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**In the Circuit Court of the Sixth Judicial Circuit
In and For Pinellas County, Florida
Civil Division**

Deanna L. Hunt,)	
)	
Plaintiff,)	
)	UCN: 522003CA002776XXCICI
vs.)	REF: 03-2776-CI-21
)	
Cam-Jo, Inc. and Garrath N. McKinley,)	
)	
Defendants.)	

Affidavit of John P. Tierney, MA

COMES NOW, John P. Tierney, MA, being first duly sworn upon his oath states the following:

Defense has filed a motion to exclude my testimony. This motion centers around the following key areas:

1. My qualifications
2. Articles by other authors
3. General acceptance

Each of these points is refuted in the discussion that follows.

1. My qualifications

Defense criticizes my expertise, appearing to believe that, because I am not a medical doctor, I should not be allowed to testify regarding Ms. Hunt's worklife expectancy. Defense confuses the training and expertise of the medical and vocational disciplines. Defense motion seems to require that the impact of limitations on work be analyzed only by a medical doctor – somebody that has no training in occupational or vocational analyses. Doctors do routinely identify a patient's limitations in terms of activities they can or should not perform. It is the province of a vocational expert to translate an individual's limitations into the expected impact for the plaintiff in his or her employment (current or future).

Medical impairments must be translated into vocationally-relevant data by experts knowledgeable about the world of work and the effects of impairments on ability to work. For this case, I offer the court vocational expertise on the expected impact of disability on Ms. Hunt's annual earnings and worklife expectancy. This expertise requires knowledge of available statistics and how disabilities impact a person's ability to perform work and earn money. These are the skills that I have used continuously. I note my years of experience

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working with people with disabilities and as a vocational expert with the U.S. Department of Health and Human Services, Social Security Administration.

My knowledge, skill, experience, training, and education all combine to qualify me as an expert. As noted in my Curriculum Vitae (Attachment A), I have a Master's degree in Guidance and Counseling and additional graduate level coursework specific to vocational counseling, vocational rehabilitation counseling, and economics as it pertains to the assessment of loss of lifetime earnings.

In addition to my education, I have work experience specific to placing persons with disabilities in jobs. In particular, I was employed by the Metropolitan Sewer District from 1976 to 1987 and by the River Region Mental Health/Mental Retardation Board from 1974 to 1976. In both of these jobs, I managed Employee Assistance Programs that worked toward the rehabilitation and placement of persons with disability.

From 1986 to 1992, I was under contract as a vocational expert with the U.S. Department of Health and Human Services, Social Security Administration. In this capacity, I provided opinion testimony regarding the employment potential of disabled persons seeking Social Security disability benefits. I provided such testimony at the government's request on numerous occasions. In addition, I have been providing expert testimony in personal injury litigation for over 15 years. I have been qualified as both a vocational and economic expert in over 10 states (including Florida) and numerous federal jurisdictions, and have never failed to qualify as such.

My education and experience provide me with specialized knowledge pertaining to the immediate and ongoing needs of persons with disability in finding and maintaining employment. In addition, data are available from the U.S. Census Bureau's Current Population Survey and American Community Survey that pertain specifically to the earnings and worklife expectancy of persons with and without a disability. These data are analyzed in various government publications and scientific articles, demonstrating the impact of disability on earnings and employment (worklife). This combination of education, experience, and technical data enables me to assess the loss of lifetime earnings of Ms. Hunt in a way that is beyond the realm of common knowledge.

2. Articles by other authors

In point #8 of their Motion, Defense objects, stating that I am "attempting to legitimize [my] opinions by . . . referring to articles by other authors." I find this objection curious, because in the very next point, they state that my opinions are not generally accepted within the relevant scientific community. I am unclear as to whether or not Defense wants me to support my opinions with use of professional literature. It is my experience that support from other professionals is generally preferred by the courts. Indeed, it is required on the doctrine of "general acceptance" set forth in the US Supreme Court's *Frye* decision. Therefore, I will discuss this support in more detail in Section 3.

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3. General acceptance

Lastly, Defense objects to my opinions regarding worklife expectancy, apparently believing that they are not generally accepted. Since the accuracy of my opinion regarding Ms. Hunt's future obviously cannot be known until the end of her lifetime, the concept of general acceptance must be applied to the statistical data used to estimate her future worklife expectancy. As will be shown, the data I have used is accepted by other professionals as valid for studying the effect of disability on employment.

Forecasting a plaintiff's future earnings stream is not an exact science. There is no single step in the loss computation process that enjoys universal acceptance in the relevant community. As such, it is predictable that experts will disagree on the method for computing lost earnings. This is true of defining earning capacity, computing worklife expectancy, projecting earnings growth, and determining discount rates.

The U.S. Supreme Court recognized the inexact nature of assessments for lost earnings in its 1983 decision in *Jones and Laughlin Steel Corporation v. Howard E. Pfeifer* 462 U.S. 523. The Court stated that

by its very nature the calculation of an award for lost earnings must be a rough approximation. Because the lost stream can never be predicted with complete confidence, any lump sum represents only a 'rough and ready' effort to put the plaintiff in the position he would have been in had he not been injured.

In conducting the assessment of Ms. Hunt's worklife expectancy, I used two data sources from the US Census Bureau, the Current Population Survey (CPS) and the new American Community Survey (ACS). The CPS has been gathering disability data since 1981, and the ACS since 1999. Data from the CPS and the ACS are produced and extensively tested by the U.S. Census Bureau.

There are many articles that use CPS data to define the effects of disability on employment (see Attachment B for a partial list). Though the ACS is much newer, researchers have already begun to publish data from it as well (see Attachment C). All known disability research from these surveys as well as others shows that people with a disability, on average, have lower rates of employment, and, therefore, lower worklife expectancies, than do people without a disability.

The methodology used to estimate Ms. Hunt's worklife expectancy with and without disability was developed by Michael Brookshire and William Cobb (1983) and was further refined by Brookshire, Cobb, and Anthony Gamboa (1987). In a 1991 article in the *Journal of Legal Economics*, Gary Albrecht applied this methodology to assessments of earnings for partially disabled individuals. In addition, a 1999 publication by Richards and Abele, *Life and Worklife Expectancies*, looks at several generally accepted ways of computing a statistical worklife, including the method I used in calculating Ms. Hunt's future worklife (see Attachment D for these articles).

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The data and the methodology underlying the calculation of Ms. Hunt's worklife expectancy, therefore, have been the subject of many articles, lending credence to their overall acceptance. The combination of this statistical knowledge with my education and experience in the vocational and economic fields enables me to provide the most reasonable estimate of the effect of Ms. Hunt's disability on her future employment.

FURTHER, THE AFFIANT SAYETH NAUGHT.

John P. Tierney, MA
Senior Vocational Economic Analyst

Subscribed and sworn to before me, a notary public, in this ____ of October 2005.

Notary Public

My Commission Expires _____