 33:7,14 33:17,21 35:8 35:21 36:1,10 37:7 39:13,25</p>
	<p style="text-align: center;">U</p> <p>ultimately 26:6</p>	<p style="text-align: center;">V</p> <p>vacuuming 44:22 value 27:13 29:7 37:5 40:18 41:1,4 45:9 47:17,22 48:2 values 27:14 variation 27:4 27:7 versus 41:13 viewing 34:6 vocational 10:9 vs 1:8</p>		

40:6,8 42:23 43:3,25 45:16 45:24 46:12 46:13,13 48:20 worked 16:20 25:11 27:20 27:24 30:12 30:13,17,17 31:5 36:20 40:11 41:3 43:10 working 16:2 24:22 25:21 28:11 30:5 32:4,15,24 45:22 works 30:21 wouldn't 38:22 40:9 write 7:11 writing 7:8,8 written 14:10 wrongful 17:9 17:11,13,20 17:24 18:6 wrote 19:4 Wunderlich 3:2,6 5:7 6:23 7:1,15 11:22 11:25 13:17 14:18 16:21 18:8 19:1 31:6 34:2,8 48:25 Wunderlich's 5:24 7:15 21:18	18:20 23:21 23:23,24 40:19,20 years 4:18 17:18 21:23 22:12,18 23:21,24 27:11 28:7,21 28:21 29:22 29:24 34:3 41:3 young 30:19 younger 31:17	13 2:15 130 35:21 14.12 45:11 148,830 41:5 15,198 42:5 1504 3:3 18.3 42:3,4 1990 47:1	35:14 39:16 40:15 297,660 37:8	37:7 39:1 41:3 42:5 43:15 63049 3:4 63101 3:13,24 636-677-5669 3:5 644-2191 3:25 65 32:22	
X	Z	2	3	7	
X 2:1,7	0	2 2:12 9:16,20 25:25 26:16 26:17 29:2 39:12 40:14 41:2 2.5 40:19,20,22 20 18:18 22:11 22:18 23:21 23:24 2000 7:20 18:4 2010 24:23 43:11 2011 8:16 14:25 16:8 2012 1:25 2:14 6:10 7:21 9:17 12:4,8 13:23 50:9 2018 43:12,14 20th 3:12 21 5:3 25:8,13 26:14,19 43:20 21.72 43:22 21st 7:20 22 25:8,13 26:14,19 239 41:15 24 2:14 12:8 31:11 25 24:2,23 36:1 36:5,9 25.1 38:20 2600 1:23 27 4:18 27.22 26:4 35:9	3 2:14 11:24 12:3,7 38:3 30 24:24 25:2 25:15,18 29:22,23 35:25 36:1,4 36:5,12,14 37:2 300 31:19 314 3:25 314-421-3400 3:14 345 19:24 20:2 20:4,5 35 31:11 351 41:21	8	8
Y	084-001766 3:21 50:24 084-1766 1:22	1	4	9	
yeah 10:20 29:16 year 17:5 18:5	1 2:11 6:6,9,15 18:18 22:6 28:13 29:1 37:5,7,11 39:16 1,000 39:13,21 40:6,15 1.25 22:14 23:19 1.5 23:13 1:05 49:8 10 18:18 29:15 1010 3:12 11 6:10 9:17 12:4 13:23 50:9 11.1 42:4 11:30 1:25 112 41:14 115 1:23 1165 4:14 11th 1:24 12 2:14 12.1 41:9,22	2 2:12 9:16,20 25:25 26:16 26:17 29:2 39:12 40:14 41:2 2.5 40:19,20,22 20 18:18 22:11 22:18 23:21 23:24 2000 7:20 18:4 2010 24:23 43:11 2011 8:16 14:25 16:8 2012 1:25 2:14 6:10 7:21 9:17 12:4,8 13:23 50:9 2018 43:12,14 20th 3:12 21 5:3 25:8,13 26:14,19 43:20 21.72 43:22 21st 7:20 22 25:8,13 26:14,19 239 41:15 24 2:14 12:8 31:11 25 24:2,23 36:1 36:5,9 25.1 38:20 2600 1:23 27 4:18 27.22 26:4 35:9	3 2:14 11:24 12:3,7 38:3 30 24:24 25:2 25:15,18 29:22,23 35:25 36:1,4 36:5,12,14 37:2 300 31:19 314 3:25 314-421-3400 3:14 345 19:24 20:2 20:4,5 35 31:11 351 41:21	9 2:13 90 17:4,6 90-day 22:20 90s 47:3,6	